

## Lawyer Fanned By Judge in Bid For Million Award

An attempt by a plaintiff's lawyer to compare the "quality of life" of his client in a personal injury case — a middle-aged, unemployed woman — with a high-salaried baseball star in asking the jury for a near-million-dollar verdict was rebuffed last week by a State Supreme Court justice.

The judge, following a rancorous confrontation with the lawyer during the latter's summation, rejected a post-verdict motion for set aside a \$45,000 award to the woman for injuries suffered in an automobile accident. Also, the judge refused to grant a motion for a new trial on the ground that the judge's comments in the presence of the jury were unwarranted.

The decision is published on page 10, column 5.

Justice Alfred J. Callahan, in his decision in *Wheeler v. Brown*, filed in Bronx County, Trial Term, Part 5, ruled there was no basis for the plaintiff's motion for a mistrial because his remarks were intended to correct the attorney's references to the jury to convince it to return a verdict corresponding to the ad damnum clause of \$950,000 and equating his client's "quality of life" to that of a baseball pitcher.

What touched off the heated colloquy was when the attorney, Harry I. Katz of Rosenberg & Horowitz, asked the jury, "What is it worth when you have a woman who carries a diamond ring on her that's worth \$3 million dollars, when you have a pitcher that throws a ball across a plate that gets a multimillion-dollar contract? Is Ms. Wheeler's quality of life worth any less?"

Justice Callahan termed "ridiculous" equating the woman to a major league baseball player, asking the lawyer, "Is that how you want them (the jurors) to fix damages for her, because she could make a million dollars if she didn't have this pain in the back?"

At one point, the justice noted that

"my quality of life is worth a lot less than a pitcher who has a multimillion-dollar contract. I only get \$65,000 a year."

In addition, he explained, there was a question as to whether the injuries of the plaintiff, Rose Wheeler, were caused by the accident or were "the result of her obesity." He also took issue with the attorney's placing a \$950,000 figure — "pulled out of the air, apparently" — on the damages suffered by his client. Mr. Katz had told the jury that "I am not like another attorney that asks for twice as much in the hopes you will give me half. I am being straight."

**Not Worth \$950,000**

"You are required under the law to fix damages from the evidence before you, and I know of no evidence which would entitle him to say this case is worth \$950,000," the decision said in quoting the justice's comments to the jury. "You have to decide this case on the evidence — not on what some lawyer argues to you in a summation."

In denying the post-verdict motion for a mistrial because of reversible error, Justice Callahan ruled that "it is the trial court's duty to charge the jury that it must determine the amount the amount of its verdict solely from the evidence, that the allegations of the complaint are not evidence, and such allegations should not be considered as evidence in fixing the amount of the verdict."

He concluded that since "there was not a scintilla of evidence in this case which in any way could serve as a basis for plaintiff's counsel equating her 'a woman who carries a diamond ring on her that's worth \$3 million' or to 'a pitcher who throws a ball across a plate that gets a multimillion-dollar contract'."

"Counsel's remarks that such an equation should be made by the jury in this case was entirely uncalled for and, in my opinion, required me to indicate this to the jury in no uncertain terms," he concluded.

The defense was represented by John V. Fabriani of Krall, Killarney, Pomerantz & Cameron.