Slip and Fall Plaintiff's New York Jury Verdict Awarding More Than $1,000,000 for Future Medical, Custodial and Rehabilitation Expenses Affirmed in Back Injury Case Despite Prior Accident in which Back Surgery had been Recommended but Declined

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Ramona Ulerio, a 36 year old homemaker, sustained **serious back injuries** when she slipped and **fell down subway stairs** in New York City on October 5, 2002. She sued the New York City Transit Authority claiming it was negligent in its maintenance of the stairway and that its negligence created a dangerous condition. She won her case five years later when a Bronx County jury ruled that it was **a missing non-slip plate that caused the accident.**

The subway station looked something like this:

The jury then calculated and awarded **damages in the sum of $1,500,000, as follows:**

- past medical expenses - $30,000
- future medical expenses - $381,322
- future custodial care - $441,163
- future rehabilitation expenses - $214,318
- future pain and suffering - $433,197

Each of the future periods was 20 years.

The transit authority appealed on the basis that the damages awarded were excessive but **yesterday the appellate court affirmed the award** in its entirety in **Ulerio v. New York City Transit Authority** (1st Dept. 2010).

The case is significant and a big win for the plaintiff because Ms. Ulerio had sustained a **previous back injury (also in a fall down accident) three years earlier**. And her doctor recommended surgery for a disc at L5-S1 that was injured in the first accident. That very same disc was injured in the new accident, in addition to a disc at L4-L5.

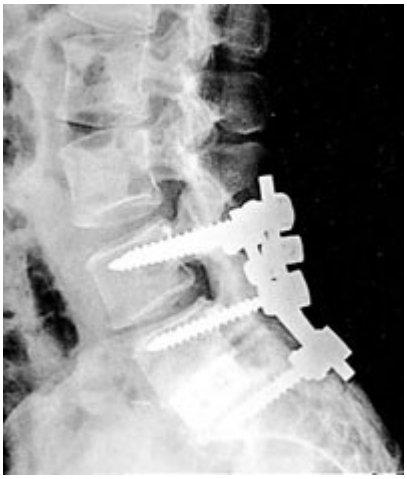
So, the defendant argued at trial and on appeal that plaintiff's injuries pre-existed and were not caused by the 2002 accident, noting also that Ms. Ulerio had even scheduled surgery for her back after the 1999 accident (although later canceled).

The defense urged that any treatment plaintiff claimed she'd need in the future was directly related to the old accident and injury. On the face of it, this sounds plausible; however, there were several facts that led the jury and the appellate judges to believe otherwise:

- a doctor who treated plaintiff for both accidents testified that the first accident was minor and the second quite major,
- plaintiff was able to maintain all of her usual activities after the first accident but after the second accident she was rendered totally disabled

The treatment after the second accident included extensive physical therapy, epidural injections and two surgeries – a **laminectomy** at L4-L5 with **bilateral foraminotomies** and a bilateral laminectomy at L4-5, L5-S1 with L5-S1 **fusion**.

The **L5-S1 fusion** was clearly a new and huge injury and in that procedure the doctor fused the two vertebrae together fusing metal hardware and **her back now looks like this**:



Unfortunately, Ms. Ulerio remained at trial in unremitting pain (despite morphine) and unable to resume her household duties. She could not stand for more than 15 minutes, sleep at night, bathe or dress herself. She needed a cane to walk and wore a back brace at all times. She was diagnosed with **failed back syndrome**.

Ms. Ulerio's **need to incur future expenses was explained by testimony from her doctors and an economist** who concluded that Ms. Ulerio would require 40 years worth of physical therapy (30-50

times a year), pain management, household help (20 hours a week) and medical testing and care (including additional spine surgeries). They added it all up to more than $3,500,000. The jury agreed that these categories of future expenses would be required but only for 20 years and only in the total sum of about $1,000,000.

Inside Information:

- plaintiff was found to be 30% at fault for her accident so her total recovery is $1,050,000 (not $1,500,000)
- the jury clearly decided that the total verdict should be $1,500,000 and then it "backed into" that figure by awarding odd amounts for each category of damages
- plaintiff had before trial stopped going for physical therapy so the defense argued that there was no reason to believe she'd continue or need it in the future – plaintiff countered that the reason she stopped was she could not afford therapy and the jury's award would allow this needed care in the future
- the future pain and suffering award ($433,197) was not challenged on appeal (and it would not have been modified downward anyway in view of case precedent we've discussed before, **here** and **here**
- the appeal of this important case was handled superbly by noted appellate counsel **Brian Isaac**