

# The Hochfelder Report

## THE CONSUMER'S GUIDE TO INJURY LAWSUITS IN NEW YORK

TRAUMATIC BRAIN INJURIES

ISSUE 9

In this issue of The Hochfelder Report, you'll discover....

- How much money New York juries awarded for traumatic brain injuries
- How much money New York lawyers accepted to settle cases
- What makes a brain injury's value in New York go up or down
- Types of injuries in the low-range, mid-range and high-range of values
- Details from actual New York brain injury cases
- Different types of traumatic brain injuries
- Accurate meanings of related medical terms
- Fine points of the brain's anatomy
- More!

This week, the Hochfelder Report focuses on traumatic brain injuries. Before we analyze the potential New York pain and suffering recoveries for this type of injury, let's define certain terms:

### Definitions

**Traumatic Brain Injury (TBI):** Damage to living brain tissue caused by an external, mechanical force. It is usually characterized by a period of altered consciousness (amnesia or coma) that can be very brief (minutes) or very long (months/indefinitely). The term does not

include brain injuries that are caused by insufficient blood supply, toxic substances, malignancy, disease-producing organisms, congenital disorders, birth trauma or degenerative processes.

Traumatic brain injury can also occur when the head accelerates and then rapidly decelerates or collides with another object (for example, the windshield of a car) and brain tissue is damaged, not by the presence of a foreign object within the brain, but by violent smashing, stretching, and twisting of brain tissue. Closed brain injuries typically cause diffuse tissue damage that results in disabilities that are generalized and highly variable.

**Brain Stem:** The lower extension of the brain where it connects to the spinal cord. Neurological functions located in the brain stem include those necessary for survival (breathing, heart rate) and for arousal (being awake and alert).

**Cognitive Rehabilitation:** Therapy programs that aid persons in the management of specific problems in perception, memory, thinking and problem solving.

**Coma:** A state of unconsciousness from which the patient cannot be awakened or aroused, even by powerful stimulation; lack of any response to one's environment. Defined clinically as an



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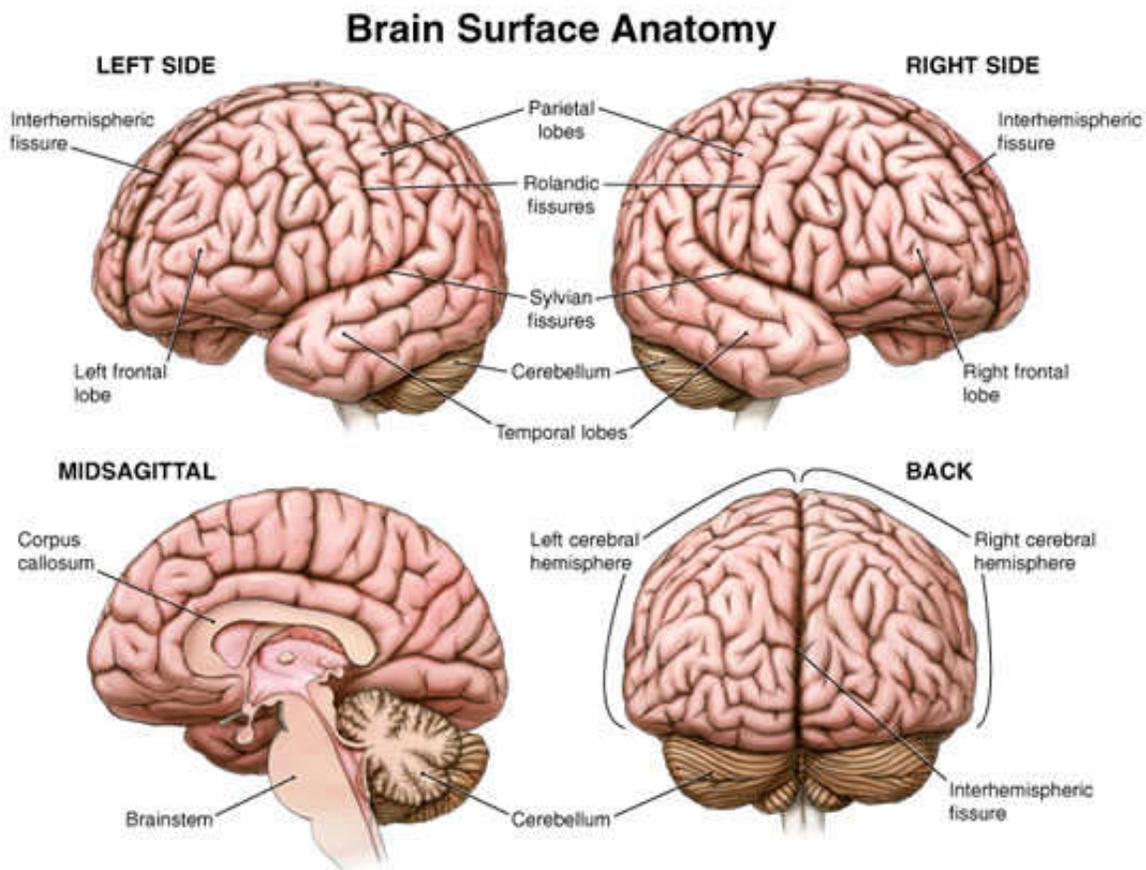
inability to follow a one-step command consistently; Glasgow Coma Scale score of 8 or less.

**Concussion:** The common result of a blow to the head or sudden deceleration usually causing an altered mental state, either temporary or prolonged. Physiologic and/or anatomic disruption of connections between some nerve cells in the brain may occur. Often used by the public to refer to a brief loss of consciousness.

**CT Scan/Computerized Axial Tomography:** A series of X-rays taken at different levels of the brain that allow the direct visualization of the skull and intracranial structures. A scan is often

taken soon after the injury to help decide if surgery is needed. The scan may be repeated later to see how the brain is recovering.

**Glasgow Coma Scale:** A standardized system used to assess the degree of brain impairment and to identify the seriousness of injury in relation to outcome. The system involves three determinants: eye opening, verbal responses and motor response, all of which are evaluated independently according to a numerical value that indicates the level of consciousness and degree of dysfunction. Scores run from a high of 15 to a low of 3. Persons are considered to have experienced a “mild” brain injury when their score is 13 to 15. A score of 9 to 12 reflects a “moderate” brain injury



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and a score of 8 or less reflects a “severe” brain injury.

**Hematoma:** The collection of blood in tissues or a space following rupture of a blood vessel.

**Epidural:** Outside the brain and its fibrous covering, the dura, but under the skull.

**Subdural:** Between the brain and its fibrous covering (dura).

**Intracerebral:** In the brain tissue.

**Subarachnoid:** Around the surfaces of the brain, between the dura and arachnoid membranes.

**Magnetic Resonance Imaging (MRI):** A type of diagnostic radiography using electromagnetic energy to create an image of soft tissue, central nervous system and musculoskeletal systems.

**Seizure:** An uncontrolled discharge of nerve cells that may spread to other cells nearby or throughout the entire brain. It usually lasts only a few minutes. It may be associated with loss of consciousness, loss of bowel and bladder control, and tremors. May also cause aggression or other behavioral change.

Now, let’s look at the brain anatomy and a skull fracture:

The Hochfelder Report provides facts and estimated ranges of value for New York pain and suffering for specific traumatic injuries. Often in trauma cases, many body parts are injured. As a result, the verdicts, settlements and case histories that you often hear discussed on the evening news or in the newspaper do not help you determine the value of your injury when you have injured only one body part.

Therefore, please understand that if you have suffered a traumatic injury to more than one part of your body, you should use the information in The Hochfelder Report only as a starting point. The value of your case could be much less or much more than the amounts discussed here.

Often, in cases involving traumatic brain injury — resulting from car accident trauma and construction injuries — the victim has other injuries as well. These frequently include skull fractures, pelvic fractures, scars, internal organ injuries and neck injuries. For information about a specific claim regarding those injuries, see The Hochfelder Report that deals with that specific injury.

If we haven’t discussed your injury, you’re invited to call John Hochfelder, who will gladly discuss your injuries with you at no cost or obligation. You’re invited to call John toll free at 1-800-530-4660, or locally, 914-686-0900.

Traumatic brain injury is an often-used and sometimes misunderstood term. Many plaintiff attorneys attempt to overreach and claim TBI for their clients any time an injured party strikes his head in a traumatic accident or suffers from headaches. Jurors often reject TBI claims when (1) an impact is minor, (e.g., no visible car damage), (2) there’s been no loss of consciousness, (3) there is no objective proof of TBI, such as positive findings on an MRI or CT scan, or (4) the claim is — for whatever other reason — just not believable.

Conversely, with significant impact accidents (e.g., the cars are totaled and smashed), comas, surgeries, skull fractures, positive MRI or CT findings and the like, TBI pain and suffering recoveries may be worth millions of dollars.

Please understand that the values set forth here are for pain and suffering only. The dollar amounts can be much higher when an injured

person also incurs significant lost wages, significant medical expense payments and other so-called special or out of pocket damages.

Note: The verdicts and settlements described in this issue of The Hochfelder Report were current on the date of publication. If you'd like to verify that these case results are current, please call John Hochfelder at 914-686-0900. Or, if you're outside the local area, call John toll free at 1-800-530-4660.

Now, here are the estimated New York pain and suffering values of injuries based on the circumstances described:

#### **Low Range of Value for a Traumatic Brain Injury: \$0 to \$200,000**

Your case is often valued in the \$0 to \$200,000 range when any or all of the following factors are present: When you experienced a minor traumatic impact. When there is no positive test finding on a CT, MRI or otherwise. When you did not lose consciousness or lapse into a coma. When you require only minor hospitalization or rehabilitation. When you do not need surgery. When there are measurable cognitive deficits. When you have a good recovery. And when your case would be tried in an area where juries are conservative in their awards.

**Actual Case: \$0.** A defense verdict on damages (i.e., a jury award of \$0) was rendered by an Orange County jury in a light impact car accident case in which a 59-year-old man claimed TBI. Despite testimony from the plaintiff's neurologist claiming the existence of TBI, the jury rejected the claim in total.

**Actual Case: \$12,150** jury verdict for a 50-year-old Nassau County man claiming TBI from a rough private plane landing. He claimed memory loss, inability to multi-task, severe headaches,

cognitive deficits and a hearing loss.

#### **Mid Range of Value for a Traumatic Brain Injury: \$200,000 to \$750,000**

Your case is often valued in the \$200,000 to \$750,000 range when any or all of the following factors are present: When you experienced a significant impact or fall. When you were in a coma. When you were admitted to the hospital for a significant time, not just overnight. When you require surgery. When you require significant outpatient rehabilitation. And when your case would be tried in an area where juries are about average in their awards.

**Actual Case: \$250,000** Suffolk County recovery for pain and suffering for a 4-year-old boy who suffered a skull fracture with hematoma evacuation and TBI resulting in possible cognitive deficits.

**Actual Case: \$450,000** recovery for a 39-year-old man in a car accident in Livingston County who suffered mild TBI with cognitive deficits including memory impairment. He was hospitalized for two days and underwent several months of rehabilitation.

**Actual Case: \$650,000** recovery for a 29-year-old Bronx County woman whose TBI resulted from a vicious criminal assault. She exhibited a Glasgow Coma Scale of 8 at the scene, which is highly indicative of a coma.

#### **High Range of Value for a Traumatic Brain Injury: \$1,000,000 to \$7,000,000**

Your case is often valued in the \$1,000,000 to \$7,000,000 range when any or all of the following factors are present: When you experience a huge impact or trauma at the scene. When you have at the accident scene significant visible open

wounds to the head, including skull fractures. When you have at the accident scene a significant loss of consciousness, resulting in a coma of significant length. When you require extended hospitalization. When you require surgery. When you require many months of rehabilitation. When physicians agree you have significant cognitive deficits, such as memory loss and the inability to function in society.

**Actual Case:** \$1,200,000 recovery for a 34-year-old man in Manhattan who had a head-on car accident. He suffered a closed-head injury with cognitive deficits and brain stem injuries with vision problems. The man was in a coma for four weeks and on a ventilator. He remained in the hospital's trauma intensive care unit for six weeks and required multiple surgeries including a tracheostomy.

**Actual Case:** \$1,400,000 recovery in New York County for a 30-year-old man who fell head first down a scaffold ladder at a construction site. He suffered a closed-head injury resulting in TBI and cognitive impairment, post-traumatic reactive psychosis and emotional distress with personality disturbances, chronic pain and depression.

**Actual Case:** \$5,000,000 appellate court determination. The court approved a New York County jury award of \$5,000,000 for a 43-year-old woman who suffered several skull fractures in a heavy impact accident with a police vehicle. She had brain damage with progressive tissue loss in her occipital lobes, memory loss, permanent inability to lie down (she slept sitting up), permanent termination of sexual relationship and complete loss of smell and taste and seizures.

**Actual Case:** \$7,000,000 upstate appellate court determination for a 22-year-old law student in a massive car accident who suffered a severe brain

injury that left him paralyzed on one side, able to speak only a few words and able to communicate only by blinking his eyes. The jury award of \$15,000,000 for pain and suffering in this case was reduced by the appellate court to \$7,000,000.

**You're Invited to Call or E-mail!**

*"If you or a loved one has suffered a traumatic brain injury, you're invited to call me. I will ask questions about your injury and help you determine the value of your claim.*

*Call me toll free at 1-800-530-4660 or e-mail [jhochfelder@newyorkinjurycases.com](mailto:jhochfelder@newyorkinjurycases.com). I promise I'll do everything I can to help you."*

—John Hochfelder