

## Opposite Results in Two New York Neck and Back Injury Cases: When and How are Future Pain and Suffering Verdicts Upheld?

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The concept of **verdicts for future pain and suffering in injury cases** is pretty simple: juries are told that if they believe the evidence shows a plaintiff's injuries or disabilities will continue after the date the verdict is rendered, then the jury must award a reasonable sum of money for the plaintiff's future pain and suffering. The jury is also told to determine the length of time the plaintiff is expected to suffer.

**In two recent appeals court cases from New York, opposite results were reached as to the issue of future damages.** In one, the jury's refusal to award and future damages was upheld; in the other, the jury's refusal was overturned and a new trial ordered. Both cases involved neck and back injuries.

In [Delacruz v. Port Authority of New York](#), the Bronx County jury awarded a 30 year old woman \$25,000 for her past pain and suffering (8 years) and nothing at all for the future. Following a trip and fall accident, Ms. Delacruz sustained herniated discs in her back at L4-L5 and L5-S1 as well as a partial tear of her right knee's lateral meniscus and grade 3 chondromalacia, all of which required the following procedures:

- percutaneous discectomy at L4-L5, L5-S1
- partial lateral meniscectomy, chondroplasty, arthroscopy of the right knee

Here's what the **percutaneous discectomy** procedure looks like:



The defense argued that much of Ms. Delacruz's pain and suffering from the accident had been due to a heavy lifting injury to her back a year before the lawsuit injury and her being **grossly overweight** at the time of the accident. They also claimed she had fully recovered by the time of trial.

On appeal, the jury's award of \$25,000 for past pain and suffering was held to be too low and was thus increased to **\$75,000**. The **jury's refusal to award any future pain and suffering damages was upheld**. The appellate judges said that it was reasonable for the jury to decline any

future damages in view of competing expert medical testimony and a surveillance video of plaintiff.

In [Zgrodek v. Mcinerney](#), plaintiff was injured in a car accident and sustained neck and back injuries each requiring surgery (he also claimed carpal tunnel injuries but the jury rejected that claim). The defendant conceded liability. Under New York's Insurance Law Section 5102, however, the plaintiff was entitled to recover pain and suffering damages only by proving that at least one of the statute's nine categories of "**serious injury**" had been met. [This restriction applies only to automobile accident cases in New York and was intended by the legislature to weed out minor whiplash cases.]

The Ulster County jury found that Mr. Zgrodek's **neck and back injuries qualified as a "significant limitation of a body, function or system."**



**The jury declined, however, to award any damages for pain and suffering - nothing for the past and nothing for the future.**

Plaintiff appealed claiming that there was an impermissible consistency between the jury's findings that (a) plaintiff sustained a "significant limitation" and is entitled to about \$77,000 for past medical expenses and \$70,000 for future lost wages but also (b) no damages at all should be awarded for his pain and suffering.

The defense argued that Mr. Zgrodek's spinal surgeries were due to lifelong degenerative changes, not the car accident trauma.

The appeals court agreed with the plaintiff and found that the jury verdict was flawed and that plaintiff is entitled to "reasonable compensation" for his pain and suffering. A **new trial was ordered** to be held at which time the jury:

- shall award an amount for past pain and suffering and
- may award an amount for future pain and suffering.

We will follow the [Zgrodek](#) case and report back upon a retrial or settlement.

Inconsistent damages verdicts in New York personal injury cases are all too common and we will no doubt revisit this issue soon. As new appellate court decisions are rendered, we will report and analyze them.