

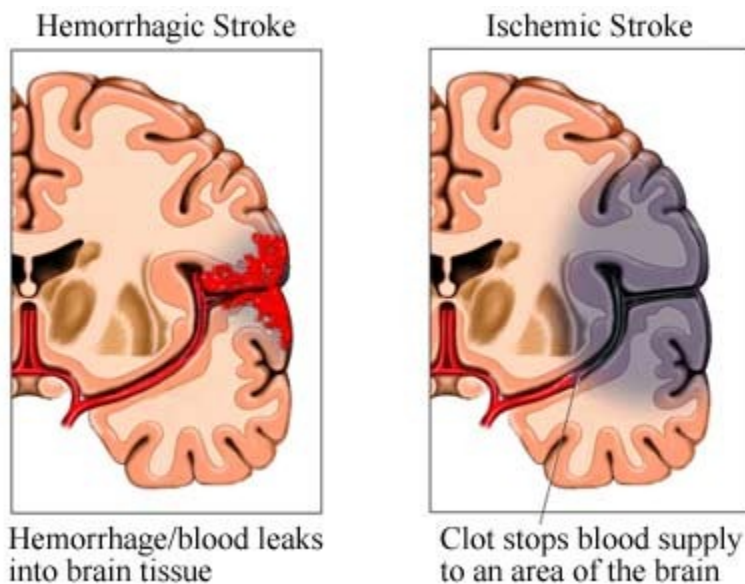
No Future Pain and Suffering for Stroke Victim in Medical Malpractice Lawsuit? New York's Highest Court Affirms but Allows \$300,000 for Past Pain and Suffering

Posted on June 18, 2009 by [John Hochfelder](#)

It's rare that the Court of Appeals, New York's highest court, rules on the proper amounts for pain and suffering in accident or medical malpractice cases. Usually, jury verdicts are challenged by the aggrieved party at the trial court level (a post-trial motion addressed to the trial judge) and/or at the intermediate appeals court level (one of the four statewide Appellate Division courts). **Last week, though, the Court of Appeals weighed in on the pain and suffering verdict in a medical malpractice case.**

Lang v. Newman (link is to Court of Appeals decision; Appellate Division decision is [here](#)) involved the claims of a 26 year old woman who woke up on January 14, 2003 with weakness on her left side, lightheadedness and tunnel vision. After an ambulance took her to the hospital, she also complained of nausea and a severe headache. Ms. Lang was given a CT scan (it was negative), medicated, observed, offered a lumbar puncture (she declined) and after a couple of hours she was feeling much better, had no pain and the difficulties on her left side seemed to have abated. She was discharged to home with a diagnosis of migraine headaches (from which Ms. Lang suffered in the past).

Within hours she was back in the hospital and ultimately diagnosed with an ischemic stroke (a cerebral infarction caused by an inadequate supply of blood and oxygen due to a blocked artery).



She then sued the doctors.

Liability against one of her doctors was found by the Cortland County jury which concluded that **the doctor prematurely discharged her from the hospital without further observation and treatment.** While it was ultimately determined that Ms. Lang had already been suffering from a stroke when she first came to the hospital, the doctor was found to be liable for **\$300,000 in past pain and suffering damages** (four years from the incident to the trial date) because of expert testimony that **timely admission and treatment would have made the effects of the stroke less severe.**

Plaintiff sought in addition substantial **future pain and suffering damages** claiming that sensory changes on her left side, a seizure disorder and worsening anxiety were all caused by the malpractice and are permanent. **The jury's refusal to award her anything at all for the future was upheld** by the appeals court.

The defense presented evidence that the plaintiff's seizure disorder had fully resolved by the time of trial and that whatever other symptoms she complained of were mild, subjective and could not be quantified. The trial judge concluded (and the appeals courts agreed) that it was not irrational for the jury to conclude that the majority of plaintiff's symptoms resolved prior to trial and that those that remained were either so minimal as to warrant no compensation or not satisfactorily proven by objective, credible medical evidence.

This was a hard fought case both on liability and damages grounds. The defense doctors claimed no liability because plaintiff's stroke had already occurred before she came to them and it seems there's merit to that position. Unfortunately, the jury, the judge and two banks of appeals courts judges (except for a lone dissent at the Appellate Division) disagreed. The plaintiff claimed she should be awarded millions in future damages because of the lifelong effects of the stroke (she was only 26 at the time); however, the jury clearly agreed with the defense that either she had already fully recovered or that whatever deficits she was left with could not - because she already had the stroke before being treated by the defendants - clearly be assigned to the malpractice.

Both sides walked away from this case feeling the sting of a loss.