

Attorney: **Richard N. Slater**

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FRACTURED FEMUR as a result of gunshot wound court of claims judge awards \$1,600,000 to 34-year-old human resources administration officer shot by off-duty corrections officer

New York State  
COURT OF CLAIMS

Ortiz v. State of NY

4 JRD 190 Ortiz v. State of New York, Claim No. 70867 8-Page Decision Filed 10/18/94 (N.Y. Ct.Cl.) (4 JRD 190).

Court's Decision: \$1,618,326.18, reduced to \$1,416,052.18 after discounting of future lost earnings to its present value. Breakdown: \$375, 000 for past pain and suffering; \$28,308.18 for past medical expenses; \$96, 392 for past lost earnings; \$500,000 for future pain and suffering; \$73, 320 for future medical expenses; \$545,306 for future lost earnings ( discounted to its present value at a rate of 5.50% to \$343,032).

Discussion: (Editor's Note: This case was previously reported in The New York Jury Verdict Reporter, Volume XII, Issue 25, Case 25.) In a prior decision, Deft. was found liable for the injuries suffered by Clmt., a 34- year-old Human Resources Administration (HRA) special officer at the time. On November 28, 1984, Clmt. was assigned to crowd control at the welfare center at 434 East 147th St. in the Bronx when he was accidentally shot in the leg by an off-duty corrections officer. For a complete report of the liability decision, see, The New York Jury Verdict Reporter, Volume VIII, Issue 46, Case 20. This trial was on damages only.

Clmt. suffered a gunshot wound resulting in comminuted fracture of the right femur requiring open reduction and internal fixation with a Grosse-Kempf nail and screws; torn cartilage of the right knee. He underwent subsequent surgery in April 1985 to remove the screws and again in January 1987 to remove the nail. He underwent arthroscopic surgery in June 1992 for his knee. Clmt.'s orthopedist testified that he will require a knee replacement in the future. He is required to attend physical therapy once a week. Clmt. argued that he has difficulties walking without pain medication when the weather is bad, but the medication makes him light-headed. He also argued that his right knee buckles if he puts pressure on it. Clmt. returned to work in February 1986 and was out intermittently thereafter. He claimed that he was unable to run, walks with a limp, and often falls asleep from the medication. He resigned in October 1991. Clmt.'s vocational expert testified that based on his obtaining an 11th-grade education and present and projected physical limitations, he could only obtain unskilled sedentary work and would earn \$10,837 per year.

Deft.'s orthopedist argued that based on X-rays and his examination of Clmt., the only abnormality he found was a calcification of the thigh muscles. He agreed that this would create a limp or pain. Deft.'s expert testified that Clmt. was close to earning a high school equivalency diploma and that with a little more education he could re-enter the work force at an entry level position of \$15,000 to \$30,000 per year. On the issue of pain and suffering, the court accepted Clmt.'s testimony that he continues to suffer constant pain in his leg as a result of his injury, and suffers lower back pain that prevents him from participating in sports, enjoying sex, or physically supervising his young children. The court accepted the testimony of Clmt.'s experts that he has a measurable limitation of movement in his right leg, caused in part by calcifications of the thigh muscle where the nail was inserted. The court discounted Clmt.'s future pain and suffering award at a rate of 5.50% to a present value of \$343,032. Deft. objected to the use of the 5.50% discount rate, but the court held that because Deft. offered no expert evidence to the contrary, and it did not on its face appear unreasonable, the court accepted it. Decision at p. 7.

Attorneys: **Richard N. Slater** of Richard J. Cardalli, Jr., Manhattan, for Clmt. Robert S. Hammer, Asst. Atty. General, for State of New York.

Decision by Judge Gerard M. Weisberg, Manhattan Court of Claims.