# Jury's Refusal to Award Any Future Pain and Suffering Damages Reversed on Appeal in New York Car Crash Lawsuit

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When a defendant has been found liable causing for a car accident and the jury verdict includes amounts for past pain and suffering and future medical expenses but nothing at all for future pain and suffering, a new trial is required under New York law.

On August 22, 1996 Lindsay Grobman, then 17 years old, was a passenger in a car driven by Adam Chernoff. After a 30 mph head on collision, Lindsay was left complaining of head, neck and back pain.

What followed over the next four years until the trial of this case in Nassau County, New York was a fairly typical medical treatment scenario in car accident cases:

- pain at the scene, ambulance to the hospital,
- x-rays negative,
- a week or more out of work,
- return to work with pain,
- diagnosis of cervical or lumbar herniated or bulging disks

Lindsay's pain persisted and finally an electroyogram (EMG) indicated nerve damage in her neck.

EMG involves testing the electrical activity of muscles and is often performed with a nerve conduction study to measure the conducting function of the nerves.

**Here's what an EMG  looks like:**

At trial four years after the accident, Lindsay still complained of the same pain which her doctor said was permanent and caused by herniated or bulging disks in her neck. The defense doctor testified she was fine and not hurt from the accident.

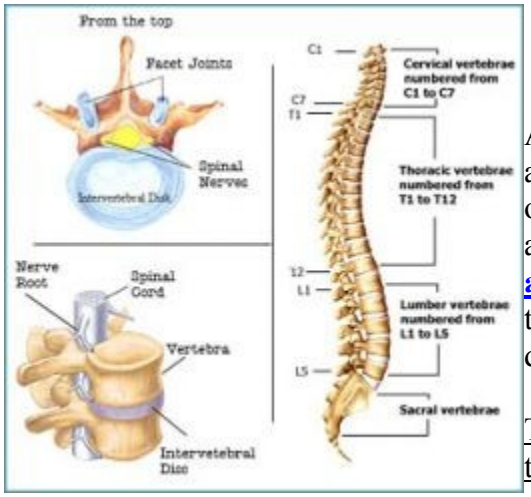
A trial on liability for the accident was held in June 2000 and the Nassau County jury found the driver 100% at fault for the accident. A second jury was directed to try only the issue of damages. In August 2001, the new jury found that Lindsay's neck and back injuries represented a permanent consequential limitation of the use of a body organ or member (one of the prerequisites under New York's Insurance Law Section 5102 before a person hurt in a car accident may recover **any** pain and suffering damages whatsoever). [My colleague **Eric Turkewitz** discusses some of the intricacies and nuances of this law over at New York Personal Injury Law Blog]

The jury awarded Lindsay Grobman damages in the total sum of **$10,000** as follows:

1. $1,100 for past pain and suffering (four years)
2. $-0- for future pain and suffering
3. $8,900 for future medical expenses (58 years)

The plaintiff appealed, arguing that the verdict was inconsistent in finding a permanent injury and awarding damages for future medical expenses but failing to award any future pain and suffering damages. The appeals court agreed in **Ajoudanpour v. Globman** and ordered a new trial on damages. Instead, the plaintiff and defendant agreed, as was their right, to submit their case to an arbitrator who then conducted a hearing and in May 2005 rendered an award in plaintiff's favor in the sum of **$125,000**.

The arbitrator awarded $125,000 for Lindsay's pain and suffering essentially due to **herniated disks in her neck that probably looked something like this:**




A second and third appeal ensued concerning the arbitration procedure, the timing and amount of interest on the arbitrator's award and whether in general the award should be confirmed by the court. **In the latest appeal, the court confirmed the award** and reiterated that the jury's failure to award future pain and suffering damages was inappropriate.

This case is one of many in which jury verdicts appear to be inconsistent - either the product of confusion or perhaps too jurors' refusal to follow instructions from the trial judge. In this case, another factor may have been present: the legendary stinginess of Nassau County jurors and the growing trend of jurors disinclined to award significant pain and suffering damages in cases where there's been no surgery and there are few clearly objective signs of the injuries and pain complained of.

No doubt jurors in New York injury cases and elsewhere will continue to be confused in their deliberations and inconsistent in their pain and suffering awards. When they are and the appellate courts step in to issue corrective rulings, we will revisit these issues.