Ankle Fractures Result in $1,000,000 Pain and Suffering Verdict Upheld on Appeal

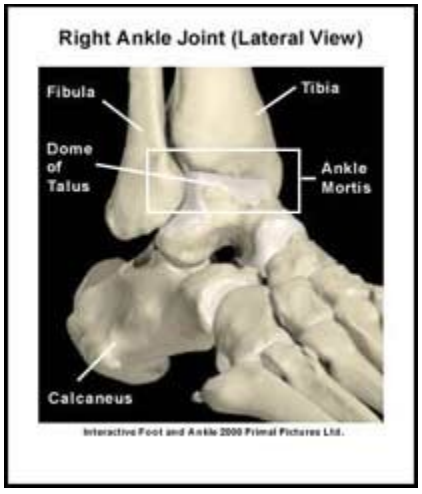
Posted on November 5, 2009 by John Hochfelder

The good news for the plaintiff is that his **$1,000,000 pain and suffering verdict for disabling ankle fractures has been upheld on appeal**; the bad news for lawyers and the public is that the **decision gives little guidance as to why** the judges concluded that the jury award was a fair and reasonable amount.

On January 8, 2003 at about 7 a.m., then 26 year old Daniel Conway was on his way to work when he began to descend a **New York City subway staircase, like this:**

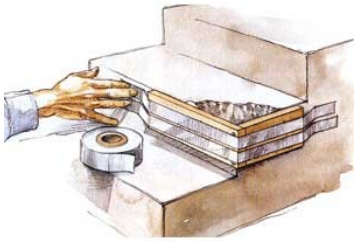
As he took his second step, Daniel lost his balance and **fell down the stairs** because there was a 2 ½ inch deep and wide piece of the step missing on the tread surface edge where the ball of his foot would have landed. He sustained **fractures of the talar bones in both ankles** and underwent arthroscopic surgery to repair the fractures and remove cartilage that had separated from the bone.

The talus is the tallest bone in the foot and one of the bones that makes up the ankle joint:



Liability was established 100% against the New York City Transit Authority after the jury saw photos of the defect, heard from plaintiff's engineering expert that the defect was present for at least two years before the accident and heard from defendant's station agent that the defect should have been reported for repair but wasn't.

The city could have avoided the $1,000,000 verdict with a simple repair like this:



One million dollars for ankle fractures pain and suffering with just arthroscopic surgery sounds like a lot; indeed, to the defendant it's unreasonably excessive. The appeals judges, though, held that the amount did not deviate materially from what was reasonable. And that's all the judges said in this week's decision in **Conway v. New York City Transit Authority** affirming the **$1,000,000** jury verdict ($200,000 past - 5 years, $800,000 future - 50 years) – no other explanation, no other details, and precious little guidance for anyone analyzing future ankle fracture cases.

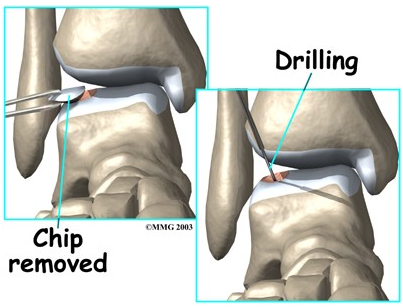
New York's **CPLR 5522** requires appellate courts to identify the reasons for their decisions in cases where they modify or affirm a pain and suffering damages verdict. When they fail to explain their decisions, we dig deeply and uncover the facts and other relevant matters in the case so that lawyers and the public will be better able to evaluate similar cases with similar injuries.

Here are the details of Daniel Conway's ankle injuries:

- on the left, a partial **avulsion of the lateral aspect of the dome**
- on the right, **Stage IV talar dome injury** **with cartilage separated** entirely from the bone

And here are the treatment details:

- on the right, **arthroscopic repair of the talar dome fracture** with the cartilage edge ground down and a hole drilled into the bone to encourage fibrocartilage to move up into the joint
- on the left, a similar **surgical procedure including a clean out of the joint, debridement and subchondral abrasion and drilling**



After four months at home, Mr. Conway returned to his work as an airport security screener but after 10 months he had to quit due to pain. At the time of trial he was a lather (using a wood working machine). He was still in pain every day, had to ice his feet after work and could no longer participate in any recreational sports.

His surgeon testified that Daniel has early onset **arthritis** and will require **additional surgery** in the future – both arthroscopic and **ankle fusion**.

In arguing for and against the amount of the jury's pain and suffering award the attorneys in this case, as do the attorneys in all such cases, pointed to and analyzed judicial decisions in other similar cases. **The appeals judges in Conway v. New York City Transit Authority all but ignored the parties' briefs on appeal and all but ignored all relevant prior cases**. The only cases referred to in the decision affirming the $1,000,000 verdict are **Pryce v. County of Suffolk** (2008), **Crockett v. Long Beach Medical Center** (2005) and **Stylianou v. Calabrese** (2002). Two of the three cases cited did not deal with ankle injuries and are largely irrelevant and the third case is simply not at all the most relevant ankle injury case and reference to it is misleading.

1. Pryce (a decision that gave no information at all as to the nature of plaintiff's injuries, the details of which we previously disclosed and discussed **here**) upheld a **$575,000** pain and suffering verdict ($300,000 past - 4 years, $275,000 future - 18 years) for a 63 year old man who sustained distal tibia fractures requiring open reduction internal fixation surgery.
2. Crockett was a medical malpractice case involving an injection of pain medication following a shoulder injury with resulting nerve damage and pain to plaintiff's hip and leg for which a jury awarded and the appellate court upheld **$198,000** for pain and suffering ($48,000 past – 5 years, $150,000 future – 49 years). There was nothing in the decision to indicate the nature of the injuries or the pain and suffering amounts.
3. Stylianou was a car accident case in which the 32 year old plaintiff sustained a shoulder injury requiring surgery and was awarded pain and suffering damages of **$550,000** ($200,000 past - 3 years, $350,000 future – 20 years).

It is of little use or value to the bar and the public when appellate courts rule on million dollar cases and cite precedent that has little or no relevance. That's especially so where, as in the Conway case, there is ample relevant prior case law that could and should have been cited. **Boulukos v. 213 P.A.S., L.L.P.** (2004) involved a 38 year old man who sustained fractures in the talus of each ankle with bone fragments – almost the precise injuries ruled on in Conway. In Boulukos the jury awarded plaintiff $2,000,000 for 35 years of future pain and suffering, the trial

judge reduced that to $960,000 and the appeals court modified it up to **$1,500,000** (facts not referred to in the court's decision but discovered by us). That's a case cited by plaintiff in his brief in Conway but ignored by the court in its decision.

It's become a recurring theme for us – the failure of appellate courts to discharge their obligations under the law to identify the reasons for their decisions. As we have discussed before (for example, **here** and **here**), the law requires courts to look to similar appealed verdicts and exercise their judgment in ruling on the reasonableness of damage verdicts. In that manner they are to promote greater stability in the tort system and greater fairness for similarly situated plaintiffs and defendants. **We will continue to expose significant decisions that do not meet the statutory standard and, at the same time, uncover and report the facts and cases that should have been discussed.**