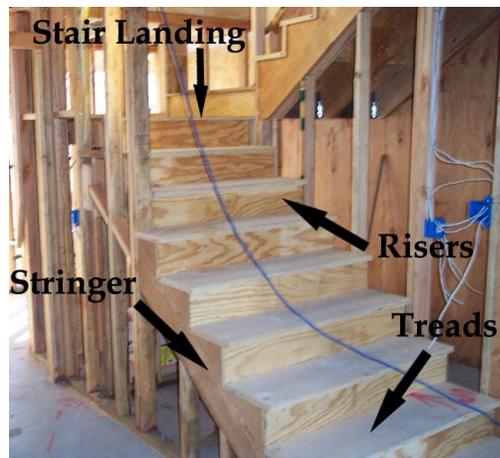


New York Appeals Court Inadequately Explains its Order Deducting \$455,000 from Pain and Suffering Verdict for Firefighter with Wrist, Shoulder and Knee Injuries

Posted on May 26, 2009 by [John Hochfelder](#)

On December 22, 1999, Lieutenant Nocenzu Cusumano, a New York City firefighter, reported to work at the city's recently renovated Staten Island training center. He slipped on stairway debris and fell 16 feet down to a concrete floor. He reached out for a handrail or banister but none was there as the renovation was illegal and violated the building code.

Like these stairs under construction, there was no handrail or banister:



Here are the injuries Lt. Cusumano sustained:

- crushed left hand and **wrist** with fractures of his hamate, capitate and lunate bones requiring reconstructive surgery with pins and wires
- left **shoulder** impingement requiring two surgeries (known as acromioplasty) to remove bone and scar tissue
- exacerbation of previously **torn meniscus in his knee** now requiring surgical repair

In the ensuing lawsuit, [Cusumano v. City of New York](#), a Queens County jury awarded plaintiff pain and suffering damages in the sum of **\$1,700,000 (\$1,200,000 past, \$500,000 future)**. The past award was for the seven years from the date of the accident to the date of the verdict. The future award was based on plaintiff's life expectancy of 15 more years.

The defendant appealed, claiming that \$1,700,000 was excessive and the appellate court agreed as to the past pain and suffering verdict. It **held that \$1,200,000 was too high and reduced it by \$455,000 to \$755,000. The \$500,00 verdict for future pain and suffering was affirmed.**

So, **on what basis did the appeals court conclude that \$455,000 should be deducted** from the jury verdict for past pain and suffering? We have previously noted that appeals courts often provide no basis at all in their decisions reducing personal injury jury verdicts (for example, [here](#) and [here](#)). In this case, though, the judges purport to provide some basis for their decision.

The decision states that " ... upon consideration of the nature and extent of the injuries sustained by the plaintiff [the court did recite the specific injuries in its decision], the jury's finding that the plaintiff sustained damages in the sum of \$1,200,000 for past pain and suffering deviated materially from what would be reasonable compensation to the extent indicated herein [i.e., the past pain and suffering verdict was \$455,000 too high]." That's the **usual standard statutory language of CPLR 5501 inserted into almost every appeals court decision wherein damages are reduced (or increased). That provides no guidance or justification.**

The judges then go on to cite **six prior cases as support for their decision**. Let's take a look at those cases and see if they do.

1. [Deshommes v. Hussain](#) - 40 year old taxi driver in car accident sustained a herniated disc (no surgery). The jury verdict of \$1,200,000 (\$300,000 past, \$900,000 future) was reduced on appeal to **\$700,000** (\$200,000 past, \$500,000 future).
2. [Pitera v. Winzer](#) - a 37 year old man in a car accident sustained a torn meniscus requiring surgery (as well as bulging cervical discs and a herniated lumbar disc none of which required surgery). The jury's \$1,100,000 verdict (\$450,000 past, \$650,000 future) was reduced on appeal to **\$550,000** (\$200,000 past, \$350,000 future).
3. [Jansen v. Raimondo & Son Constr. Corp.](#) - a 36 year old firefighter fell injuring both shoulders requiring surgery on each. The jury verdict of \$730,000 for future pain and suffering was reduced to \$400,000. The \$350,000 for past pain and suffering was affirmed and thus the total affirmed was **\$750,000**.
4. [Purcell v. Axelsen](#) - a motorcyclist sustained fractures of her pelvis (no surgery), wrist (surgery) and a lumbar vertebrae (no surgery). The jury verdict of a mere \$10,000 (past only) was increased on appeal to **\$250,000** (\$130,000 past, \$120,000 future). There were significant credibility issues at trial regarding both plaintiff and her treating doctor that resulted in the low jury verdict.
5. [Frascarelli v. Port Auth. of N.Y. & N.J.](#) - a 35 year old who was assaulted sustained a torn meniscus requiring arthroscopic surgery. Plaintiff was out of work for only six weeks and required no more surgery. The jury verdict of \$700,000 (\$300,000 past, \$400,000 future) was reduced on appeal to **\$450,000** (\$225,000 past, \$225,000 future).
6. [Perez v. Farrell Lines](#) - a 58 year old fell and sustained a traumatic brain injury and a shoulder injury. The jury verdict of **\$650,000** (\$400,000 past, \$250,000 future) was affirmed.

We have reviewed the six cited cases in detail and urge readers to do so as well. In many respects, they deal with injuries different from those ruled on in Cusumano v. City of New York. We do not believe they support the decision to deduct nearly half a million dollars from Lt. Cusumano. The jury that heard this case listened to each of the witnesses (including of course the plaintiff and his treating doctor), assessed the credibility of each and every witness and deliberated carefully among themselves before rendering their verdict. That's how our legal system works in New York injury cases.



An appeals court may disturb the jury's verdict only when it finds the amount deviates materially from reasonable compensation (CPLR 5501). To make that finding, the appeals court must have a basis. It cannot pull numbers out of thin air. It should explain its reasoning. **Merely citing cases, some of which involve similar injuries and some of which involve injuries not at all relevant is not right.** It is neither instructive to the bar and the public nor is it even academically proper.

More and instructive reasoning must be given so that the bar and the public can be guided by the upper and lower limits appeals courts are likely to set in New York injury cases. When that's done, there will be a reduction in trials as more cases are settled because everyone knows the limits.