

Woman's Leg Amputated after Bus Accident; \$27,500,000 Verdict Will Not Stand

Posted on May 6, 2009 by [John Hochfelder](#)

It's a **huge verdict for someone who lost a leg in an accident - \$27,500,000** - but it will never be paid. It will either be reduced on appeal or settled before then.

Here's the story. Plaintiff [Gloria Aguilar](#), then 45 years old, was walking in midtown Manhattan on November 4, 2005 when she was run over by a city bus turning a corner. Her left leg was crushed, it could not be saved in surgery and it was amputated above the knee. In **Aguilar v. New York City Transit Authority** (Index # 103132/06), a Manhattan jury heard this case for several weeks in March and April and awarded her \$27,500,000, finding the bus driver 100% at fault for the accident (even though it also found plaintiff negligent for not looking when she crossed the street). Her outstanding attorneys at [Gair, Gair, Conason, Steigman & Mackauf](#), led on this case by Ben Rubinowitz, believe it may be the highest verdict ever for a woman who lost her leg in an accident.

A New York City bus like this one crushed the plaintiff's leg:



The verdict in Aguilar will be appealed by the city on two grounds:

1. the pain and suffering award is excessive and
2. the finding of full liability against the city was against the weight of evidence

Insider Information: The jury verdict was \$16,000,000 for pain and suffering (which was in addition to \$9,500,000 for medical expenses and \$2,000,000 for loss of consortium to plaintiff's husband), broken down as follows.

- Past pain and suffering - \$4,000,000
- Future pain and suffering - \$4,000,000
- Past mental suffering, emotional and psychological injury - \$4,000,000
- Future mental suffering, emotional and psychological injury - \$4,000,000

So, Ms. Aguilar was awarded \$8,000,000 for past pain and mental suffering (for the 3 1/2 years from the 11/4/05 accident to the 4/16/09 verdict) plus \$8,000,000 more for the pain and mental suffering she is expected to endure for the rest of her life (i.e., an additional 32.6 years).

It's unusual for the mental suffering to be separately awarded in personal injury trials. In any event, the total of \$8,000,000 for past pain and mental suffering would not be sustained by an appeals court. Under the law, CPLR 5501, in our experience that figure - for a 3 1/2 year period - would be deemed excessive and reduced by one-half or more.

The \$8,000,000 for future pain and mental suffering (over a 32.6 year period) is likely to be reduced as well.

My opinion as to the pain and suffering awards in Aguilar being unsustainable comes not from any lack of sympathy for Ms. Aguilar; you couldn't give me \$50,000,000 to go what she's going through. Or even a billion dollars. No sum of money would be acceptable. But that's just not the standard (and we're not allowed to talk to the jury that way when suggesting an appropriate award in summation). We have a body of law to draw from - especially, prior appellate court decisions - to see what's sustainable in leg amputation cases.

In [Firmes v. Chase Manhattan Automotive Finance Corp.](#), a 23 year old mechanic drove his motorcycle through an intersection and collided with a left turning car. Mr. Firmes suffered a below the knee amputation of his leg and a Nassau County jury awarded him \$7,700,000 for his pain and suffering. The appellate court reduced that to **\$5,000,000** (\$1,500,00 past, \$3,500,000 future) without significant explanation. We learned from the appeal briefs in that case that plaintiff had undergone 11 surgeries and that his weight of 340 pounds meant it was unlikely he'd be able to use a prosthesis. Also, there was evidence from a psychiatrist that Mr. Firmes felt completely incapacitated and filled with hopelessness. He concluded that Firmes suffered from permanent depression and post-traumatic stress disorder and would need psychotherapy for the rest of his life.

More Insider Information: There is a significant distinction in leg amputations between those that are above the knee and those that are below the knee. It's much easier to be fit with a prosthesis and regain much function when the amputation is below the knee. The pain and suffering awards tend to reflect this distinction.

Here's an example of of an amazing physical recovery by a Michigan girl with a below the knee amputation who ended up a high school varsity athlete. And **here she is in action!**



In **Bondi v. Bambrick**, the appeals court affirmed a Manhattan jury verdict of **\$9,750,000** for pain and suffering for a 35 year old woman who lost part of her leg in an accident in which a drunk defendant drove across a double yellow line in the roadway and struck a motorcycle on which plaintiff was a passenger. Ms. Bondi underwent nine surgeries prior to trial and was left with pervasive scarring and a wound at the amputation site that may never heal. In addition, because of defendant's recklessness - he had previously been convicted for drunk driving and this time his blood alcohol level of .42 was the highest to date recorded in Suffolk County - the jury awarded punitive damages of \$7,000,000 (which the appellate court reduced to \$1,000,000).

In **Sladick v. Hudson General Corp.**, the appeals court upheld a Manhattan jury's award **\$7,500,000** for pain and suffering (\$2,500,000 past, \$5,000,000 future) for a previously athletic man in his 30's who sustained an amputation of his leg eight inches above his knee. In addition, he suffered deterioration of parts of his remaining leg and would have resulting consequential lifelong back pain.

Most recently, in **Cardonna v. Coach Leasing, Inc.** (Index # 100162/06; Supreme Court, New York County; 11/7/08), after a judge granted the plaintiff summary judgment on liability and the matter was to proceed to a trial on the issue of damages only, the parties reached a **\$6,000,000 settlement**. Plaintiff was a 47 year old woman who was hit by a bus and after three months in the hospital required a below the knee amputation of her leg. Her claim included about \$750,000 in medical expenses and lost earnings as well as an unspecified amount for future earnings (she had

been a physical therapist's assistant) so it's clear that the great bulk of the settlement was for pain and suffering.

The Aguilar case is far from over. The city has already announced it will **appeal**. Plaintiff's counsel will no doubt oppose any reduction.

Prediction: If taken to a full appeal, the verdict on liability will be upheld while there will be a significant reduction in pain and suffering damages. In the meantime, there will likely be settlement negotiations and if concluded, we will report back on the settlement when we obtain the information.