

# Medical Negligence Claims in the New York Court System

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# The Discovery Process

- Bills of Particulars
- Medical Record Disclosure
- Party Depositions
- Expert Witness Disclosure

# CPLR 3212: Summary Judgment

- Defendant may seek dismissal of non-meritorious claims
- Plaintiffs required to lay bare their proof
- Both sides submit Expert Affidavits
- Interlocutory Appeal  
Consequences: Case Dismissal

# CPLR 4401:

- Requires dismissal if plaintiffs, through their medical experts, have not made out a prima facie case of medical malpractice.

# CPLR 4404: Judicial review of verdicts

- Against weight of credible evidence
- Legally insufficient evidence
- Fair trial
- Excessiveness

# CPLR 5501: Appeal

- Liability
- Fairness
- Excessiveness

# CPLR 5501(c):

- Review of Damages Awards
- A Damage award maybe set aside if it “Deviates materially from what would be reasonable compensation.”

# Ross v. Mandeville

- Baby's face slashed during  
Cesarean section  
Permanent two inch scar

Verdict: \$550,000.00

Reduced to: \$125,000.00

# Abdelkader v. Shahine

- Erb's Palsy Case

Permanent Scapular Winging

Biceps Injury

Verdict: \$800,000.00

Reduced to: \$550,000.00

# Williams v. NYCHHC

## Unnecessary Mastectomy

Verdict: \$3,000,000.00 Past Pain & Suffering

\$3,500,000.00 Future Pain & Suffering

Reduced to: \$600,000.00 Past Pain & Suffering

\$400,000.00 Future Pain & Suffering  
(42 years)

79 AD 3d 440  
(1<sup>st</sup> Dept 2010)