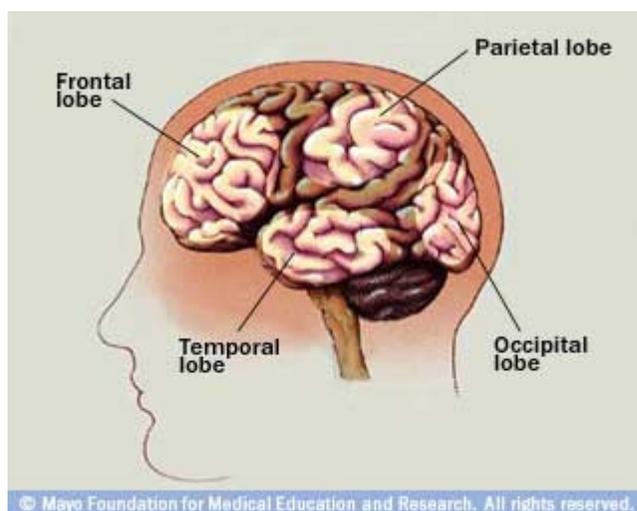


## New York Injury Cases Blog

Posted at 12:34 PM on December 31, 2008 by John Hochfelder

### \$750,000 Traumatic Brain Injury Decision

When a Bronx County, New York jury recently returned a verdict that failed to award **any** future pain and suffering damages in a traumatic brain injury case (in which the jury verdict was \$100,000 for six years of past pain and suffering (i.e., from the date of the incident to the date of the verdict), the trial judge thereafter ruled that the verdict for past pain and suffering should be increased from \$100,000 to \$250,000 and there should be a verdict for future pain and suffering in the sum of \$500,000 - total pain and suffering verdict of \$750,000. [Zimmerman v. Bd. of Ed of NYC](#)



The traumatic brain injury arose when a school counselor tried to break up a fight between two students she was escorting in a group of 12 at a school for behaviorally and/or emotionally disturbed kids. She was pushed down stairs, hit her head, was rendered unconscious and spent 4 days in the hospital. She suffered:

- epileptic seizures, which she'd never had before
- inability to drive a car or go to the supermarket
- seizure related incontinence

Her doctors testified she would need a major brain surgery and she's already been hospitalized almost a dozen times. She was unable to continue her work due to the seizures.

Juries are often unpredictable. Here, it seems odd that the jury made a significant award - \$100,000 - for past pain and suffering but then determined plaintiff should get nothing at all for pain and suffering damages for the rest of her life. And this was in view of undisputed testimony from plaintiff's doctors regarding her seizures and their consequences -- the defense put on next to no rebuttal of the plaintiff's medical testimony and no expert to

refute the plaintiff's expert. Big mistake.

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The judge applied the appellate standard for disturbing jury verdict amounts set forth at CPLR 5501 (c): he found that the jury's figures "deviated materially from what would be reasonable compensation" and the way he justified this was by reviewing other jury verdicts for pain and suffering in traumatically induced epilepsy cases.

For example:

[Sinkins v. City](#) - \$5,500,000 settlement in 2008

[Batiste v. City](#) - \$2,000,000 settlement

[French v. Schiavo](#) - \$7,400,000 verdict

For other cases involving jury verdicts and settlements in New York for pain and suffering in traumatic brain injury cases, see: [The Hochfelder Report on Traumatic Brain Injuries](#).

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