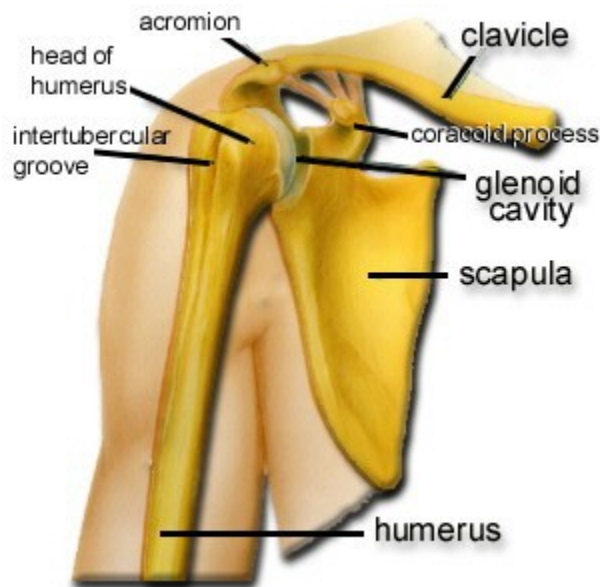


Scapula Fracture: \$1,600,000 Pain and Suffering Verdict Reduced on Appeal to \$500,000

Posted on June 25, 2009 by [John Hochfelder](#)

The **scapula**, also known as the shoulder blade, is the flat triangular bone of the shoulder girdle. It articulates with the clavicle (the collarbone) and it forms the glenoid fossa with which the humeral head articulates.

Take a look:



There aren't a lot of scapula fracture cases or decisions that result in large pain and suffering damage awards or appellate court decisions. In part, that's because when it's only the scapula that's injured it's usually not too serious and heals well without surgery. When it's a bad scapula fracture, there are often other injuries too such as head injuries or facial fractures which often dwarf the scapula fracture insofar as pain and suffering is concerned.

This month, though, an appeals court in New York weighed in on the amount of pain and suffering damages that's proper in a case involving only a scapula fracture. In [Keaney v. City of New York](#), a 57 year old construction worker was unloading wooden planks and frames when **two planks fell from the top of 30 foot scaffolding and struck the plaintiff on the right shoulder**, knocking him to the ground.

Michael Keaney was taken by ambulance to the hospital where he was diagnosed with an **extensive, comminuted fracture of his right scapula**. By the time of trial seven years later, the fracture itself had healed but Keaney testified that he:

- could no longer raise his right hand and had to use his left hand for all activities of daily living such as using the toilet, shaving and brushing his teeth.
- underwent physical therapy for seven years
- was still on painkillers seven years later, and,
- was never able to return to work

The Queens County jury awarded Keaney \$1,600,00 for his pain and suffering (\$700,000 past; \$900,000 future) and the defense appealed arguing that the verdict amount was excessive.

The appeals court agreed with the defense and ordered a reduction to \$500,000 (\$200,000 past, \$300,000 future).

The \$500,000 for pain and suffering for a fractured scapula in a 57 year old man is the highest reported such verdict (i.e., for a case involving only the scapula). Plaintiff argued that his injuries were unique in that:

- his arm served no practical functional use and caused him exquisite, worsening pain
- he testified that he suffered a massive permanent shoulder girdle injury and adhesive capsulitis (frozen shoulder)



Inside Note: The appeals court indicated that a major reason for the reduction of the jury's verdict was that plaintiff had not submitted to the arthroscopic surgery his orthopedic surgeon recommended and had testified would likely help the plaintiff's condition. Judges routinely instruct juries using New York's Pattern Jury Instructions (in this case PJI 2:325) that:

a plaintiff who fails to have a recommended operation may be held to be unreasonable and denied all or some damages. If, though, the plaintiff satisfactorily shows the jury that his refusal to submit to surgery was due to his inability to pay for it (as was the case with Keaney) or that the surgery would not have relieved the pain (argued here) then the jury is told it should not reduce damages.

Clearly, in awarding \$1,600,000, the jury in this case "bought" all of Keaney's arguments concerning the reasons he declined the surgery. **Therefore, the appeals court should not have taken into account the surgery refusal in reducing the pain and suffering award.**

