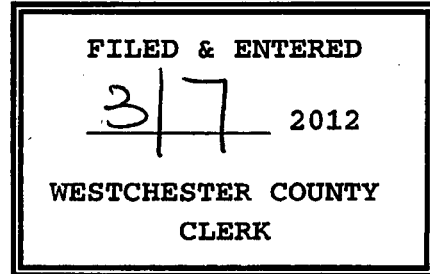


SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

P R E S E N T:

HON. ORAZIO R. BELLANTONI
JUSTICE OF THE SUPREME COURT



ANTONIA MARY CORAPI and PETER CORAPI,

Plaintiffs,

- against -

CITY OF MOUNT VERNON and
SPORTS UNDERDOME, INC.,

FILED

MAR - 7 2012

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

SHORT FORM ORDER

Index No. 15042/08

Motion Date: 2/15/12

Defendants seek an order, pursuant to CPLR 4404(a), reducing the jury's award for past medical expenses from Two Hundred Thousand Dollars (\$200,000.00) to Fifty-Nine Thousand Nine Hundred Ninety-Two Dollars and Three Cents (\$59,992.03). Plaintiffs' cross-move for an order, pursuant to CPLR 4404(a) and CPLR 4406, ordering additur and fixing damages in a monetary amount that does not deviate materially from what is considered reasonable compensation for the plaintiffs injuries and damages, or alternatively setting aside the jury verdict on the issue of damages and ordering a new trial on said issue.

The following papers were read:

Notice of Motion-Affirmation-Exhibits A-G-Affidavit of Service	1-10
Notice of Cross-Motion-Affirmation-Exhibit 1-Exhibit B-Exhibits 2-5-Affidavit of Service	11-19
Affirmation in Opposition-Exhibits A-D-Affidavit of Service	20-25
Affirmation in Opposition-Exhibits 1-3-Affidavit of Service	26-30
Reply Affirmation-Affidavit of Service	31-32
Reply Affirmation-Affidavit of Service	33-34

Upon the foregoing papers, the motions are decided as follows:

For a court to conclude that a jury verdict is not supported by legally sufficient evidence there must be no valid line of reasoning and permissible inference which could possibly lead rational persons to the conclusion reached by the jury on the evidence presented at trial (*see Bolton v. Express*, 73 AD3d 779 [2nd Dept 2010]).


The sole issue in defendants motion is whether there was any evidence in the medical records before the jury that could have lead a rational jury to determine that there were Two Hundred Thousand Dollars (\$200,000.00) in medical expenses incurred from the date of the accident up until the date of the verdict. With regard to the jury award of Two Hundred Thousand Dollars (\$200,000.00) for past medical expenses this Court concludes that such an award is against the weight of the evidence since no fair interpretation of the evidence supports such an amount. The evidence of past medical expenses presented at the time of trial included the following: Plaintiffs' "22"-Huntington Hills Center for Health and Rehabilitation in the amount of Ten Thousand One Hundred Fifty-Two Dollars and Forty-Three Cents (\$10,152.43); Plaintiffs' "24"-North Shore University Hospital at Plainview in the amount of Forty-Five Thousand Eight Hundred Ninety Dollars and Forty Cents (\$45,890.40); Plaintiffs' "25"- North Fork Radiology billing records for services provided to the plaintiff between February 23, 1998 and July 8, 2008 in the amount of One Thousand Seven Hundred Nine Dollars and Twenty Cents (\$1,709.20); Plaintiffs' "26" Zwanger Pesiri Radiology for two MRIs one of the lumbar spine in the amount of Two-Thousand Two Hundred Forty Dollars (\$2,240.00) and an MRI of the right elbow totaling a paid amount of Eight Hundred Sixty-Two Dollars and Forty-Eight Cents (\$862.48); and Plaintiffs' "29"-billing entries for Dr. Beck beginning on January 25, 2008, which left a billed/paid amount of One Thousand Two Hundred Eighty-Nine Dollars and Sixty-Seven Cents (\$1,289.67). This was the only documentation presented and stipulated into evidence between the parties of past medical expenses for the jury's consideration. Additionally, the records of Zwanger Pesiri Radiology for injuries to the right elbow cannot be considered as the record is devoid of evidence of a right elbow injury as a result of the accident of April 14, 2007. Further, the records of Dr. Beck do not appear to be relevant to the claimed injuries to the spine. Accordingly, based upon the evidence presented the award of damages for past medical expenses must be reduced to the amount of Fifty-Nine Thousand Nine Hundred Ninety-Two Dollars and Three Cents (\$59,992.03) (*see generally Toppin v. Capan Contracting Corp.*, 251 AD2d 493 [2nd Dept 1998]; *Monaco v. Canty*, 238 AD2d 486 [2nd Dept 1997]).

In support of their cross-motion plaintiffs' alleges that additur is appropriate as the monetary amount which the jury awarded deviated materially from what is reasonable

compensation for plaintiffs' injuries and damages. Initially, this Court notes that plaintiffs' failed to move after trial and before the jury was discharged to set aside the verdict, nor did they seek an extension of time to make the within cross-motion. A motion made under Article 44 of the CPLR shall be made within fifteen days after the verdict of the jury (*see* CPLR 4405). The verdict herein was rendered on November 28, 2011 and the plaintiffs' cross-motion was not served until February 3, 2012. Accordingly, the cross-motion must be denied as untimely. Assuming *arguendo* that the cross-motion was timely, this Court finds that contrary to plaintiffs' contention, there was a valid line of reasoning and permissible inference by which the jury could have reached its verdict on the evidence presented at trial and a fair interpretation of the evidence (*see generally Hendrickson v. Dynamic Med. Imaging, P.C.*, 78 AD3d 999 [2nd Dept 2010]; *Chery v. Souffrant*, 71 AD3d 715 [2nd Dept 2010]; *Segal v. City of New York*, 66 AD3d 865 [2nd Dept 2009]). Furthermore, it is well settled that the amount of damages to be awarded for personal injury is primarily a question of fact for the jury (*see Banks v. Lindenbaum*, 201 Ad2d 523 [2nd Dept 1994]). On this record this Court finds that the jury verdict did not deviate materially from what would be reasonable compensation (*id.*).

Based upon the foregoing, defendants' motion is granted. Defendants are directed to submit judgment on seven (7) days notice within thirty (30) days hereof

Dated: March 6, 2012
White Plains, New York



HON. GRAZIO R. BELLANTONI
Justice of the Supreme Court

Sullivan, Papain, Block, McGrath & Cannavo, P.C.
Attorneys for Plaintiffs
1140 Franklin Avenue, Suite 200
Garden City, New York 11530

Gordon & Silber, P.C.
Attorneys for Defendants
355 Lexington Avenue, 7th Floor
New York, New York 10017