Hip Fracture Leads to RSD - $3,500,000 Pain and Suffering Verdict Upheld on Appeal

Posted on September 12, 2009 by John Hochfelder

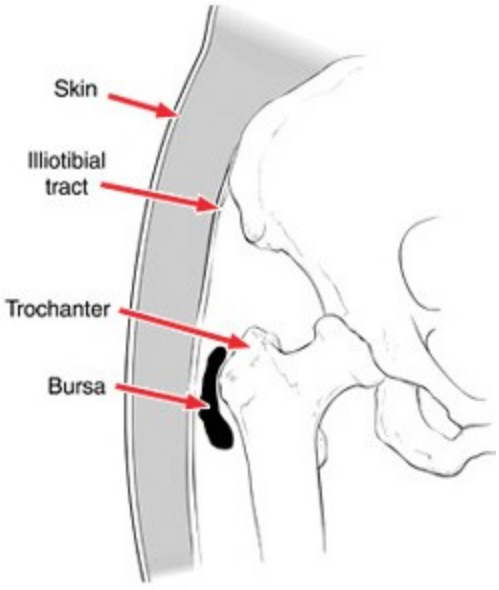
On July 21, 2003, George Brown had been employed as a seaman without missing a day of work for over 30 years. Working as a barge captain on a 376 foot long ocean going vessel carrying 120,000 barrels of oil, **Brown fell about 10 feet from the top of a ladder and sustained a comminuted intertrochanteric fracture of his right hip.**

In his ensuing lawsuit, Brown claimed that the boat's owner, Reinauer Transportation Company (which was also his employer) was negligent in that the ladder was unsafe. Under the **Jones Act**, a federal law that provides seamen with special protections in the area of personal injury lawsuits and places a duty on shipowners to provide a safe workplace, **all Brown had to prove was that Reinauer violated some relevant law or regulation and that the violation contributed to his injury in a slight degree**. That was easy in this case - the ladder had no handrail despite the requirements of a Coast Guard regulation - and Brown was granted summary judgment on liability.

After a three week trial on damages, an Ulster County, New York jury in July 2008 awarded Brown **$3,500,000** in pain and suffering damages ($1,000,000 past - 5 years; $2,500,000 future - 26 years). **An appeals court upheld the verdict this week in Brown v. Reinauer Transportation Co.**

Here's a synopsis of Brown's injuries that led to the $3,500,000 pain and suffering verdict:

1. open reduction internal fixation (ORIF) surgery to fix the hip fracture
2. a second operation to remove the irritating hardware
3. a third operation to lengthen his iliotibial band which had been snapping and caused a painful bursa to form
4. worsening pain and disability despite eight nerve block procedures and the surgical implantation of a spinal stimulator
5. permanent burning pain, swelling and skin sensitivity finally diagnosed as reflex sympathetic dystrophy (RSD)
6. difficulty walking, cannot sit for more than 30 minutes, clinically depressed, cannot work



The usual appellate standard that applies to a review of jury damage verdicts in New York did not apply in this case. Instead of CPLR 5501, which states that an appellate court may modify a jury verdict when it deviates materially from what would be reasonable compensation, the standard in this case was the Jones Act standard of whether the verdict shocked the conscience of

the appellate judges. Clearly, the $3,500,000 pain and suffering verdict was not shocking.

In its decision, the court cited **Serrano v. 432 Park S. Realty Co., LLC** (**$3,100,000** pain and suffering award for a 38 year old worker suffering from RSD after wrist surgery), a case we discussed **here**. Not mentioned, but also quite relevant, is **Lopiano v. Baldwin Transportation** (**$2,350,000** pain and suffering for a 48 year old construction worker with extensive pelvic fractures), a case we discussed **here**.

Inside Information:

- Defense counsel argued that plaintiff was an alcohol abuser, a liar and a person motivated by money making a sales pitch for big damages. Plaintiff's attorney, though, addressed this issue up front arguing that the charge of alcohol abuse was inconsistent with his client's years of responsible, dependable service in a demanding job.
- While deliberating, the jury requested that a security guard be present when the verdict was read. Apparently, that was because the defense attorney had been screaming throughout the case - the judge stated he had never before seen anyone yell or scream and be as offensive as this attorney. Clearly, the jury members were put off by defense counsel.