



Economic Damages: Capturing The Full Value Of Injury

CONNECTICUT UNUSUAL IN OFFERING COMPENSATION FOR LOSS OF LIFE'S ENJOYMENT

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Life, a right so valuable that it is deemed inalienable in our Declaration of Independence and protected by force of law in our Constitution.

For centuries, from the Babylonian Code to the institution of the English court system, man has attempted to quantify life, to place a value on it and to compensate for its loss and diminution. The loss of life's enjoyment and pleasure, together with lost earning capacity, medical expenses and lost household services, encompass economic damages. Within the United States, the concept of restitution for the loss of life or decline in life's enjoyment, absent lost income, is rarely permitted in wrongful death claims and is only partially recognized in non-fatal injury claims. In contrast, Connecticut statutes explicitly permit such recovery, with case law supporting and expanding the methodologies for such computations.

Connecticut General Statute §52-572h, which governs negligence actions and damages recoverable for personal injury and wrongful death claims, defines economic damages as, "[C]ompensation determined by the trier of fact for pecuniary losses including, but not limited to, the cost of reasonable and necessary medical care, rehabilitative services, custodial care and loss of earnings or earning capacity excluding any non-economic damages..." with recoverable economic dam-

ages meaning those damages as determined by the trier of fact, reduced accordingly by collateral sources, such as insurance benefits, reimbursement contracts or other set-offs, credits or comparative negligence.

Damages resulting from lost earning capacity are explicitly recoverable under Connecticut statute. Case law further expands upon the accepted methodology of damage calculations, supporting the inclusion of employer-provided fringe benefits in computations of lost future earnings, while also maintaining that income taxes are properly deducted. Connecticut has further recognized and accepted that future losses should be discounted to present value, while asserting that consideration of inflation is permissible by the trier of fact.

Of a more vague nature is the determination of work life and life expectancy. The courts have provided no firm guidance on these determinations; giving wide discretion to expert witness testimony and leaving conclusions as to correct methodology in the hands of the trier of fact.

Medical expenses have traditionally been recoverable as economic damages within Connecticut. The 1992 case *Seymour v. Carcia*, 221 Conn. 473 (1992) expanded upon recovery, with the Connecticut Supreme Court ruling that expert tes-



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timony opining that lifelong medical care would be necessary, together with evidence of the treatment received since the date of the accident, life expectancy and past lost earnings, was sufficient to provide a basis for a jury to estimate loss of future earnings and, thus, to award future economic damages. To avoid damage estimates that are speculative in nature, in practice, attorneys have retained life-care planners to estimate future medical expenses, which are then present-valued by a financial or economic expert.

Unique Concept

Loss of household services is a unique concept proffered by Connecticut courts which have suggested restitution in wrongful death claims for destruction of the ability to carry on life's activities. In *Chase v. Fitzgerald*, 132 Conn. 461 (1946) and *Moffa v. Perkins Trucking Company*, 200 F. Supp. 183 (D.Conn.1961), the loss of the decedent's activities as a wife and homemaker and evidence of the decedent's "family activities" including home

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and yard maintenance and time spent with the children were, respectively, admissible to show evidence of destruction of life's activities.

Although competing viewpoints suggest such damages are not available where the decedent is unmarried or single without children, damages for loss of household services has been considered a viable economic damage claim in Connecticut for more than half a century.

Connecticut has long been recognized as one of the first to permit recovery for the lost enjoyment of life without accompanying lost earning capacity, interpreting state statutes to allow an estate to recover such damages in *Katsetos v. Nolan*, 170 Conn. 637 (1976). This landmark decision led to the Illinois case of *Sherrod v. Berry*, 856 F.2d 802 (7th Cir. 1988) which was the first to permit expert witness testimony, with the judge ruling that such testimony rose above the level of speculation and "...enabled the jury to perform its function in determining the proper measure of damages..."

In addition, the concept of "hedonic damages" was first coined by expert witness Stanley V. Smith through his testimony in the *Sherrod* case. "Hedonic," as related to the value of life, was defined by Smith as "the larger value of life, the life at the pleasure of society...the value including economic, including moral, including philosophical, including all the value with which you might hold life..." The concept

of hedonic damages was thus born and has since begun its expansion into courtrooms across the country.

Several Categories

In Connecticut, the loss of enjoyment of life was extended to include personal injury claims in the 2001 consolidated actions of *Hamernick, et al. v. Bach, et al.* and *Carney, et al. v. Schultz, et al.*, 64 Conn.App. 160 (2001).

Here, the jury, in returning a verdict, divided the award into several categories, which included past and future loss of enjoyment of life's activities. The defense, unsuccessfully, argued that the jury should have considered only economic and non-economic damages as defined by Connecticut statutes. The court, in reviewing the legislative history of Connecticut's applicable statutes and relevant tort reforms, determined that the statutes did not prohibit the expansion of damage categories beyond the two defined and thus, such an award was proper.

The use of experts in economic damage claims has progressed significantly, with testimony in hedonic damage claims considerably advanced since the 1993 landmark decision of *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993) which gave wide discretion to courts to admit expert testimony. The *Daubert* ruling, which requires an expert's conclusions to be as a result of proper scientific methods, over-

ruled the prior *Frye* test, a much more rigid requirement, which allowed expert testimony only if the expert's opinions were generally accepted as conclusions in the scientific community.

The use of several experts, such as testimony by a physician or psychiatrist opining as to the percentage of physical movement or mental state that has been reduced, combined with the testimony of a financial or economic expert as to present value of such percentage losses, continues to be of significant assistance to conclusions drawn by fact finders. Together with the more expansive *Daubert* test, damage claims, particularly hedonic damages, have begun to become more accepted theories of recovery.

Connecticut's statutes and their interpretation by the courts continue to evidence recognition that traditional measures restricted to financial damages do not fully capture the value of loss experienced in personal injury and wrongful death actions. From remuneration for future lost earning capacity to the loss of life's enjoyment and pleasure, future economic damages are fully encompassed within Connecticut's statutes and supporting case law.

Together with expert witness requirements, the measures invoked by state statutes and supporting case law combine to present assistance to fact finders in reaching their conclusions and full compensation to plaintiffs who have been wrongly injured. ■