

## [Trial Judge Upholds New York Jury's \\$3,200,000 Pain and Suffering Verdict for 44 Year Old Electrician with Tibia-Fibula Fractures and RSD](#)

Posted on January 17, 2010 by [John Hochfelder](#)

Almost ten years ago, a month after the Great Neck, New York commercial office building at 1010 Northern Boulevard had been constructed and occupied, there was a problem with some of the emergency backup lighting fixtures. The tenant notified the building owner who in turn notified its general contractor. Then, the electrical subcontractor was notified and then the manufacturer who engaged an electrical services corporation to send out an electrician, **Daniel Hernandez**, to see what the problem was.

So, on July 21, 2000, there was Hernandez, at the site, on a ladder, replacing the ballast on a defective lighting fixture when he received an **electrical shock**, fell from the ladder, broke his leg and promptly sued everyone involved – the owner, general contractor, tenant and the manufacturer.

This is the **actual building** where Hernandez fell:



The lawsuit was based on [Labor Law Section 241\(6\)](#) which provides protections to workers injured at construction sites. Plaintiff claimed that his injuries resulted from a violation of a regulation that prohibits work on electric circuits unless there is protection from electric shock by de-energizing the circuits and grounding them.

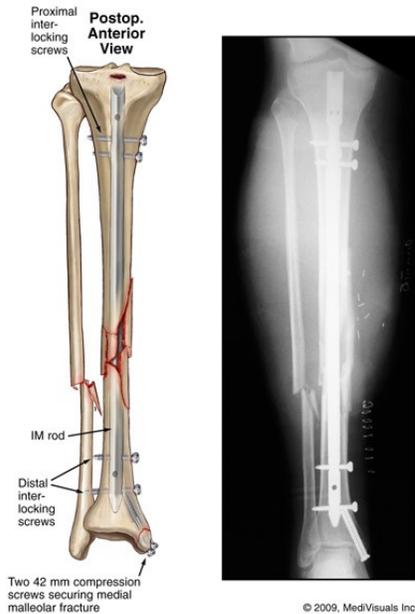
The trial began on October 6, 2008 and ended with a jury verdict on November 3, 2008 finding that Hernandez was shocked and fell because wires were not properly grounded and the power was left on.

Here's an **electrician on a ladder** working on ceiling lights just as Hernandez was:



In assessing damages, the jury heard from various doctors and the plaintiff. They testified that Hernandez sustained **comminuted, displaced fractures of his right tibia and fibula** requiring open reduction and internal fixation surgery (the placement of an intramedullary rod and screws from his knee to his ankle). The fibula fracture never healed – it was **non-union**. Furthermore, and most importantly, Hernandez developed **reflex sympathy dystrophy (RSD) affecting both legs**.

Here is what the tibia looks like after surgery with an **intramedullary rod** in place:



For pain and suffering the jury verdict was **\$3,166,667 (\$1,000,000 past – 8 years, \$2,166,667 future – 25.8 years)**. In a decision issued the day before Christmas last month, the trial judge, Louis B. York, upheld the award in full in [Hernandez v. Ten Ten Co.](#), after a post-trial motion by the defense claiming it was excessive. The defense argued that no more than \$1,680,000 should be deemed reasonable

At first glance, more than \$3,000,000 for tib-fib fractures seems excessive. Within the past year, we reviewed tib-fib fracture cases, [here](#), discussing recent appellate court decisions that have upheld awards in the range of \$1,100,000 to \$1,500,000. In the Hernandez case, though, there are significant additional injuries such as RSD and plaintiff's:

- inability to walk without crutches
- severe, permanent and progressive loss of right knee and ankle range of motion
- chronic persistent pain requiring lifelong use of narcotic pain medication
- inability to play with his children
- clinical depression requiring anti-depressant medication

In a well-reasoned opinion, the trial judge reviewed prior appellate court decisions dealing with **damages in RSD cases** ([Jeffries v. 3520 Broadway Management Co.](#) [2007], [Brown v. City of New York](#)

[2003] and [Valentine v. Lopez](#) [2001]) and they appear to be relevant and supportive of his decision to uphold this large verdict. For **additional information on recent RSD cases**, see our posts [here](#) and [here](#).

**Inside Information:**

- Plaintiff was also awarded \$1,900,000 for 19 years of lost earnings which the defense argued should be dismissed because there was no vocational rehabilitation expert testimony to justify the plaintiff's claim that he could no longer work at all. The judge properly upheld the lost earnings verdict noting that the doctors had testified plaintiff was incapable of holding **any** job so no need for vocational rehabilitation expert testimony.
- Plaintiff's wife was awarded \$341,666 for the loss of her husband's services for the eight years leading up to trial but nothing at all for future loss of services. The defense had argued that this award was excessive to the extent it exceeded \$75,000.
- The nearly 10 year delay from the accident to the verdict was due in part to an earlier appeal. In 2004, the defense had moved to have the entire case dismissed on the ground that the Labor Law did not apply because the building was not under construction at the time of the accident. That decision was reversed on [appeal in 2006](#) and the case allowed to proceed to trial.