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## When compensating for pain and suffering, it's a small world after all

By Adam J. Glazer

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*"It's a world of laughter, a world of tears."*

Compensating plaintiffs for wrongful pain and suffering is typically the jury's province — and a look at some recent cases vividly displays just how difficult, even gut-wrenching, these decisions can be.

*"It's a world of hope, and a world of fears."*

In a tragic April 2008 accident, Donald Wells, unaffected by booze or drugs, drove his semitrailer truck into a CTA station on Cermak Road in Chinatown, killing two and injuring 20.

Wells was arrested and held for about 48 hours while police investigated the collision and he was then hospitalized for six weeks before dying of multiple organ failure. His estate sued the city of Chicago and several police officers for unlawfully detaining him and denying medical care.

Despite the horror caused by his driving, a federal jury awarded Ann Wells, as his representative, a cool million dollars for his pain and suffering, exceeding even her \$725,000 request. The U.S. District Court in Chicago, however, ordered a remittitur late last year to \$250,000. (*Wells v. City of Chicago*, No. 09 C 1198, 2012 WL 4092691 (N.D. Ill.)).

*"There's so much that we share, that it's time we're aware, it's a small world after all."*

Already in 2013, other juries have handed down, and appellate courts have affirmed, some equally noteworthy awards for pain and suffering.

Trena Wells was visiting her brother and sister-in-law in downstate Moro in 2008 when their dog, Tank, whom she knew well, and who "by all accounts was a friendly and nice dog," triggered a bizarre incident. Tank escaped from their house and was hit by a passing truck, prompting Wells and her sister-in-law to run after him. Wells placed her arms around Tank's chest and he collapsed

on her. When she tried to extract her hands, the dog, a Labrador/husky mix, savagely bit her thumbs, then died.

Wells invoked the Illinois Animal Control Act, which encourages tight command over animals, to sue her brother and sister-in-law in Madison County. After learning that she underwent four surgeries on her right thumb, the jury awarded \$280,000, including \$50,000 for pain and suffering. The 5th District Appellate Court affirmed in March. (*Wells v. Cooper*, 2013 IL App (5th) 120074-U.)

*"It's a small world after all. It's a small world after all. It's a small world after all."*

*"It's a small, small world."*

Elsewhere, Mohammed Kayes took his 3-year-old daughter for an afternoon walk on a Long Island City, N.Y., sidewalk in 2006. A New York City Transit Authority truck backed up suddenly, dislodging a 40-pound stop sign and pole and propelling it into Kayes' head and neck. Summary judgment was entered on liability and a Queens County jury awarded Kayes \$2 million for past and future pain and suffering, an award affirmed on appeal in March. (*Kayes v. Liberati*, 2013 NY Slip Op 01534.)

*"There is just one moon, and one golden sun."*

The Virginia Supreme Court reinstated an award won by the widow of a former Navy sailor, who died of mesothelioma, that included \$2 million for his pain and suffering before death. Robert Hardick worked as a ship fitter, where he was fatally exposed to asbestos while ships were repaired in port. The U.S. Supreme Court's February denial of certiorari enables additional damages, such as for pain and suffering before death, to be obtained under general maritime law. (*John Crane, Inc. v. Hardick*, 283 Va. 358 (2012), cert. denied, 133 S.Ct. 1263 (2013).

*"And a smile means friendship to everyone."*

Meanwhile, in the first case to go to trial against Johnson & Johnson involving its highly publicized defective artificial metal hips, J&J's DePuy orthopedic unit sustained an \$8 million hit for Loren Kransky's pain and suffering. Softening the blow a bit, the Los Angeles jury found that DePuy did not act with fraud or malice and, thus, rejected Kransky's punitive damages prayer.

Interestingly, the trial court prevented DePuy from informing the jury that the U.S. Food and Drug Administration had cleared the artificial hips for sale. With almost 100,000 of these metal hips sold before the product was recalled three years ago, it is not surprising that an appeal is planned.

*"Though the mountains divide, and the oceans are wide, it's a small world after all."*

Each of these pain and suffering awards is notable in its own right, but none is more remarkable than the award obtained in March by Jose Martinez in the federal court in Orange County, Calif. Martinez visited Disneyland in 2009 with his wife, where they enjoyed the popular "It's a Small World" ride.

Their boat reached the "Goodbye Room," signaling the ride was nearly over, when it broke down. Other riders were quickly evacuated, but Martinez, a paraplegic, was left on the boat while the "It's a Small World" song, set out above, played on a loop.

Disneyland officials evidently decided to wait for the ride to be fixed, rather than call firefighters to rescue Martinez from the ride and the song. After listening to it playing incessantly for 30 minutes, Martinez was finally taken off the ride and treated at a first aid station.

Opting to sue Disneyland in its own backyard, Martinez proceeded to trial. He testified how he suffered from panic attacks and high blood pressure, each of which was aggravated as he awaited rescue with that song playing endlessly. Further, he needed to urinate.

*"It's a small world after all. It's a small world after all. It's a small world after all.*

*"It's a small, small world."*

Martinez's trial testimony of getting subjected to the song for half an hour proved stirring. Although awarded only \$8,000 on his suit, 50 percent was for his pain and suffering. (Disability access violations comprised the other \$4,000.)

Most parents will understand how repeated exposure to that song amounts to pain and suffering, but no "runaway jury" can be blamed for finding that an involuntary 30 minutes of "It's a Small World" is compensable. This award was returned by the court sitting without a jury.

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