

Yanes v City of New York

2020 NY Slip Op 32607(U)

August 10, 2020

Supreme Court, New York County

Docket Number: 161066/2014

Judge: Alexander M. Tisch

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ALEXANDER M. TISCH PART IAS MOTION 18EFM

Justice

INDEX NO. 161066/2014
MOTION DATE 10/09/2019
MOTION SEQ. NO. 002

YVONNE YANES, CLAUDIO YANES, INDIVIDUALLY AND AS PARENTS AND NATURAL GUARDIANS OF, ALONZO YANES, AN INFANT,

Plaintiffs,

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF EDUCATION, THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, ANNA POOLE,

Defendants.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128

were read on this motion to/for SET ASIDE VERDICT

In this action filed by plaintiffs Yvonne Yanes and Claudio Yanes for personal injuries sustained by the then-infant Alonzo Yanes ("Mr. Yanes"), defendants the New York City Department of Education ("Department of Education"), the Board of Education of the City of New York, and Anna Poole ("Ms. Poole") (collectively, "defendants")¹ move, pursuant to CPLR §§ 4404 [a] and 5501 [c], for an order (1) setting aside the damages award and directing a new trial on damages on the grounds that the jury's verdict deviates materially from what would be reasonable compensation, or, alternatively suggesting a substantial reduction in the award conditional upon stipulation to the reduced award; and (2) staying the entry of judgment until sixty (60) days after entry of the order on this and any other post-trial motions. For the reasons stated herein, the motion is denied.

¹ The City of New York was dismissed from the instant action on June 24, 2019 as it is not a proper entity for suit (tr at 1493).

FACTUAL & PROCEDURAL HISTORY

On January 2, 2014, Ms. Poole, a teacher at Beacon High School (“Beacon”), performed a demonstration for a tenth-grade chemistry class, colloquially known as “The Rainbow Experiment”² (tr at 1016-19, 1030-31). Ms. Poole intended to show the students how various nitrates, when lit, caused flames to appear in different colors (id. at 1019). Ms. Poole set up four different nitrates each in small dishes on a demonstration table, placed methanol in each dish to use as an accelerant, and ignited it (see id. at 255, 1020; exhibits 4, 12-14).³ Although Ms. Poole wore goggles, her students were neither provided with safety equipment nor given any safety instructions (tr at 250-51, 254-55, 261-62, 322, 1021, 1031, 1034, 1044, 1061-62, 1080-81, 1095-98, 1102-1104).⁴

When the flames began to extinguish, Ms. Poole attempted to repeat the demonstration by reigniting the nitrates in the same dishes (see id. at 263, 1098-99). Ms. Poole poured methanol from a gallon jug into said dishes containing the nitrates with the nozzle of the jug facing away from her and towards the students (see id. at 263-65, 325, 1031-33, 1050-51, 1099-1100, 1102).⁵

When the methanol poured out of the jug, “a giant fireball” erupted from the jug and engulfed

² This demonstration had previously caused horrendous burns to other high school chemistry students and was the subject of a specific warning by the United States Chemical Safety Board that went unheeded by defendant Department of Education (NYSCEF Doc. No. 111, at 6; see also tr at 342).

³ All citations to exhibits are references to the trial record, rather than motion exhibits.

⁴ Ms. Poole and the classroom (Room 317) that she used for the Rainbow Experiment were not compliant with the Department of Education’s Science Safety Manual, written in 2008, because Ms. Poole did not give safety instructions prior to the experiment and she admittedly knew that she should have never brought the gallon jug of methanol above the edge of the demonstration table with the dishes containing the nitrates and, for a demonstration involving a substance like methanol, the classroom should have been equipped with a vent hood, chemical shower, and fire blankets (see id. at 215-29, 231, 239-42, 345). Principal Ruth Lacey testified that she “delegated all responsibilities for safety to Mr. [Harry] Streep[,]” the Vice Principal and that it was his responsibility to ensure that teachers complied with the Science Safety Manual (id. at 1468 [internal quotation marks omitted]; see also id. at 201-206, 210-11, 213-18, 232-36, 238-39). However, neither Principal Lacey nor Vice Principal Streep were aware of the existence of said manual prior to Mr. Yanes’ accident (id. at 236, 1465-67).

⁵ This is in contrast to the pipette that Ms. Poole initially used “to carefully put a little bit of methanol into [the] evaporation dishes” (id. at 327; see id. at 328, 1052-53, 1110).

Mr. Yanes, who was only sixteen years old at the time of the accident, in flames (see id. at 265, 268-69, 1023-25, 1032-34, 1051, 1102). The fireball was described as “massive” and that it was so big “[i]t felt like it just took up the entire room” (id. at 265).⁶ When the accident occurred, Mr. Yanes was seated a mere two (2) to three (3) feet away from the demonstration (id. at 253, 1033, 1053, 1080, 1096). The classroom where the demonstration took place lacked certain safety features such as fire blankets and chemical showers, which caused Mr. Yanes to remain engulfed in flames, squirming on the floor and yelling for help, until a fire blanket was retrieved from the classroom next door by another teacher and Ms. Poole stood, staring in shock (see id. at 254, 266, 323-24, 1035-37, 1046-47, 1061).⁷ Mr. Yanes’ classmate testified that he screamed while he was on fire for approximately a minute and then was completely silent (id. at 1081).

Mr. Yanes testified that after Ms. Poole poured the methanol into the container, he heard “a big woosh sound,” saw “a giant fireball had erupted from the jug,” heard his classmates scream, and “reflexively put [his] arms . . . up to . . . shield [himself] from the flames that were shooting out towards [him]” (id. at 1100). Mr. Yanes further testified that he “closed [his] eyes as tight as [he] could” as he “felt this immense heat wrap around [his] entire head,” arms, and hands (id.). He remembered the intense smell of methanol all over his body and an “intense burning sensation” (id. at 1100-1101). He then felt this continuous burning feeling all over his body that “kept going and going” (id. at 1101). Within seconds, Mr. Yanes realized that he was on fire and screamed this aloud (id.). Yelling for help, Mr. Yanes dropped to the floor and rolled around in an attempt to extinguish the flames (id.). The entire time Mr. Yanes felt “the fire eat

⁶ To demonstrate the immense heat of the “fireball” that injured Mr. Yanes, a classmate sitting next to him, Julia Saltonstall, also suffered “second and third degree burns on [her] arm, first degree [burns] on [her] stomach and [her] face. [Her] eyebrows were singed off” (id. at 270; exhibit 25). She even suffered emotional issues relating to fire as a result of the accident (tr at 326-27).

⁷ Prior to the retrieval of a fire blanket from another classroom, there was an unsuccessful attempt by Ms. Poole and the students to use a fire extinguisher to extinguish the flames (id. at 266-67, 1059-62, 1078-79).

away at [his] skin and eat away at [his] flesh. It was charring [him] the same way that a piece of meat chars in a frying pan. [He] remember[ed] hearing the sounds of sizzling all around [his] ears” (id.). Mr. Yanes testified that “[i]t felt like an eternity;” that he “was hopelessly burning alive and [he] couldn’t put [himself] out. And the pain was so unbearable” (id. at 1104). He further described the pain as “the worst pain [he had] ever felt in [his] entire life. Nothing is even comparable. This was unreal” (id. at 1104-1105). One of Mr. Yanes’ classmates described seeing “his skin . . . bubbling” (id. at 1078) and “melting” (id. [internal quotation marks omitted]); “[i]t wasn’t a pretty sight” (id. at 1079).

According to Mr. Yanes, after what “felt like forever” (id. at 1104), the flames were extinguished, he experienced difficulty breathing and went into the hallway, gasping for air, in an attempt to collect himself (id. at 1106). Mr. Yanes was brought into another classroom, which had an area for treating burns or other science-related injuries, though not a shower, and tried to apply cold water to all of the areas where his skin had been burned, but particularly his hands because that was where he experienced the strongest burning sensation, but the water provided no relief from this burning sensation (id. at 1107). He further testified that his “head started blowing up with liquid [from] inside [his] body [which] made it very difficult to breathe” (id. at 1108). Despite the foregoing, Mr. Yanes attempted to calm Ms. Poole and tell her it was okay, but he “overheard her saying, ‘I’m stupid. I’m so stupid’” (id.). Mr. Yanes also testified that even when the New York City Fire Department (“Fire Department”) arrived at Beacon (id. at 1108-1109), he “was still in pain. In agony. Just constant pain. Constant burning all around [his] head” and he “couldn’t do anything” even after the flames went out (id. at 1110)—he felt that he was “still cooking There was heat everywhere and [he] couldn’t do anything to escape it. Nothing [he] did made it go away” (id. at 1110-11). Mr. Yanes testified that his clothes were cut

off of him and he was taken, via ambulance, to New York-Presbyterian/Weill Cornell Medical Center (hereinafter, “the hospital”) (id. at 1108-1109). Mr. Yanes also testified that the ambulance ride was “awful” for him because each bump and turn of the ambulance agitated his burns, causing him additional pain (id. at 1111).

Upon his arrival at the hospital, Mr. Yanes was in “critical condition,” meaning he had a high risk of dying (id. at 824). This was because he had large amounts of burned skin and a contributing injury to his trachea, discussed infra (id. at 825). At the hospital, where Mr. Yanes’ pain was noted to be a “ten” on a scale of one to ten, “indicating a very severe maximum pain,” which would be expected from an individual suffering from methanol burns (id. at 874-75), and Mr. Yanes was immediately taken into a decontamination room in an attempt to wash the methanol off of his body and clear it from his throat (id. at 876-77). Due to the concern for methanol toxicity, a toxicologist was involved in his care (id. at 875-76). Mr. Yanes testified that when the water from the chemical shower touched his burnt skin, even though the pressure was not strong, it caused him such intense pain that he had to pull away from the water several times before all of the chemicals could be properly washed off (id. at 1111).⁸ The amount of methanol Mr. Yanes was exposed to, two-thirds (2/3) of a gallon, was concerning because this is “a huge amount of methanol” that “could cause a major flame and explosion” (id. at 880-81). Next, Mr. Yanes testified that he was placed on a bed and taken to the emergency room of the hospital (id. at 1111). Mr. Yanes testified that, at the time, he “was still burning and in pain” (id.). Mr. Yanes then testified that he felt fluids rushing to his head, which caused his face to swell (id. at 1112).

⁸ The fact that a methanol ignition was the cause of Mr. Yanes’ injuries made the hospital treatment team more concerned about a potential inhalation injury and other damage to tissue because “methanol can cause individual cells to be killed and can cause the organs -- organs in the body -- to be damaged, and so that could cause trouble in the lungs if it got into the lungs” (id. at 822). Dr. Roger Yurt was also concerned that the methanol “could have caused damage to his kidneys. But also, the kidneys [could] be damaged by going into shock and having low blood flow to the kidneys” (id. at 834). It was important for the doctors to know how much methanol Mr. Yanes was exposed to in order for them to determine the proper concern for potential organ damage (id.).

Dr. Roger Yurt, who was the physician in charge of Mr. Yanes' care while in the burn unit at the hospital and chief of the burn center, trauma, and surgical care for the hospital (id. at 806-08), testified that the types of injuries Mr. Yanes sustained caused his body to produce a massive systemic inflammatory response, such as the overwhelming swelling of his face (id. at 814-15).⁹ When Mr. Yanes was admitted to the hospital, his condition was deemed a medical emergency (id. at 826).

Mr. Yanes' father testified that when he arrived at the hospital, he was immediately escorted into a room that contained a bandaged, bloated body connected to a respirator and he did not realize that he was viewing his own son's body, as it had been rendered unrecognizable by the burns and swelling (id. at 765-66 ["I didn't recognize his face"]; see id. at 1112). Mr.

⁹ Dr. Yurt explained the inflammatory response when there is an injury to the skin as follows:

"[T]he local response is that there are what we call mediators or chemicals that are released into the tissue all around the area and that causes swelling. And it causes the [] blood vessels [between the different layers of skin] to leak. So what's in the fluid, the plasma in the blood leaks out into the tissue. We call that edema. So there is swelling all around in that area. . . . [A]lso coming in through the blood vessel are other parts of the blood. Cells, like white blood cells are coming in, other proteins, things that are involved in clotting the blood. . . . They get turned on by what's going on in this injury [and] they come out . . . in a state that is activated. They are now prepared to fight, to fight infection and to fight the injury itself. The problem is that ends up leading to . . . a systemic response. That means now the entire body is . . . responding, not just the local area where there is a burn. This is called SIRS or the systemic inflammatory response"

(id.). Dr. Yurt further explained that this affects other parts of the body that were not burned because, "[t]he problem is [when] all of these things get activated and seep out . . . and go all throughout the body and they cause damage, actually cause damage to the rest of the body" (id. at 815-16). This could include "all the organs of the body. In particular with a burn injury, . . . the already injured skin can get [a] worse injury from this type of thing happening. But [there is concern] about other organs, such as the kidneys, the heart that can get damaged by this in the process" because "the white blood cells that get turned on . . . actually can start attacking your own normal tissue" (id. at 816). Dr. Yurt further testified that

"The other thing that's occurring in systemic response is when this fluid is leaking out, then that means there is less fluid in the blood. And what that means is you're starting to go into shock. Less blood is flowing to these other organs. The organs can get damaged because there is not enough blood or oxygen to do their normal functioning"

(id.).

Yanes described his father as being “in a state of shock” before he was removed from the room because his son needed to be intubated (id. at 1112; see id. at 766, 768-70 [“I felt that I was going to faint.”], 1112-13). Mr. Yanes’ mother testified that when she was at the hospital and she “got to take a glimpse of what [she] thought was Alonzo” and she described her memory at that time as “just . . . seeing this huge body, and it . . . didn’t look human. It looked like an alien form that was just . . . moving and flailing around. It was just a massive size” (id. at 982). Mr. Yanes’ mother further testified that upon viewing her son in the hospital room, “[h]e was all bandaged up. . . . He was huge. Very, very swollen. I couldn’t . . . recognize him” (id. at 983; exhibit 44). No one had prepared her as to what her son would look like (tr at 984). These types of severe injuries often cause major stress on both the family and the patient, requiring a social worker and a psychologist “to assist in dealing with the emotional stress and pain” (id. at 836; see id. at 990). When visiting Mr. Yanes after he awoke from the induced coma, his family was unable to offer him any physical comfort—no embracing was permitted because Mr. Yanes’ skin was very sensitive (id. at 985-88).

As a result of the demonstration and subsequent accident, Mr. Yanes initially suffered third-degree burns¹⁰ to 31% of his body, mainly on his face, ears, neck, arms, and hands; this was

¹⁰ Upon admission to the hospital, doctors listed all of Mr. Yanes’ burns as third-degree burns (id. at 826). This is notable because “the wound is evolving. It’s changing. So, actually, if you look at the medical records, there [are] some records that indicate they thought it was [a] second degree burn, but as it evolved over those hours after injury, it became apparent it was deeper” (id.). In explaining the differences between first, second, and third-degree burns, Dr. Yurt testified as follows:

“[T]here is a difference in two levels of second degree burns. . . . So the first degree burn is just the outer layer of the skin and that’s like a sunburn. So you would see redness. You would have pain, but the skin is not destroyed. In the second degree burn [shown] as superficial, that’s the outer layer of the skin. And . . . if they have a burn there, the skin is coming off. It’s actually blistering off. So that it’s red. It’s moist. And it’s painful. Just below that [is] ‘deep superficial’. That’s also red, moist and painful, but a little bit deeper. The reason it’s important to be able to tell the difference, they look exactly the same, but if it’s deep, there is so much of the skin destroyed that we’re going to have to treat that just like we would a third degree burn All the way down at the bottom is a full thickness.

a “huge injury” (id. at 931; see exhibits 47, 48, 82, 83; see also tr at 825). With respect to his hands, Mr. Yanes had deep second-degree and third-degree burns, which caused degloving injuries¹¹ (id. at 845, 889-90). Mr. Yanes further suffered inflammation, swelling, and irritation around his vocal cords, which caused concern that the airway would be blocked off and Mr. Yanes would not be able to breathe on his own (id. at 878). As a result, doctors inserted an endotracheal tube so that a mechanical ventilator could breathe for him (id. at 824, 830). Although Mr. Yanes was sedated, the insertion of the endotracheal tube was so painful that he actually pulled the tube out, causing it to be reinserted, which culminated in Mr. Yanes being placed in an induced coma for three (3) days (id. at 824, 830-31; see id. at 1113). According to hospital records, there was a “definite impairment of his lungs” and doctors were “concerned that the lung tissue down below could also be injured,” resulting in respiratory failure (id. at 879), as well as potential organ failure (id. at 883). As a result of his exposure to methanol, Mr. Yanes also sustained a corneal abrasion to his right eye, meaning that the outer layer of his cornea was injured (id. at 881, 929). Dr. Yurt testified that, due to the severe and extensive nature of Mr. Yanes’ injuries, he believed that Mr. Yanes had a 57% chance of dying,¹² with only a 43%

In that third [type of] burn, a full thickness burn, all of the skin is destroyed. So there is no chance that it’s going to heal on its own. It’s going to have to have some kind of [surgical] intervention to heal on its own. . . . [I]f you have a third degree burn, say the size [of] the end of a pencil, that could heal, because the body would contract or make it smaller. But anything larger than that, you have to get skin from someplace else to get that deep burn to heal”

(id. at 812-13).

¹¹ The term “degloving injuries” was explained by Dr. Yurt as follows: “That’s a term we use when you lose skin as though it was a glove. And so that if you think of a glove, when you pull off a glove, if you pulled off the skin the same way you do a glove, it would remove all of the skin from the fingers and the hands” (tr at 845).

¹² Doctors calculate the chances of survival by adding “the patient’s age to the percent of the body burned” in order to determine the prognosis (id. at 825). If there is an inhalation injury, the rule of thumb is to add an additional 10% mortality rate (id. at 826). For Mr. Yanes, this is sixteen years of age plus 31%, plus another 10%, equating to 57% (see id. at 825-26).

corresponding chance of survival (id.). In other words, Mr. Yanes' injuries were so grave that he was more likely to die from his injuries than he was to survive.

When Mr. Yanes arose after the induced coma was terminated, his upper body, arms, and head were bandaged, his arms were in a fixed position in a giant brace, and he was given narcotic pain medications—Fentanyl and Morphine—to quell the awful pain that he felt everywhere (id. at 836, 1113). However, Dr. Yurt testified that the amount of medication required to alleviate all of the pain that Mr. Yanes was experiencing would potentially stop him from breathing and cause cardiac arrest (id. at 836; see id. at 885, 1113-14). Mr. Yanes testified that during his entire two months at the hospital, he was “tired and restless at the same time” and he was “[a]lways in pain” (id. at 1113; see id. at 991-92 [“Alonzo was in constant pain. Constant pain. Everything was a big deal. Everything was a monumental . . . chore, task. Everything hurt. . . . It was a constant [sic] . . . pain and suffering.”]).

While doctors ultimately saved Mr. Yanes' life by, amongst other things, pumping approximately thirty-eight (38) pounds of fluid into his body in an attempt to provide adequate fluid replacement to his damaged tissue (id. at 827-30),¹³ his life would never be the same and,

¹³ The amount of fluids is determined by the “Parkland formula”: “you multiply four times the percent [of the] burn times the patient’s weight, [which] tells you how much fluid they’re going to require for the first 24 hours” (id. at 829). For Mr. Yanes, he would need four (4) times the 31%, multiplied by Mr. Yanes’ weight of seventy (70) kilograms, equating to eight (8) quarts of fluid, or thirty-eight (38) pounds of fluid over the first twenty-four (24) hours (id. at 829-30).

In order to infuse the thirty-eight (38) pounds of fluid into Mr. Yanes' body, doctors inserted a triple lumen central catheter, which has three different intravenous tubes in one tube, through the burns on Mr. Yanes' chest, subjecting him to a risk of infection in both the burn itself and an infection entering the bloodstream (id. at 828). However, this was necessary because Mr. Yanes was “in critical condition and unstable” and he needed to get fluids as fast as possible (id.). A feeding tube was also inserted through Mr. Yanes' nose, down to his stomach (id. at 835), and a Foley catheter into his penis, the latter remaining in place for several weeks (id. at 871, 1116). Dr. Yurt testified that, for years, doctors have tried to figure out a way to resolve the fluid leaking out from a burn injury without success (id. at 817). Instead, the best doctors can do “is replace the fluid and stabilize the patient. So, we have to give large amounts of fluid to fill back up the blood vessels to repair the [low volume or low amount of blood] and to stand off . . . or supplement what’s being lost in the edema” before the patient goes into shock, experiences cardiac arrest, and dies (id.).

instead, would be replete with innumerable medical procedures including skin grafts and hydrotherapy (id. at 838-40). The treatment plan, with respect to these procedures, was to remove as much of the burned skin from Mr. Yanes as possible as quickly as the doctors were able (id. at 838). However, due to the risk of excessive blood loss when removing the burned skin, not all of the burned areas could be removed at once, so Mr. Yanes was forced to endure a series of major operations once a week, and then recover, in order for doctors to remove all of the dead skin (id.). Initially, doctors placed cadaver grafts, skin taken from recently deceased people, onto Mr. Yanes' head and neck as a temporary measure before permanent skin grafts cut from other parts of his own body could be utilized (id. at 838-40, 852-53; exhibits 45, 46, 51, 70-73, 76, 80). Mr. Yanes described the idea of having cadaver skin affixed to his body as not only painful, but also "horrifying" (tr at 1115). He further described himself as "look[ing] deformed. That wasn't my skin. I looked like Frankenstein or something" (id.). Once the temporary cadaver grafts were in place, doctors needed to cut into Mr. Yanes' healthy skin to take that skin and graft it onto the areas that were burned (id. at 847-48). The grafts were taken from two areas of Mr. Yanes' body: his legs and, to match the color of the skin on his face, his scalp (id. at 848, 855-56).¹⁴

In order to perform these skin grafts, Mr. Yanes had to undergo twice daily operations at the hydrotherapy unit of the hospital, commonly referred to as "the tank,"¹⁵ where doctors would

¹⁴ After skin was removed from Mr. Yanes' scalp, "bio grade, which is a synthetic temporary skin, was stapled in place to help . . . in the healing process. Then . . . skin was taken from [the same site] to get a color match [and was put] on his face and his neck" (id.).

¹⁵ Hydrotherapy has this nickname because, in the old days, a patient would be put into a tank that was like a giant bathtub and the patient would be cleaned in there (id. at 831). Dr. Yurt testified that this is not done "in a major burn center now because the chances of one patient infecting another patient is very high" (id.). While "the tank room" still exists, it is "a stainless steel table, like a[n] operating table, that [they] put the patient on and [there is] a hose that comes down out of the ceiling," to essentially rinse them off (id. at 831-32). "[W]arm water, gauze, and various pads [are used] to rub off and remove the dead skin to remove any bacteria that's there. And then once you finish doing that, you put on antibiotic cream" (id. at 832; see also id. at 832-33).

debride¹⁶ necrotic tissue from Mr. Yanes' body (id. at 887-88) and carve slices of skin from the top of his head, leaving Mr. Yanes always feeling worse than he had before the procedure (id. at 1118) inasmuch as he felt like he was "losing more and more" of himself, rendering him "hopeless" (id. at 1119; exhibits 49-50, 52-53, 75, 79). Mr. Yanes explained that he felt like he lost a part of himself because he had to sacrifice one part of himself in order to heal another part of himself (tr at 1116), the part that was injured by the accident. These painful, twice daily operations occurred every day during Mr. Yanes' two-month hospital admission (id. at 888-89).¹⁷ And, even so, Mr. Yanes testified that he was never back to normal (id. 1119).

When the skin was removed from Mr. Yanes' scalp, this caused his scalp to "bleed profusely" (id. at 1120) and the wounds oozed bodily fluids (id. at 857). Mr. Yanes' entire head was shaved and scalped; his head "was all red and exposed and it was very raw" (id. at 1119). As a result of these procedures, blood from Mr. Yanes' scalp had congealed while he slept, which

¹⁶ The term "debride" refers to removing things such as dead tissue, dead skin, or blisters that are on the surface layer of skin (id. at 832). This procedure requires the use of an operating room and surgical instruments (id.).

¹⁷ Doctors had initially anticipated that Mr. Yanes would only be in the hospital for only one (1) month, but due to the necessity of a respirator for a certain period of time and the necessity of additional surgeries and procedures due to the depth of the burn in order to graft the skin on his face, Mr. Yanes' hospital stay was lengthened by one (1) month (id. at 892-93). After two (2) months of constant treatment (January 2, 2014 through February 25, 2014), Mr. Yanes was transferred to Blythedale Children's Hospital ("Blythedale") for approximately three (3) months as an inpatient (NYSCEF Doc. No. 80, ¶ 5 [a]; see tr at 1002, 1345) because "he still needed a tremendous amount of care" (tr at 906). There he was forced to wear a mask, compression garments, and a brace (see id. at 906, 1345; NYSCEF Doc. No. 80, ¶ 3). Mr. Yanes spent another three (3) months attending the day hospital at Blythedale to receive occupational and physical therapy from May 15, 2014 through August 11, 2014 (tr at 906, 1345-46; NYSCEF Doc. No. 80, ¶ 5 [a]). Mr. Yanes then attended counseling sessions for one (1) year, from June 2014 through June 2015, at the Jewish Board of Children's and Family Services (see NYSCEF Doc. No. 80, ¶¶ 3, 7; NYSCEF Doc. No. 98; tr at 1375). He also had follow-up visits with Dr. Yurt, the burn surgeon (see tr at 907-908), which concluded on June 22, 2015; at least one (1) visit to a plastic surgeon, Dr. Spector; and routine visits in 2017 and 2018 to his pediatrician for the injuries he sustained as a result of the accident (NYSCEF Doc. No. 75, ¶ 19; see tr at 1348-49) and still receives regular medical treatment (tr at 1374-75). At Blythedale, Mr. Yanes had continuing complaints of insomnia and anxiety (id. at 909, 1346 ["Every day was a nightmare. Just every day was a fight to -- with my own body to . . . make sure that . . . it didn't look all blackish and scarred. To make it look like . . . my normal skin, but it was -- it was a fight every day and I got tired of fighting."]). Further, Mr. Yanes testified that "no matter how much physical therapy [he] went through, . . . [he] still didn't quite look like [his] old self. [He] looked . . . a little too different for [his] likings. And [he] grew very frustrated . . . with how it kind of just seemed to be amounting to almost nothing. All of this just wasn't . . . good enough for [him]" (id. at 1347-48).

caused his head to stick to the pillow (id. at 857; see id. at 1120) and he would have to find a way to painfully peel his head off of the pillow (id. at 1120). Mr. Yanes described the pain as being “like nothing [he has] ever felt before” and stated that he “never felt so vulnerable” (id.). Doctors also performed skin grafting directly across Mr. Yanes’ forehead every day, which was very painful (id. at 1334, exhibit 71). The skin grafts required in excess of 2,000 staples, between a quarter and a half an inch apart, to attach the new skin to Mr. Yanes’ body (tr at 849, 854), which left him, in his own words, looking like, as noted below, something “out of a horror movie” (id. at 1122). The staples in Mr. Yanes’ head made it difficult for him to move his head around (id. at 1334-35). Despite Mr. Yanes’ parents’ efforts to prevent him from looking in the mirror while at the hospital (see id. at 990-91, 993), a nurse permitted him to do so (id. at 993). Mr. Yanes did not recognize his reflection in the mirror, and he realized that his life would never be the same (id. at 1122).¹⁸ He described the experience as follows:

“I saw my face. It was disfigured. The face that was . . . reflecting back to me wasn’t -- it wasn’t my face. And it kind of dawned -- it was like out of a horror movie, just something that’s not suppose[d] to be there was looking back at you. I kind of thought to myself is this going to . . . follow me for the rest of my life. Is this what I have to deal with every day. How is this going to affect my relationships. How is this going to affect any future, you know, I hope to . . . achieve. And I felt hopeless. I didn’t know what I was going to do”

(id. at 1122). Mr. Yanes still has those thoughts to this very day (id.).

The skin grafts taken from Mr. Yanes covered another 19% of his body, meaning that the equivalent of 50% of his total body area was burned as a result of the demonstration and resulting accident (id. at 843). According to Dr. Yurt, harvesting the skin grafts from the patient

¹⁸ Mr. Yanes’ mother testified that, at this point in his life, Mr. Yanes was just starting to work on his physique and had asked to get a personal trainer, but now he is “steps behind from where he . . . was starting out from” and will “have to . . . push forward a lot [because] he’s got longer way to go now with . . . the damage that was . . . now done to him” (id. at 991). Mr. Yanes testified that he got a physical trainer because “there was a girl [he] liked, [and he] thought maybe if [he] got into shape, she would like [him] back” (id. at 1092).

is risky because it is tantamount to causing a second-degree burn and increasing the patient's initial injury until the area from which the skin is grafted heals (id.). Dr. Yurt also testified that "[t]here was severe pain associated with [these procedures]" because the outer layer of temporary skin was adhered with "staples all around the edge" (id. at 856). These operations were also painful because removing the dead tissue created new wounds (id. at 854). Mr. Yanes experienced intense, horrible pain from any physical contact with his legs, which "were all exposed," "all pink," and "very raw" due to the debridement procedures and caused Mr. Yanes to constantly ask for more pain medication (id. at 1116; see id. at 1328 [describing his legs as "very delicate" and "very sensitive"]; exhibits 77, 78). To minimize the necessary size of the grafts, Dr. Yurt testified that the grafts for Mr. Yanes' arms were placed into a "mesher"¹⁹ to make the grafts expand (id. at 843-44; exhibit 67), but it also left a permanent cobblestone imprint on the skin on Mr. Yanes' arms (tr at 844; exhibits 88-89). The skin grafts on Mr. Yanes' hands, that went all the way up to his nails and fingertips (tr at 775-76), "scarred up a lot, and as a result[,] they greatly affected the dexterity in [his] hands" (id. at 1329). Mr. Yanes further testified that he could not close one hand at all and could not open the other hand at all, which "made it very difficult to do things like feed [himself] because [he could not] properly grip utensils" (id.). Additionally, Mr. Yanes testified that [t]here were also . . . lots of staples in [his] hands; so . . . even moving them would hurt a lot and cause [him] great pain" (id.).

Due to the demonstration and resulting accident, Mr. Yanes' ears were "pretty much destroyed" (id. at 858), which could only be fixed with prostheses due to the severe damage (id.

¹⁹ Dr. Yurt described the "mesher" as "a machine that has a crank on one side, [with] sort of a spiral metal cylinder [that] cuts, slits . . . in the skin" (tr at 844). He further explained that at the hospital, "[w]e have different ones. We can cut the slits so that we can expand the skin, make it three times bigger, two times bigger. So that's the way you can cover more surface area. The problem is the cosmetic result is not as good as if you use what we call sheet graft [which is] when [the skin is] not meshed" (id.).

at 869-70). Doctors continued to remove dead skin from the ears in an attempt to save the appendages, which caused Mr. Yanes severe pain due to the exposed raw tissue in that area and profuse bleeding (id. at 872, 1121, 1335-36; exhibit 80). This made Mr. Yanes feel like he “was becoming less normal [and more] like a freak” because of the way he looked (tr at 1121; see id. at 839-40; exhibits 45, 46, 51, 70, 72, 73, 76, 80). Sadly, Mr. Yanes described his appearance as “inevitable” and that he “was destined to look the way [he] did” (tr at 1121).

Dr. Yurt further testified that the third-degree burns that Mr. Yanes suffered also destroyed the nerves and sweat glands underneath his skin, which caused Mr. Yanes to permanently lose all ability to feel in those areas and regulate his body temperature (id. at 859-60). With respect to the destruction of Mr. Yanes’ nerves, Dr. Yurt anticipated that the nerves would not grow back and there is no cure for such an injury in Mr. Yanes’ case (id. at 859). With respect to the loss of sweat glands, this is also incurable (id. at 861) and continues to cause Mr. Yanes to constantly feel hot and itchy (id. at 792, 1002).

As alluded to by Dr. Yurt, the risk that a patient in Mr. Yanes’ condition could contract an infection was a very real consideration. In fact, Dr. Yurt testified that, during his time at the hospital, Mr. Yanes suffered a methicillin-resistant staph aureus (MRSA) infection, which is a flesh-eating bacterium, that caused a loss of 50% of all of the cadaver grafts (id. at 894-98). Not only was the MRSA infection itself painful, but it was treated with intravenous antibiotics and more painful debridement procedures, as part of the treatment for the MRSA infection was to remove even more dead tissue from Mr. Yanes (id.).

Following the multiple surgeries to place skin grafts on Mr. Yanes’ hands and arms, he was forced to remain immobile with his arms outstretched in a crucifix position for five (5) days at a time, which caused his muscles to atrophy and required extensive occupational therapy (id.

at 849-51, 863, 1117-18; exhibits 73, 74). Remaining in this position caused Mr. Yanes intense pain—he described it as feeling “all the tension in your muscles and you feel all the skin pulling around all of your body and you want it to stop but you are stuck like that and you can’t really do anything about it I felt hopeless” (tr at 1330). Even Dr. Yurt testified that this immobilization, even for a short period of time, would cause cramping and discomfort (id. at 850). However, if Mr. Yanes moved during this five (5) day period of time, he would lose the newly placed skin graft (id. at 862). Nonetheless, this was particularly difficult for Mr. Yanes, especially at night when he needed to sleep in order for his body to heal, so he would again ask for more pain medication to make him drowsy and help him sleep, as well as to stave off the pain and discomfort from the skin graft procedures (id. at 1117). As a result of the immobilization, Mr. Yanes “would have to undergo physical therapy to make sure that [his] skin was getting proper exercise, . . . and to make sure that it retained its . . . elasticity so that [he] could actually use [his] arms and hands and other . . . burned parts of [his] body” (id. at 1330-31).

For a full year following the demonstration and resulting accident, in order to promote healing and attempt to minimize scarring, Mr. Yanes was required to wear heavy compression garments and a mask (id. at 864-65; exhibits 84-86, 100-105). When Mr. Yanes wore the mask, he “felt like a freak . . . it just look[ed] really weird on [him]” (tr at 1339), but it also triggered the problem he had with heat and the inability to regulate his body temperature (id. at 1339-40). The process of wrapping Mr. Yanes’ body with the tight-fitting garments that put pressure on his burnt skin was torturous for him (id. at 865-67, 1001; exhibits 97, 100-105). The garments themselves were uncomfortable, not only because they were tight, but also because they insulated the heat and made Mr. Yanes irritable (tr at 1340). The compression garments also made him very itchy and, due to the pressure, Mr. Yanes found it hard to move while wearing

them (id. at 1342). In addition, Mr. Yanes was required to wear a silicone neck brace every day for over a year that went all the way up to his mouth (id. at 868, 1003, 1336-37; exhibits 81, 98, 99), which he took off only to eat or shower (tr at 1003, 1336-37). Mr. Yanes testified that the purpose of the brace was to help his skin regain its elasticity (id. at 1336-37), but that wearing the brace was terribly uncomfortable and painful and pulled down on his lip, which hurt his neck and caused him to drool into the brace, coating the entire inside with saliva (id. at 1337; see id. at 1003 [“[H]e looked like a spectacle. There is no other way to describe that.”]). This would cause the brace to smell terribly (id. at 1337). When Mr. Yanes went outside in these garments to attend psychology appointments, children would point at him and ask “Why does he look like that?” and adults could likewise not help but stare (id. at 1004 [internal quotation marks omitted]; see id. at 1352-53).

Dr. Yurt testified that all of these injuries and treatment required extensive physical and occupational therapy for lost dexterity and atrophy of Mr. Yanes’ arms, legs, neck, and face (id. at 864). Mr. Yanes also had to learn to walk again, “the same way that a baby does” because the muscles in his legs atrophied from being in bed for so long (id. at 1116). However, Mr. Yanes had to be careful with his physical therapy in order to protect the skin grafts and not create any cuts in his skin, which would prolong healing (see id. at 1346-47). Despite all of these procedures and therapy, Mr. Yanes’ physical pain was and continues on a daily basis (id. at 1358). For example, Mr. Yanes developed contracture formation, a thickening of the tissue and scars in the body’s attempt to decrease the size of the wound, particularly on his neck, resulting in painful contractions that pulled on the skin on his chin and chest (id. at 864-66). The contractures affect dexterity and nerve function, causing a loss of feeling and ability to move joints properly (id. at 864), this included extreme amounts of tension that could dislocate bones

and cause disfiguration (id. at 867). This resulted in constant pulling at the skin on Mr. Yanes' neck (id. at 1010). Mr. Yanes testified that his neck was the most severely burned and, as a result of the skin grafts, it had the worst scarring, including scars extending up around his mouth, that caused him to involuntarily drool and smell badly (id. at 1332). Despite intensive physical therapy, Mr. Yanes constantly pulls at the skin on his neck in a futile attempt to relieve the discomfort from the scarring (id. at 1332, 1337-38).

Moreover, Dr. Yurt testified that as people age, they will, in the normal course, suffer atrophy of the skin, which is the loss of elasticity and thickness of the skin to the extent that even rubbing skin against something can cause it to come off (id. at 873). Dr. Yurt's unrebutted testimony also indicated that this will "double or triple" the problems Mr. Yanes will have in the future due to the burns he sustained, meaning that Mr. Yanes' physical pain and suffering, as a result of his injuries, will significantly worsen as he ages (id.). Specifically, Dr. Yurt testified that the skin atrophy will be a future source of pain for Mr. Yanes and he will also experience pain from the locations where healthy skin was grafted from his body (id. at 874). To that end, Dr. Yurt testified that Mr. Yanes "will need additional surgery" (id. at 910-11). Mr. Yanes discussed the possibility of having further surgeries with his mother—specifically, "[s]urgeries for his ears, . . . plastic surgery [to] even[] out his skin tone, the scarring" (id. at 1009). Really, "[a]ny kind of surgery that will take that burn victim appearance away, . . . some procedure that will give him a more normal appearance" (id. at 1010).²⁰

²⁰ While there is the possibility of reconstructive surgery, and Mr. Yanes had discussed the possibility of ear prostheses (id. at 792), Mr. Yanes testified about his apprehension in pursuing additional surgeries because there were many risks without any guarantees that it would improve his appearance and he was "afraid that more surgeries would mean more scars. More cutting up. More dealing with more physical therapy and dealing with more people like gawking at me on the street or something, and [he did not] feel like going through all of that again" (id. at 1348-49; see id. at 792 ["[H]e's not really too happy about doing as many surgeries. He wants to limit, but you know he knows that some of them are very essential."], 1371-73 [stating that he was "afraid that further surgeries might set him back even more"]]).

With respect to his family, Mr. Yanes' father described, in detail, Mr. Yanes' inability to come to grips with what was happening to him, that he repeatedly wondered if God was punishing him for his sins (id. at 782). The many months of treatment took a huge emotional toll on Mr. Yanes—one night when Mr. Yanes' father stayed overnight with his son, he woke up in the middle of the night to find his son naked in the bathroom, screaming and crying (id. at 785-86).²¹ Additionally, Mr. Yanes was separated from all of his friends and his then seven-year-old sister with whom he shared a bedroom and had a close sibling relationship (see id. at 989, 998, 1095). Initially, Mr. Yanes' mother explained his sudden disappearance to his sister by stating that “he’s very, very sick. And that’s why he can’t come home” (id. at 990). Mr. Yanes' mother further explained to his sister that her brother “looks very, very different. . . . [T]hat Alonzo looks like a monster. He looks . . . all beat up and . . . cut up. And . . . he looks very, very scary right now” (id.). Later on, prior to visiting her brother in the hospital, their mother prepared Mr. Yanes' sister for the visit by explaining to her that her brother will “probably look very scary to you. And he’ll probably look like a monster, something like Frankenstein” (id. at 999). When she visited her brother, Mr. Yanes' sister did not recognize him at first, “[s]he was very shocked and taken aback and she didn’t know what she was looking at” and Mr. Yanes had to experience the pain of witnessing his own little sister being afraid of him (id. at 1344). Not only did this hurt Mr. Yanes a lot to see his own sister be afraid of him, but it caused him concern for his future (id.). That same day, a visit arranged by Mr. Yanes' mother at the hospital with a group of Mr. Yanes' friends did not go any better (id. at 996-97, 1344) despite Mr. Yanes' mother's attempt to prepare them for the visit by explaining “that he might not look the same, but he’s still the same

²¹ Mr. Yanes' father testified that his son said to him: “dad, I’m in so much pain. I can’t stand this pain. Please make it stop. Make it go away.’ And he just kept yelling. ‘I’m tired of this,’ he said. ‘Please dad help me’” (id. at 786). Due to his lack of dexterity, a nurse had to come in to help him get dressed (id. at 786-87).

Alonzo that we know and love” (id. at 273).²² As Mr. Yanes described it, he did not think that his friends “were expecting what they saw” because “[t]hey had these . . . shocked looks on their faces but they were trying to . . . mask their shocked looks . . . they didn’t understand how much this fire had affected me” (id. at 1342-43), but, nonetheless, Mr. Yanes explained that it “hurt me to . . . see and read into that some of my closest friends were kind of taken aback by the way that I looked” (id. at 1343). Based upon his friends’ reactions to his appearance, as with his sister’s reaction, Mr. Yanes had additional concerns about his future appearance with respect to how other people he did not know would react to him (id. at 1344).

When Mr. Yanes returned to school the following fall, he had to deal with a new reality—a new “normal” of being stared at by strangers and feeling uncomfortable (id. at 1004, 1006, 1008-1009). He was anxious about returning to school (id. at 1005, 1349) and, when he did, he still had to wear the protective garments and braces, including a mask (see id. at 273-74, 789-90, 1349). Upon returning to school, Mr. Yanes kept to himself (id. at 274); his confidence plummeted (id. at 1352). Mr. Yanes was on the receiving end of another student’s cruelty when he heard the quip “Great costume you have on there” on Halloween at a time when he was not wearing a costume (id. at 1005-1006 [internal quotation marks omitted]). While Mr. Yanes once had a number of close relationships since “he was always . . . a pretty cool guy” (id. at 1062), “[e]verybody loved him[,]” and “[h]e was everyone’s friend” (id. at 248), he found it difficult to connect with people, and they found it difficult to connect with him after the accident, they had abandoned him (id. at 1005, 1064, 1356 [describing how Mr. Yanes was not invited to hang out

²² Mr. Yanes’ mother also prevented her son’s friends from bringing their cell phones into his hospital room or taking pictures (id.). Mr. Yanes’ friends were happy to visit him in the hospital “because it gave [them] solace to know he was okay, even though he was physically in pain, he was still . . . here with [them]” (id. at 1037-38), however, despite Mrs. Yanes’ attempts to prepare her son’s friends for his appearance, they were still shocked (id. at 273-74).

with his friends and how he would find out about such events later]). Mr. Yanes testified that this made him “feel left out and forgotten . . . like there is something . . . wrong with [him] that is keeping them from . . . wanting to see him” (id. at 1360), which also continues to hurt him, in part, because he cannot do anything to change this—to change other people’s opinions or feeling about his appearance (id. at 1360-61). Mr. Yanes’ father testified that he now has one friend: Julia Saltonstall, whose arm was also burned by the experiment (id. at 794; see id. at 265-66, 268, 1033). Despite having described Mr. Yanes as “the nicest, most outgoing, funny, kind, caring, compassionate person you could ever know” (id. at 248) prior to the accident, Ms. Saltonstall confessed that “she wasn’t a very good friend to Alonzo” after the accident and had admittedly avoided him (id. at 274). Mr. Yanes explained how difficult it was to deal with the stares of strangers who gawked at his appearance to the point that he developed a habit of removing his glasses in public, thereby rendering his eyesight too poor to actually see the expressions of passersby (id. at 1350). In other words, Mr. Yanes chose not to correct his sight in an attempt to avoid the tremendous pain caused by others who stared and gawked at his appearance, including his classmates, which is something he is still not used to (id. at 1351, 1359). This also caused Mr. Yanes concern about his future, that he “would have to deal with this every day, and [he] wouldn’t get any break from it, and that this is [his] life now. It changed forever” (id.).

Mr. Yanes also testified that prior to the accident, he did not experience any limitations with respect to moving his hands, specifically, bending them or any flexion or extension issues (id. at 1091). He further testified that he had no difficulties with his neck or his ears and only had typical teenage concerns about his physical appearance (id.).

With respect to his current life, the last time Mr. Yanes went to a bar with friends was one time “[o]ne or two years ago” (id. at 1356) and he has never been to a night club (id. at 1357). Mr. Yanes testified that he keeps to his work-study job as a porter at his college, despite wanting to go out with people he calls his friends, because it is “physically uncomfortable every day to deal with . . . my scars” and he does not have enough confidence (id.). He also testified that he works very hard to overcome any prejudice that people might have about his appearance, to prove to people that he is more than just his appearance, but his attempts have thus far proven unsuccessful (id. at 1354). Mr. Yanes is scared about the future—he is “very worried that this . . . won’t go away. That [he has] to deal with this for the rest of [his] life” (id. at 1357). He also experiences pain every single day (id. at 1357-58). Mr. Yanes also testified that he is very afraid of the exceedingly long road ahead of him and all of the obstacles that he will have to face because he does not “know when it’s going to end” (id. at 1358-59). He wonders, daily, what his face would look like if this accident had not occurred and he was not burned and if people would treat him differently, in other words, if his life would be different because he would be more outgoing and would have more friends (id. at 1359). Instead, he feels that his disfigurement from the accident has affected his relationships with friends, his own self-esteem, and any possibility at having an intimate relationship (id. at 1354-57). Mr. Yanes wishes, for the future, that there would be a day where he does not feel any physical or emotional pain from this accident (id. at 1359-60). However, he feels trapped by his situation because there is nothing he can do to make it any better or make himself look physically better, irrespective of how hard he tries (id. at 1360).

Despite seeking psychological help for these issues, Mr. Yanes was not better off (id. at 1352). Going to the psychologist entailed Mr. Yanes walking in the hot sun, during the summer,

around his neighborhood and having more people stare at him, which made him feel awful, “[j]ust everything was awful about it” and it “didn’t make the pain, the physical pain go away” or his physical scars (id. at 1352-53). After the session was over, Mr. Yanes returned to this new reality where people would continue to stare at him and it only made him feel more self-conscious (id. at 1353). Mr. Yanes also explained that he still has trouble sleeping and nightmares about the accident—he has visions where he revisits certain moments and sometimes wakes up shaking a little bit—there are certain memories that he just cannot escape and have been burned into his mind (id. at 1353-54, 1358, 1361). For Mr. Yanes, “[e]very day has been a nightmare” (id. at 1361).

In sum, all of these injuries and procedures left Mr. Yanes with permanent, painful, and disfiguring scars that permanently and substantially altered his appearance, which did not make him feel any less like a freak—his ears were destroyed and his face was left unrecognizable, damaged beyond recognition (see, e.g., exhibits 84-87, 90-96). Mr. Yanes was also emotionally scarred—he went from being a popular teenager to having one friend, taunted by his classmates, who made him feel so uncomfortable in his own skin that he removes his glasses and has had a complete loss of confidence in dealing with people (tr at 1006-1007, 1350-51). Further, Mr. Yanes has never had an intimate relationship with another person and believes that his physical appearance may now prevent him from ever experiencing one (id. at 1355), he even discussed the fact that he may never experience sexual relations with his mother (id. at 1006-1007). Mr. Yanes believes that his current appearance “gets in the way too much” and that “the scars or the pulling that it does” is not “very attractive” (id. at 1355). Now, not a day goes by where Mr. Yanes does not think about what happened after Ms. Poole poured the methanol from that jug because it was so traumatic (id. at 1105-1106).

In the above-captioned matter, a jury trial was held before the undersigned and, on July 1, 2019, the jury returned a verdict in favor of Mr. Yanes, awarding him \$29,585,000 in damages for past pain and suffering and \$29,585,000 for future pain and suffering, to compensate him over a period of fifty-four (54) years (NYSCEF Doc. No. 72). Defendants now move to set aside the damages award, seeking a new trial on damages on the grounds that the jury's verdict deviates materially from what would be reasonable compensation, and to stay entry of judgment in this matter until sixty (60) days after entry of this order and any other order issued on post-trial motions. This decision follows.

DISCUSSION

The right to a jury trial for civil matters is encompassed in the Seventh Amendment to the United States Constitution and in Article 1, Section 2 of the New York State Constitution. Because a jury verdict represents the embodiment of constitutional rights, judges have granted the conclusions reached by a jury great deference (see, e.g., Ortiz v 975 LLC, 74 AD3d 485, 485 [1st Dept 2010] ["[T]he amount of damages awarded . . . is primarily a question for the jury, the judgment of which is entitled to great deference based upon its evaluation of the evidence, . . ."]; Po Ye So v Wing Tat Realty, Inc., 259 AD2d 373, 374 [1st Dep't 1999] ["Although possessing the power to set aside an excessive jury verdict, a trial court should nonetheless be wary of substituting its judgment for that of a panel of fact finders whose peculiar function is the fixation of damages."]; Gilliard v New York City Health & Hosps. Corp., 77 AD2d 532, 534 [1st Dept 1980, Fein, J., dissenting] ["The measure of damages for pecuniary loss is complex. It is not to be constricted by mathematical formulas. The court should not set aside the verdict of the jury as to damages unless they are so clearly excessive as to be 'beyond all measure unreasonable.' By that standard the jury's verdict should not be disturbed. The damages were fixed by the jury on

the basis of all of the evidence and a careful charge, and an experienced trial justice declined to set aside the verdict. That should suffice. Although generous, the verdict was neither excessive nor unreasonable.”] [internal citations omitted]; cf. Kupitz v Elliott, 42 AD2d 898, 898 [1st Dept 1973] [“It was error for the Trial Court, absolutely and unconditionally to reduce the verdict for conscious pain and suffering and to have the sum so fixed stand as the jury’s verdict. This constituted a usurpation by the Court of the function of the jury to assess damages.”] [collecting cases]). When reviewing a jury verdict, courts should be mindful of Supreme Court Justice Joseph Story’s caution that “[i]t is indeed an exercise of discretion full of delicacy and difficulty” and even he had great hesitation in altering the jury’s verdict (Blunt v Little, 3 F Cas 760, 761 [1822]).

In reviewing a jury verdict, courts have considered whether a particular award “deviates materially from what would be reasonable compensation” (CPLR § 5501 [c]) or is against the weight of the evidence (CPLR § 4404 [a]).²³ To determine whether a jury award deviates

²³ In 1986, CPLR § 5501 [c] was adopted, which changed the standard for judicial scrutiny of jury verdicts to the “deviates materially” standard used today (see Reed v City of New York, 304 AD2d 1, 5 [1st Dept 2003]). While the standard articulated in CPLR § 5501 [c] was applied herein, this standard may be unconstitutional. The first New York State Constitution, which was adopted on April 20, 1777, states the following: “And this convention doth further ordain, determine, and declare, in the name and by the authority of the good people of this State, that trial by jury, in all cases in which it hath heretofore been used in the colony of New York, shall be established and remain inviolate forever” (1777 NY Const, art XLI) without setting forth any specific powers of the New York Legislature in this regard. On July 26, 1788, when New York State ratified the United States Constitution, including the Seventh Amendment protections involving civil juries, its delegates ensured that the right to a trial by jury would continue to be protected. The ratification states the following: “That the trial by Jury in the extent that it obtains by the Common Law of England is one of the greatest securities to the rights of a free People, and ought to remain inviolate” (1788 Ratification of US Const). The Bill of Rights to the New York State Constitution now expressly states the following with respect to civil jury trials and verdicts:

“Trial by jury in all cases in which it has heretofore been guaranteed by constitutional provision shall remain inviolate forever; but a jury trial may be waived by the parties . . . in the manner to be prescribed by law. The legislature may provide, however, by law, that a verdict may be rendered by not less than five-sixths of the jury in any civil case”

(NY Const, art 1, § 2). Because the New York State Constitution specifically sets forth the limited powers of the Legislature with respect to jury verdicts, statutory construction would appear to foreclose the Legislature from transferring the power from juries to award monetary damages to judges to modify or set aside jury verdicts beyond

materially from what is considered reasonable compensation, courts “are required to look to similar appealed verdicts to determine whether a material deviation exists” (Matter of 91st St. Crane Collapse Litig., 154 AD3d 139, 153 [1st Dept 2017]). “Reasonableness” is determined “by

what existed in the common law. The common law, as it existed when the current version of the State Constitution was adopted, prohibited judges from substituting their opinions as to the reasonableness of a jury verdict in place of the verdict rendered by the jurors themselves. Rather, judicial interference with jury verdicts was rare and was only permitted because jury verdicts shocked the conscience of the court (see Reed, 304 AD2d at 5 [stating that the “deviates materially” standard was adopted in order to ensure “greater scrutiny of the amount of verdicts and promote greater stability in the tort system . . .”]).

New York State’s approval of the Seventh Amendment further supports the historical deference provided to jury verdicts because New York State’s adoption was specifically premised on the right to have disputes decided by juries to be “inviolable,” which was the same language contained in the original New York State Constitution. Yet, the Supreme Court of the United States has observed that the standard of review embodied by CPLR § 5501 [c] permits judges to have greater review of jury verdicts as compared to what is allowed under the Seventh Amendment (see Gasperini v Ctr. for Humanities, Inc., 518 US 415 [1995]). As Chief Justice William Rehnquist noted in Parklane Hosiery Co. v Shore, 439 US 322 [1979], the Seventh Amendment was adopted to protect the common law trial system from any potential abuse or interference by judges who presided over trials:

“The founders of our Nation considered the right of trial by jury in civil cases an important bulwark against tyranny and corruption, a safeguard too precious to be left to the whim of the sovereign, or, it might be added, to that of the judiciary. . . . Trial by a jury of laymen rather than by the sovereign’s judges was important to the founders because juries represent the layman’s common sense, the ‘passional elements in our nature,’ and thus keep the administration of law in accord with the wishes and feelings of the community. Those who favored juries believed that a jury would reach a result that judge either could not or would not reach”

(439 US at 343-44 [Rehnquist, J., dissenting] [citation and footnote omitted]). The above statement articulated in Chief Justice Rehnquist’s dissent indicates that a judge’s disturbance of a jury award or other invasion of the province of the jury is the edge of what is appropriate under the Constitution. The Supreme Court, in Parklane Hosiery Co., went to great lengths to make it clear that courts cannot pretend or otherwise ignore the right to a jury trial guaranteed by the Seventh Amendment (id. at 335-37 [“[T]he Amendment was designed to preserve the basic institution of jury trial . . .”], quoting Galloway v United States, 319 US 372, 390 [1942]). Accordingly, “[s]ince the merger of the systems of law and equity, [the Supreme Court of the United States] has carefully preserved the right to trial by jury where legal rights are at stake” (Chauffeurs, Teamsters & Helpers, Local No. 391 v Terry, 494 US 558, 565 [1990] [citation omitted]). Further, “[m]aintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care” (id. [internal quotation marks omitted], quoting Dimick v Schiedt, 293 US 474, 486 [1935]). The foregoing views are appropriate to consider since New York State has historically provided the same or greater protections as the United States Constitution under its own Constitution (see, e.g., People v P.J. Video, Inc., 68 NY2d 296, 303 [1986] [“In the past we have frequently applied the State Constitution, in both civil and criminal matters, to define a broader scope of protection than that accorded by the Federal Constitution in cases concerning individual rights and liberties.”]; Febres v City of New York, 238 FRD 377, 392 [SDNY 2006] [applying New York law] [“The New York State [C]onstitution’s guarantees of equal protection and due process are virtually coextensive with those of the federal Constitution.”]; Straniere v Silver, 218 AD2d 80, 82-83 [3d Dept 1996] [construing the Speech and Debate Clause of the New York State Constitution to have “at least as much protection as the immunity granted by the comparable provision of the Federal Constitution”] [internal quotation marks and citation omitted]).

whether or not the jury's decision is in any way supported by record evidence" (Donlon v City of New York, 284 AD2d 13, 16 [1st Dept 2001]; see CPLR § 4404 [a]). Courts are to bear "in mind that personal injury awards, especially those for pain and suffering, are subjective opinions which are formulated without the availability, or guidance, of precise mathematical quantification" (Reed, 304 AD2d at 7). When evaluating a jury award for pain and suffering, courts must "consider not only the type of injury and the level of pain, but the period of time for which that pain is being calculated" (Garcia v Queens Surface Corp., 271 AD2d 277, 278 [1st Dept 2000]).²⁴

The catastrophic nature of Mr. Yanes' injuries was essentially conceded by defendants who did not call a single medical expert or damages witness, such as a doctor. As shown by the evidence discussed above, Mr. Yanes suffered an unprecedented amount of physical and emotional suffering. In terms of past pain and suffering, Mr. Yanes was subjected to literally being burned alive. In fact, Mr. Yanes was so grievously wounded that it was statistically more likely that he would die, rather than live, as a result of his injuries. Having miraculously survived being severely burned and the related the trauma of the accident, Mr. Yanes became acquainted with the agonizing pain and suffering he would have to endure daily. Mr. Yanes underwent approximately one hundred and twenty (120) medical procedures, which transpired on a daily basis, for the debridement of dead skin, the implementation of temporary skin grafts from cadavers, and then, later that day, having his own healthy skin removed to replace the temporary

²⁴ Courts must also evaluate certain other factors that revolve around how the jury behaved and what its motivations were in reaching the verdict. In other words, a court must evaluate whether the jury strayed from its sworn duty to try the matters in issue and render a true verdict according to the evidence and the law (see Walker v New York City Tr. Auth., 130 AD2d 442, 443 [1st Dept 1987] [stating that in calculating damages, even where the award is found to be excessive, this does not "mean that the jury was biased and did not reasonably assess the evidence before it with respect to liability, or that . . . the award [was an] indication of the jury's unfairness"]). Here, there was no evidence that the jury improperly considered the evidence or had any bias or improper motive in reaching its verdict, which includes its award to Mr. Yanes for past and future pain and suffering.

skin grafts. This excruciating pain will be a constant companion to Mr. Yanes throughout his life as the amount of pain medication necessary to eliminate Mr. Yanes' suffering would be fatal.

While certain aspects of Mr. Yanes' physical suffering have decreased since the accident occurred, other injuries will progressively worsen over the additional fifty-four (54) years he is expected to live post-verdict. Mr. Yanes' physical problems will "double or triple" as he ages due to skin atrophy, which is the loss of elasticity and thickness of the skin that causes the skin to come off when it is scraped or rubbed (tr at 873). Due to the accident, Mr. Yanes "already has atrophy of the skin and he has abnormal skin where [there is] grafting and where he's been burned" (id.). Accordingly, this will further compound Mr. Yanes' pain and suffering as he ages because he already has this preexisting damaged skin that will further atrophy and cause additional problems as he gets older (id. at 873-74). Unfortunately for Mr. Yanes, there is no cure for the skin atrophy that he will experience, except for potential future full thickness skin grafting, which would only move the problem from one area on his body to another, the grafting site (id. at 874). A partial result of this skin atrophy will prevent Mr. Yanes from having a normal life and, among other things, from going out into the sun because his skin will burn, blister, and fall off (id. at 911). Mr. Yanes will also never recover nerve function or be able to self-regulate his body temperature via sweating in the areas where he suffered third-degree burns (id. at 912). As Dr. Yurt plainly stated: Mr. Yanes is "never going to be normal" (id. at 911).

In addition to physical pain and suffering, the emotional suffering that Mr. Yanes must endure on a daily basis is tremendous. Initially, Mr. Yanes' father did not even recognize him after the accident. His younger sister had to be cautioned that her brother would "probably look like a monster, like Frankenstein" (id. at 999). The fact that his own sister could not recognize him deeply troubled and pained Mr. Yanes. In fact, one night when Mr. Yanes' father had stayed

over in the hospital, he awoke to find his son naked and screaming while standing naked in front of a mirror. Additionally, Mr. Yanes' injuries are so gruesome that he refuses to wear his glasses when he is going from place to place so that he cannot see people gawking at his disfigurements. Mr. Yanes has been ostracized from his friends and has been forced to endure callous insults. While Mr. Yanes is supposed to be entering the prime of his life, he has been unable to establish a romantic relationship and has never even experienced his first kiss or had a single sexual encounter. A reality that is exemplified when, after hearing his parents having sexual relations, he bitterly informed his mother that he would never be able to have sexual relations with another person. There is no evidence that the years of mental suffering Mr. Yanes has endured will somehow lessen over the remainder of his life.

Additionally, the accident will have a devastating future impact on Mr. Yanes' life—essentially the complete deprivation of a typical high school experience, including major foundational life events such as prom, graduation, dating, and even a typical American college experience. All of the crucial hallmarks that young adults experience in high school and college are lost to Mr. Yanes forever and he will never recoup this time of his life. What truly makes this even more tragic for Mr. Yanes is that he missed out on such a significant and impressionable time in his life—this accident happened to Mr. Yanes during his adolescence, the formative years for developing his own personal identity on his way to adulthood. It is apparent that the emotional and physical impact of this accident will continue to follow Mr. Yanes throughout his adult life and will affect his job prospects and future relationships, such that Mr. Yanes will never become comfortable with his own body; Mr. Yanes may never be able to gain independence from his parents; based on his own testimony, Mr. Yanes has been deprived of a realistic opportunity to build meaningful relationships with his peers and it is questionable

whether Mr. Yanes will attain economic and social stability, as evidenced by his testimony and his parents' testimony as to his poor self-image. All of this excruciating physical and emotional trauma experienced by Mr. Yanes has essentially stopped his young life before it even began.

In consideration of all of the above, this Court finds that the jury awarded a substantial verdict to compensate Mr. Yanes for his past and future pain and suffering resulting from the extensive injuries he sustained as a result of defendants' negligence.

While defendants concede that Mr. Yanes has been grievously injured, they, nonetheless, request a modification of the jury award for past and future pain and suffering based upon their assertion that the amount awarded was unreasonable when compared with verdicts awarded in other burn cases. Specifically, defendants' argument primarily relies upon three "comparison" cases to essentially assert that they have some type of preclusive application with respect to the amount of a recoverable monetary award. In addressing this contention, it is helpful to reiterate that a determination of damages is the constitutional responsibility of a jury and falls outside the providence of judges. As such, when deciding whether a monetary award is reasonable compensation in light of the circumstances of a particular case, the use of comparison cases barely threads the needle of constitutionality because it is for civil juries to decide the outcome of lawsuits, including the amount of damages, in each individual case and the parties in this action were not litigants in these purported comparison cases (*cf. Parklane Hosiery Co.*, 439 US 322). Further, "[m]odification of damages, which is a speculative endeavor, cannot be based upon precedent alone because comparison of injuries in different cases is virtually impossible" (*Po Ye So*, 259 AD2d at 374). Thus, while comparing "analogous cases will be useful as benchmarks," "the issue of material deviation, however, is a mixed question of law and fact which has been legislatively committed to judicial oversight," "on which the trier of fact is accorded deference"

(Donlon, 284 AD2d at 16), and is not intended to serve as a cap on damages. The court’s “task necessarily involves the identification of relevant factual similarities and the application of reasoned judgment” (id. at 15). By avoiding overreliance on comparison cases, courts can avoid such constitutional issues.

The cases that defendants primarily rely upon—Peat v Fordham Hill Owners Corp. (110 AD3d 643 [1st Dept 2013]), Weigl v Quincy Specialties Co. (1 AD3d 132 [1st Dept 2003]), and Man-Kit Lei v City University of New York (33 AD3d 467 [1st Dept 2006])—as analogous burn cases for the purpose of reducing the jury’s award for past and future pain and suffering are inapposite. The cases cited either do not involve so-called maximum sustainable jury verdicts or are factually distinguishable from the instant action. Thus, these comparison cases are of limited use in acting as benchmarks by which to evaluate Mr. Yanes’ injuries (see Jones v New York City Tr. Auth., 2007 WL 9646330, at *6 [Sup Ct, Bronx County Oct. 31, 2007]). While these cases may indicate factors that are considered when determining whether compensation is reasonable in a particular circumstance, none of the three cases delineate or define the specific limits of compensation for injuries that do not even compare to the unique nature of Mr. Yanes’ injuries (see id.). Despite some similarities, not a single case includes all of the combined injuries that Mr. Yanes sustained, including having such a lasting effect on that particular plaintiff (see id.). These three cases are addressed below.

In Peat v Fordham Hill Owners Corp. (110 AD3d 643 [1st Dept 2013]), a thirty-seven-year-old plaintiff²⁵ sustained “second and third-degree burns over 50% of his body” (110 AD3d at 644). The jury returned a verdict of \$16,000,000 in damages for pain and suffering: \$10,000,000 for past pain and suffering and \$6,000,000 for future pain and suffering, intended to

²⁵ According to defendants’ affirmation in support of the instant motion (NYSCEF Doc. No. 75, ¶ 31).

compensate the plaintiff over a period of thirty-two (32) years (NYSCEF Doc. No. 106, at 15-16).²⁶ The Appellate Division, First Department affirmed the verdict, finding that the “damages awarded do not materially deviate from what would be reasonable compensation under the circumstances” in accordance with CPLR § 5501 [c] (110 AD3d at 645).²⁷

Defendants argue that the plaintiff in Peat sustained similar injuries to Mr. Yanes and received a much lower award; however, Peat merely stands for the proposition that an award of \$10,000,000 for past pain and suffering and \$6,000,000 for future pain and suffering was not excessive and did not materially deviate from reasonable compensation. As in Peat, “when an appellate court refuses to reduce and affirms an award, . . . it stands only as a determination that the award fell *somewhere* within the range of awards justified by the evidence. The affirmance does not indicate that a considerably higher verdict is not within the upper limit of that range” (2007 WL 9646330, at *6). Thus, Peat is not an appropriate comparison case for this reason.

Moreover, the facts of Peat significantly differ from the injuries sustained by Mr. Yanes in this case. In an attempt to argue that Peat is an appropriate comparison decision, defendants improperly minimize Mr. Yanes’ injuries by asserting that Mr. Peat sustained the same or worse injuries than Mr. Yanes. These efforts underscore the subjective and individualized nature of jury verdicts in cases involving catastrophic injuries that rely upon the facts unique to a particular plaintiff (see, e.g., 2007 WL 9646330, at *5 [“The jury’s verdict in this action is especially

²⁶ The detailed factual information of the Peat case is available via some of the parties’ briefs on appeal (see NYSCEF Doc. No. 106 [defendants’ exhibit FF] [brief for plaintiff-respondent dated August 19, 2013]; brief for third-party defendants-respondents A. Brantley Flooring Co. and ABE Brantley, available at 2013 WL 12165610, dated August 27, 2013). This Court relies on the facts as presented in those briefs and defendants’ affirmation in support of this motion.

²⁷ The factors considered by the First Department in making this determination are as follows: the plaintiff underwent fifteen (15) surgeries, “engaged in extensive physical and occupational therapies in an effort to be able to perform the most basic of life functions again, and still experience[d] significant depression and post-traumatic stress disorder” (id.).

unsusceptible to evaluation by precise standards, not only because it involved a unique combination of injuries with reciprocal exacerbating effects, . . . but also because of their uniquely subjective impact on this specific plaintiff.”)]. In their argument, defendants ignore the approximate one hundred and twenty (120) procedures that Mr. Yanes underwent during his two-month hospitalization, which far exceeds Mr. Peat’s fifteen (15) total surgeries. As one of his fifteen (15) surgeries, the plaintiff in Peat had a scar contracture release procedure to ease the permanency of the discomfort associated with the scarring, whereas Mr. Yanes was left with permanent scarring and disfigurement to his face, ears, neck, arms, and hands. This permanent scarring and disfigurement required Mr. Yanes to undergo a significant additional amount of physical and occupational therapy for his neck and mouth because the scars made him involuntarily drool due to muscle atrophy (tr at 1332; 1337-38). Further, the fact that defendants’ cases focus purely on physical injury makes their utility as benchmarks all the more limited in light of the evidence presented regarding Mr. Yanes’ continued anxiety and depression, his painful debridement procedures, and permanent scarring and discomfort (see 2007 WL 9646330, at *6). Another important distinction between Peat and the instant case is the age of the injured parties—here, the jury’s damage award for future pain and suffering was intended to compensate Mr. Yanes for an additional twenty-two (22) years.²⁸ In the end, a teenager in his formative years is likely to experience and will have to endure injuries very differently than an adult on the cusp of middle-age.

In Weigl v Quincy Specialties Co. (1 AD3d 132 [1st Dept 2003]), a twenty-five-year-old plaintiff “sustained second and third degree burns to at least seventeen percent of her body in the areas of her face, chest, arms, and hands” (Weigl v Quincy Specialties Co., 190 Misc 2d 1, 7

²⁸ Mr. Peat was thirty-seven years old at the time of his injury, which is more than twenty (20) years older than Mr. Yanes.

[Sup Ct, NY County 2001, Friedman, J.]; see also id. at 8). The plaintiff suffered some severe and permanent scarring, though not on her face or hands (id. at 7). During her one-month hospitalization, Ms. Weigl underwent debridement procedures and only three surgeries: two skin grafting surgeries and a third surgery to relieve the irritation associated with scar contractures (id. at 7-8). Ms. Weigl promptly returned to work despite suffering from post-traumatic stress disorder and other psychological problems, as well as physical pain (id. at 8). On December 8, 2000, approximately twenty (20) years ago, the jury awarded her \$9,140,000 for past pain and suffering and \$10,000,000 for future pain and suffering, which was reduced by the trial court to \$8,000,000: \$4,000,000 each for both past and future pain and suffering (id. at 1, 9).

Weigl does not support a reduction of the jury's award for past and future pain and suffering in this case. As an initial matter, Ms. Weigl apparently did not appeal the trial court's reduction of the jury award. Thus, the only issue before the Appellate Division, First Department with respect to damages was the defendants' argument that the reduced award materially deviated from what constituted reasonable compensation under the circumstances, which is an argument that the Appellate Division rejected. Additionally, Mr. Yanes injuries are substantially different than the injuries sustained by Ms. Weigl. Notably, Mr. Yanes sustained burns to a sufficiently larger percentage of his body and has undergone a significantly greater number of surgical and other medical procedures than Ms. Weigl. Further, unlike Ms. Weigl, Mr. Yanes did not even have a marginally improved cosmetic recovery. Moreover, Mr. Yanes' injuries have destroyed his ability to have a normal social life and develop romantic relationships (see, e.g., 2007 WL 9646330, at *7).²⁹ While the trial court in Weigl did not believe that the plaintiff

²⁹ In Jones, the court compared the injuries sustained by the ten-year-old plaintiff therein to the plaintiff in Weigl and found that the court did not take into consideration factors like "lost time from school; functional impairment to social, scholastic, and extracurricular activities; and young age" (id.). The Jones Court further stated that a younger plaintiff "does not have an adult's coping mechanisms" (id.). Further, "[t]he terrifying physical injuries to this

therein suffered an unprecedented level of injury (*id.* at 9), thereby disagreeing with the jury's verdict based upon the amount of its award, this Court reaches a different conclusion in the instant case based upon its own review and consideration of the evidence herein. As the *sui generis* nature of this case demonstrates, "[t]he disparity between the prior verdicts and the verdict in this case does not by itself require the conclusion that the verdict is excessive," especially where the plaintiffs' injuries are not comparable and "the injuries of different persons are not capable of exact or objective comparison" (*id.*).

In *Man-Kit Lei v City University of New York* (33 AD3d 467 [1st Dept 2006]), the twenty-nine-year-old plaintiff,³⁰ "sustained serious burns while sculpting with an oxyacetylene torch in the [defendant] college's metal lab. The trial court . . . awarded claimant \$2.5 million for past pain and suffering, \$2.5 million for future pain and suffering" (33 AD3d at 467-68). However, this decision is not helpful for several reasons. Most importantly, the matter was tried in the Court of Claims and, accordingly, did not involve a jury verdict (*Man-Kit Lei*, 4 Misc 3d at *7). The appellate review of bench decisions differs materially from its review of a jury verdict. "On an appeal . . . after a nonjury trial, this court's standard of review is not limited to whether the trial court's verdict is against the weight of the evidence. This court may review . . . the record as a whole and . . . grant the judgment warranted. Our scope of review is as broad as that of the trial court" (*Capizola v Vantage Intern., Ltd.*, 2 AD3d 843, 845 [2d Dept 2003] [alterations in original] [internal quotation marks and citations omitted]). The standard for appellate review of a jury verdict has been articulated as follows:

[plaintiff], in particular, destroyed her confidence in the sphere of her life where she had demonstrated her greatest abilities. The scars impacted her at the very time when . . . appearance is most important. Although the burns eventually healed, the scars are with her for life" (*id.*). Here, Mr. Yanes was only a mere six (6) years older than the plaintiff in *Jones* when he was injured.

³⁰ (*Man-Kit Lei v City Univ. of N.Y.*, 4 Misc 3d 1003[A], *7 [Ct Cl 2004], affd in part, mod in part by 33 AD3d 467).

“In *Caprara v. Chrysler Corporation*, 52 N.Y.2d 114, 436 N.Y.2d 251, 417 N.E.2d 545, the Court of Appeals expounded on the task before us: ‘It goes without saying that [the] court, lacking clairvoyance, in evaluating a verdict intended to compensate for a projected long lifetime of pain, suffering, helplessness and all the other tangible and intangible losses that were sure to follow, faced an unusually difficult judgmental responsibility, for the fulfillment of which no less than a sophisticated elasticity will ever do. In no two cases are the quality and quantity of such damages identical. As has been pointed out by pragmatists and theorists who have wrestled with the problem of how damages in such cases may justly be arrived at, evaluation does not lend itself to neat mathematical calculation’”

(*Morsette v “The Final Call”*, 309 AD2d 249, 256-57 [1st Dept 2003] [alteration in original], quoting 52 NY2d at 126-27).³¹

Next, the Appellate Division, First Department merely affirmed the damages award, as it related to pain and suffering.³² Therefore, the damages award would not constitute a so-called maximum sustainable verdict, as discussed *supra*, for the type of injuries Mr. Yanes sustained (see 2007 WL 9646330, at *6). Accordingly, *Man-Kit Lei* is not an appropriate comparison case for this reason.

Finally, even if *Man-Kit Lei* was an appropriate comparison case, the injuries that Mr. Yanes sustained eclipse the injuries sustained by the plaintiff in that case. For instance, the plaintiff in *Man-Kit Lei* only lost some ability to use his left hand and also suffered from itchy

³¹ This Court notes that this is the same, or a very similar standard, used by the trial court when reviewing a jury verdict.

³² With respect to damages, the First Department considered the following factors:

“claimant has endured seven operations and numerous painful treatments, required extensive physical therapy, and sustained permanent scarring to his upper torso, neck, lower jaw and left hand, which is gnarled and has diminished grip strength. [His] damaged skin itches persistently; heat, cold and humidity make him uncomfortable; and he has developed serious psychological problems, many of them permanent, including elements of post-traumatic stress disorder and severe depression”

(33 AD3d at 468).

skin (33 AD3d at 468), but Mr. Yanes has endured permanent disfigurement, including destruction of certain appendages and scarring to his face such that it was damaged beyond recognition. Mr. Yanes also lost all nerve function and feeling in certain areas of his body, causing him constant discomfort. Accordingly, as with the prior two comparison cases relied upon by defendants, Man-Kit Lei does not support a reduction of the jury award for past and future pain and suffering rendered in the instant case.

Moreover, because neither Peat nor Weigl contain a reduction in the jury's award on appeal, those two cases are of limited utility as benchmarks. The most that those two cases can stand for, with respect to the jury's verdict in each case, is that it fell somewhere within the range of reasonableness for that plaintiff's injuries. The same is true of Man-Kit Lei since the Appellate Division merely affirmed the award of damages rendered by the Court of Claims. As here, the "prior awards, even when closely analyzed, provide scant precedential analog or guidance, because none is based on comparable, compounding injuries that comparably impacted the plaintiff" (2007 WL 9646330, at *5 [collecting cases]), especially since Mr. Yanes was more grievously injured than the plaintiffs in the comparison cases cited by defendants. Because of this, the disparity of these cases becomes significantly more evident and their use as benchmarks to reduce the verdict in the instant matter would be substantially detrimental and unjust to Mr. Yanes. As such, Peat, Weigl, and Man-Kit Lei do not provide any real guidance with respect to the jury's award for past and future pain and suffering herein.

Having presided over the trial, and examined the totality of the evidence, which included personally viewing Mr. Yanes' injuries, this Court finds that the jury's award for past and future pain and suffering does not deviate from what would be considered reasonable compensation under the circumstances in accordance with CPLR § 5501 [c]. As discussed above, the cases

relied upon by defendants are not fair comparisons to the sui generis nature of the injuries suffered by Mr. Yanes. This is not a simple litigation over a broken leg or arm, but a determination of damages that required a substantial amount of subjective decision making by the jury. The jury carried out its duty based upon this Court's charge on the law "that the plaintiff is entitled to recover from the defendant, [it] must render a verdict in a sum of money that will justly and fairly compensate the plaintiff for all losses resulting from the injuries and disabilities he sustained" (PJI 2:277) as a result of the accident, including the loss of enjoyment of life (see PJI 2:280.1; see also PJI 2:280, 2:281). In doing so, the jury took into account all of the additional injuries sustained by Mr. Yanes, such as lung damage and more severe burns, which did not otherwise have to occur except for defendants' multiple acts of negligence above and beyond the acts that caused the accident.³³ In its award, the jury also accounted for the horrific nature of Mr. Yanes' injuries that will torment him, both emotionally and physically, every moment over the remainder of his life.³⁴ The jury, which the law tasked with the decision of computing an award of damages to fully and fairly compensate Mr. Yanes for his injuries, awarded a sizable, but fair monetary award for the substantial injuries, including pain and suffering, that Mr. Yanes has endured and is statistically likely to continue to endure for an additional fifty-four (54) years post-verdict. This Court finds no fault in the jury's verdict and, as such, hereby denies defendants' motion.

³³ These acts of negligence include, but are not limited to, failing to maintain adequate safety features such as fire blankets and chemical showers in the classroom, which required Mr. Yanes to remain engulfed in flames for a longer period of time while a fire blanket was retrieved from the classroom next door; and the fact that the teacher poured from a gallon jug of methanol, instead of using smaller containers, into the dishes containing the nitrates to attempt to reignite the demonstration.

³⁴ As noted above, the only way to alleviate Mr. Yanes' physical pain would be to give him an amount of medicine that would potentially kill him by means of inducing cardiac arrest. As for alleviating Mr. Yanes' emotional pain, there may never be any true cure or solution because the pain that he feels is tied to his physical appearance and self-conception.

CONCLUSION

Having evaluated the jury’s verdict in the instant case, taking into consideration the nature and extent of the injuries sustained by Mr. Yanes, and the fact specific query that the jury was charged with leads this Court to conclude that the jury’s award of damages in the amount of \$29,585,000 and \$29,585,000 for past and future pain and suffering, respectively, was based upon a fair interpretation of the evidence (CPLR § 4404 [a]). Additionally, due to the extensive nature of Mr. Yanes’ injuries resulting from the accident, “and the devastating effects the injury has had on [his] physical being and [his] quality of life” (Sadhvani v New York City Tr. Auth., 66 AD3d 405, 406 [1st Dept 2009]), not to mention his emotional well-being, the jury’s award of \$29,585,000 for past pain and suffering and \$29,585,000 for future pain and suffering over a period of fifty-four (54) years does not materially deviate from what would be reasonable compensation under the circumstances and, therefore, should not be disturbed (CPLR § 5501 [c]; see id.). As such, the jury’s verdict stands as it was rendered, defendants the New York City Department of Education, the Board of Education of the City of New York, and Anna Poole’s motion, pursuant to CPLR §§ 4404 [a] and 5501 [c], is denied in its entirety and the Clerk is directed to enter judgment with interest from the date of the verdict.

This constitutes the decision and order of this Court.

8/10/2020

DATE



ALEXANDER M. TISCH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE