

New York Injury Cases Blog

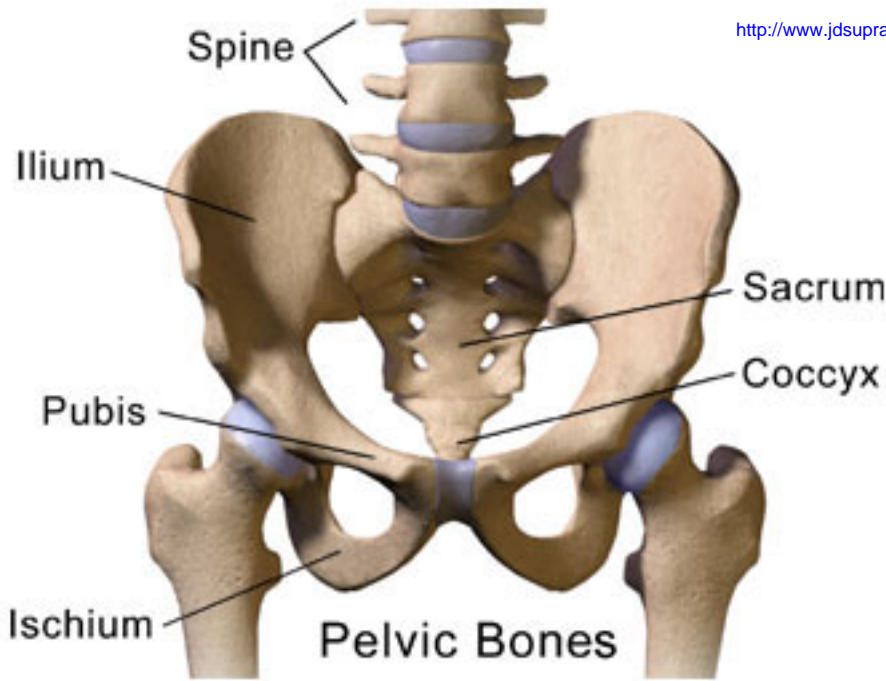
Posted at 9:48 AM on February 5, 2009 by John Hochfelder

Hip and Pelvis Injuries - Pain and Suffering Verdicts and Settlements Vary Widely in New York

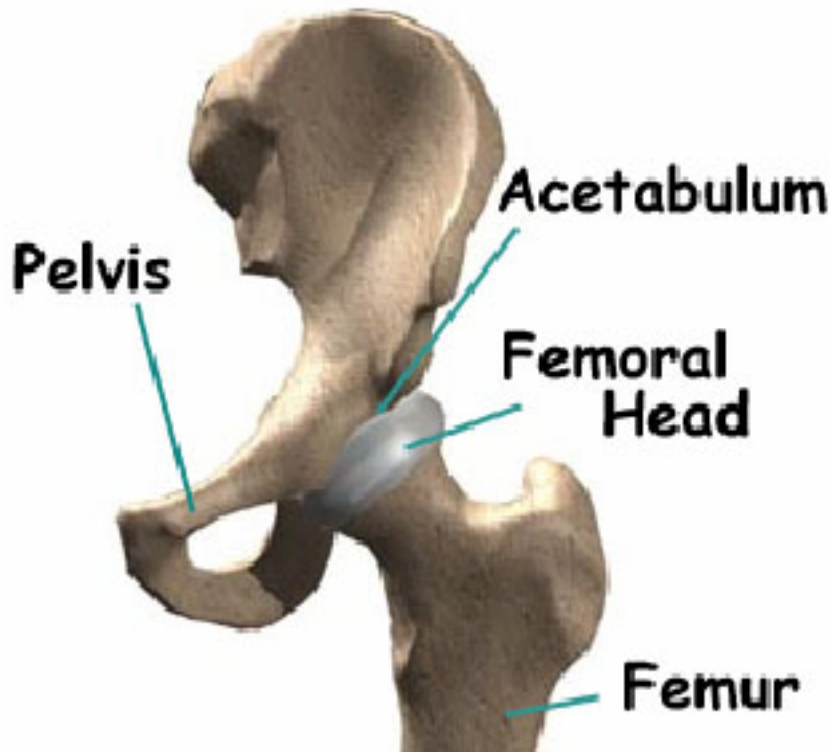
It usually takes quite a bit of trauma or force to break bones in one's hip or pelvis. And when that happens, additional bones are often broken too. So it's particularly difficult to find court cases that isolate and deal with pain and suffering just for the injured hip or pelvis. But that's just what I've tried to do in this post.

Most recently, the appellate court in [Denis v. City of New York](#) (Appellate Division, 2nd Dept.; 9/16/08), affirmed a Kings County jury verdict for pain and suffering in the sum of **\$1,000,000** (\$600,000 past, \$400,000 future) for a 60 year old man who fell 15 feet from an unsecured ladder. He sustained a comminuted fracture (where the bone is broken into two or more pieces) of his acetabulum (the hemispheric concavity on the pelvis - see below) that articulates with the head of the femur (the thigh bone). Mr. Denis also suffered a displaced fracture of his ilium and fractures of his pubis.

Before going further, let's take a look at the **anatomy of the pelvis**:



And now a closer look at the **anatomy of the hip:**



Mr. Denis was hospitalized for 37 days, almost all of which time he was in traction with an external fixation device surgically implanted. His doctor testified at trial that without total hip replacement surgery Denis would never be able to walk without a limp.

Two **significant trial court cases in 2008** dealt with hip fracture verdicts:

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- Kann v. New York City Transit Authority (Supreme Court, New York County; Index # 10334/07; 7/21/08) - **\$525,000** pain and suffering verdict (\$175,000 past, \$350,000 future) for an 86 year old woman who fell and suffered an intertrochanteric fracture of her hip that was addressed by open reduction internal fixation surgery.
- Utsey v. City of New York (Supreme Court, Bronx County; Index # 28638/03; 4/21/08) - **\$2,500,000** pain and suffering verdict (\$1,000,000 past, \$1,500,000) future for a 77 year old woman who fell and fractured her hip. Seven years after her initial open reduction internal fixation surgery, she underwent a total hip replacement surgery

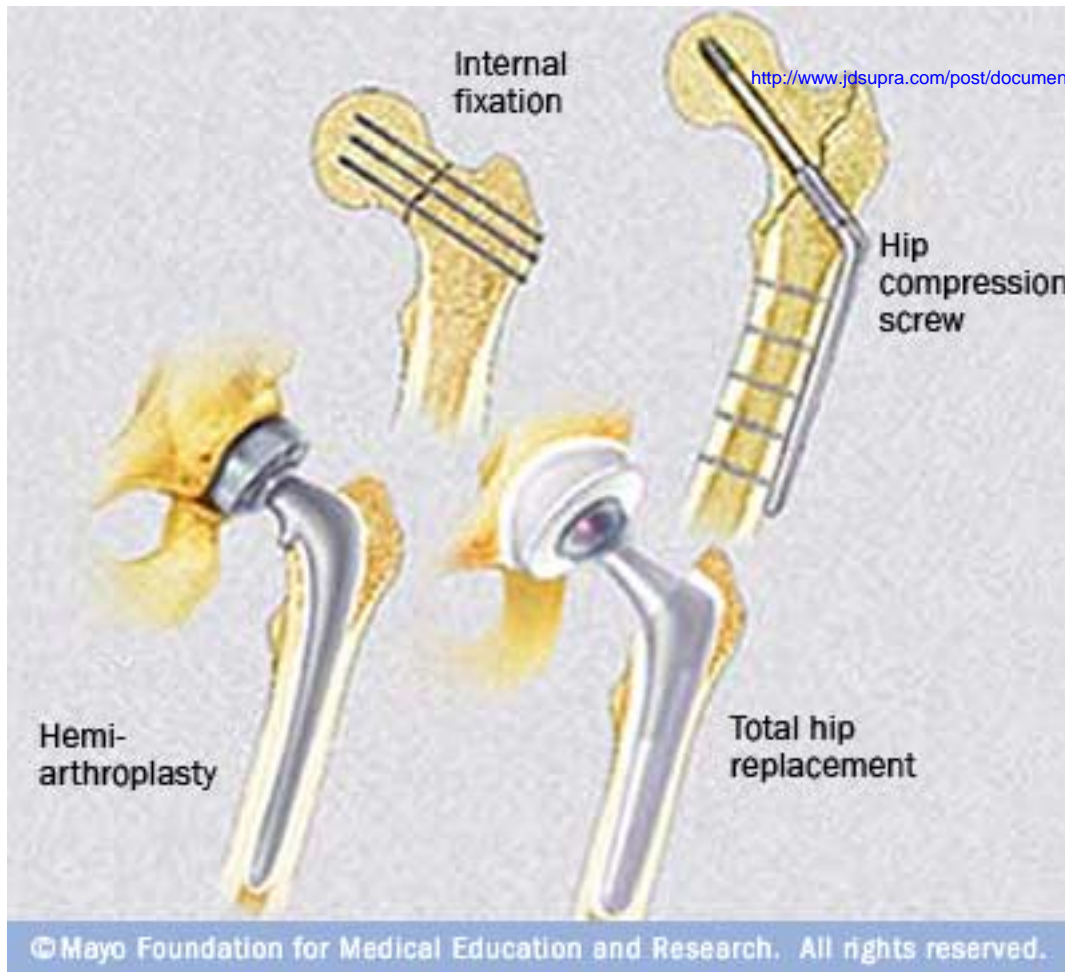
Other **recent appellate court cases** in New York addressing hip and pelvis pain and suffering verdicts include:

Tushaj v. Elm Management Associates (Appellate Division, 2nd Dept.; 2004) - **\$325,000** pain and suffering verdict (\$200,000 past, \$125,000 future) for a 54 year old man with a comminuted intertrochanteric fracture that required open reduction internal fixation surgery. The Kings county jury had awarded plaintiff a mere \$30,000 for his future pain and suffering and it took the appeals court to increase that sum. Plaintiff trial lawyers usually prefer to try cases in Brooklyn (Kings County) because it's widely thought that the jurors there are very liberal in their verdicts. Not this one!

Dooknah v. Thompson (Appellate Division, 2nd Dept.; 2000) - Here's another unusual case in which the appeals court found that a jury's verdict was too low. A 61 year old man was awarded \$50,000 for past and future pain and suffering for his nondisplaced acetabulum fracture and two pubic ramus fractures and it took the usually conservative appeals court (that governs appeals from Brooklyn, Queens, Long Island and Westchester) to increase the verdict to **\$200,000** (\$75,000 for past pain and suffering and \$125,000 for future). I would not want to suffer those injuries for \$200,000 (nor would any sane person) but at least the appeals court recognized how inadequate the jury finding was.

Lopiano v. Baldwin Transport. (Appellate Division, 1st Dept.; 1998) - **\$2,350,000** pain and suffering award for a 48 year old construction worker injured on the job when a four ton concrete catch basin pinned against him. Plaintiff, who had served in Vietnam with the Marine Corps and was a very active and physical man, suffered multiple comminuted fractures of his left and right superior and inferior pubic ramus, together with a fracture adjacent to the area surrounding the foramen. Essentially, his sacrum and ilium were broken apart and thereafter failed to re-join symmetrically leaving him in lifelong persistent pain and totally disabled. The Bronx County jury returned a verdict of \$750,000 past and \$1,600,000 future pain and suffering but the trial judge reduced those awards to a total of \$550,000. It took the stellar work of noted appeals attorney Jay Breakstone to convince the appellate court to reinstate the \$2,350,000 verdict.

Here are some illustrations of the various surgical approaches to fractured hips:



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These cases are good examples of how widely divergent juries in different counties can be. Jurors in Kings County are usually thought to be very generous but look at the Tushaj v. Elm Management case above. And the Appellate Division for the Second Department (hearing appeals from Long Island, Brooklyn, Queens and Westchester) is usually thought to be stingy but look what it did in the Dooknah v. Thompson case above.

So what's the lesson from all of this? Here it is: each case has to be analyzed, re-analyzed and compared against as many similar verdicts and settlements as can be found that deal with pain and suffering for the body part involved. Then, you must dig up documents, briefs and trial testimony to see what really happened in those cases, what the injuries and disabilities really were and how disabled for life the plaintiff is or how well he actually recovered. **With all that information, you'll know when to hold 'em (and try the case to verdict) and when to fold 'em (and settle the case for the right number).**

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