

## New York Injury Cases Blog

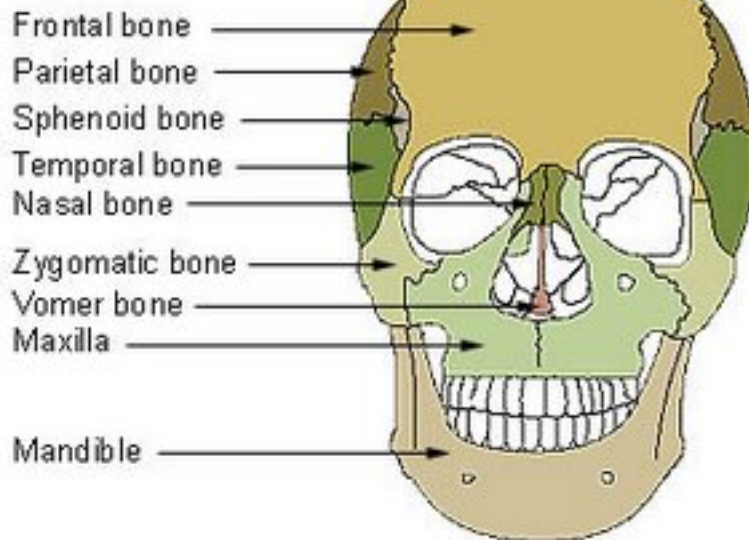
Posted at 5:16 AM on February 10, 2009 by John Hochfelder

### Facial Bones Fractured - \$2,750,000 Pain and Suffering Verdict for 16 year old Hit by Bat in School Softball Practice

On a beautiful spring day, **16 year old Chelise Navarro** had just finished her turn at bat during high school softball practice at a New York City high school. She handed her bat to the next player who took a full practice swing and .... You know what happened next. Bam. Smash. Crush. Bones broken. Chelise took a full, powerful bat swing right into her face and sustained a crushing fracture of of the bone under her left eyelid, displacement and bowing of the zygomatic arch (which forms the prominence of the cheek) and a fracture of her maxillary sinus.

Let's take a look at some of these facial bones:

#### Facial Bones



In **Navarro v. City of New York** (Supreme Court, Bronx County; Index # 25776/04; 11/25/08), Chelise claimed that the New York City Department of Education was liable for her pain and suffering injuries because her gym instructor didn't properly supervise the other students. And she won her case when the

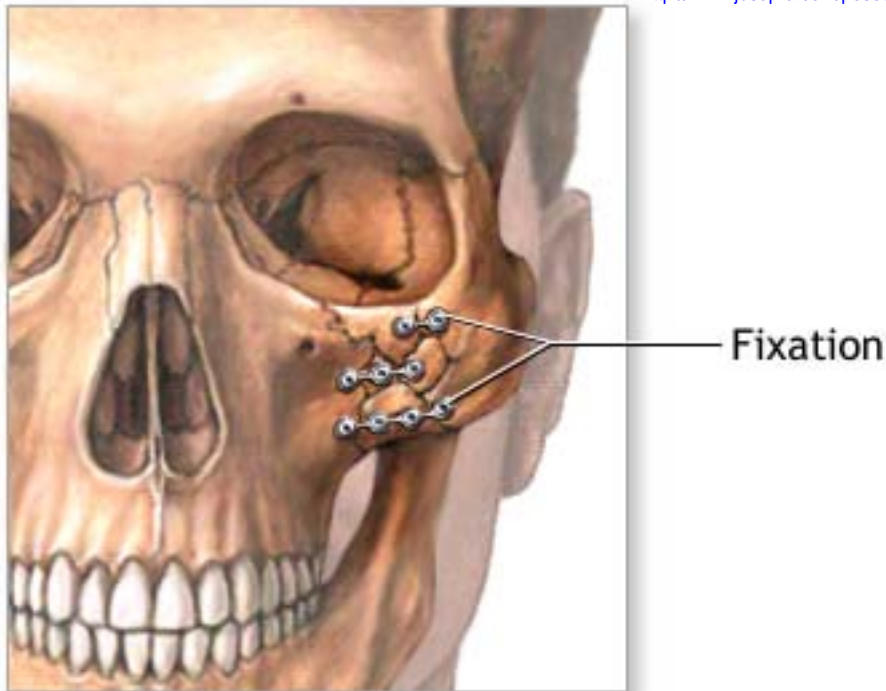
Bronx County jury (said by a character in the movie "Bonfire of the Vanities" to be the best juries for plaintiffs because they believe in the redistribution of wealth) awarded her **\$2,750,000** for her pain and suffering (\$750,000 past, \$2,000,000 future).

A post-trial motion is pending as we write and no matter what the judge decides, in my experience I can tell you that there will be an appeal of this case. Defense counsel is adamant that there was no liability on the city's part - that fault should rest only on the student who whacked Chelsie in the head. I think the city is right and will succeed on its appeal to have this case thrown out. Even if liability is upheld, though, the appeals court will very likely find that the **pain and suffering damages awarded were excessive and that they should be reduced substantially**.

A review of all of the reported and many unreported cases that dealt with jury awards for facial injury pain and suffering indicates that **the sustainable range for most of the significant facial injury cases is \$200,000 to \$500,000**.

Of course there will be an isolated case here and there with much higher or lower recoveries that are sustainable but they are the exception, not the rule. For example, there's the case of [Storms v. Vargas](#) in which an appeals court upheld a **\$4,000,000** Kings County pain and suffering verdict for a 31 year old police officer. But that case was atypical in that the plaintiff there was in a high speed emergency vehicle accident when his face was thrust into a metal and glass speedometer and his eye, face, nose and forehead were all crushed and had to be surgically rebuilt. By the time of trial, he had already undergone 26 surgeries, would likely need 16 more. He was, as the court declared, "a patient for life." Clearly, that case is extraordinary.

**Here's what happens when bones in the face are so broken that surgery with metal insertions (i.e., open reduction internal fixation) is needed:**



ADAM.

And here are some of the more **typical and recurring facial injury cases** which, as you will see, end up with sustainable verdicts in the **\$200,000 to \$500,000** range:

- [Resnick v. Linkow](#) - **\$400,000** (\$150,000 past, \$250,000 future) pain and suffering award for a 41 year old patient in a dental malpractice case in which plaintiff claimed a nerve was penetrated during dental implant surgery leaving him with permanent facial numbness, a drooling sensation and facial itchiness. The New York County jury had returned a verdict of \$2,000,000 but the trial judge reduced it to \$1,000,000 and then the appeals court even further.
- [Angerome v. City of New York](#) - **\$500,000** (\$200,000 past, \$300,000 future) pain and suffering award for a 15 year old passenger in a high speed car accident who sustained a traumatic injury to her jawbone, a left angle fracture and a right para-symphysis fracture. Her jawbones had to be wired shut for eight weeks, she had a second surgery to tighten the arch bars in her jaw and she was left with a permanent clicking and muscle spasms around her jaw. The Queens County jury had awarded her \$2,250,000 for her pain and suffering but the appeals court substantially reduced that figure finding that the jury's award deviated materially from what would be reasonable compensation.
- [Mancusi v. Miller Bewing Co.](#) - **\$500,000** (\$200,000 past, \$300,000 future) pain and suffering New York County jury verdict affirmed for a taxi cab passenger whose face was thrown against the Plexiglas partition separating the front and rear seats. She had lacerations to her face and inside her mouth, parasthesias affecting her chin and lip, trauma to seven teeth and internal derangement of her temporomandibular joint ("TMJ"). After extensive dental surgery, Ms. Mancusi was left with a permanent limited ability to open her mouth and the appeals court found

that the \$500,000 verdict was reasonable.

- [Cicalese v. Carter](#) - **\$105,000** (\$35,000 past, \$75,000 future) pain and suffering award to a woman in a dental malpractice case who claimed that her dentist caused her TMJ when he placed a bridge into her mouth too forcefully. The Suffolk County jury had awarded \$200,000 for Ms. Cicalese's pain and suffering but the appeals court reduced that sum apparently affected by the fact, not reported in the decision but found by me after searching through court records on file, that the plaintiff had been involved in a huge car crash three years before she sought the bridge treatment and that in the car accident she had huge facial injuries including a fractured cheekbone that required surgery. On top of that, there was evidence that three years before the alleged malpractice the plaintiff had complained of TMJ-like symptoms and was advised to see a TMJ specialist but that she failed to do so. I'd say this plaintiff was lucky to walk away from her dental malpractice case with any verdict at all.

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