

Sokol v Lazar
2013 NY Slip Op 03433
Decided on <u>May 14, 2013</u>
Appellate Division, <u>First Department</u>
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This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on May 14, 2013

Tom, J.P., Acosta, Saxe, Freedman, Feinman, JJ. 9648-

104216/10

[*1]9648A Carol Sokol, Plaintiff-Respondent,

v

Paul A. Lazar, DPM, Defendant-Appellant.

Kaufman Borgeest & Ryan LLP, Valhalla (Jacqueline Mandell of counsel), for appellant.
Sanocki, Newman & Turret, LLP, New York (David B. Turret of counsel), for respondent.

Judgment, Supreme Court, New York County (Alice Schlesinger, J.), entered September 18, 2012, after a jury trial, in plaintiff's favor, unanimously modified, on the facts, to vacate the award for future pain and suffering and to direct a new trial on that issue, unless plaintiff stipulates, within 30 days of service of a copy of this order with notice of entry, to a reduction of the award for future pain and suffering from \$600,000 to \$450,000 and to entry of an amended judgment in accordance therewith, and otherwise

affirmed, without costs. Appeal from order, same court and Justice, entered July 11, 2012, which denied defendant's posttrial motion to set aside the jury's verdict on damages for future pain and suffering, unanimously dismissed, without costs, as subsumed in the appeal from the judgment.

Plaintiff, who was 57 years old at the time of the trial, sustained injuries to her right foot as a result of defendant podiatrist's negligent performance of a bunionectomy. Under the circumstances, we find that the award for future pain and suffering deviates materially from reasonable compensation to the extent indicated (CPLR 5501[c]; *compare Pouso v City of New York*, 22 AD3d 395 [1st Dept 2005]; *Hixson v Cotton-Hanlon, Inc.*, 60 AD3d 1297 [4th Dept 2009]).

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

ENTERED: MAY 14, 2013

CLERK

[Return to Decision List](#)