Severe Facial Injuries from Assault - Jury Awards $5,000,000 for Pain and Suffering, Trial Judge Reduces Verdict to $3,500,000 and Appellate Court then Dismisses Case on Liability Grounds

Posted on January 28, 2010 by John Hochfelder

On March 2, 2002 at about 5:30 p.m., Miguel Beato returned home from work as a porter. As he walked through the courtyard of his apartment complex at 35-46 65th Street in the Woodside section of Queens, New York, he was confronted by an unknown gang of men. He asked them to move out of his way and they responded by with a **15 minute attack in which Miguel was beaten continuously and severely.**

Beato faced a **gang of hoods** like this:

Beato sustained **injuries all over his face**, including:

- an orbital (eye socket) fracture
- a mid-face (depressing and caving in the area from the eye to the teeth) fracture
- a displaced eye
- a markedly displaced fractured nose that obliterated his sinus

The attackers fled but were caught, convicted and jailed. Beato, then 39 years old, sued the building owner claiming that the owner negligently failed to provide adequate security. A Queens County jury agreed and apportioned liability 75% to the owner and 25% to the attackers. Pain and suffering damages were then assessed at **$5,000,000** ($1,500,000 past – 6 years, $3,500,000 future – 15 years). The **trial judge then ruled** that the award was excessive and should be reduced to **$3,500,000 ($1,500,000 past, $2,000,000 future**).

The building owner appealed arguing that there was no basis for any liability against it because the attack was neither foreseeable nor the result of any negligence on its part. Also, the defendant urged that the future pain and suffering award of $2,000,000 was still excessive (**no challenge was made to the reasonableness of the $1,500,000 for past pain and suffering**).

Last week, in **Beato v. Cosmopolitan Associates, LLC**, the appellate judges agreed with the defense and dismissed the entire case. Plaintiff's testimony that he previously complained of loitering and suspected

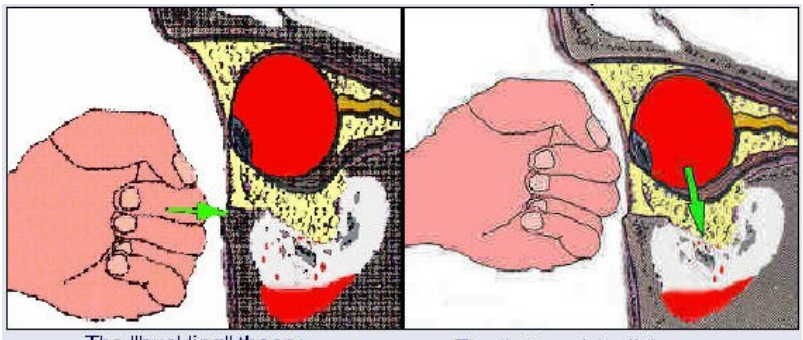
drug sales in the building lobby was ruled insufficient to establish the requirement that the assault was foreseeable.

The appellate judges in Beato did not address the arguments as to the reasonableness of the damage awards stating that in view of the dismissal on the merits those issues were academic. Here, though, we can and will address those issues and we do so with the benefit of the parties' submissions to the court, including their briefs on appeal.

First, let's take a look at some **details as to the injuries in this case**. The injuries are generically described above but here are their technical terms:

- comminuted fractures of both sides of his **nasal bones**
- comminuted fractures of his left **orbital floor and nasal septum**
- fractures of the left **lamina papyracea** and lateral superior wall extending to the frontal maxillary sinus and significant **nasal lacerations**

Blowout fractures are casued by direct trauma to the globe, like this:



- The "buckling" theory maintains that an anterior force is transmitted back into the orbit.
- It states that the orbital rim buckles and transmits forces to the orbital walls, resulting in an orbital floor fracture..

- The "retropulsion" theory, advanced by Smith and Regan, refers to a fracture of the orbital floor caused by sudden increase in intra-orbital pressure; a fracture may result from the hydraulic forces generated in the closed orbital cavity.
- Blows from a fist, for instance, or objects larger than the horizontal diameter of the orbit, are the most frequent cause of this type of fracture

If ever the term "getting his face punched in" applied, this is the case. Photographs of the plaintiff as he appeared shortly after the attack were shown to the jury (over defense objections) and no doubt they were stunned and sympathetic.

Now, let's see what happened to Mr. Beato after the attack. He was immediately taken by ambulance to the hospital and admitted. He **underwent two complex surgeries** – one addressed the repair of his sinus and septum and the other consisted of open reduction and internal fixation of the orbital floor fracture.

At trial, six years after the incident, Beato had **difficulty breathing** due to his sinus injury, **scars** on his face and his surgeon stated he'd **need additional surgeries** to redo his nose, take out the plate and open his sinus and would have **lifelong pain**, difficulty breathing, physical and visible deformities and the need for **narcotic pain medication**.

It's usual in injury cases that the defense will avail itself of its right to have the plaintiff examined by one or more doctors of its choosing to verify or dispute the severity (and causation) of a plaintiff's injuries. The defense doctors are then usually called to testify at trial as to their findings. In this case, though, the defense chose to keep its doctors out of court and the plaintiff therefore sought and obtained a **missing witness charge**. That's where the judge tells the jury that it may draw negative inferences from the defendant's failure to call its own physicians. Clearly, that hurt the defense in this case and the jury accepted as true all of the dire future consequences testified to by plaintiff's own doctors.

The **defense gambled in this case in failing to call its doctors to testify and then after the verdict in declining to challenge the $1,500,000 past pain and suffering. In the end, the gamble paid off.**

Before it did, though, there was substantial argument and disagreement over the propriety of the award for future pain and suffering. **Would $2,000,000 have been sustained had liability not been overturned? I think not.** There is a dearth of precedent as to sustained multi-million dollar verdicts for facial injury pain and suffering. Also, defense counsel claimed plaintiff made a good recovery and that plaintiff's doctor's claim that plaintiff would need lifelong pain medication was belied by the fact that at trial he took nothing more than over the counter antihistamine.

We've reviewed facial injury cases, **here**, especially several in the $200,000 to $500,000 range.

There are very few **cases awarding $1,000,000 or more for facial injury pain and suffering**. Here are some:

- **Simon v. Sears Roebuck & Co., Inc**. (2nd Dept. 1986) - **$1,000,000** for loss of eye following car accident
- **Stiuso v. City of New York** (2nd Dept. 1996) - **$1,750,000** ($1,000,000 past – 4 years, $750,000 future – 15 years) for loss of an eye and fractured jaw
- **Storms v. Vargas** (2nd Dept. 1998) - **$4,000,000** ($3,000,000 past – 10 years, $1,000,000 future – 32 years) for 31 year old police officer in car accident who sustained crush fractures all over his face requiring 26 separate surgical procedures and 16 one week or more hospitalizations prior to trial and was left with an artificial eye, limited vision and the need for additional surgeries once every two years for life

Without minimizing what Mr. Beato went through and will be left with for his life, it appears that **had Beato's $2,000,000 future pain and suffering verdict been reviewed by the appellate court it would**

have been reduced substantially given the case law discussed above and especially in view of Storms v. Vargas where the injuries appear to be much more severe.

Inside Information:

- the jurors appear to have been confused in that plaintiff offered proof of $52,000 in medical expenses incurred to the date of trial but the jury awarded $250,000 for that element of damages
- further evidence of juror confusion: they awarded $1,500,000 for future medical expenses but the trial judge reduced that sum to $200,000 as the doctors' testimony as to the costs future treatment justified no more than that
- had liability been upheld, the defendant would have had to pay the entire damages award even though the jury found others (the criminals) were 25% at fault and that's because under New York's CPLR Article 16 a defendant in this type of case will be liable for the full damage award when found to be 50% or more at fault