NEW YORK INJURY CASES BLOG
NEWS & UPDATES ON PAIN & SUFFERING VERDICTS & SETTLEMENTS
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New York Injury Cases Blog

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New Wrist Fracture Case Upholds $3,100,000 Pain and Suffering Damages Award

It was hardly two weeks ago that we discussed wrist fracture cases in New York and how they can command settlements and verdicts between $450,000 and $900,000. Now comes the case of Serrano v. 432 Park S. Realty Co., LLC and an award of **$3,100,000** for pain and suffering.

In this new case, a 38 year old construction worker fell eight feet from a ladder while attempting to dismantle an air conditioning duct. He sustained comminuted fractures of his wrist that required both external and internal fixation surgery. Then, he suffered from posttraumatic arthritis and underwent wrist fusion surgery which permanently restricted him from being able to move or bend his hand up or down at the wrist.

This case did present additional injuries other than the severe wrist fractures:

- a herniated disc requiring an operation, and
- reflex sympathetic dystrophy ("RSD" - a chronic, painful and progressive neurological condition often presenting as a burning sensation after surgery or trauma)

At trial in 2007, a New York County jury awarded Mr. Serrano $600,000 for his past pain and suffering plus $4,240,0000 for his future pain and suffering. On appeal, the court determined in a **decision released today**, that the past pain and suffering award was reasonable but ruled that the future pain and suffering award should be reduced to $2,500,000.

It was the RSD, which left Mr. Serrano with a functionally useless hand, that led the court to distinguish this case from Cabezas v. City of New York, (in which **$900,000** was found to be the proper pain and suffering award for a 50 year old man with a comminuted intra-articular radius fracture and a displaced ulna styloid fracture that required two surgeries and would need a fusion surgery in the future) and from Hayes v. Normandie (in which **$985,000** was found to be the proper pain and suffering award for a 52 year old man with a comminuted fracture of his radius extending into his wrist requiring future fusion

surgery).

- **Insider's Tip**: The defendant in the Serrano case claimed that the plaintiff's employer should have to reimburse it for the verdict because the employer was negligent (the employer could not be sued by plaintiff because of the Workers' Compensation Law that gives employees wage and medical benefits but prohibits them from suing their employers for negligence). The problem was that New York law does not allow such reimbursement unless the plaintiff has sustained a "grave injury" under Workers' Compensation Law Section 11. The jury was told by the judge that "grave injury" in this case meant a total loss of use of plaintiff's hand and it ruled that plaintiff's injury, which it found was "worth" over $4,000,000 for pain and suffering was not a "grave injury." That finding appears to be reversible error. There was uncontroverted evidence from many physicians that Serrano had no "functional" use of his hand but the jury disregarded that and the appellate court disregarded the arguments made on defendant's behalf by the highly regarded Mauro Goldberg & Lilling law firm (the only firm in New York that is devoted exclusively to appellate litigation). While the "grave injury" issue will not affect plaintiff's damage award in this case, watch for that issue -- whether there is a difference between "functional loss of use" and "loss of use" -- to be ruled upon soon by the highest court in New York (the Court of Appeals).

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