

## Impermissible Jury Compromise Requires Court to Set Aside \$500,000 Pain and Suffering Verdict for Ankle Injuries in Case Stemming from 1993 World Trade Center Bombing

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Terrorists attacked **New York City's World Trade Center** buildings twice - once on 2/26/93 exploding a bomb in the underground parking garage of the north tower; then on 9/11/01 flying planes into both towers.

**Most people safely evacuated in 1993 (six died and hundreds were injured):**



The lawsuits that followed the 1993 bombing are still ongoing and **we write here about the case of Charla Mitchell who was working in the south tower that day on the 100th floor who claims the Port Authority of New York and New Jersey (the buildings' owner) was responsible for her injuries (along with the terrorists).**

It took **15 years for the courts to resolve whether the Port Authority bore any responsibility** for the damages resulting from the deaths and the injuries in the bombing. In [Nash v. Port Authority of New York and New Jersey](#) (2008), a Manhattan jury's verdict finding the Port Authority 68% at fault was upheld in view of its refusal to secure the towers against this type of attack when it had in its possession for years reports that placed it on notice that this very type of attack would occur.

So, Charla Mitchell's case finally came to trial in Manhattan in December 2008 and she won pain and suffering damages for her **trimalleolar ankle fracture** injuries in the sum of **\$500,000** (\$20,000 past - 16 years, \$480,000 future - 24 years). The trial judge, though, in [Mitchell v. Port Authority of New York and New Jersey](#) (2009) ruled on a post-trial motion that the verdict should be set aside and a new trial held. The judge found that the the jury's verdict was irreconcilably inconsistent and, in view of the sharply contested issue of proximate cause, an impermissible compromise. [This week, the judge's decision was affirmed on appeal.](#)

**The big issue in this case was causation: Mitchell's ankle fracture didn't happen until 3/8/93 - 10 days after the bombing - when she was going to the mailbox outside her home.**



Mitchell said her right knee was injured and weakened in the exhausting evacuation and that 10 days later it buckled or gave out and caused her to fall upon which her ankle fractured.

The defense argued that Mitchell did not sustain any knee injury during the evacuation and that she fell 10 days later simply because she slipped on grass. Mitchell sought no medical treatment at all during those 10 days; in fact, she performed in an opera the day after the bombing and for the five days before she fell, and on that very same day, she walked a mile each way to and from work.

Mitchell countered with (a) her own testimony that her knees hurt a great deal during those 10 days and (b) the testimony of her doctors that the evacuation resulted in knee injuries.

**The jury found for Mitchell and answered "yes" to the question "Was plaintiff's descent down 100 floors of stairs on 2/26/93 a substantial factor in causing plaintiff's accident on 3/8/03?"**

The jury then addressed damages and its odd inconsistency between \$20,000 for 16 years of past pain and suffering and \$480,000 for 24 years of future pain and suffering is what led the courts to order a new trial on all issues. They invoked the **well settled principle that in a case where liability is sharply disputed, there should be a retrial on all issues if there is a strong likelihood that a jury verdict represents a compromise on damages.**

The **impermissible compromise principle** is applied when juries have rendered inexplicably low verdict awards on damages as in [Sheffield v. New York City Housing Authority](#) (1994) (nothing for future pain and suffering and an inadequately low sum for past pain and suffering in a case where defendant stipulated to serious and permanent injuries).

In Mitchell, by contrast, the \$500,000 pain and suffering damages verdict was not unreasonably low for a trimalleolar fracture case (in which the plaintiff had surgery, wore an air cast for 10 years and claimed permanent difficulties walking) and was within the range of reasonable

compensation as determined by the courts (as we recently discussed, [here](#)). It was just the unusual apportionment of the \$500,000 between past and future damages that led the court to conclude that the verdict was an impermissible compromise.

The court in Mitchell should have addressed the damages issue either by (a) affirming the \$500,000 award because that total was within the range of reasonableness for the injuries involved or (b) exercising its power to conditionally modify the past pain and suffering award upward and/or the future pain and suffering award downward.

Ordering a new trial results in an unwarranted waste of the litigants' time and money (as well as the courts) and appears to be a judicial compromise - **they did not agree with the liability finding made by a jury that acted deliberately so the judges point to a discrepancy within an overall reasonable damage award and claim this shows that the jury was trying to compromise. No, it's the judges who did that.**