



New York's "Serious Injury" Requirement – A Recent Car Accident Case That The Jury Blew

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I read the latest appellate (appeals) level cases relevant to my areas of law practice and interest pretty much as soon as they're published. Let's talk about one that has me scratching my head.

Published on March 1, 2011 is [the car accident case](#) of *Jun Suk Seo v. (against) Edward A. Walsh*. The accident occurred in August 2006. This appeals court case comes from a Queens County jury verdict. The jury threw out the injured accident victim's (plaintiff's) case because he did not suffer a "serious injury" as required by the New York State Insurance Law. For more information about New York car accidents and the serious injury requirement (or No-Fault threshold) see my [FREE Special Report The New York "No-Fault" Law](#).

Accident victim Jun Suk Seo asked the trial judge to disregard the jury's verdict and give him a new trial - which is something a trial judge can do in New York. His lawyer argued that he should get that new trial (essentially, a "do over") because the defense attorney said nasty things in his closing statement to the jury, what plaintiff's lawyer calls "inflammatory and highly prejudicial remarks."

As a second or alternative ground to throw out the jury verdict and give the accident victim a second trial, the accident victim's lawyer argued that the jury verdict was "contrary to the weight of the evidence." This means that the verdict was so screwy, that the jury must have ignored what was shown to it in the courtroom or, as the appeals court explained it, "the verdict could not have been reached on any fair interpretation of the evidence."

The trial court judge granted a new trial to the injured plaintiff based on the first ground, that the defense attorney made an improper closing argument.

The Appellate Division, Second Department disagreed and found that the defendant's lawyer's closing argument was fair enough. Then the appeals Court moved on to the second argument made by the injured accident victim's lawyer: against the weight of the evidence. **I'll tell you the facts that the Appellate Division pointed out in its decision and, Dear Readers, you be the judges:**

Here's the evidence the jury heard at trial.

INJURED PLAINTIFF'S (ACCIDENT VICTIMS'S) DOCTORS:

1. Dr. Hal Gutstein, plaintiff's treating neurologist. As a result of the car accident, he [suffered nerve damage \(radiculopathy\)](#) due to herniated disks in his neck (cervical disks) which pressed on his spinal cord. He had surgery to his neck, a discectomy, a procedure in which his herniated disks were cut out and a biomechanical device was inserted into his spine to stabilize it. Approximately one year after the discectomy, an examination of plaintiff showed [permanent limitations in his ability to move his neck](#).

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2. Dr. Ksushik Das, injured plaintiff's surgeon. Told the jury that the plaintiff's neck injury was permanent.

DEFENDANT'S DOCTORS:

1. Dr. Sang Lee, a specialist in physical medicine and rehabilitation. Examined the accident victim for a prior (1999) car accident where plaintiff suffered a stiff neck and lower back injuries.

2. Dr. Renan Macias, a neurologist. Examined the plaintiff in 1999 and noted some possible nerve damage to his neck and possible disk injury to his neck as well.

3. Dr. Leon Sultan, a board-certified orthopedic surgeon. Examined the accident victim in 2007 for this car accident, and testified that this car accident did not result in a significant limitation of the use of a body function or system, or a permanent consequential limitation of the use of a body organ or member. Dr. Sultan did not believe that the plaintiff had herniated disks; rather, according to Dr. Sultan, MRI films revealed the presence of mere bulges.

What do you think, Dear Readers? What should the jury have decided? What did the appeals court do?

In a return to sanity, the appeals court granted the accident victim a new trial, noting that none of the defendant's witnesses rebutted the plaintiff's showing that he underwent a discectomy, or provided any testimony that the discectomy was unnecessary.

The Court's holding: the Lower Court properly granted the plaintiff's motion to set aside the jury verdict on the issue of serious injury, but should have done so on the ground that the verdict was contrary to the weight of the evidence, and should have granted a new trial on that basis.

Comment: This jury had its heads up its asses. I hope that anyone called upon to do their civic duty and serve on a jury for ANY kind of case will not drop the ball, will pay close attention, and will dispense justice.

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