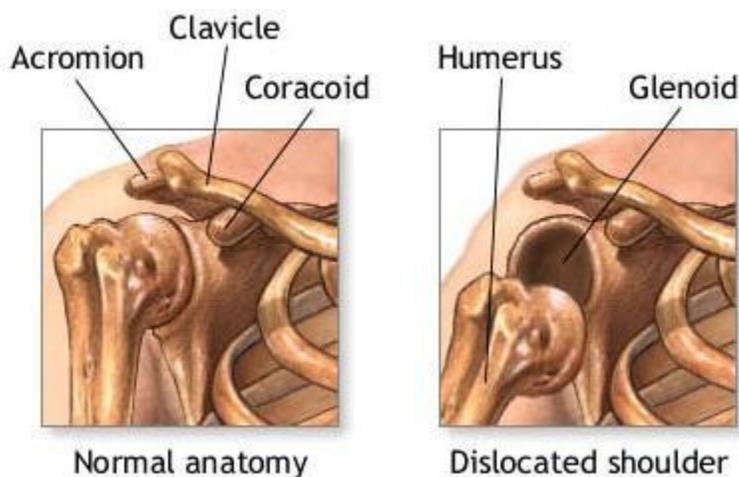


Shoulder Dislocation and Rotator Cuff Surgery - New York Judge Denies Plaintiff's Motion Challenging Inadequacy of \$10,000 Pain and Suffering Verdict

Posted on September 7, 2009 by [John Hochfelder](#)

There was no question as to liability - 54 year old Bill Bouzas slipped and fell on a wet floor at a New York City restaurant on February 1, 2007 and the jury found it was all the fault of the defendant. After a one week trial ending May 7, 2009, though, the same Manhattan jury ruled that Mr. Bouzas was entitled to only **\$10,000** for his past pain and suffering (and nothing at all for the future). This, despite the fact that his injuries included an **acute dislocation of his dominant shoulder** and surgery three months later to repair a **torn rotator cuff** in that shoulder.



In a post-trial decision handed down last week by the trial judge in Bouzas v. Koshers Deluxe Restaurant, plaintiff fared no better. The judge had the conditional power, under New York's **CPLR 4404**, to modify upward the pain and suffering award if she found it was against the weight of the evidence (i.e., if the amount deviated materially from what would be reasonable compensation). I say "conditional" because the judge can't impose a higher (or lower) figure on the parties; what she can do is declare that the verdict was unreasonable, state what amount is reasonable and then order a new trial unless the parties agree to the reasonable figure. Most cases then settle for the new figure (or there's an appeal to the higher court).

In Bouzas v. Koshers Deluxe Restaurant, the judge stated:

- " ... the award may deviate materially from what would be reasonable compensation for the injuries ..." and
- she found no cases in which less than \$80,000 was awarded for a shoulder dislocation.

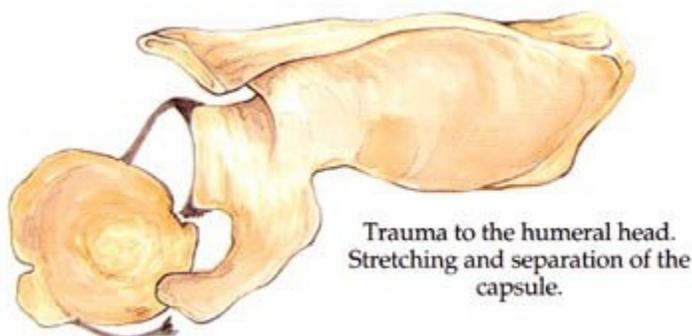
Then, inexplicably, the judge concluded that she was not empowered to adjust the verdict and that its inadequacy would best be addressed by an appeal to a higher court.

With a golden chance to eliminate further litigation in a garden variety slip and fall case (the kind of case that clogs the court system), the judge could have - and should have - ruled that \$80,000 was a reasonable pain and suffering verdict and that if the parties did not stipulate to that sum then there would be a new trial. In all likelihood, the parties would have agreed and the case would already be settled. Instead, plaintiff will now appeal and wait a year or more for a new ruling.

While the judge did not cite any of the pain and suffering verdicts she found on point (all of which she said were \$80,000 or more), **we set forth here some shoulder dislocation verdicts and, more importantly, appellate court decisions, that are relevant:**

- [Conte v. City of New York](#) - **\$300,000** (\$150,000 past, \$150,000 future - 28 years) for a 54 year old unemployed artist who tripped and fell sustaining a **shoulder dislocation and a Hill-Sachs lesion** requiring 2 1/2 months in a sling and surgery that plaintiff declined.

A Hill-Sachs lesion is a complication of shoulder dislocations, causing damage to the head of the humerus:



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- [Jansen v. C. Raimondo & Son Construction Corp.](#) - **\$750,000** (\$350,000 past, \$350,000 future) for an ironworker who fell from a ladder and sustained a **subluxation of one shoulder, a dislocation of his other shoulder, fractures to one humerus and bilateral carpal tunnel syndrome.** He required two surgeries already and will need more.
- [Guzman v. Cisse](#) (Supreme Court, New York County; 9/19/02; Index # 006778/96) - **\$175,000** (\$75,000 past - 7 years, \$100,000 future) for a 19 year old retail clerk struck by a car while crossing the street. He sustained a **dislocated dominant shoulder with rotator cuff injuries.**
- [Hertzmark v. Triple Mittil Foods, Inc.](#) (Supreme Court, New York County; 4/29/02; Index # 113318/99) - **\$150,000** (\$75,000 past, \$75,000 future) for a 39 year old fashion marketing executive who slipped and fell sustaining a **shoulder dislocation requiring arthroscopic surgery.** Ms. Hertzmark admitted to having dislocated her shoulder in a prior skiing accident.

For even more information on shoulder injury pain and suffering verdicts in New York, see our previous posts [here](#), [here](#) and [here](#).