

294 A.D.2d 241, 741 N.Y.S.2d 865, 2002 N.Y. Slip Op. 04276
Supreme Court, Appellate Division, First Department, New York.

Samuel DESIDERIO, etc., Plaintiff-Respondent,
v.
Dr. Robert L. OCHS, et al., Defendants,
New York Hospital, Defendant-Appellant.
Medical Liability Mutual Insurance Company, Inc., FOJP
Service Corporation, Combined Coordinating Council, Inc.,
The City of New York and New York City Health and
Hospitals Corporation, Amici Curiae.

May 23, 2002.

Thomas A. Moore, for Plaintiff-Respondent.

Anthony M. Sola, for Defendant-Appellant.

Frances A. Ciardullo, Steven J. Ahmuty, Jr., Christina M. White, for Amici Curiae.

*241 Order and judgment (one paper), Supreme Court, New York County (Alice Schlesinger, J.), entered June 4, 2001, awarding plaintiff damages against defendant hospital in the principal amount of \$50,123,293, before structuring, including \$1.5 million for past pain and suffering and \$3 million for *242 future pain and suffering over 55 years, upon plaintiff's stipulation, in lieu of a new trial on damages, reducing the jury's award of damages in the principal amount of \$79,873,293, before structuring, including \$2 million for past pain and suffering, \$30 million for future pain and suffering and \$40 million for future nursing care, and, for purposes of structuring pursuant CPLR article 50-A, determining the total present value of the award to be \$28,873,490, before interest, unanimously affirmed, without costs.

The awards for past and future pain and suffering, as reduced by the trial court, do not deviate from what is reasonable compensation for the severe brain damage sustained by plaintiff when he was four years, taking into account his preexisting impairments since birth. In addition, as the trial court indicated, defendant's evidence that the care plaintiff needs can be provided by licensed practical nurses is not so weighty as to warrant judicial "usurpation" of the jury's finding that plaintiff requires permanent, around-the-clock care by registered nurses. The methodology used to structure the judgment is in accordance with CPLR 5031(e) and Bryant v New York City Health & Hosps. Corp., 93 N.Y.2d 592, 695 N.Y.S.2d 39, 716 N.E.2d 1084, and should not be disturbed. We have considered defendant's other arguments and find them to be unavailing. **WILLIAMS, P.J., BUCKLEY, ROSENBERGER and LERNER, JJ., concur.**