

New York Injury Cases Blog

Posted at 5:38 AM on January 27, 2009 by John Hochfelder

Paralyzed from Diving Accident, Jury Awards \$76 Million - Will Verdict be Upheld or Paid?

As reported by **Walter Olson** at [Overlawyered](#), a 20 year old Merritt Island, Florida man just won a **\$76,000,000** jury verdict for damages he suffered as a result of a diving accident in which he broke his neck on the bottom of a shallow river. The pain and suffering component was **\$52,800,000**. He is now a quadriplegic (all four limbs are paralyzed).

Apart from the size of the damages award, this case ([Hoffman v. C&D Dock Works](#)) is noteworthy also because of other factors, [as reported in local newspapers](#):

- The young man answered a dare and sprinted down a dock as he jumped into the river.
- The defendant, C&D Dock Works, filed for bankruptcy protection and did not defend itself at trial.
- The defendant claimed there was no negligence because there was a rail at the edge of the water indicating a potential danger; however, a judge ruled last year that the defendant was negligent.

These types of headline cases leave many of our citizens feeling that the civil justice system has run amok. Has it? **Phillip Howard**, the author of upcoming book [Life Without Lawyers](#), summed up this sentiment well in an [op-ed article in yesterday's Wall Street Journal entitled "How Modern Law Makes Us Powerless."](#)

One wonders what it is the dock owner should have done to prevent a 20 year old boy from answering a dare, running down a dock and jumping into a river alongside which he had been working. As the dock company's former owner said: "There's got to be some common sense."

Then there's the damages award. Mind you, I practice traumatic injury trial law exclusively and am always trying to maximize my client's case and to obtain the most in damages that the law allows. And I am keenly aware that no amount of money ever compensates a traumatic injury victim such that it makes the whole thing "worth it." But **in my experience I can tell you that there's no way this quadriplegia**

pain and suffering damage award would be sustained in New York.

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The jury awarded of **\$52,800,000** for this young man's pain and suffering. And that was in addition to awards for so called special damages that are easily calculable: past and future medical expenses in the sum of \$23,200,000 and lost earnings in the sum of \$672,000.

In New York, juries have awarded tens of millions of dollars to paralyzed victims of negligence only to see the appellate courts substantially reduce those verdicts.

- [Brown v. City of New York](#) (Appellate Division, 2nd Dept.; 2000) - \$10,000,000 past and future pain and suffering awards for two brothers, 26 and 27 year old rendered quadriplegic and pentaplegic reduced to **\$4,000,000** each.
- [Driscoll v. New York City Transit Authority](#) (Appellate Division, 2nd Dept.; 1999) - \$10,000,000 jury verdict for past and future pain and suffering for a 19 year old rendered quadriplegic in a subway accident reduced to **\$2,000,000**.
- [Cruz v. Long Island Railroad Co.](#) (Appellate Division, 2nd Dept.; 2005) - \$28,000,000 jury award for past and future pain and suffering for a person rendered a T12/L1 paraplegic reduced on appeal to a total of **\$12,000,000**.

The Hoffman case is on appeal and as I indicated, it's very unlikely that any significant amount will be collected by the plaintiff. Even if the verdict on liability stands and even if the amount of damages is upheld, there remains the issue of payment. It's clear that the defendant allowed this case to be tried without a defense because there was no liability insurance and there are no significant assets from which collection of a judgment can be made. The defendant is now bankrupt, the plaintiff of course remains tragically paralyzed and our system of civil justice has been tested once again.

We will follow this case and report on future developments - both with respect to Mr. Hoffman and with respect to our civil justice system.

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Richard Wright - *January 30, 2009 11:09 AM*

The finding of negligence by the defendant may make more sense given two facts not noted in your description of the case:

- (1) The defendant was not the owner of the dock but the employer of the plaintiff and the general contractor for work being done on the dock.
- (2) The plaintiff's boss as well as fellow employees allegedly goaded him into jumping into the water (and, as you report, the defendant did not put up any defense).

See <http://www.orlandosentinel.com/news/local/state/orl-lawsuit2309jan23,0,1704148.story>

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