

Res Judicata

By Arlene Zalayet

"NOTHING IS PERMANENT BUT CHANGE"
HERACLITUS

Pain: permanent or passing? The pain-riddled plaintiff prognosticates perpetual suffering. An indignant defendant diagnosis the distress as short-lived. How long will the ailments last? Only the jury knows for sure. *JOANNE ZIMMERMAN v THE COUNTY OF NASSAU and MICHAEL J. KAPPELMIER v JOHN LYONS*

Supreme Court, Nassau County
Before: Hon. Stuart L. Ain
December 1988
Verdict: \$152,000.00

This lawsuit stemmed from an automobile accident. The plaintiff was a passenger in the car operated by the third-party defendant. At the conclusion of the liability phase of the trial, the Court directed a verdict in favor of the plaintiff against the defendant and dismissed the third-party action. The case proceeded to a trial on the damages issue. The only injury alleged to have been sustained by the plaintiff was a cervical sprain. The alleged sprain was substantiated by positive x-ray interpretations as well as positive thermographic study findings. The plaintiff did not allege any fractures or bulge concerning the neck area. The sole expert witness pro-



duced by the plaintiff was a chiropractor who had treated the plaintiff, a young woman who had no pre-existing cervical problems. The jury determined that the plaintiff had sustained a permanent injury and awarded her the sum of \$87,000.00 for past and future pain and suffering. The verdict award additionally provided \$55,000.00 for loss of earnings capacity and \$10,000.00 for loss of enjoyment of life. (This verdict pre-dated the Court of Appeals decision in *McDougal v Garber*.)
NOTE: Information provided by George Rockman, Esq., attorney for the plaintiff.
CLIFFORD BAKSYS, JR. v PAUL BERTON and

JOHN BERNHARDT
Supreme Court, Nassau County
Before: Hon. Francis X. Becker (liability)
Hon. Stuart L. Ain (damages)
January 1989
Verdict: \$38,000.00

This case emanated from a two-car auto accident. The plaintiff was a passenger in the car driven by the defendant Berton. The Berton vehicle struck a tree. Berton alleged that his car had been cut-off by the car operated by the defendant Bernhardt. The Berton car hit the tree at a speed of 50 miles per hour. The initial jury in this matter determined the host driver to be 65% liable and that the defendant Bernhardt was 35% liable. The damage portion of the case was tried before a second jury. The plaintiff alleged to have sustained severe personal injuries. He suffered, *inter alia*, fractures of the spine at L3, L4, L5, and S1, which required a spinal fusion operation. A Harrington rod was permanently implanted. Additionally, the plaintiff underwent a splenectomy, which was necessitated by a ruptured spleen. He also fractured his pelvis and jaw. Furthermore, the plaintiff had a thoracotomy and suffered a torn hemidiaphragm and a torn pericardium. The evidence indicated that the plaintiff was hospitalized for two months and was confined to his home for seven months. He was a 15 year old high school student when the ac-

cident occurred. The alleged permanent injuries included pain in the low back which will last for the rest of his life and restriction of motion in his back due to the permanent implantation of the Harrington rod. He further alleged that he would have a greater susceptibility to viral infections as a result of the splenectomy. Three medical expert witnesses testified on the plaintiff's behalf, including 2 surgeons and a consulting orthopedist. The defendant did not offer any medical expert testimony. The jury awarded the sum of \$38,000.00 for past pain and suffering but determined that the plaintiff was not entitled to an award for future pain and suffering in spite of the extensive testimony regarding the issue of permanency. NOTE: Information provided by Elliott C. Winograd, Esq., attorney for the defendant Berton.

Arlene Zalayet, a senior editor of the Nassau Lawyer, a director of the Bar Association, Assistant Dean of the Nassau Academy of Law, chairperson of the Legislation Committee, is an adjunct professor of law at Touros Law School, and is associated with William J. Cariello in Garden City.

Member News

The Officers and Board of Directors of the Columbian Lawyers' Association of Nassau County, Inc. have unanimously chosen Hon. Marie G. Santagata, Supreme Court Justice, Nassau County and Supervising Judge of the Nassau County Criminal Courts, as their honoree for the receipt of the Association's annual Distinguished Service Award. Judge Santagata will receive the award at the Association's annual dinner on June 16 at the Waterview Restaurant in Bayville, Long Island. Judge Santagata, an active member of the Association's Board of Directors, is the first woman to receive the award.

Thomas F. Liotti, Esq., President of the Columbian Lawyers' Association, stated: "Judge Santagata is a superb Judge with a vast record of personal and professional achievements. She is an inspiration to her many friends and colleagues who respect her skill, charm, temperament and integrity as one of the

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