

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MARGARET A. CHAN PART IAS MOTION 33EFM

Justice

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ROBERT MCCULLOUGH, INDEX NO. 113802/2009
Plaintiff, MOTION DATE _____
- v - MOTION SEQ. NO. 008 009

ONE BRYANT PARK, DURST DEVELOPMENT, LLC., TISHMAN
CONSTRUCTION CORP., COMPONENT ASSEMBLY SYSTEMS,
INC.,

**AMENDED
DECISION AND ORDER**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 008) 241, 242, 243, 244,
245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 269, 271, 272, 273, 338, 339, 355

were read on this motion to/for VACATE -
DECISION/ORDER/JUDGMENT/AWARD

The following e-filed documents, listed by NYSCEF document number (Motion 009) 255, 256, 257, 258,
259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 336, 337, 340, 341, 342, 343, 344, 345, 346, 347, 348,
349, 350, 351, 353, 354, 356, 357, 358, 359

were read on this motion to/for SET ASIDE VERDICT

In this personal injury action, a nine-day jury trial was held on October 2, 2017. The jury awarded plaintiff a total sum of \$3,927,046 for personal injuries and apportioned liability as follows: 90% to defendant One Bryant Park LLC (Owner)/Tishman Construction Corp.¹ (the Bryant defendants); 5% to Component Assembly Systems, Inc. (Component); and 5% to plaintiff. The Bryant defendants moved to set aside the verdict and requested a collateral source hearing pursuant to CPLR § 4545 in motion sequence (MS) 8. Defendant Component also moved in MS 9 to set aside the verdict. This court rendered a Decision and Order on those motions dated August 10, 2018 (the Decision) that granted the motions to the extent that the jury's verdict was reduced and a collateral source hearing was ordered to take place on October 3, 2018. After the issuance of the Decision, an error on the amount for future lost earnings was noted in the Decision. Additionally, after the Decision was rendered, the parties stipulated to a further reduction of future lost earnings, and the defendants agreed to withdraw the request for a collateral source hearing. A copy of the stipulation is annexed to this Decision and Order. As such, this court amends the Decision to correct the errors and to incorporate the parties' stipulation.

¹ Defendants One Bryant Park LLC and Tishman Construction Corp. are represented by the same counsel.

The Decision stated that at trial the jury returned a total award of \$3,960,455.52, itemized as follows:

- future medical expenses \$ 99,000
- lost earnings up to verdict date \$ 705,370
- future lost earnings to age 62 (now 53) \$1,000,000
- pain and suffering up to verdict date \$1,000,000
- future pain and suffering \$ 750,000

(NYSCEF Doc No. 361 - Decision and Order dated August 10, 2018).

The itemization did not include stipulated past medical expenses in the amount of \$33,409.52, even though the total award accounted for that amount. Another error was the amount listed for “future lost earnings to age 62 (now 53)”. The court’s decretal paragraph stated that the jury award for future lost earnings was \$1,058,000 for 27.3 years, and the court reduced the amount to 24.8 years. However, there was no dispute that the jury had reconsidered the amount for future lost earnings while they were still empaneled. The amount the jury awarded for future lost earnings was \$1,372,676.00 for a period of 10.3 years (Trial Tr., pp 779-781). The Decision shall be amended to reflect this amount.

As such, the court’s prior decision and order dated August 10, 2018, is amended to reflect the correct itemization of the total award of \$3,960,455.52, as follows:

- stipulated past medical expenses \$33,409.52
- future medical expenses \$ 99,000
- lost earnings up to verdict date \$ 705,370
- future lost earnings to age 62 (now 53) \$1,372,676
- pain and suffering up to verdict date \$1,000,000
- future pain and suffering \$ 750,000

In all other respects, the court adheres to the Decision.

Lastly, after the Decision, on October 29, 2018, the parties executed a stipulation that reflected an amendment of plaintiff’s future lost earnings. The parties agreed to reduce the future lost earnings to age 62 (now 53) by \$81,674.59, making the total award for lost earnings \$1,291,001.41. Defendants also withdrew their request for a collateral source hearing. The stipulation is annexed to this amended decision and order.

Accordingly, pursuant to these corrections and the stipulation of the parties, the court’s decision and order dated August 10, 2018, is hereby amended in that it is

ORDERED that plaintiff is awarded a judgment after trial in the amount of \$3,878,780.93, itemized as follows:

- stipulated past medical expenses \$ 33,409.52
- future medical expenses \$ 99,000
- lost earnings up to verdict date \$ 705,370
- stipulated future lost earnings \$ 1,291,001.41
- pain and suffering up to verdict date \$ 1,000,000
- future pain and suffering \$ 750,000

This constitutes the decision and order of the court.

11/15/2018
DATE


MARGARET A. CHAN, J.S.C.

CHECK ONE: CASE DISPOSED GRANTED DENIED NON-FINAL DISPOSITION OTHER

APPLICATION: SETTLE ORDER SUBMIT ORDER FIDUCIARY APPOINTMENT REFERENCE

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN