

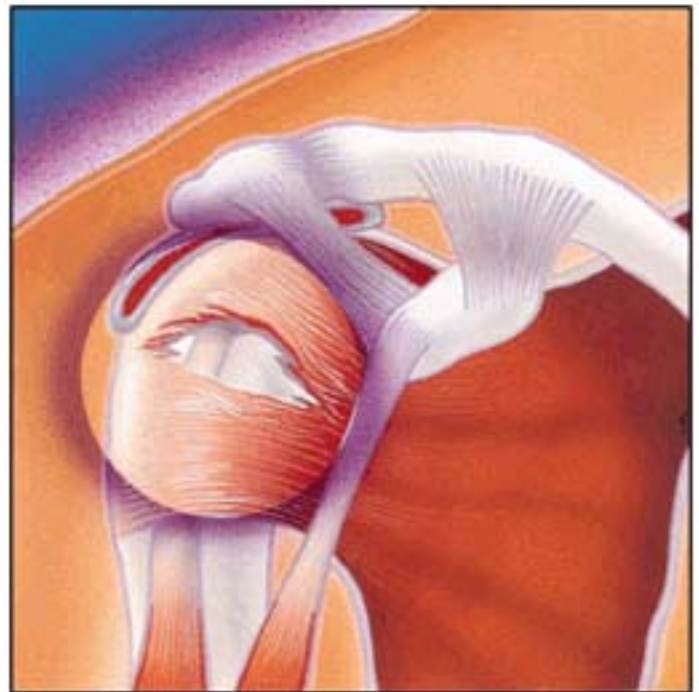
## New York Injury Cases Blog

Posted at 9:00 AM on January 13, 2009 by John Hochfelder

### **\$2,162,000 Verdict for Shoulder Rotator Cuff Injury**

Jurors in a recent shoulder trauma case tried to a verdict awarded **\$2,162,000** for pain and suffering involving a **torn rotator cuff**.

#### **Torn Rotator Cuff:**

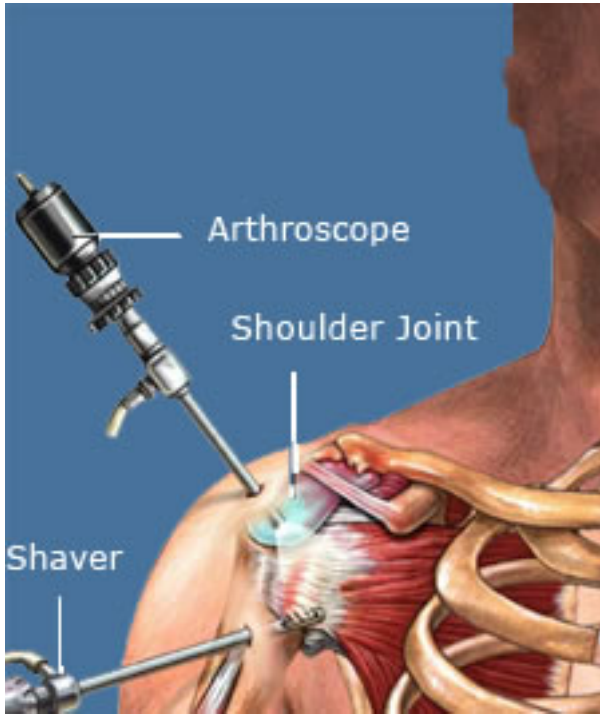


In another late 2008 jury verdict, **\$1,100,000** was awarded for pain and suffering for a similar injury.

These pain and suffering verdicts appear to be well above the norm and may be modified downward on appeal. Neither case resulted in a court decision that has been publicly reported; however, we have obtained detailed information about each case, both of which are discussed below.

In [Bauer v. NYC School Construction Authority](#) (Supreme Court, Kings County; Index # 4119/05), after

a seven day trial the jury determined that a 46 year old laborer who fell off a scaffold at a construction site was entitled to **\$2,162,000** for his pain and suffering (**\$650,000** past pain and suffering plus **\$1,512,000** future pain and suffering). Plaintiff's injuries included a **tear of his left, non-dominant shoulder's rotator cuff** that required three surgeries and left him with residual arthritis, fibrosis (a thickening of the connective tissues) and scar tissue).



In Kirk v. Bed Bath & Beyond, Inc. (Supreme Court, New York County; Index # 10694/06), a 69 year old actress was walking through an open interior doorway when the doorway's metal frame fell on her and injured her shoulder. She was awarded **\$1,100,000** for her pain and suffering (\$300,000 past pain and suffering plus \$800,000 future pain and suffering). She underwent arthroscopic surgery which disclosed an **irreparable torn supraspinatus tendon** and during which a piece of the clavicle was excised. A second surgery was required two years later - a palliative release of the shoulder's biceps and an anterior capsulectomy (removal of some membranes). Her orthopedic surgeon testified at trial that the falling door frame caused permanent inflammation of the shoulder which could not be fixed by more surgery. While the \$1,100,000 verdict may well be reduced on appeal, the defendant could have gotten out much cheaper with a settlement: the plaintiff offered to settle for \$750,000 but the defense offered only \$650,000 before the verdict.

While each case is different and each person's pain and suffering is unique, the appellate courts in New York will look to awards in prior cases for guidance when ruling on appeals from jury verdicts that are claimed to be excessively high or inadequately low. If either the Bauer or the Kirk cases discussed above is ruled on by an appellate court, it's likely that the following cases will be relevant:

- [DeSimone v. Royal GM, Inc.](#) - **\$350,000** pain and suffering verdict (\$100,000 past and \$250,000 future) upheld on appeal for a 30 year old hotel guest services agent in a car accident who sustained a **torn rotator cuff** and underwent an unremarkable arthroscopic surgery. She made a good recovery, was able to return to work within five months and required no further medical treatment after one year.
- [Miller v. Weisel](#) - **\$700,000** pain and suffering verdict (\$200,000 past and \$500,000 future) for **Erb's palsy** suffered by a boy due to medical malpractice at birth. He was 13 years old at trial and the appellate court reduced the jury's verdict from \$1,200,000 to \$700,000.
- [Chase v. Mullings](#) - **\$190,000** pain and suffering verdict (\$60,000 past and \$130,000 future) for a 58 year old woman in a bus accident who sustained a partial tear of her left, non-dominant **rotator cuff** requiring arthroscopic surgery.

Personal injury lawyers such as New York's Eric Turkewitz will tell you that just because you read about a verdict in the news, or it's reported in blogs such as here, does not mean the plaintiff will actually get the money. Under CPLR 5501(c), [as Turkewitz notes](#), and [as we have previously discussed](#), the **appellate courts can rule that a jury verdict deviates from what would be reasonable compensation and require a new trial on damages** unless the parties stipulate to the amount determined reasonable by the appellate court.

We will follow the recent verdicts discussed here for further treatment by the appellate courts and report if and when there are new developments.

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