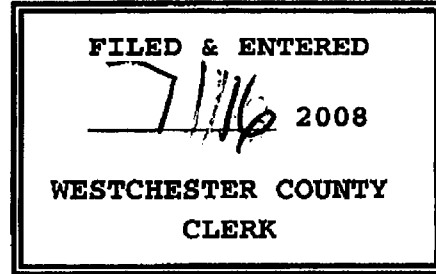


SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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



LUCILLE TURUSETA,

Plaintiff,

- against -

WYASSUP-LAUREL GLEN CORP. and EDWARD
M. VERDES AND SON, INC.,

Defendants.

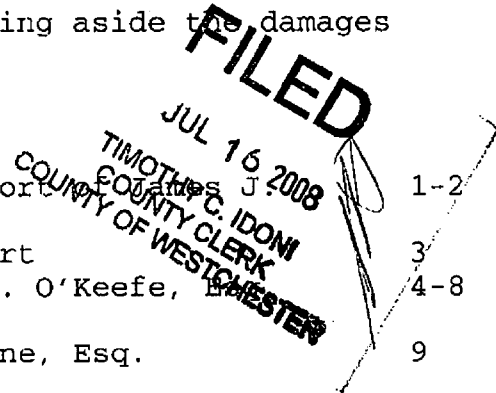
SHORT FORM ORDER

Index No. 10529/03
Motion Date: 4/16/08

Plaintiff moves for an order setting aside the damages verdict reached by the jury.

The following papers were read:

- | | |
|---|-----|
| Notice of Motion - Affirmation in Support of James J. Killerlane, Esq. | 1-2 |
| Plaintiff's Memorandum of Law in Support of Affirmation in Opposition of Richard M. O'Keefe, Esq. | 3 |
| - Annexed Exhibits A-D | 4-8 |
| Reply Affirmation of James J. Killerlane, Esq. | 9 |



Upon the foregoing papers it is hereby ORDERED that the motion is granted.

The jury awarded plaintiff \$80,000.00 for future medical expenses which was the precise costs that plaintiff's treating orthopedist, Dr. Liebowitz, gave as the estimated expense of the future operative procedures. However, the jury did not make an award for past and/or future pain and suffering. Such a finding was inconsistent. It appears that the jury's verdict may have been the result of an impermissible compromise. In the case of Califano v Automotive Rentals, Inc., 293 AD2d 436 (2nd Dept 2002), the Second Department reversed the trial court's denial of the plaintiff's motion for a new trial on damages. The court held that the verdict awarding damages for medical expenses but nothing for pain and suffering was against the weight of the evidence, deviated from what would be reasonable compensation, and clearly constituted a compromise verdict. See also Ramos v

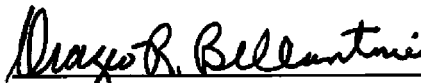
Noveau Industries, Inc., 29 AD3d 555 (2nd Dept 2006), Roseingrave v Massapequa General Hospital, 298 AD2d 377 (2nd Dept 2002), and Powell v New York City Transit Authority, 186 AD2d 728 (2nd Dept 1992).

The verdict by the jury cannot stand. As indicated in plaintiff's post-trial memo of law, the jury's finding that plaintiff presently suffers from conditions caused by the subject accident that are serious enough to require future surgery is irreconcilable with its other findings. In Lolik v Big V Supermarkets, Inc., 86 NY2d 744 (1995), the Court of Appeals held that the trial court could order a new trial if it concluded that the jury's verdict was against the weight of the evidence.

Accordingly, the verdict is set aside and a new trial is ordered on the issue of damages.

Settle order within thirty (30) days on at least ten (10) days notice.

Dated: *July 14, 2008*
White Plains, New York


HON. DRAZIO R. BELLANTONI
Justice of the Supreme Court

James J. Killerlane, P.C.
Attorneys for Plaintiff
175 Main Street, Suite 606
White Plains, New York 10601

Richard M. O'Keefe
Attorney for Defendants
300 Main Street, Suite 6F
White Plains, New York 10601