

New York Injury Cases Blog

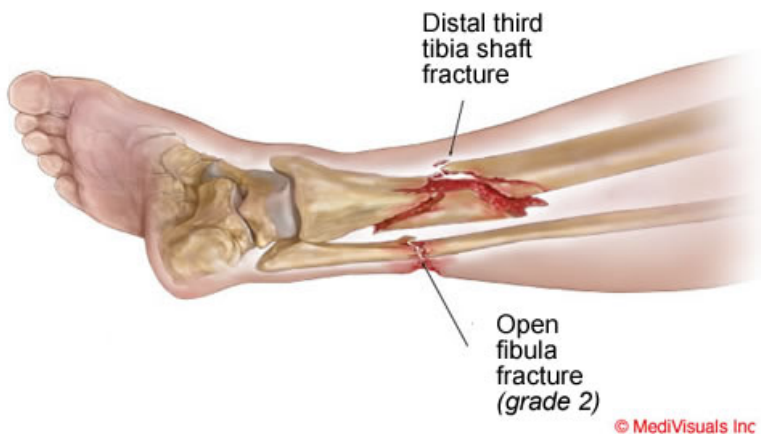
Posted at 4:40 AM on January 5, 2009 by John Hochfelder

\$575,000 for Ankle Injuries

In [Pryce v. County of Suffolk](#), New York's appellate court which handles appeals from Long Island as well as Westchester and nearby counties, the Appellate Division Second Department, upheld a jury's \$575,000 pain and suffering award for a 63 year old maintenance man who fractured his ankle after stepping off a county bus and being struck by another vehicle.

The plaintiff suffered open comminuted fractures of the distal portions of his left leg's tibia, extending into the lateral portion of the ankle joint.

Open Comminuted Distal Tibia and Fibula Fractures



He had to undergo **open reduction internal fixation surgery** (surgical repair of fractured bones using hardware such as plates, screws and rods) and the application of an external fixation device. Also, he had to have the fixation device removed surgically and he underwent four weeks of inpatient rehabilitation.

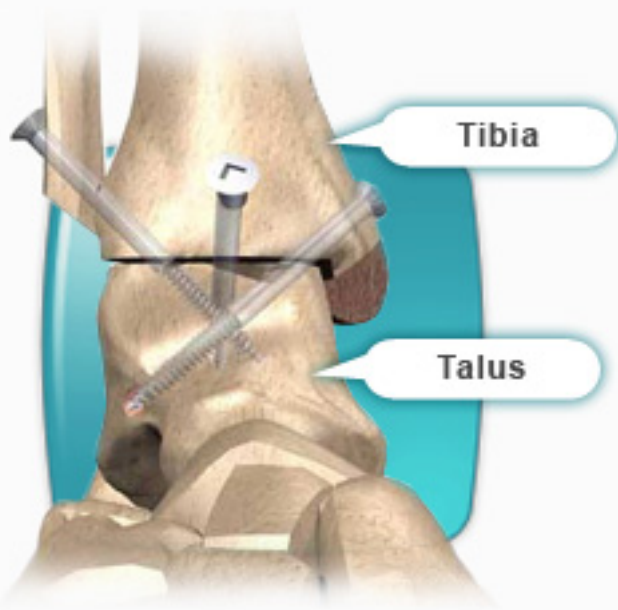
At 63 years of age, the [life expectancy tables](#) indicate the plaintiff had about 18 years more to live and part of the jury's award, \$275,000, was meant to compensate him for his future pain and suffering from this injury in which he claimed he'd have to walk forever with a limp (the defense claimed he'd made a good recovery).

In another recent case, [Bermudez v. New York City Board of Education](#) (Supreme Court, Kings County, Index # 27303/02) [no court decision and not reported publicly but summary available for purchase at [Verdict Search](#)], an 11 year old schoolboy fractured his ankle in gym class in a game of soccer. He sued claiming negligent supervision by his teachers. The jury awarded him \$1,030,000 for his pain and suffering - \$190,000 for past pain and suffering plus \$840,000 for the future.

The boy's ankle fracture was first treated by open reduction and internal fixation and then two years later he underwent an osteotomy (surgical cut through a bone with pieces then removed or repositioned).

At trial, Bermudez's lawyer argued that he would develop residual arthritis and need in the future a **surgical fusion** of his ankle (in which joint cartilage is removed and screws, plates, rods or pins are placed to hold the position to allow the bones to fuse solid over a few months time).

Traditional Ankle Fusion



There are **important distinctions between these two recent ankle fracture cases.**

- The disparity in age between the two plaintiffs: in Pryce, a 63 year old and in Bermudez, an 11 year old. Clearly the jury concluded that the 11 year old plaintiff would suffer for many years more than the 63 year old Pryce and awarded him \$840,000 for his future damages as opposed to only \$275,00 for Pryce's future damages.

- The Pryce case is an appellate court case and therefore provides much more guidance and is of significant value in guiding lawyers and insurance companies in evaluating pain and suffering in ankle fracture cases.
- In Bermudez, not only could there be an appellate reversal on the liability grounds (i.e., whether the city was negligent as a matter of law for either failing to instruct the class or failing to supervise them) but also it appears that the damages award is subject to attack. First, the plaintiff's settlement demand before trial was only \$450,000 (the city had offered only \$60,000). Second, any appeal in this case would go to the Appellate Division, Second Department, which ruled in Pryce and which is generally more conservative in its evaluations than its co-equal branch the First Department (which hears appeals from Manhattan and the Bronx only).

We will follow and report any changes.

Comments (0) Read through and enter the discussion with the form at the end

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