Beer v Equinox Holdings, Inc.
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January 20, 2026
Supreme Court, New York County
Docket Number: Index No. 156484/2016
Judge: David B. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. DAVID B. COHEN** **PART** **58**

Justice

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WENDY BEER,

Plaintiff,

- v -

EQUINOX HOLDINGS, INC.,EQUINOX COLUMBUS CIRCLE, EQUINOX CENTRE INC.

Defendants.

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INDEX NO. 156484/2016

MOTION DATE 09/20/2024, 09/20/2024

MOTION SEQ. NO. 006 007

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 006) 196, 197, 198, 199, 200, 201, 231, 233, 234, 235, 236, 239, 241, 243, 244, 245, 246, 247, 248

were read on this motion to/for MISCELLANEOUS.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 232, 237, 240, 242, 249, 250, 251, 252

were read on this motion to/for SET ASIDE VERDICT.

These post-trial motions arise from a jury verdict rendered in this personal-injury action. Plaintiff alleges that she sustained injuries, including a mild traumatic brain injury and a nasal fracture, when she slipped and fell in the locker room of defendants' Equinox fitness facility. Following trial, the jury found defendants negligent and awarded damages as follows: (1) $0 for past pain and suffering; (2) $2 million for future pain and suffering over 27 years; and (3) $106,435 for future medical expenses.

Defendants move in motion sequence 006, pursuant to CPLR 4404(a) and 5501(c), for an order setting aside the verdict on damages as excessive, or alternatively, granting a new trial on liability and damages based on alleged juror intimidation during deliberations. Plaintiff moves in motion sequence 007, pursuant to CPLR 4404(a), to set aside as inadequate the jury's awards for

past pain and suffering and future medical expenses and seeks a new trial on those categories unless defendants stipulate to increased amounts.

For the reasons set forth below, the motions are decided as follows.

I. PROCEDURAL BACKGROUND

Trial commenced before this Court and a jury in Part 58 on May 30, 2024 (NYSCEF 214). After roughly two weeks of testimony, on June 18, 2024, the jury returned a verdict finding defendants 51% negligent and plaintiff 49% comparatively negligent, and awarding damages consisting of: zero dollars for past pain and suffering; $2 million for future pain and suffering over twenty-seven years; and $106,435 for future medical expenses (NYSCEF 226).

On September 20, 2024, defendants filed a post-trial motion (seq. 006) pursuant to CPLR 4404(a) and 5501(c) seeking (1) remittitur of the $2 million future pain-and-suffering award as materially excessive, and (2) a new trial on liability and damages based on alleged juror misconduct during deliberations (NYSCEF 196).

On the same day, plaintiff filed a post-trial motion (seq. 007), also under CPLR 4404(a) and 5501(c), seeking (1) additur of the past pain and suffering and future medical expenses awards, respectively from $0 to $850,000, and from $106,435 to $4,366,816.40, or (2) order a retrial as against the weight of the evidence and materially inadequate, or, alternatively, requesting a new trial limited to those categories unless defendants stipulate to increased amounts (NYSCEF 202).

II. PERTINENT FACTS

This action arises out of an incident that occurred on May 16, 2016, when plaintiff was in the women's locker room of defendants' Equinox gym facility, tripped over a hair-dryer cord,

and fell forward, striking her face on the ground (NYSCEF 215). Equinox employees assisted her immediately after the fall, and photographs admitted at trial depict visible facial bruising and swelling in the days that followed (NYSCEF 229; NYSCEF 215).

Medical Evidence

Plaintiff reported to the emergency room the next day where she underwent a CT scan of her facial bones. The emergency-department records noted nasal tenderness, bruising, and a superficial abrasion, and she was discharged with a diagnosis of a nasal fracture and instructions to follow up with an ENT specialist (NYSCEF 213). No CT scan of the brain was performed, and no concussion diagnosis was rendered at that time (NYSCEF 213; NYSCEF 214).

At trial, the parties presented extensive medical testimony from treating physicians and retained experts across multiple specialties, including neurology, neuropsychology, physical medicine and rehabilitation, diagnostic radiology, neuro-ophthalmology, otolaryngology, plastic surgery, psychiatry, and life-care planning. Plaintiff relied principally on testimony from her treating neurologist, Dr. Rand Safdieh; brain-injury specialist Dr. Paul Greenwald; diagnostic radiologist Dr. Teslic; and ENT surgeon Dr. Thomas Pastorek. Defendants countered with expert testimony from neurologist Dr. Rubenstein; neuropsychologist Dr. DeBenedetto; diagnostic radiologist and neuroradiologist Dr. Sapan; neuro-ophthalmologist Dr. Banik; and plastic surgeon Dr. Ascherman.

After the incident, plaintiff underwent additional diagnostic imaging at different points in time. A conventional brain MRI performed approximately six weeks after the accident, on June 28, 2016, was interpreted as normal and showed no gross structural abnormality. Several years later, on May 10, 2019, plaintiff underwent a 3-Tesla MRI performed on an Alpha-3T platform with additional quantitative sequences, including diffusion tensor imaging (DTI) and

NeuroQuant volumetric analysis. Plaintiff's experts testified that this study demonstrated abnormal diffusion metrics and reduced regional brain volumes when compared to age-matched controls. A follow-up Alpha-3T MRI with NeuroQuant, DTI, and spectroscopy was performed in May 2022, which plaintiff's experts interpreted as showing further cortical volume loss.

Plaintiff's experts emphasized that mild traumatic brain injury is a clinical diagnosis and may not appear on routine MRI, and they opined that the quantitative Alpha-3T findings were consistent with traumatic injury when viewed alongside plaintiff's symptoms. Defendants' experts disagreed, testifying that the conventional MRI and the Alpha-3T studies were structurally normal, that variations in cortical thickness and volumetric measurements are nonspecific, and that neither NeuroQuant nor DTI is capable of reliably diagnosing mild traumatic brain injury.

Dr. Sapan testified that both the MRI studies were normal and that variations in cortical thickness are nonspecific findings seen for many non-traumatic reasons (NYSCEF 219). Dr. Rubenstein likewise testified that plaintiff's MRI revealed no abnormalities consistent with traumatic brain injury (NYSCEF 220).

Plaintiff was evaluated and treated by several specialists following the incident. She returned to her treating neurologist, Dr. Rand Safdieh, whom she had seen before the accident for migraine management (NYSCEF 215). He testified that those earlier complaints resolved and did not resemble the constellation of symptoms plaintiff reported after the 2016 accident (*id.*). Following the fall, plaintiff described persistent headaches, fatigue, slowed processing, difficulty concentrating, and cognitive inefficiencies. Dr. Safdieh testified that these symptoms were "consistent with a mild traumatic brain injury and post-concussive syndrome," even though her imaging—including MRI—was normal (*id.*). He opined within a reasonable degree of certainty

that her symptoms were attributed to the fall, and that such symptoms persisted for years and were likely permanent (*id.*).

Plaintiff also underwent neuropsychological evaluation with Dr. Greenwald who testified that he reviewed her emergency-room records, imaging, and history, and that the mechanism of injury—a frontal-face impact followed by dazing, confusion, headaches, and fatigue—was consistent with a mild traumatic brain injury (NYSCEF 213). He stated that plaintiff's ongoing complaints of cognitive inefficiency, visual fatigue, headaches, and slowed processing were characteristic of persistent post-concussive syndrome and that, given their duration, her condition was permanent (*id.*).

Plaintiff treated within days of the incident with ENT surgeon Dr. Pastorek, who documented nasal swelling and obstruction and ultimately performed nasal surgery in August 2016 to correct what he understood to be trauma-related nasal deformity (NYSCEF 213). Dr. Teslic testified that the CT scan taken on May 11, 2016 showed, with reasonable medical certainty, a left nasal bone fracture attributable to the fall (NYSCEF 213).

Defendants presented contrary expert testimony. Diagnostic radiologist Dr. Sapan testified that the CT scan was "indeterminate"—meaning it did not definitively establish whether a fracture existed, or whether any abnormality was acute or preexisting (NYSCEF 219). He further noted Dr. Pastorek's pre-accident medical chart entries documenting longstanding nasal obstruction, suggesting plaintiffs' surgery may have been prompted by longstanding structural issues rather than by trauma (*id.*).

Defense neuropsychologist Dr. DeBenedetto testified that plaintiff's neuropsychological testing revealed a "basically normal or nonclinical profile," with only mild deficits that he deemed non-disabling (NYSCEF 219). He emphasized that plaintiff scored "markedly elevated"

on the somatization scale, indicating a tendency to manifest stress as physical symptoms, and opined that her high-level work performance after the accident was inconsistent with significant neurocognitive impairment (*id.*).

Defense neurologist Dr. Rubenstein who examined plaintiff in 2017, testified that although she may have sustained a mild concussion, such injuries ordinarily resolve within six to twelve months (NYSCEF 220). He testified it would be "quite unusual" for symptoms of the severity she reported to persist six or seven years later, particularly where her diagnostic imaging, including MRI, NeuroQuant, and DTI, was normal (*id.*). Dr. Rubenstein explained that NeuroQuant is a volumetric MRI analysis comparing brain-structure measurements to age-matched norms, and that DTI is an MRI technique assessing water diffusion within white-matter tracts, but that neither modality revealed abnormalities consistent with traumatic brain injury (*id.*). He also noted that plaintiff had reported longstanding migraines predating the accident and that her symptoms of fatigue, insomnia, and forgetfulness could be attributed to stress, preexisting migraine disorder, or antidepressant medication effects rather than post-traumatic pathology (*id.*).

Neuro-ophthalmologist Dr. Banik testified that plaintiff's neuro-ophthalmic examination, including visual acuity, ocular motility, visual fields, optic-nerve imaging, and balance assessment, was entirely normal and that her complaints of visual strain and balance issues had no objective correlate (NYSCEF 215). He opined that her symptoms were more consistent with migraine or nonspecific visual discomfort than with traumatic visual-vestibular dysfunction (*id.*).

Defendants also presented testimony from plastic surgeon Dr. Ascherman, who acknowledged palpating bilateral nasal irregularities but testified that he could not determine

whether those irregularities resulted from trauma, preexisting anatomy, or the subsequent surgery (NYSCEF 215).

At trial, plaintiff's medical experts also testified that, based on their evaluations and diagnoses, plaintiff would require ongoing care, including periodic neurological management, neuropsychological treatment, ophthalmologic follow-up, psychiatric support, and migraine-related care in the future.

Post-Accident Functioning

At the time of the accident, plaintiff was employed in a high-level position in the financial sector at Wells Fargo (NYSCEF 211). She testified that before May 2016, she traveled frequently for business and was responsible for managing client relationships, and that the position required long hours and sustained concentration, and that she routinely exercised by running five to six miles on a treadmill several times per week (*id.*). After the fall, plaintiff stated that she continued working full time but that tasks requiring focus, memory, and sustained mental effort became more difficult and required substantially more preparation; she also described experiencing migraines that interfered with her energy and functioning at work (*id.*).

Patrick Travers, plaintiff's direct supervisor at Wells Fargo at the time, corroborated that he initially viewed plaintiff as "professional, astute and intelligent" and that her performance before the accident was "top notch" (NYSCEF 230). He testified that immediately after the incident plaintiff arrived at work with black eyes and a visibly injured face, prompting him to contact human resources because he feared she had been assaulted (*id.*). In the months that followed, Travers observed plaintiff attending frequent medical appointments and appearing increasingly "aloof," but by 2017–2018 he noticed a more pronounced decline: plaintiff arrived late, left early due to severe daily migraines, lost weight, appeared unwell, and became

increasingly forgetful, failing to recall names, meetings, and scheduled obligations (*id.*). He testified that conversations that had once been quick and efficient became prolonged, with plaintiff pausing and searching for information she previously recalled with ease (*id.*). Travers further stated that these issues impaired her reliability in a client-driven business, reduced her ability to travel, and caused her team to "pick up the slack" when she was absent or unable to complete tasks (*id.*).

Defendants countered with evidence, including plaintiff's own testimony, that she continued to run five or six miles multiple times per week, returned to Equinox within days of the accident, and traveled frequently (to Chicago, Dallas, East Hampton, Mexico, and the Cayman Islands), suggesting that this high level of functioning was inconsistent with a significant or permanent neurological injury (NYSCEF 211). Plaintiff also testified that she remained employed at Wells Fargo after the accident, received a promotion and a salary increase from $250,000 to approximately $400,000, and later transitioned into consulting work, serving on more than 12 hedge-fund advisory boards (*id.*).

III. DISCUSSION

A. MOTION SEQ. 007 (PLAINTIFF'S MOTION FOR ADDITUR)

In motion sequence 007, plaintiff moves pursuant to CPLR 4404(a) and 5501(c) to set aside the jury's awards of zero dollars for past pain and suffering and ordering a new trial, limited to damages, on past pain and suffering and future medical expenses unless defendants stipulate to increase the awards of past pain and suffering from zero to $850,000, and future medical expense from $106,435 to $4,366,816.40. Defendants oppose.

Plaintiff contends that the jury awards are contrary to the weight of the evidence and materially deviate from what would constitute reasonable compensation, arguing that the evidence and testimony at trial established an undisputed nasal fracture diagnosed on the date of the accident, followed by a closed reduction procedure as a result of the fall. Plaintiff further contends the jury could not rationally award zero damages for past pain when trauma was objectively documented and conceded to be a result of her fall, and that such award cannot be reconciled with the $2 million award for future pain and suffering. With respect to future medical expenses, plaintiff asserts that the award is grossly inadequate considering the life-care plan prepared by her expert, which projected treatment costs in the multi-million-dollar range, and the testimony of multiple experts who described the need for ongoing neurological, neuropsychological, ophthalmologic, psychiatric, and migraine-related care.

Defendants oppose, arguing that the jury was entitled to reject plaintiff's subjective allegations because experts testified that her neuropsychological testing was normal, her ophthalmologic and neuro-ophthalmologic exams revealed no objective deficits, and there was no evidence of traumatic brain injury. They further note that plaintiff's pre-existing conditions, combined with her post-accident functioning—including full-time employment, long-distance running, and extensive travel—were inconsistent with the level of impairment she claimed. Defendants maintain that the jury was free to reject plaintiff's evidence of past pain as non-credible or preexisting and unrelated to the accident, and that the future medical award reflected the jury's conclusion that only limited future treatment was medically necessary. Defendants lastly argue that plaintiff waived any claim that the verdict was internally inconsistent by failing to raise the issue before the jury was discharged, or, in the alternative, that if it is determined that

a new trial is warranted, such trial should not be limited to damages, but should address the issue of liability as well.

In reply, plaintiff asserts that defendants mischaracterize the record, and that testimony conclusively supports causation for the nasal fracture and surgical repair. Plaintiff reiterates that the jury could not permissibly award no damages for an injury that both sides' experts agreed occurred and required medical treatment and that the future medical award cannot be reconciled with the extensive and uncontroverted portions of her life-care plan. Lastly, she argues that defendants' waiver argument does not apply because plaintiff is challenging the damages awards under CPLR 5501(c), not seeking correction of an inconsistent verdict.

LEGAL STANDARD; CPLR 4404(a) and 5501(c)

Under CPLR 4404(a), a trial court may set aside a jury's verdict as against the weight of the evidence only where *"*the evidence so preponderate[s] in favor of the moving party that the verdict could not have been reached on any fair interpretation of the evidence*"* (*Killiion v Parrotta*, 28 NY3d 101, 107 [2016], quoting *Lolik v Big V Supermarkets*, 86 NY2d 744, 746 [1995]; *see also Mongeau v SR Taxi Corp.*, 235 AD3d 500 [1st Dept 2025]). This standard "does not involve a question of law, but rather requires a discretionary balancing of many factors" (*Cohen v Hallmark Cards, Inc*., 45 NY2d 493, 498–499 [1978]; *McDermott v Coffee Beanery, Ltd*., 9 AD3d 195, 205 [1st Dept 2004]).

The court must accord extreme deference to the jury's credibility determinations and may not substitute its own view of the evidence so long as there exists a "valid line of reasoning and permissible inferences" that could lead rational jurors to the verdict (*Cohen*, 45 NY2d at 499; *see Sow v Arias*, 21 AD3d 317, 318 [1st Dept 2005]; *see also Brown v 271 Madison Co*., 2023 NY Slip Op 31587[U], *6–*8 [Sup Ct, NY County]).

Separately, CPLR 5501(c) permits a court to modify a damages award only if it "deviates materially from what would be reasonable compensation." The "reasonableness" of an award is measured by reference to comparable appellate decisions, which guide but do not bind the analysis (*see Hedges v Planned Sec. Serv. Inc.*, 190 AD3d 485 [1st Dept 2021]; *Reed v City of New York*, 304 AD2d 1, 7 [1st Dept 2003]). Because the amount of damages to be awarded is primarily a question for the jury, a court should not disturb the verdict unless the challenged award falls outside the range of permissible findings indicated by analogous cases (*see Donlon v City of New York*, 284 AD2d 13 [1st Dept 2001]).

Where expert testimony conflicts, the jury is entitled to accept or reject any portion of either side's medical proof, and the resulting damages determination will be upheld so long as it is tethered to a fair interpretation of the evidence (*see e.g. Godfrey v GE Capital Auto Lease Inc*., 89 AD3d 470 [1st Dept 2011]).

Thus, the question here is whether the challenged awards can be reconciled with a fair interpretation of the evidence (CPLR 4404[a]) and whether they materially deviate from reasonable compensation in light of comparable First Department authority (CPLR 5501[c]).

1. INCONSISTENT VERDICTS

Although a party challenging an inconsistent verdict must raise the issue before the jury is discharged, or, the argument is waived, the absence of a timely inconsistency objection does not preclude the Court from separately evaluating, under CPLR 4404(a) and 5501(c), whether a zero-dollar award for pain and suffering is against the weight of the evidence or materially deviates from reasonable compensation (*Stanford v Rideway Corp*., 161 AD3d 505, 506 [1st Dept 2018] [waiver of inconsistency does not bar review of evidentiary sufficiency or material deviation]; *Natoli v City of New York*, 180 AD3d 477, 479 [1st Dept 2020] [failure to

object did not preclude CPLR 4404(a) and 5501(c) analysis of $0 pain-and-suffering award]). Therefore, plaintiff's challenge to the adequacy of the damages awards is not waived and is properly considered on this motion.

2. PAST PAIN AND SUFFERING

Upon review of the record, the jury's award of zero dollars for past pain and suffering cannot be sustained. Although the evidence concerning plaintiff's claimed TBI was sharply disputed, no fair interpretation of the record supports a conclusion that plaintiff experienced no compensable pain in the immediate aftermath of the accident, as discussed below.

TBI Testimony

The parties presented significantly divergent expert testimony on whether plaintiff sustained a TBI. Plaintiff testified that after the fall she suffered persistent headaches, fatigue, difficulty concentrating, and cognitive inefficiencies that she believed affected her work, along with intermittent dizziness and visual fatigue. Her neurologic and brain-injury experts, Drs Safdieh and Greenwald, testified that plaintiff's symptoms—including headaches, slowed processing, fatigue, and visual strain—were consistent with a mild traumatic brain injury and post-concussive syndrome, explaining that such injuries can occur from an acute frontal impact even without abnormalities appearing on routine imaging. Dr. Greenwald further opined that plaintiff's symptoms persisted and were permanent based on her continued complaints years after the incident.

Defendants' medical experts uniformly disputed plaintiff's claim of a traumatic brain injury, testifying that her neuropsychological testing and neurological and neuro-ophthalmologic examinations were normal and did not demonstrate objective impairment. They opined that any cognitive, visual, or headache complaints were inconsistent with traumatic pathology and were

more plausibly attributable to preexisting migraine disorder, stress, medication effects, or somatization, and that mild concussive injuries, even if sustained, would be expected to resolve within months rather than persist for years.

These conflicts placed credibility squarely within the jury's province (*see Stanford v Rideway Corp.*, 161 AD3d 505 [1st Dept 2018] ["jury was not required to credit plaintiff's description of the severity of her pain, and could reasonably have found that plaintiff's claims were inconsistent with the objective medical findings"). Given this record, the jury could have reasonably concluded that plaintiff's headaches and migraines were preexisting or unrelated, particularly in light of her ability to run six to seven miles several times per week, maintain a rigorous exercise routine, travel extensively, and advance professionally during the period she claimed impairment. The jury could also reasonably decline to find that plaintiff suffered a significant or lasting cognitive injury, and such conclusions must be respected where supported by "a valid line of reasoning and permissible inferences" (*Sow v Arias*, 21 AD3d 317, 318 [1st Dept 2005], quoting *Cohen v Hallmark Cards*, 45 NY2d 493, 499; *see also Stanford* 161 AD3d 505 ["jury was not required to credit plaintiff's description of the severity of her pain[,]" as is the case here).

Nasal Injury Testimony

The evidence concerning plaintiff's nasal injury likewise reflected a clear conflict in the expert testimony. Plaintiff's radiology expert, Dr. Teslic, testified that the CT scan taken on May 11, 2016 showed, with reasonable medical certainty, a left nasal bone fracture attributable to the fall. Plaintiff's treating ENT surgeon, Dr. Pastorek, saw her within days of the incident, documented nasal swelling and obstruction, and ultimately performed nasal surgery in August 2016 to address what he understood to be a trauma-related deformity.

Defendants' experts offered a different account. Their diagnostic radiologist, Dr. Sapan, testified that the CT scan was "indeterminate"—meaning it did not clearly establish whether a fracture existed or whether any irregularity was acute or preexisting. Defendants also relied on pre-accident nasal-obstruction notations in Dr. Pastorek's chart to argue that the surgery may have been prompted by longstanding structural issues rather than by trauma. In addition, defendants' plastic-surgery expert, Dr. Ascherman, while acknowledging bilateral palpable irregularities, testified that he could not determine from the photographs or imaging whether those irregularities were caused by the accident, preexisting anatomy, or the subsequent surgery.

Notwithstanding these disputes, the objective, contemporaneous evidence established that plaintiff fell face-first onto the floor, developed immediate nasal pain and swelling, was assisted by Equinox staff after the fall, appeared with visible facial bruising in photographs introduced at trial, and ultimately underwent nasal surgery two months later in response to the symptoms that followed the incident. Even accepting defendants' view that some portion of the nasal obstruction may have been preexisting, the record does not support a finding that plaintiff experienced no compensable pain at all from the acute facial impact.

Under comparable First Department authority, a complete denial of past pain and suffering is not supported by a fair interpretation of the evidence where an acute impact and immediate symptoms are undisputed, even if the extent of injury or duration of symptoms is contested (*see Natoli*, 180 AD3d 477 [zero award improper where plaintiff experienced immediate pain from acute impact]; *Godfrey*, 89 AD3d 470 [jury must award some damages where objective circumstances show head impact and prompt symptoms despite disputed causation]; *Angamarca v N.Y. Partnership Hous. Dev. Fund Co.*, 87 AD3d 206 [1st Dept 2011]

[material-deviation review requires some compensation where traumatic impact and immediate injuries are established—even if severity is disputed]).

Accordingly, the award of zero dollars for past pain and suffering is set aside as against the weight of the evidence and as materially deviating from reasonable compensation. A new trial on this element is ordered unless defendants stipulate to an additur in the amount of $200,000 (*see Shimukonas v City of New York*, 176 AD3d 435 [1st Dept 2019] [directing additur of $200,000 for past pain and suffering where plaintiff sustained nasal fracture and required reconstructive surgery]).

3. FUTURE PAIN AND SUFFERING

Turning to plaintiff's challenge of the $2 million award for future pain and suffering, the jury seemingly rejected plaintiff's position that she sustained a permanent TBI with chronic neurocognitive and visual sequelae. This conclusion is reflected not by the amount of the award in isolation, but by the structure of the verdict as a whole: the jury awarded no damages for past pain and suffering and sharply limited future medical expenses, outcomes inconsistent with a finding of a permanent, disabling traumatic brain injury requiring significant ongoing treatment. Defendants' experts, including Drs. Rubenstein, DeBenedetto, Banik, and Sapan, testified that plaintiff's MRI and CT imaging were normal; that her neuropsychological testing revealed no deficits; and that her reported headaches, fatigue, visual strain, and concentration problems were inconsistent with objective findings and more suggestive of preexisting conditions, somatization, or ordinary variability. Plaintiff's own testimony concerning her continued capacity to maintain a rigorous exercise regimen, travel extensively, and perform at a high level in demanding finance and consulting roles further supported the jury's determination that she did not sustain a disabling or life-altering brain injury.

At the same time, the jury could reasonably credit plaintiff's testimony that she continues to experience intermittent headaches, fatigue, visual discomfort, and residual nasal sensitivity. The verdict—denying past pain and awarding only limited future medical expenses—reflects the jury's conclusion that plaintiff's ongoing symptoms are genuine but relatively modest in degree. The question under CPLR 5501(c) is therefore whether an award of $2 million over twenty-seven years materially exceeds the range of reasonable compensation for chronic but non-disabling symptoms of this kind.

In *Godfrey*, the First Department upheld a $2.5 million future–pain-and-suffering award where the plaintiff continued to experience headaches, dizziness, nausea, and cognitive difficulties over a 29-year future damages period, despite normal imaging and sharply conflicting expert testimony (89 AD3d 471). By contrast, *Andino v Mills* involved more severe permanent impairments—including chronic cognitive deficits, persistent headaches with nausea and dizziness, and multiple knee surgeries with a future knee replacement expected—where the jury awarded $23 million for future pain and suffering over 37 years (135 AD3d 407 [1st Dept 2016], *affd as mod*, 31 NY3d 553 [2018]). The First Department held that amount "deviate[d] materially" from reasonable compensation and reduced it to $2.7 million, reflecting injuries substantially more disabling than those present here (135 AD3d 407, 409 [1st Dept 2016], *affd* 32 NY3d 158). At the high end of the spectrum is *Hedges v Planned Sec. Serv. Inc.*, where the Court sustained a $10 million future-pain award for a plaintiff who suffered catastrophic injuries—including extensive organic brain damage, permanent neurological deficits, and profound functional loss—over a 26-year future damages period (190 AD3d 485 [1st Dept 2021]).

Even in non-TBI cases involving mixed or disputed symptomology, the First Department has approved comparable or higher awards. In *Coore v Franklin Hosp. Ctr*., the Court upheld $1.5 million in future pain and suffering for forty-two years for cognitive and sensory deficits following a stroke (35 AD3d 195 [1st Dept 2006]). In *Paek v City of New York*, although the plaintiff suffered a more severe permanent brain injury, the Court reduced—but still approved—$3 million for future pain and suffering over 40 years (28 AD3d 207 [1st Dept 2006]).

Measured against these precedents, plaintiff's high level of functioning and the jury's implicit rejection of a profoundly disabling permanent TBI place this matter toward the less severe end of the injury spectrum considered in comparable First Department cases. An award of $2 million over twenty-seven years reasonably reflects the jury's determination that plaintiff experiences ongoing injury, but not a profoundly disabling impairment.

Accordingly, the award of $2 million for future pain and suffering does not deviate materially from reasonable compensation under CPLR 5501(c), and thus this court declines to disturb the jury's verdict.

4. FUTURE MEDICAL EXPENSES

Plaintiff next argues that the jury's award of $106,435 for future medical expenses was against the weight of the evidence and deviates materially from reasonable compensation. The award reflects a small fraction of the roughly $4.3 million life-care plan presented through plaintiff's expert, Mr. Bialsky, who projected extensive future costs including cognitive remediation, visual-vestibular therapy, psychiatric care, fatigue management, assistive services, and eventual "total care" commencing at age 65.

Under CPLR 5501(c), a damages award may be modified only when it "deviates materially from what would be reasonable compensation." Here, the future medical expenses

award is consistent with the sharply conflicting evidence presented. Plaintiff's life-care plan projected millions of dollars in treatment based on a diagnosis of chronic post-concussive syndrome, visual-vestibular dysfunction, and long-term cognitive decline. But the jury was free to reject that diagnosis entirely. Dr. Rubenstein testified that plaintiff had no objective findings of traumatic brain injury; Dr. DeBenedetto testified that plaintiff's cognitive testing was normal and inconsistent with the severity of the symptoms she reported; Dr. Banik testified that her visual complaints had no ophthalmologic correlate; and Dr. Sapan testified that the CT scan was "indeterminate" for a nasal fracture and that her reported nasal obstruction predated the incident. Plaintiff's high functioning further supported the jury's determination that she did not require the extensive rehabilitative or supportive services identified in the life-care plan.

The jury awarding only items that appear on the lower end of plaintiff's life-care plan, and rejecting the more extensive projected services reflects precisely this type of selective crediting. First Department precedent makes clear that where conflicting experts disagree on the need for future medical care, an award limited to the services the jury finds credible will not be disturbed (*see Hedges*, 199 AD3d 447; *Godfrey*, 89 AD3d 470). Compared to these cases, which upheld future-pain or future-care awards based on intermittent symptoms without objective findings, the jury's modest award here does not materially deviate from reasonable compensation.

Accordingly, the Court concludes that the $106,435 award for future medical expenses is supported by a fair interpretation of the evidence and does not deviate materially from reasonable compensation.

Lastly, in opposition, defendants argue in the alternative for a mistrial, referencing allegations of juror misconduct in that Juror No. 2 felt intimidated during deliberations and argue

that any new trial should include liability. Plaintiff responds that Juror No. 2 ultimately did not change her vote and that defendants' suggestion that any other juror was influenced is speculative. Because the question of juror misconduct is raised affirmatively in defendants' own post-trial motion (Seq. 006), and not by plaintiff, it will be considered fully below in connection with Motion Sequence 006.

B. DEFENDANTS' MOTION (SEQ. 006)

To the extent defendants seek remittitur of the $2 million future pain and suffering award under CPLR 5501(c), that relief is denied for the reasons set forth above. As discussed in detail, the jury's award reflects its rejection of a significant permanent traumatic brain injury while crediting evidence of ongoing but non-disabling symptoms, and falls squarely within the range of reasonable compensation established by comparable First Department authority.

1. JURY MISCONDUCT / MISTRIAL REQUEST

Defendants' alternative request for a new trial based on alleged juror misconduct is not supported by the record. Juror #2 submitted two notes indicating that she felt belittled or spoken over during deliberations, and that one juror attempted to move toward her before another intervened. The Court questioned Juror #2 on the record, twice determined that she was able to continue deliberating, and permitted the jury to resume its work. Juror #2 ultimately remained the sole juror to dissent, having dissented on 6 of the 9 questions on the dissent sheet, indicating that she did not alter her vote as a result of any interpersonal tension.

The ordinary frictions of jury deliberation—including raised voices, forceful disagreement, or criticism—do not justify impeachment of a verdict. As the Court of Appeals cautioned in *People v DeLucia*, jurors may "intimidate," "influence," or "pressure" one another in ways that are inherent to collective decision-making, and these internal dynamics cannot be

used to overturn a verdict (20 NY2d 275 [1967]). Nothing in this record suggests that any juror was prevented from voting according to their conscience, that deliberations were corrupted by an outside factor, or that the jury was unable to perform its function.

Defendants' further contention that another juror ("Eleanor") may have been influenced is speculative and unsupported by any juror note or in-court statement. Juror #2's own statements did not indicate that any juror changed their vote, and defendants did not request a further inquiry at the time. The First Department has declined to disturb verdicts on similar or stronger allegations where the record contains no evidence that deliberations were compromised (*see People v Marshall*, 106 AD3d 1, 5–6 [1st Dept 2013] [denying mistrial where juror reported feeling intimidated during deliberations, but record showed no coercion or impairment of independent judgment]).

Defendants also argue that the verdict is "tainted" because the combination of $0 past pain and suffering, $106,435 in future medical expenses, and $2 million in future pain and suffering is internally inconsistent. However, as discussed above, a party must raise any alleged inconsistency before the jury is discharged, so that the Court may resubmit the matter for clarification. Defendants raised no such objection. In any event, as discussed above, a trial court retains authority under CPLR 4404(a) and 5501(c) to evaluate whether any component of a damages award is against the weight of the evidence or materially deviates from reasonable compensation notwithstanding the absence of a timely inconsistency objection; the Court has conducted that analysis separately.

Accordingly, defendants have not established juror misconduct or verdict infirmity warranting a new trial. The record shows no external influence, no distortion of the deliberative

process, and no basis to conclude that any juror's vote was improperly affected. The request for a new trial on liability and damages is denied.

IV. CONCLUSION

Accordingly, it is hereby

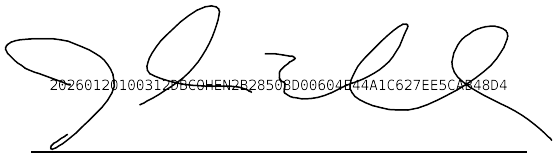
ORDERED that plaintiff's motion (motion sequence 007) pursuant to CPLR 4404(a) and 5501(c) is granted to the extent that the jury's award of zero dollars for past pain and suffering is set aside as against the weight of the evidence and as materially deviating from reasonable compensation; and it is further

ORDERED that a new trial shall be held on the issue of damages for past pain and suffering only, unless, within thirty (30) days after service of a copy of this Decision and Order with notice of entry, defendants stipulate to an additur increasing the award for past pain and suffering from zero dollars to $200,000 in which event the new trial on that element of damages shall be deemed waived and an amended judgment shall be entered accordingly; and it is further

ORDERED that plaintiff's motion is otherwise denied; and it is further

ORDERED that defendants' motion (motion sequence 006) pursuant to CPLR 4404(a) and 5501(c), seeking remittitur of the $2 million award for future pain and suffering and, in the alternative, a new trial on liability and damages based on alleged juror misconduct and an asserted inconsistent verdict, is denied in its entirety; and it is further

ORDERED that the Clerk is directed, upon the filing of any stipulation of additur as set forth above, to enter an amended judgment consistent with this Decision and Order, and otherwise to leave undisturbed the jury's remaining awards.



1/20/2026
DATE

DAVID B. COHEN, J.S.C.

CHECK ONE:		CASE DISPOSED				NON-FINAL DISPOSITION		
		GRANTED		DENIED	X	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT		REFERENCE