

Ashkinazy v Consolidated Edison Co. of N.Y., Inc.
2010 NY Slip Op 07987
Decided on November 9, 2010
Appellate Division, First Department
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Decided on November 9, 2010
Gonzalez, P.J., Saxe, Richter, Román, JJ.

3558 114048/03

[*1]Larry Ashkinazy, Plaintiff-Respondent,

v

**Consolidated Edison Company of New York, Inc., Defendant-Appellant, The City of
New York, Defendant.**

Richard W. Babinecz, New York (Helman R. Brook of counsel),
for appellant.
Sullivan Papain Block McGrath & Cannavo, P.C., New York
(Brian J. Shoot of counsel), for respondent.

Judgment, Supreme Court, New York County (Karen Smith J.), entered September 2, 2009, inter alia, awarding plaintiff damages for past medical expenses, future home health care, future lost earnings and past and future pain and suffering, unanimously modified, on the facts, to vacate the award for past and future pain and suffering and remand the matter for a new trial on those issues only, and otherwise affirmed, without costs, unless plaintiff, within 30 days of service of a copy of this order, stipulates to reduce the award for past pain

and suffering from \$2,418,000 to \$1.5 million and for future pain and suffering from \$8,060,000 to \$3.5 million, and to the entry of an amended judgment in accordance therewith.

Defendant Con Edison sought to impeach plaintiff's credibility by introducing testimony given by him at the trials of two post-accident malpractice actions against him to show that his memory was not impaired at those trials. The court properly excluded the testimony on the ground that it would not have shed any light on plaintiff's credibility.

We find the amount of damages awarded plaintiff for past and future pain and suffering excessive to the extent indicated (CPLR 5501[c]; *see e.g. Paek v City of New York*, 28 AD3d 207 [2006], *lv denied* 8 NY3d 805 [2007]).

We have considered Con Edison's remaining contentions and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: NOVEMBER 9, 2010 [*2]

CLERK

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