

## Another \$1,000,000 Unexplained Appeals Court Reduction of a Pain and Suffering Damages Jury Verdict

Posted on March 19, 2009 by [John Hochfelder](#)

One day after [we wrote about an appeals court's unexplained reduction of \\$1,350,000](#) from a jury verdict for pain and suffering in a Suffolk County case, **today we have another appeals court doing the same thing. What's going on here?**

In [Lopez v. New York City Transit Authority](#), the plaintiff was riding his bicycle when it collided with a bus owned and operated by the defendants.



In the decision handed down today, the Appellate Division, First Department ruled on two significant matters arising out of the March 26, 2007 Manhattan jury trial:

1. the court held that the jury's apportionment of fault 70% to the bus driver and 30% to the plaintiff was fairly based on the trial evidence (some of which was mentioned in the decision), and
2. the **court held** that the jury's award of \$2,100,000 for past pain and suffering damages after apportionment was fair but **that the jury's award of \$5,600,000 for future pain and suffering damages after apportionment was not reasonable compensation and should be reduced to \$4,600,000** after apportionment

The court in this case gave absolutely no reason at all for why it found that \$4,600,000 represents reasonable compensation for future pain and suffering but \$5,600,000 does not.

- no statement of the facts about the injuries
- no guidance to the lawyers, this plaintiff or members of the public as to how to evaluate similar cases

To fill this void, we dug up facts in this case from the trial record and the arguments of attorneys involved (thanks to plaintiff's esteemed appellate counsel [Brian Shoot of Sullivan, Papain, Block, McGrath & Cannavo](#)):

- plaintiff Angelo Lopez, a 26 year old, was tragically injured on September 16, 2003 when the bicycle he was riding collided with defendants' **bus whose rear left wheel then ran over Angelo's right foot**
- Angelo suffered a degloving injury, underwent four surgeries, had gangrene set in and ultimately underwent an **amputation roughly midway between his knee and his ankle joint**
- his treating orthopedist testified that Angelo suffered from and would forever suffer from phantom pain, a well documented part of being an amputee
- the defense did not adduce any expert testimony to rebut plaintiff's doctor
- **the jury awarded \$3,000,000 for Angelo's past pain and suffering and \$8,000,000 for the future (reduced due to Angelo's 30% fault to \$2,100,00 past and \$5,600,000 future)**

Not only did the appellate court in Lopez v. New York City Transit Authority fail to reveal any of the foregoing facts we dug up but also it **failed to discuss any of the many case law precedents** that were cited to it in their briefs by able counsel on both sides. There were cases in which appeals courts sustained damage awards greater than those here for similar injuries and others in which appeals courts held there should be reductions. Some cases dealt with more serious injuries, some with less serious.

The point is, though, that **we are owed some guidance from the appeals courts, some justification for their decisions involving millions of dollars** and we are more and more often getting no explanation at all. In my humble opinion, that's got to change if the appeals courts want the bar and the public, as well as the parties before it, to be guided by their opinions and to act on them in a manner (i.e., settling cases for reasonable amounts) that will reduce the number of lawsuits brought to trial and appealed.

Surely that's a goal of the judicial system and it's one we lawyers would be glad to help effectuate. We just need some guidance from the courts as to the basis for these important decisions. **So far, that guidance appears lacking. Let's hope that will change. Soon.**