

Head and Neck Injuries from Falling Tree - \$2,600,000 Pain and Suffering Verdict Reduced on Appeal Without Explanation to \$1,350,000

Posted on March 18, 2009 by [John Hochfelder](#)

On March 6, 1997, Louis Ferrigno, a 29 year old carpenter, was driving on a county road in New York when a **large tree fell onto his car** and crushed it causing him **severe head and neck injuries**.



Ten years later his case against the county for negligence came to trial. His claim was based on the fact that the tree was diseased and decayed and the county either knew about it or should have known about it and in either case should have removed the tree so that it would not be a hazard.

The **jury found for the plaintiff** on liability and then proceeded to award him **\$2,600,000 for his pain and suffering damages (\$2,000,000 past, \$600,000 future).**

On appeal, this week, the court in [Ferrigno v. County of Suffolk](#) upheld the liability verdict. In the decision, there was a discussion of the law on negligence as to roadside trees falling and whose responsibility that is and why. In doing so, the court cited prior cases and discussed the facts in this case.

But as to the damages verdict, the appeals court only stated that the past pain and suffering verdict should be reduced to \$750,000 and then concluded with these meaningless words:

The damages awarded to the plaintiff for past pain and suffering are excessive to the extent indicated herein, as they deviate materially from what would be reasonable compensation (see CPLR 5501 [c]).

That's it. Nothing about what the injuries were. Just a statement of the amounts the jury awarded for past and future pain and suffering and the amount for past pain and suffering that the appellate court felt was proper but not a clue as to what the young man went through insofar as physical injuries, no citations to case precedent as to damages and **no indication why the court felt the \$2,000,000 past pain and suffering verdict should be reduced to \$750,000.**

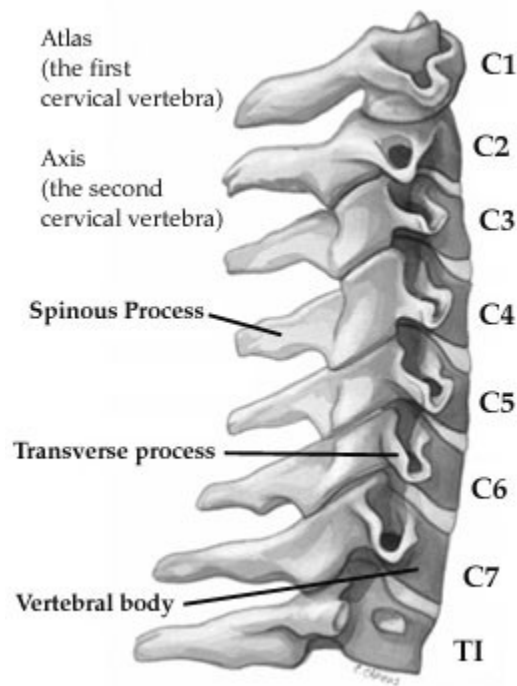
Failing to give the public facts upon which appellate courts reach their decisions as to pain and suffering damages is **unfair both to the lawyers** who rely upon the appellate court decisions for precedent **and to non-lawyer citizens** (by whose tax dollars, after all, the judges are hired and paid). **We are all entitled to know how these august bodies make their decisions.**

And in this case, we were entitled to know why the judicial panel reduced a jury's \$2,000,000 verdict for pain and suffering to \$750,000. This absence of information must change.

For the record, as we lawyers say, **here's what Mr. Ferrigno went through:**

- extreme pain and fear of imminent death while pinned inside crushed car waiting to be extricated by "jaws of life" tools and flown by helicopter to hospital
- eight inches of staple stitches across head
- skull fracture
- permanent neck pain and migraine headaches and

plaintiff sustained a compression fracture of his cervical spine at C7



And the defense argued that the \$2,000,000 was excessive and that Mr. Ferrigno's injuries were not so bad, because:

- plaintiff did not undergo any surgery
- loss of work and confinement to home was only six months
- the C7 compression fracture had healed (according to the [American Academy of Orthopedic Surgeons](#) many compression fractures are minor and need only six weeks of immobility in a cervical collar)
- physical therapy was needed for only three months
- plaintiff was only treated by a physician seven times in the years after the accident
- plaintiff was out of work for only six months and made no claim for future loss of earnings (indicating his injuries were not permanently disabling)

So now you know the facts about the injuries but we still don't know:

- which ones were important to the appeals court,
- what if any case law precedent was relied upon and
- how this case insofar as damages is concerned should be used in the future by lawyers and injured people to evaluate injury claims that are similar.

The appeals courts must stop refusing to explain their reasoning in cases that address an increase or decrease in jury verdict pain and suffering damage awards.