Appeals Court Affirms $300,000 for an Injury but Declines to Identify the Injury

Posted on March 20, 2009 by John Hochfelder

For the third time in one week, a New York appellate court has issued a decision ruling on the reasonableness of a jury's pain and suffering verdict while withholding the nature of the injury. Eric Turkewitz over at New York Personal Injury Law Blog says I am "steamed" about this issue. Well, maybe I am.

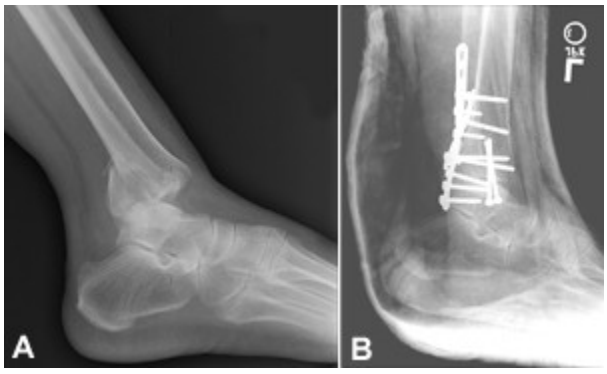
In the first two cases, the courts reduced verdicts by $1,000,000 or more. We discussed those cases here and here and made quite clear our opinion that it's wrong to withhold from the bar and the public the nature of the injuries or the judges' reasons for disturbing jury verdicts.

Now comes the case of Downes v. City of Mount Vernon in which the Appellate Division Second Department held that a jury verdict of **$288,000** split about equally between past and future pain and suffering was not excessive, as it did not deviate materially from what would be reasonable compensation.

Well that's fine but **what were the injuries? The decision is silent** on that point. So what's the value of the decision of the judges that $288,000 is fair compensation? What do we lawyers learn about how to evaluate similar injury cases in New York so that claims can be settled with the benefit of judicial wisdom and precedent? Nothing.

Once again, **we dug up the facts** and are happy to disclose them here:

- on March 27, 2004, 66 year old **Lucille Downes tripped and fell walking down steps** outside a senior citizen center that did not have a handrail as required by code
- Ms. Downes suffered a **trimalleolar fracture of her right ankle** that required an open reduction surgery with the insertion of a metal plate and screws and **her ankle now looks like this:**



- Ms. Downes was already evidencing **post traumatic arthritis** at trial in 2007 and her doctor testified that the injury is **permanent** and the pain will worsen

As to liability, the jury found the defendant 70% at fault and the plaintiff 30% responsible for her own injuries and the appeals court affirmed that finding.

As to damages, the **appeals court determined not to discuss any of its reasons for affirming the $288,000** pain and suffering award. Therefore, I have uncovered the arguments from both sides in this case and have pieced together the issues argued on appeal by opposing counsel.

The defense argued that $288,000 for pain and suffering damages was excessive not by arguing that the injury was not significant or that Ms. Downes made a great recovery and no longer suffered; instead the defense relied on case law precedent in which appeals courts ruled on damage amounts in other trimalleolar fracture cases.

In particular, the defendant relied upon Condor v. City of New York and Madrit v. City of New York. Both cases involved appeals challenging the amount of a jury verdict for pain and suffering in trimalleolar fracture cases. In Condor, the jury's $300,000 future pain and suffering award was deemed excessive and reduced on appeal to $150,000. That's almost the exact amount in the Downes case. In Madrit, future damages were reduced from $250,000 to $125,000 - again, an amount approximating the award to Ms. Downes.

The cases cited by plaintiff, Clark v. N-H Farms, Inc. (2005) and Grant v. City of New York (2004), were much more relevant and recent than any relied upon by the defendant. In Clark, the jury awarded $1,200,000 but on appeal that was reduced (without explanation) to $425,000 ($200,000 past, $225,000 future). In Grant, a jury awarded $10,000 for past pain and suffering and $20,000 for future for a 53 year old woman whose trimalleolar fractures had already resulted in two surgeries. The court found the jury's award quite unreasonable and ordered an increase to $200,000 past and $300,000 future.

If the judges in cases like Downes would disclose injury facts and case law arguments made by the parties, then the public and the bar would be informed as to why the judges find certain amounts reasonable for pain and suffering damages in trimalleolar fracture and other injury cases. Then, the public will have significant information and meaningful judicial guidance with which to evaluate these types of cases and resolve them before litigation, before a trial or before an appeal.

Our **appellate courts can and should help to reduce the number of lawsuits** by telling us more about the facts of each injury case they decide and setting out meaningful information in their decisions that will give the public real judicial guidance.