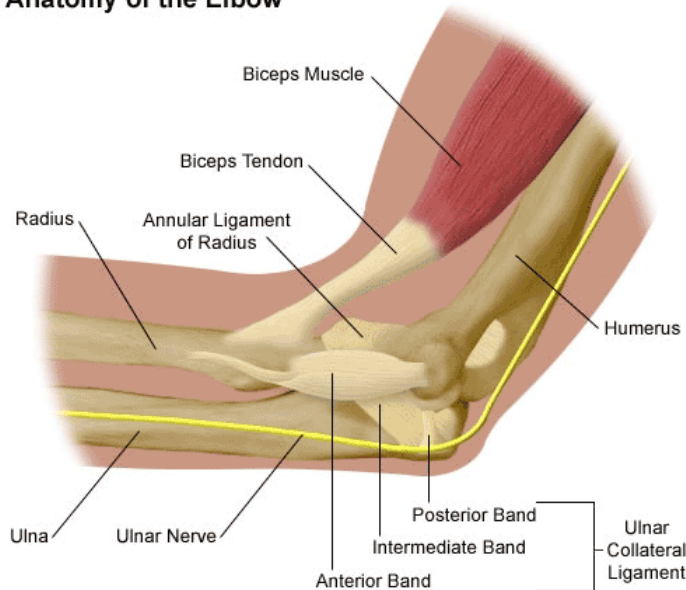


Recent Elbow Fracture Pain and Suffering Verdicts in New York in Excess of \$1,000,000

Posted on August 9, 2009 by [John Hochfelder](#)

The **elbow** is really not a bone, it's a **joint of the upper extremity (the arm) where the humerus meets, or articulates, with the radius and ulna.**

Anatomy of the Elbow



As you can see, there's no "elbow" bone. So when we hear of elbow fractures (and even doctors will use that term), what we're most likely talking about are fractures of either the distal humerus (that part of the arm bone closest to the elbow joint) or the proximal radius or ulna (that part of the forearm bones closest to the elbow joint).

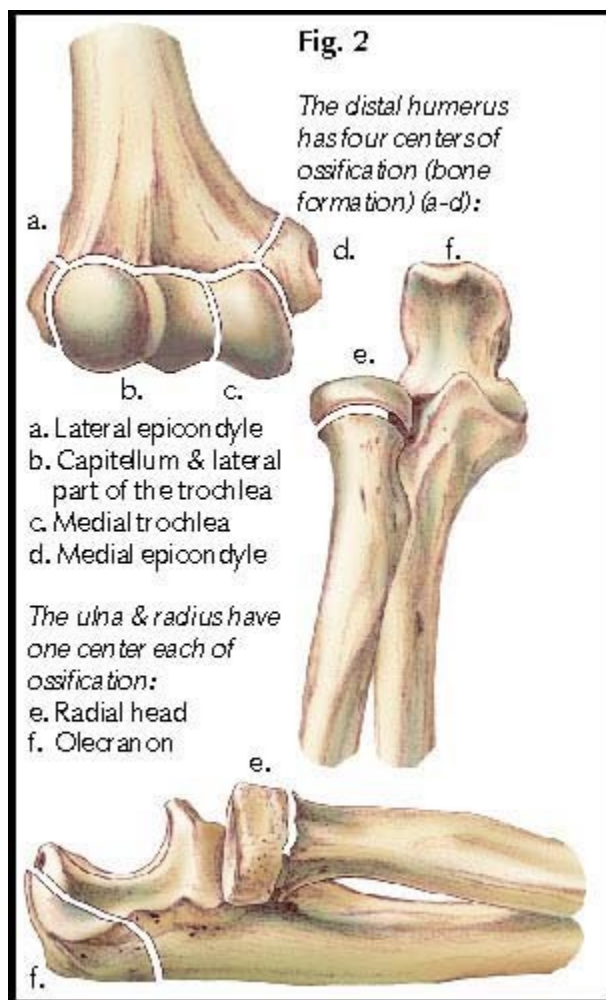
Two recent elbow fracture cases have resulted in pain and suffering verdicts in excess of \$1,000,000. In **Carrasquillo v. City of New York** (Supreme Court, Kings County; Index # 13888/01; 10/17/08), a six year old girl fell from a ladder at a slide in a municipal park and sustained a **grade III supracondylar fracture** of her dominant arm's elbow. Treatment included closed reduction and the application of percutaneous pins. At trial (eight years later), she claimed she still suffers swelling, pain, reduced range of motion and inability to carry many items. After a two week trial, the jury awarded her **\$3,200,000** for her pain and suffering (\$500,000 past; \$2,700,000 future).

- **Inside Info:** Plaintiff's settlement demand had been only \$225,000! While the more than \$3,000,000 pain and suffering award will not likely be upheld by an appeals court, a figure much more than \$225,000 would be.

The other recent case comes from the federal court in Brooklyn: **Soto v. Kraft Foods Global, Inc.** (U.S. District Court, E.D.N.Y.; # 08-2413; 3/4/09). In that case, a 36 year old delivery truck driver sustained a type II Monteggia's fracture (a fracture of the proximal region of the ulna) and a fracture dislocation of the same elbow's radial head. He underwent open reduction and internal fixation surgery and was left with a metal plate and nine screws in his arm as a result.

At trial 16 months later (the federal system is much faster than the state system in New York), Mr. Soto claimed he'll have permanent pain and range of motion deficits and that his arm and elbow retain merely marginal functionality. The jury awarded him **\$1,100,000** for his pain and suffering (\$275,000 past; \$825,000 future - 37 years).

A closer look at the **bones that articulate to form the elbow joint:**



The verdicts in **Carrasquillo** (\$3,200,000) and **Soto** (\$1,00,000) represent significantly high figures for an elbow fracture and as always when determining whether to settle or appeal (indeed, even when determining whether to try a case to verdict), the parties and their counsel will look to prevailing appellate court cases dealing with similar injuries. There are but a few.

In **Vertsberger v. City of New York**, a 51 year old man tripped and fell on a sidewalk and sustained a comminuted intertrochanteric fracture of the supracondylar and intercondylar area at his left (non-dominant) elbow with significant displacement of his medial epicondyle. He underwent open reduction and internal fixation surgery and claimed at trial seven years later that he still had and would always have significant weakness, reduced range of motion and pain. The Kings County jury awarded him \$4,000,000 for his pain and suffering but the trial judge ordered a reduction to \$2,250,000 and the appeals court held that figure was still unreasonably high and ordered a reduction to **\$1,400,000** for pain and suffering damages (\$600,000 past; \$800,000 future - 22 years).

Another significant appellate court case ruling on elbow fracture pain and suffering verdicts in New York is **Flores v. Parkchester Preservation Co.** There, on an appeal from a Bronx County jury verdict, the appeals court held that **\$350,000** was a proper pain and suffering award (not allocated between past and future) for a 24 year old woman who tripped and fell sustaining an intra-articular fracture to her non-dominant elbow requiring surgery to insert hardware to repair the fracture. The jury had awarded her \$1,000,000 (\$200,000 past; \$800,000 future - 10 years).

The **Flores** case appears to be one of more significant and disabling injuries than those in the **Vertsberger** case and they are to a much younger person. They will each likely stand as firm authority and important precedent, though, because they are from different judicial departments.

The **Vertsberger** case was decided by the Appellate Division, Second Department which hears appeals from the trial courts (the "Supreme Court") in 10 downstate counties (Kings, Queens, Richmond, Nassau, Suffolk, Westchester, Rockland, Dutchess, Orange and Putnam; whereas the **Flores** case was decided by the Appellate Division, First Department which hears appeals from the courts in Bronx and Manhattan counties.

Usually, the First Department is more "liberal," meaning that it sustains higher pain and suffering verdicts than the Second Department. These two cases, therefore, appear to be an anomaly. The conflict, though (\$1,400,000 for a 51 year old versus \$350,000 for a 24 year old, each with similar elbow fractures), will not be resolved by an appeal to the highest court in New York, the Court of Appeals. That court is reserved for important questions of law, not distinctions that relate to pain and suffering verdict amounts. It's thought that each case is so different - each plaintiff, each injury, each recovery - that final resolution of the question of a verdict's reasonableness should be left to the juries and the appellate division judges within the area or region where the trial was held.

With more and more jury verdicts coming in at more than \$1,000,000 for pain and suffering in elbow fracture cases, we expect there will be more appeals and that all four appellate divisions will sustain pain and suffering sums in excess of \$1,000,000. We will, of course, follow all of these cases and the decisions when they are rendered.