EXHIBIT G

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

P R E S E N T : HON. JEFFREY S. BROWN
JUSTICE

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TRIAL/IAS PART 13

CHARLES SIMON and CHARLES SIMON, as Administrator of the Estate of JULIE SIMON, deceased,

Plaintiff(s),

-against-

GRANITE BUILDING 2, LLC, LALEZARIAN PROPERTIES, LLC, KULKA CONSTRUCTION CORP., KULKA CONTRACTING, LLC, FXR CONSTRUCTION CORP. D/B/A DEV CONSTRUCTION CORP., CANATAL INDUSTRIES INC., MCLO STRUCTURAL STEEL CORP., NEWMAN DESIGN GROUP, LLC and THE OFFICE OF JAMES RUDERMAN, LLP,

Defendant(s).

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INDEX # 22101/08
Mot. Seq. 22, 23
Mot. Date 11.6.15
Submit Date 1.7.15

The following papers were read on this motion:	Papers Numbered	
	MS 22	**MS 23**
Notice of Motion, Affidavits (Affirmations), Exhibits Annexed.....	1, 2	8, 9
Answering Affidavit	3, 4, 5	3, 4,10
Reply Affidavit.....	6, 7	11

Upon the foregoing papers, it is ordered that the application interposed by defendant, Granite Building 2 LLC (hereinafter Granite), which seeks an order pursuant to CPLR §§4401,4404(a) and 5501(c): (1) granting a new trial as to liability, (2) granting a new trial or *remittitur* of the $6,000,000.00 jury verdict awarded to Charles Simon for past and future pain and suffering, (3) vacating or granting a *remittitur* of the $1,495,000.00 jury verdict awarded to Charles Simon for past and future economic loss, (4) vacating or granting a *remittitur* of the $1,440,000.00 jury verdict awarded to the Estate of Julie Simon for past and future economic loss, (5) granting a new trial or *remittitur* of the $500,000.00 jury verdict awarded to the Estate of

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Julie Simon for pre-impact terror, and (6) granting a collateral source hearing pursuant to CPLR §4545(a); and the application interposed by defendant, Kulka Contracting, LLC (hereinafter Kulka), which seeks an order pursuant to CPLR §4404(a) granting a new trial as to both liability and damages (Sequence #023), are determined as set forth hereinafter.

On February 13, 2008, the plaintiff, Charles Simon, was a passenger in the GMC Suburban operated by his wife, plaintiff's decedent, Julie Simon (*see* Bakalor Affidavit in Support at Exh. C at pp. 733, 762). On said date, the Simons, both of whom were wallpaper hangers, were scheduled to commence work at an office building owned by Granite where there was ongoing construction, the scope of which included the underground parking lots (*id.* at pp. 55, 702, 703, 718, 723, 1048-1049). In connection therewith, Granite engaged Kulka to serve as the general contractor, which in turn contracted with FXR Construction, Inc. d/b/a DEV Construction (hereinafter FXR) to undertake the construction of the underground lots (*id.* at pp. 55, 56, 1048, 1049, 1051). During the course of this project, a pit was excavated at the end of the west parking lot resulting in a 32 foot drop into the subterranean lot then under construction (*id.* at pp. 56-57). On February 12, 2008, employees of FXR removed two 12-foot sections of the chain link fence surrounding the west parking lot to permit a tractor-trailer to deliver rebar necessary for the concrete work (*id.* at pp. 57, 83, 134, 135, 162, 200). However, subsequent to this delivery, FXR failed to replace those sections of the fence it had previously removed (*id.* at pp. 57, 200).

On the morning of February 13, 2008, the weather was inclement with a mix of snow, rain, sleet, slush and ice (*id.* at pp. 271-73, 727, 782, 787, 788, 798). Upon arrival at the work site, the Simons were unable to access the property through the main entrance and consequently proceeded to the west parking lot successfully gaining ingress thereto via the opening in the fence left by FXR (*id.* at pp. 731, 732, 162, 200, 675). The pavement in the west lot was icy and the excavation pit was not immediately discernable (*id.* at p. 733). As Mrs. Simon proceeded, the pit came into view but her attempts to stop the vehicle were unavailing as it began to slide, ultimately going over the 32 foot precipice and into the lot below (*id.* at pp. 733, 734, 736). Prior to going over the edge, Mr. Simon was able to extricate himself from the vehicle, however, Mrs. Simon was unable to do so and died on impact after Mr. Simon heard her scream his name (*id.* at pp. 735, 736, 798, 2006).

A trial on the within action took place over 20 days commencing on May 11, 2015, during which the following theories of liability were asserted against the defendants: failing to close the gate surrounding the west parking lot; failing to employ a sufficient vehicle barrier around the perimeter of the pit, and failing to plow and or salt the west parking lot (*see* Bakalor Affidavit in Support at ¶4, Exh. C at pp. 55-61, 63). On June 16, 2015, the jury returned a verdict against the defendants as to liability apportioning same as follows: 60% to Granite; 30% to Kulka, and; 10% to FXR (*see* Bakalor Affidavit in Support at ¶4). The same jury awarded the plaintiff and the decedent's estate a total of $9,435,000.00, which was broken down as follows:

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Non-Economic Awards:	
Decedent's Pain and Suffering	
(for Emotional Distress and Pre-Impact Terror)	$ 500,000
Plaintiff's Past Pain and Suffering	$3,000,000
Plaintiff's Future Pain and Suffering	$3,000,000 (for 24 Years)
Estate of Julie Simon's Economic Loss Awards	
Past Lost Earnings	$ 200,000
Future Lost Earnings	$ 500,000 (over 13 years)
Past Household Services	$ 100,000
Future Household Services	$ 400,000 (over 27 years)
Past Lost Employer Funding of Annuity and Pension	$ 40,000
Future Lost Employer Funding of Annuity and Pension and Social Security Retirement Income	$ 200,000
Total:	$ 1,440,000
Plaintiff Charles Simon's Economic Loss Awards	
Past Lost Earnings	$ 300,000
Future Lost Earnings	$ 700,000 (over 13 years)
Past Lost Health Insurance	$ 50,000
Future Lost Health Insurance	$ 30,000 (over 11 years)
Past Lost Employer Funding of Annuity	$ 40,000
Future Lost Employer Funding of Annuity	$ 100,000 (over 13 years)
Past Lost Employer Funding of Pension	$ 50,000
Future Lost Employer Funding of Pension	$ 125,000 (over 8 years)
Future Lost Retirement Income	$ 100,000 (over 11 years)
Total:	$ 1,495,000

The within post-trial applications respectively interposed by the moving defendants thereafter ensued.

In moving for a new trial as to liability, Granite contends this court erred in denying its motion for a directed verdict dismissing the claim premised upon its failure to plow or salt the parking lot, as any such claim was barred as a matter of law by the "storm in progress doctrine" (*see* Defendant's Memorandum of Law at pp. 11-25). Granite stresses that in having the bulk of liability assessed against it, the jury obviously accepted this claim as cognizable and given this court's denial of its request for an itemized verdict, a new trial as to liability is necessary as it is impossible for a reviewing court to determine whether the verdict was predicated upon this improper theory (*id.* at pp. 27-31).

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As to the issue of damages, Granite asserts the $6,000,000.00 verdict awarded to Charles Simon for past and future pain and suffering, stemming from purely emotional "zone of danger" injuries, materially deviates from prior appellate-reviewed and approved sums awarded to similarly situated plaintiffs thereby warranting a significant *remittitur* (*id.* at pp. 31-44). Granite further contends the $1,495,000.00 verdict awarded to Mr. Simon for past and future economic loss was not substantiated with the requisite degree of certainty and accordingly must either be vacated or significantly reduced (*id.* at pp. 44-50). Granite maintains that between the years 2000 and 2007, during which time the plaintiff was a union member, 2007 was the only year he exceeded the 1200 hours necessary to receive union benefits (*id.*). Granite posits that notwithstanding this economic data, the plaintiff's expert economist, Dr. Leiken, elected to predicate his projections solely on data extrapolated from 2007 thereby rendering his opinion as to the plaintiff's past and future economic losses as speculative (*id.*). Granite further contends that in opining the plaintiff would be able to work consistently, Dr. Leiken failed to account for either the cyclical nature of wallpaper hanging or Mr. Simon's health, which had been compromised by cryptococcal meningitis in 2011 causing the plaintiff to experience dizziness, short term memory loss, instability and vertigo (*id.* at pp. 48, 49; Bakalor Affidavit in Support at Exh. C at p. 755-758, 793-797).

With respect to the $1,440,000.00 awarded to Mrs. Simon's estate for past and future economic loss, Granite similarly asserts that same must be vacated or reduced in the face of Dr. Leiken's failure to account for the decedent's medical history, which included a fractured elbow and herniated discs, as well as due to his exclusive reliance on employment data from 2007 (*see* Defendant's Memorandum of Law at pp. 51-53). Finally, Granite asserts the $500,000.00 awarded to the decedent's estate for pre-impact terror, which spanned only several seconds, materially deviates from that which would constitute reasonable compensation (*id.* at pp. 53-55).

Turning to the application separately interposed by Kulka, said defendant echoes, in large measure, the arguments set forth by Granite with regard to the storm in progress doctrine, the necessity for an itemized verdict and this court's error in failing to utilize same, as well as those assertions casting the damage awards as excessive and thus requiring a vacatur or substantial reduction thereof (*see* Defendant's Memorandum of Law at pp. 22-24, 52-64, 67-70, 71-73; Wong Affirmation in Support at ¶¶143,144). Additionally, Kulka specifically challenges the propriety of testimony elicited from Detective Cefalu, who was called by the plaintiff, as well as that of Herbert Heller, a civil engineer who appeared on behalf of Granite (*see* Defendant's Memorandum of Law at pp. 25, 29-31, 34, 39-43). As to Detective Cefalu, Kulka asserts that given the detective's admissions that he did not undertake a reconstruction of the accident and was not an expert in such an area, his testimony that the decedent's actions did not contribute to the accident should have been precluded (*see* Defendant's Memorandum of Law at pp. 25, 29-31, 34). With respect to Mr. Heller, Kulka maintains this court erred in allowing this witness to testify as to the duties of a construction manager considering his lack of expertise therein (*id.* at pp. 39-43). Finally, Kulka posits it was error in charging the emergency doctrine, as well as in

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