

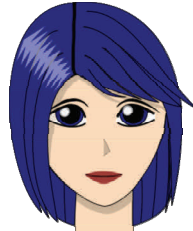
MondayMonday

A Pretty Girl Is Like A Melody

June 29, 2015

After writing last week's column about Father's Day, we found this text message waiting for us from the First Daughter: "Happy Father's Day to the person in this world who knows me better than anyone else, who is the source of my wonderful and the source of my strange, who taught me to worship words and their power, to love people but love their stories more, to fight for justice because all deserve it constantly, to feel all the feelings we as humans can, and to realize that old souls have a shot in this crazy world. Daddy, I am proud to be your daughter every day, thank you for everything, lord knows you deserve it after this bumpy ride."

Oh, my goodness. One usually has to die to have someone say such nice things about you. Sure, our kids lose their keys, forget to call, never have any cash, make insanely bad choices (and insanely good ones,) breakdown without a spare in the middle of Mississippi at midnight, become lawyers when we tell them not to (and teachers when



we tell them to.) But in the end, if we do this right, every decision, be it good or bad, makes us love them even more. We can count ourselves lucky if they extend that same saving grace to us as well.

Here at *MondayMonday* we like to think we created the PI lawyer's favorite game "What's It Worth?" Whether it's true or not, we do love it so. Today we offer a Bronx County plaintiff in a medical malpractice action who required open surgery to remove an appendiceal stump which had been left behind after a prior laparoscopic appendectomy. Plaintiff, a male, had no physical limitations, but the open surgery did leave a scar on his abdomen. What's it worth?

The jury said \$950K for past and \$250K for future pain and suffering, together with past loss of consortium of \$100K and future loss of consortium of \$125K. In *Erosa v. Coomaraswamy*, 2015 NY Slip Op 05396 (1st Dep't

6/23/2015) however, the court was not buying. It reduced past p+s to \$250K, future p+s to \$25K, past loss of consortium to \$30K and future l/c to \$20K. In making its reductions, the court compares the losses in *Rojas v. Palese*, 94 A.D.3d 557 (1st Dep't 2012), where a young female plaintiff had a large, raised scar across her abdomen "that could worsen if she were to become pregnant and may required surgical repair in the future." The award on *Rojas* was \$150K for past and \$200K/56 years for future p+s, with the First Department increasing the future p+s award to \$350K on the appeal. "Plaintiff testified that she was embarrassed by the scar, it affected the way she dresses and that she does not like her scar to be seen." 94 A.D.3d at 558.

Even disregarding the \$50K for loss of consortium, was the additional award to the plaintiff in *Rojas* gender-based? Unmarried and in her 20's, the trial court described her as "a brave and beautiful young woman." Indeed, it would seem 'twas beauty that killed the beast which can be an AppDiv reduction in damages, a scenario unavailable to Mr. Erosa.

©Jay L. T. Breakstone, 2015. *MondayMonday* is published by PARKER WAICHMAN LLP, a National Law Firm, offering appellate counsel to the profession, together with trial counsel and referral/co-counsel in cases involving significant damages. 1.800.LAW.INFO (800.529.4636) Contact jbekastone@yourlawyer.com. For the online version, visit www.monday-monday.yourlawyer.com.