

[Appellate Court Upholds Jury Verdict Finding Police Officer Caused Wrist Injury with Excessive Force and Negligence in Arrest but Reduces \\$1,100,000 Pain and Suffering Verdict to \\$450,000](#)

Posted on April 6, 2010 by [John Hochfelder](#)

On June 7, 2003, two New York City **Police Department officers responded to a criminal trespass call** at 439 East 135th Street in the Bronx where 48 year old Juanita Young was asleep in a second floor apartment.

The police had been called by the landlord who had obtained an **eviction order due to Ms. Young's non-payment of rent** and the city marshals had already changed the locks. Ms. Young had re-entered the apartment and now the **cops were there to arrest her and take her out.**



That they did but, **on the way down the stairs, with her hands cuffed behind her back, the legally blind Ms. Young fell down the stairs and hurt her wrist.**

In her ensuing civil lawsuit against the city claiming excessive force and negligence in the arrest, Young won a **\$1,100,000 pain and suffering jury verdict for her wrist injury (\$600,000 past – 4 ½ years, \$500,000 future – 10 years)**. In addition, she was awarded \$250,000 for civil rights violations because after the arrest she wasn't given a desk appearance ticket and was in jail for more than a day before she was released on her own recognizance (she was ultimately acquitted of the criminal charges in a separate trial).

The **city appealed** claiming that there was insufficient evidence to justify excessive force or negligence, the pain and suffering awards were unreasonably excessive and there was no basis for the civil rights violation award.

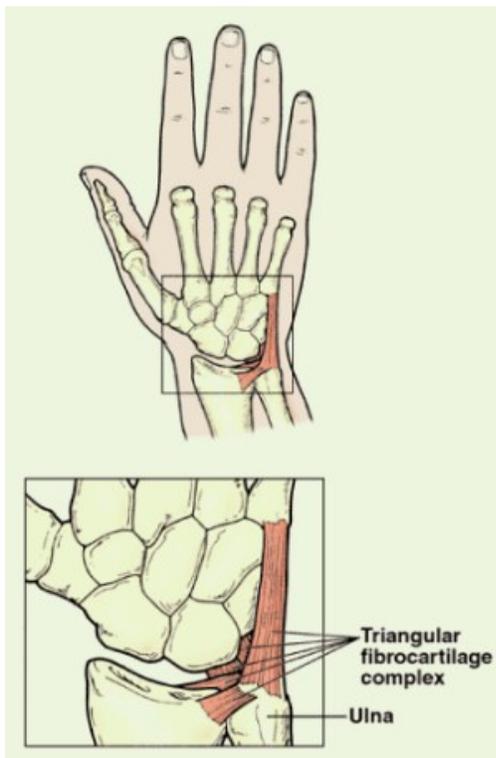
In a decision released this week, in [Young v. City of New York](#) (1st Dept. 2010), the **pain and suffering award was reduced to \$450,000 (\$300,000 past, \$150,000 future)** and the civil rights claim was dismissed entirely.

Unfortunately, as is so often the case, the judges disclosed very little about the actual injuries involved in the case and they gave **no explanation at all for why they decided to reduce the pain and suffering award by \$650,000 (a cut of nearly 60%)**. As we often do, we've dug up the trial transcript, delved into the briefs on appeal and brought to light the underlying facts so that readers can try to make sense of and give perspective to appellate court decisions that otherwise don't allow for either.

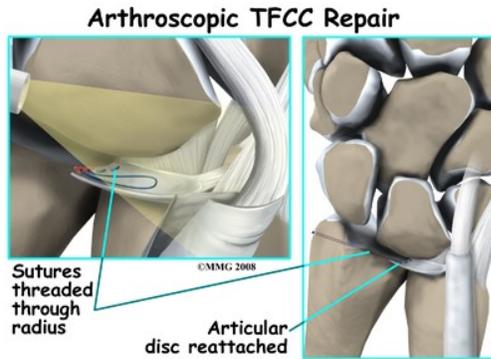
After Ms. Young fell down the stairs, while still under arrest, she was taken to the hospital complaining of right wrist pain. She was treated with a splint, a sling and pain medication. Over

the next eight months, despite physical therapy and extensive treatment with an orthopedic surgeon, she failed to improve, her pain was unrelenting and an **MRI finally revealed the cause: a tear in the triangular fibrocartilage complex (TFCC).**

The **TFCC is a segment of cartilage in the wrist joint.** In Ms. Young's case, a piece of ligament had been torn during her fall and had been flapping around in the joint causing irritation and pain.



Surgery was required in which two holes were made in Ms. Young's wrist through which little scopes (thus, the name "arthroscopic surgery") were inserted – one to visualize the wrist joint and the other, with a tiny shaver attached, to operate through and remove the ligament flap. The idea was to reduce the pain by **removing the irritating ligament** but, ultimately, as the surgeon testified ([transcript of Albert Grazioso, M.D., here](#)), this is only buying time because the ligament removal leaves the wrist bones unprotected and more susceptible to bone on bone friction contact (the classic precursor to arthritis).



At trial, **plaintiff testified** that she:

- has near constant shooting, sharp pain in her wrist,
- could not write (she is right hand dominant) and
- has difficulty holding cooking and even eating utensils.

Her doctor testified that her condition is **permanent**, her prognosis is guarded and she will develop early **arthritis** which may require a risky **distal osteotomy** (a surgical procedure in which the bone is transected or cut, usually to correct rotational or angular deformities by allowing the bone ends to heal in a realigned position).

In addition to failing to discuss or even mention almost all of the injury details, **the appellate judges failed completely to discuss any comparable cases that would justify a modification** of the jury's pain and suffering verdict. We have previously noted, for example, [here](#) and [here](#), that appeals courts often provide no basis at all in their decisions reducing personal injury verdicts.

In arguing for a reduction of the award, the city cited two cases that warranted discussion and should have been compared and contrasted:

1. In [Garcia v. Spira](#) (1st Dept. 2000), the jury awarded \$640,000 (\$300,000 past, \$340,000 future) for a 36 year old woman who suffered a fracture of her nondominant wrist. Casting was unsuccessful and she required an external fixator. In reducing the verdict to **\$290,000 (\$130,000 past, \$160,000 future)** the appellate court noted that plaintiff was able to perform most of her usual pre-accident activities and felt pain only when the weather was bad.
2. In [Conley v. City of New York](#) (2nd Dept. 2007), a 74 year old woman fell and sustained a comminuted intra-articular fracture of the distal radius of her right hand requiring open reduction internal fixation surgery in which a metal plate with screws was permanently inserted. Four years later, her volar flexion range of motion had improved only to 30 degrees, she had permanent arthritis and difficulty carrying things. The jury awarded her \$14,000 (all for past) but the appellate court ordered an increase to **\$200,000 (\$125,000 past, \$75,000 future)**.

We've reviewed other wrist injury cases, for example [here](#) and [here](#), and several appear to have been worthy of some discussion before substantially modifying the award in Young v. City of New York. None were mentioned.

Inasmuch as **significant wrist injuries are often sustained in trip and fall, motor vehicle and construction accident cases** that end up in court, I hope that this insight into the facts and injuries in Young v. City of New York will result in an improved ability to evaluate these types of cases so that those that can and should settle before trial do so and the courthouse backlog is reduced to the benefit of all.

Inside Information:

- Juanita Young's 23 year old son was shot to death by a police officer in 2000 and her lawsuit on his behalf (Ferguson v. City of New York), claiming that the shooting was unjustified, resulted in a [\\$10,500,000 verdict almost all of which was then dismissed by the trial judge](#). Oral argument of her appeal is being heard today by the same court that just ruled on her wrist injury lawsuit.
- The city had two doctors examine Ms. Young before trial but decided not to call them to testify. Plaintiff's counsel suggested to the jury that this indicated they agreed with plaintiff's doctor as to the seriousness of the injuries.
- Plaintiff's attorney told the jury in opening statements that in closing he would ask them to award pain and suffering damages of \$1,100,000. He did so and that's exactly what they awarded. The defense argued there was no liability and therefore no damage.