

EXHIBIT

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STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

JUANITA WALKER,

Plaintiff,

**DAMAGES VERDICT &
ORDER**

Index No. 812908-2014

vs.

**KIM TUYEN PHAM, individually,
and d/b/a PETERS NAILS and PETERS NAILS 1,
JANE DOE NO. 1, and
JANE DOE NO. 2,**

Defendants.

HON. CATHERINE NUGENT PANEPINTO, J.S.C.

After a Confession of Judgment, this Court issued an Order and Judgment in December, 2017; ordering Defendants liable for the conduct set forth in the Confession and ordering an Inquest on Damages, pursuant to CPLR §3215. The Inquest was held September 20, 2018; when Plaintiff testified regarding her past and future damages. Thereafter this Court reviewed the following:

- Attorney Affirmation of Thomas Lane with exhibits;
- Affidavit of Juanita Walker with exhibits;
- Affirmation of Thomas A. Cumbo, M.D.;
- Affidavit of Hongyu Wen, M.D. with exhibit;
- Affidavit of Kamaljit Singh, M.D. with exhibits;
- Affidavit of Lynn Fletcher; and
- Memorandum of Law with exhibits.

This Court finds as follows:

From Plaintiff JUANITA WALKER's Testimony:

Plaintiff was a compelling and credible witness. She described her experience at Defendants' nail studio, PETERS NAILS in July, 2013. Plaintiff treated herself to a pedicure for her 41st birthday. Shortly thereafter she experienced pain, soreness, and discoloration on her feet, which then traveled throughout her body. She initially was diagnosed with an abscess on her leg, which was lanced and packed, along with antibiotic treatment. After several more abscesses, Plaintiff was eventually hospitalized at Millard Fillmore Suburban Hospital with a diagnosis of methicillin-resistant staphylococcus aureus (MRSA), contracted from unsanitary tools used by Defendants PHAM and PETERS NAILS.

Plaintiff explained in detail the painful procedures to treat the various infections. She also testified to the strain her injuries inflict on her family life; she has a young son, now nine years old, four at the time of the injury. Plaintiff was warned about MRSA being transferred to her son; necessitating her limiting physical contact with him and maintaining a disciplined cleaning procedure of linens and anything else with which she comes into contact. There have been periods of time, during which Plaintiff's son had to live in a separate home with Plaintiff's sister to prevent him from being infected. Plaintiff has "self conscious issues" because of the unsightly sores/scars, especially those on her neck and chest, as well as the draining odor and also suffers from side effects from the antibiotics, such as diarrhea. As a result, she sharply limits her time away from home. The sores are itchy and painful, sometimes dictating her clothing options in order to avoid aggravating certain parts of her body. One abscess was located on her left shoulder blade, which caused loss of mobility in her left arm; treated with physical therapy. Thankfully, Plaintiff's sister is a nurse and she helps with the wound care, as do other nurses from the Visiting Nurses Assistants (VNA). Plaintiff's MRSA "sits in the back of her head" causing her anxiety as she's learned it is an unpredictable and permanent condition.

Thomas A. Cumbo, MD:

Dr. Cumbo is a board certified physician with a specialty in infectious diseases. He reviewed Plaintiff's certified medical records from Millard Fillmore Suburban Hospital. In his Affirmation, Dr. Cumbo explained MRSA is a bacterium that causes a variety of significant health issues, including boils, skin infections, sepsis, heart valve, brain, lung, spinal and blood stream infections. Through natural selection, MRSA has developed a resistance to certain antibiotics.

Ms. Walker treated for MRSA in 2013, 2014, 2015, and 2017; demonstrating she is susceptible to recurrent new infections. "The recurring infections can generally be expected to present through symptoms of abscesses, boils, and cellulitis." With a blood stream infection, "patients will suffer fevers and whichever organs are infected will be symptomatic...a patient may experience chest pains or trouble breathing... when the spine is infected, neurological deficits may occur...As Ms. Walker gets older, she will be more at risk of developing skin boils, abscesses, and in the worst case scenario, life threatening conditions like sepsis and blood stream infections."

Hongyu Wen, MD:

Dr. Wen is a board certified physician and member of Buffalo Medical Group. He is Plaintiff's primary care physician; he supplied her certified records documenting her various treatments for MRSA since her diagnosis in 2013.

Kamaljot Singh, MD:

Dr. Singh is a board certified plastic surgeon and member of Buffalo Medical Group. He is Plaintiff's surgeon, who has operated on her various abscesses since MRSA was first diagnosed in 2013. From his certified records, "I performed an incision and drainage procedure at the time of the visit utilizing an 11 scalpel blade. A large amount of purulence was expressed from the wound. Site was packed with 1/4 iodoform. A dressing was applied. The patient tolerated the procedure well."

“Attempted to reach patient, she had a near syncopal episode on the way home. Her sister was taking her to suburban. Will admit patient and check some labs...” “” Recently had to go to MFSH ER for a right neck abscess. It was lanced on 7/7/17.. On a 14 day course of Bactrim.”

Lynn Fletcher, RN:

RN Fletcher is Plaintiff's sister and a registered nurse at Erie County Medical Center. She has “assisted Juanita with her treatment over the past few years in connection with the MRSA infection she sustained after receiving a pedicure at the Defendant's nail salon in 2013.” She went to Plaintiff's house twice a day to assist with wound care; “abscess incisions unpacked, repacked, and dressed twice a day... over the years she has sustained multiple abscesses each year. They appear over many different parts of her body.” Juanita is very self conscious about the abscesses. “During her first bout with these abscesses, I kept her son at my house. He was about four to five years old at that time. Juanita's son could not stay at their residence because her wounds were draining. It was tough on Juanita to be apart from her son.” The resulting circumstances from the MRSA infection have been extremely difficult and have taken a significant toll on Juanita.”

The Court reviewed and considered the following New York State Pattern Jury Instructions: 1:2B (Split Trial-Damages), 1:8 (Weighing Testimony), 1:21 (Review Principles Stated), 1:23 (Burden of Proof), 1:25 (Consider only Testimony & Exhibits), 1:27 (Exclude Sympathy), 1:90 (Expert Witness), 1:91 (Interested Witness), 2:277 (Damages), 2:280 (Damages-Injury & Pain and Suffering), 2:280.1 (Loss of Enjoyment of Life), and 2:281 (Damages-Permanence-Life Expectancy). CPLR §3215 was reviewed.

Plaintiff counsel respectfully requests an award for past pain and suffering and loss of enjoyment of life in the amount of \$350,000.00 and an award for future pain and suffering and loss of enjoyment of life in the amount of \$650,000.00. Plaintiff has a life expectancy of 31.8 years. The requested amounts are based upon the above referenced testimony and medical affirmations/affidavits, along with certified medical records and photographs. In addition, counsel submitted comparable verdicts with awards ranging from \$765,000.00 to \$10,000,000.00. In light of these verdicts and the testimony and proof submitted, this Court hereby awards the amounts requested.

After said review and consideration of the essential facts, applicable charges, law and decisions, this Court decides as follows:

1. State the total amount of damages to plaintiff, JUANITA WALKER, for the following items of damage, if any, from the date of accident (7/26/13) to the date of verdict. If decide not to make an award, may insert the word “none” as to that item.

(A) Past Pain and Suffering, \$ 350,000.00
include Loss of Enjoyment of Life:

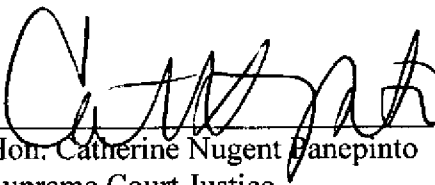
2. State separately the amount to plaintiff, JUANITA WALKER, for the following items of damage, if any, from the date of verdict to be incurred in the future. If decide not to make an award as to any of the below items, may insert the word "none" as to that item.

(A) Future Pain and Suffering, include Loss of Enjoyment of life, including permanent effect of injuries, from the time of verdict for the time that Plaintiff can be expected to live: \$ 650,000.00

3. If in response to Question #2, there are amounts intended to compensate plaintiff, JUANITA WALKER, for damages to be incurred in the future, then for each item for which the amounts are made, state the period of years over which such amounts are intended to provide compensation to the plaintiff.

(A) Pain and suffering and loss of enjoyment of life, including the permanent effect of the injury, from the time of the verdict for the time that Plaintiff can be expected to live 31.8 years

This constitutes the Verdict and Order of this Court. The mailing of a copy of this Verdict and Order by this Court to counsel shall not constitute notice of entry and service.


Hon. Catherine Nugent Panepinto
Supreme Court Justice

Dated: October 23, 2018
Buffalo, New York

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