MondayMonday

The Value of Knowing the End

October 28, 2013

If life is big, its wondrous moments are small. A sunrise, a glacial martini, the turn of beautiful woman's ankle, the smile of a baby. It doesn't take more than that to put up with the other stuff; the 99% of life that is crap, like paper cuts, World Wars, and the one bad pistachio nut in the bag that ruins all the others.

We flew to Rochester this weekend on business, accompanied by the First Daughter, who tagged along to visit a law school chum. When we made the reservations, the only way we could guarantee sitting together was to pay extra for seats that were denominated "Extra Room." Now, know that we are a "plus size" person, but have never taken that extra step of paying for more room on an airline. Consequently, we have never had use of a tray table on any flight, at least not since we flew a 707 with our parents to the Bahamas in the 60's. Instead, we wear military style shirts on airplanes; those with two breast pockets. We can put a can of Coke in one and a packet of honey roasted peanuts in the other. Our body is our "tray table."

But on Sunday's flight back from Rochester, the world changed. "Extra Room" meant more space between the seat in front and us. It meant that we could put our tray table down! Oh frabjous day! We put the table down and waited. A Coke in a cup with ice! Peanuts arrayed like the droppings of angels on a napkin! Nothing sliding into our lap! All was well with the world.

Talking damages to a trial lawyer is like talking miraculous cures to a TV evangelist. It's the stuff by which our success is measured and we make our living. So we turn today to *Santana v. De Jesus*, 2013 NY Slip Op 06934 (1st Dep't 10/24/13). Though the facts of the case are almost non-existent in the opinion, we do know that it involved a NYCTA bus driver who "breached his duty to exercise due care" or "see that which he should have seen through the proper use of his senses." Is the liturgy familiar enough for you? Read on.

Evidently, defendant's breach was complete, for the jury found him 100% liable for plaintiff's death. In addition to compensatory damages, however, the jury also held defendant responsible for decedent's pain and suffering, including pre-impact terror. The jury assessed the value of that pain and suffering and pre-impact terror at $750,000. The Appellate Division, much wiser at these matters, reduced that number to $350,000. Why? Because the jury's number was a "deviation." You know the drill.

In making its reduction, the court referred to a case of which we have some knowledge, *Segal v. City of New York*, 66 A.D.3d 865 (2d Dep't 2009). In *Segal*, as we recall, the decedent, struck by a diseased tree branch, lived but 3 seconds, sustaining an award of $350,000 by the jury, which was sustained, in full. Here, our spies tell us, the decedent lived from between 15-25 seconds, and was ultimately awarded the same amount.

Is there a finite amount of money which is the value of the knowledge of impending death? Is the pain leading to such death, whether by dint of a tree branch or a bus, immaterial in assessing that value? Barring philosophical answers to such questions, best left for Doctors of Divinity rather than Juris Doctors, can we more safely say that such values must be set by members of the community of the deceased, rather than by jurists, who possess no special skills for doing so?