

# The Hochfelder Report

## THE CONSUMER'S GUIDE TO INJURY LAWSUITS IN NEW YORK

BACK INJURIES

ISSUE 2

### How New York Juries Decide the Value of Pain and Suffering in Back Injury Cases

The Hochfelder Report provides facts and estimated ranges of value for New York pain and suffering for specific traumatic injuries. Often in trauma cases, many body parts are injured. As a result, the verdicts, settlements and case histories that you often hear discussed on the evening news or in the newspaper do not help you determine the value of your injury when you have injured only one body part.

Often, in cases involving back injuries — resulting from slip/trip and fall trauma, car accident trauma or construction accidents — the victim has other injuries as well. These frequently include neck injuries and pelvic fractures.

Therefore, please understand that if you have suffered a traumatic injury to more than one part of your body, you should use the information in The Hochfelder Report only as a starting point. The value of your case could be much less or much more than the amounts discussed here.

### Special Notes on Back Injuries

Many back injuries are caused by car accidents. There is a law in New York (Insurance Law Article 52) which severely restricts the ability of car accident victims to recover pain and suffering damages, especially in herniated disc cases. A plaintiff must prove that he sustained one of the

nine enumerated categories of a “serious injury.” For herniated disc cases, this usually means that the case will be dismissed in the absence of an objectively determined permanent injury.

All three of the following matters have been raised by the defense time and again in front of jurors with great success in limiting or denying plaintiffs’ injury claims:

- Many trauma victims alleging back injuries have suffered spinal injuries in the past or have degenerative chronic conditions.
- It’s been shown scientifically that many people over 40 years of age have herniated discs, even without knowing about them.
- Many car accidents that cause significant back injuries involve little or no damage to the car raising doubts in the minds of juries as to causation.

If we haven’t discussed your injury, you’re invited to call John Hochfelder, who will gladly discuss your injuries with you at no cost or obligation. You’re invited to call John toll free at 1-800-530-4660, or locally, 914-686-0900.

Please understand that the values set forth here are for pain and suffering only, and, also, we have eliminated as much as possible cases in which there are significant injuries in addition to the back. The dollar amounts can be much higher



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when an injured person also incurs significant lost wages, significant medical expense payments and other so-called special or out of pocket damages or there are significant injuries in addition to the back.

Now, here are the estimated New York pain and suffering values of injuries based on the circumstances described:

*Pain and suffering in a back injury case is often in the \$0 to \$75,000 range when any or all of the following factors are present: disc bulges only (no herniations); a car accident in which plaintiff cannot meet the "serious injury" statutory threshold; no surgery; a significant pre-existing back injury; excellent recovery; no likely future pain or disability; trial in an area where juries are conservative.*

**Actual Case:** \$ 0 Queens County jury verdict for a 36 year old in a car accident. While plaintiff proved he had a herniated disc at L4- 5 and L5-S1, the jury found that he did not meet any of the serious injury requirements under the law. Plaintiff failed to produce any objective studies such as an MRI or EMG and he had been in a prior car accident.

**Actual Case:** \$30,000 pain and suffering award affirmed by an appellate court for a 50 year old unemployed woman in a car accident who suffered a herniated disc at L5-S1 requiring a laminectomy and spinal fusion. The jury concluded that the injuries were in part due to pre-existing conditions (surgery from five years earlier) even though plaintiff argued she had recovered fully from her prior injury.

**Actual Case:** \$50,000 Bronx County jury award to a 32 year old in a car accident who sustained bulging discs at L4-5 and L5-S1 which impinged on the nerve root and deformed the thecal sac. Plaintiff had extensive treatment, was unable to

work as a supermarket pallet loader for seven months, but he had no surgery.

### **Low Range of Value for Pain and Suffering for Back Injuries: \$100,000 to \$300,000**

Pain and suffering in a back injury case is often in the \$100,000 to \$300,000 range when any or all of the following factors are present: clear disc herniations (not just bulges); a car accident in which plaintiff can easily meet the "serious injury" statutory threshold; surgery such as a discectomy or laminectomy; no significant pre-existing back injury; there is only a fair recovery; there is likely future pain or disability; trial in an area where juries are about average in their awards.

**Actual Case:** \$140,000 Bronx County jury award for an 80 year old pedestrian struck by a car in a crosswalk sustaining a herniated lumbar disc. She underwent four months of physical therapy and was left with permanent disabilities limiting her daily activities.

**Actual Case:** \$200,000 settlement during a damages only Kings County trial for a 34 year old in a car accident who sustained back injuries. He underwent lengthy treatment including discography, epidural steroid injections and a nucleoplasty before a discectomy and fusion at L4-5.

**Actual Case:** \$285,000 Monroe County jury award for a 44 year old security officer whose car was toppled over and who sustained a herniated disc at L5-S1 abutting the nerve root and requiring surgical fusion.

### **Mid Range of Value for Pain and Suffering for Back Injuries: \$400,000 to \$900,000**

Pain and suffering in a back injury case is often in the \$400,000 to \$900,000 range when any or all

of the following factors are present: clear disc herniations that impinge on spinal nerves; the plaintiff is under the age of 40 and was physically active; fusion surgery or multiple level discectomies or laminectomies; no pre-existing back injury at all; poor recovery with significant future pain or disability; trial in an area where juries are liberal in their awards.

**Actual Case:** \$500,000 Orange County jury verdict for a 75 year old home health care aide in a car accident. She sustained a herniated disc at L4-5 resulting in a discectomy and lumbar decompression surgery. The defense contended that her injuries were not from trauma but were degenerative spinal stenosis.

**Actual Case:** \$750,000 Bronx County jury verdict affirmed by the appellate court in a slip and fall construction site accident. A 25 year old mechanic sustained a herniated disc at L5-S1 and underwent a laminectomy and a lumbar fusion with a bone graft and screws.

**High Range of Value for Pain and Suffering for Back Injuries: \$1,000,000 to \$10,000,000**

Pain and suffering in a back injury case may be in the \$1,000,000 or more range when there has been fusion surgery with continuing and permanent pain and disability following surgery; when there is a total inability to return to work or any recreational activity; when plaintiff requires daily prescribed narcotic pain medication; when additional surgery may be needed; and when trial is in an area where juries are liberal in their awards. Pain and suffering awards for more than \$3,000,000 have been sustained by appellate courts typically when the injured party has been rendered a paraplegic or worse.

**Actual Case:** \$1,000,000 Queens County jury award to a 57 year old nurse hit by a car while bicycling. She sustained a herniated disc at L4-5 and a fractured coccyx requiring a laminectomy and fusion. She was unable to return to her job

which involved lifting patients.

**Actual Case:** \$2,000,000 settlement in Nassau County for a 19 year old in a car accident who sustained a herniated disc at L5-S1 with impingement of nerve roots requiring fusion surgery. She could no longer engage in sporting activities that had been a large part of her life.

**Actual Case:** \$10,000,000 appellate court determination for a 25 year old whose spine was severed resulting in paraplegia with constant and severe pain. The New York County jury had awarded \$15,000,000 but the appeals court stated that it deviated materially from what was a reasonable pain and suffering award for this injury.

**You're Invited to Call or E-mail!**

*"If you have suffered a back injury, you're invited to call me. I will ask questions about your injury and help you determine the value of your claim.*

Call me toll free at 1-800-530-4660 or e-mail [jhochfelder@newyorkinjurycases.com](mailto:jhochfelder@newyorkinjurycases.com)

*I promise I'll do everything I can to help you."*

—John Hochfelder

## Definitions

**Bulging Disk** - When the displaced material causes a discrete bulge in the annulus, but no material escapes through the annular fibers

**Coccyx** - The lowermost element of the backbone containing four fused vertebrae in a triangular bone that articulates with the sacrum.

**CT Scan (computerized axial tomography)** - A non-invasive imaging technique using a computer to reconstruct anatomic features, used especially for cross-sectional studies.

**Degenerative Disk Disease** - A condition in which the intervertebral disk loses its normal structural integrity as a result of wear and tear, repeated injuries, or aging. Secondary effects may be disk space narrowing and formation of osteophytes.

**Discectomy** - An excision of all or part of an intervertebral disc often done to decompress a nerve root.

**Disk** - A circular or rounded flat plate commonly used to refer to the intervertebral disk, which is composed of a nucleus pulposus and an annular fibrosis. It is like a soft, rubbery pad between the hard vertebral bones.  
**Nucleus Pulposus:** The central, semi-elastic, spongy zone of the intervertebral disk. **Annulus Fibrosus:** The outer concentric layers of the fibrous tissue in the intervertebral disks.

**EMG (electromyogram)** - The record of electrical activity in a skeletal muscle, obtained by applying electrodes to the surface or a needle into the muscle, used to diagnose nerve and muscle disorders.

**Herniated Disk** (also called ruptured or slipped disk) - A pathologic condition in which the nucleus pulposus of an intervertebral disk has protruded through the surrounding fibrocartilage or annulus fibrosus.

**Laminectomy** - Surgical removal of the posterior bony arches of one or more vertebrae in order to expose the neural elements in the spinal cord.

**Ligament** - A cord, band or sheet of fibrous connective tissue, linking two or more bones or other structures together. They usually impart stability and prevent excessive motion in certain directions.

**Lumbar Vertebrae** - The five vertebrae in the lower part of the back, located between the thoracic vertebrae and the sacrum. They are the largest of the vertebrae and are referred to as L-1, L-2, L-3, L-4 and L-5.

**MRI (magnetic resonance imaging)** - A non-invasive imaging technique using radio waves and magnets, used especially for soft tissue contrast.

**Radiculopathy** - An abnormality of a spinal nerve secondary to irritation of the root causing sensory changes such as tingling, numbness and weakness.

**Sacrum** - Part of the backbone with five fused vertebrae that articulates above the last lumbar vertebra at the coccyx and the pelvic bones.

**Spinal Fusion** - A surgical process by which two or more vertebrae are fused together with bone grafts and internal devices such as metal rods to heal into a single solid bone. The surgery eliminates motion between vertebral segments, which may be desirable when motion is the cause of significant pain.

**Spinal Stenosis** - A narrowing of the spinal cord canal which causes cord or spinal nerve compression.

**Spine** - The backbone or vertebral column, composed of vertebrae separated by intervertebral disks and bound together by ligaments.

**Vertebrae** - One of the bony segments of the spinal column. There are 33: 7 cervical (neck), 12 thoracic, 5 lumbar (back), 5 sacral and 4 coccygeal. Each consists of a body, or centrum. An arch of bone, the neural arch, arises from the body to enclose a cavity, the vertebral canal, through which the spinal cord passes.