

EMOTIONAL DISTRESS CASE

EFFECTIVELY PROVING DAMAGES FOR THE INVISIBLE INJURY

I. INTRODUCTION

To be victorious in proving the unseen emotional injury, you need to present more than just facts and law, you need first to “humanize” your client. One way to do this is to “give” the client a life. What was a day in the life of your client before the injury or death? Did he or she hug their children, take them to school, and work all day everyday to keep a roof over their heads and clothes on their back? Make your client someone who the jury might know or want to know. Paint your client as human, and appeal to the goodness in his or her life.

Be aware that your client’s cultural background and other’s stereotypes affect damages. In order to combat prejudice, look for a common ground between your client and “mainstream America”. Incorporate in to your case issues that all human beings relate to regardless of who they are – love; hate; safety; family; and responsibility. The jury will be more able to empathize with your client’s emotional pain and suffering when sharing common human traits. The plaintiff’s attorney’s task is to convince the jurors that pain need not be only physical to be real. Emotional pain is very real and is no less damaging than a physical injury. It is an injury that stems from the way our brain and mental processes react to hurtful conduct by others.

Over 2000 years ago, Hippocrates wrote:

Men ought to know that from the brain and from the brain only, lies our pleasures, joys, laughter, and jests as well as our sorrows, pains, griefs, and fears. Through it, in particular, we think, see, hear, and distinguish the ugly from the beautiful, the bad from the good, the pleasant from the unpleasant.

...

It is the same thing which makes us mad or delirious, inspires us with dread and fear, whether by night or by day, brings sleeplessness, inopportune mistakes, aimless anxiety, absentmindedness, and acts that are contrary to habit.

II. EXPERTS

1) Psychiatrist- Despite widespread need for and use of psychiatric assistance in this country, psychiatry is still a field viewed with skepticism by significant numbers of potential jurors at virtually all economic levels. If it becomes necessary to use such an expert at trial, get one accustomed to treating patients!! A less costly and effective method of proving emotional distress damages, may be had in the utilization of mental health professionals employed by and/or contracted with Employee Assistance Programs. In employment tort cases, this has proved to be very effective before the jury. It is especially impressive when the jurors learn that the mental health professional has diagnosed and treated the plaintiff for work-related stress and other emotional injuries related to the employer's wrongful conduct; and that the mental health professional is made available to the employee through the employer itself.

2) Medical Doctor – Oftentimes, as a matter of necessity, a medical doctor must be retained to prove a causal relationship between emotional distress/stress and physical injuries. Of course, physical manifestations within the jury's lay comprehension need not be established by medical testimony. A plaintiff is permitted to testify as to the "garden variety" emotional distress physical manifestations such as headaches, nausea and sleeplessness.

III. STORY TELLING

In some cases, such as in discrimination claims, economic damages can be somewhat limited. It is therefore the trial attorneys hope to recover a substantial verdict for emotional distress. Emotional distress damages can best be proved by the testimony of your client, family and friends. Short stories told by clients to demonstrate the impact on his or her life are powerful when spoken from the heart.

Just as the key to an effective opening statement is to tell a good story, emotional distress evidence is best presented in a compelling narrative or story format. Don't simply ask your client to describe how he is effected emotionally by, for example, his discharge, ask him to tell a story.

When asking the client to describe simply how he was effected emotionally, you can expect a reply such as "I was really a mess. I was upset. I had a great deal of emotional distress. I couldn't function. I really did have some good damages." You can only imagine what would have happened had your client so testified to the jury.

However, when pressed for an example, or a story to demonstrate the impact of his discharge, the change can be extraordinary. Here is such an example:

Client leans back and begins to recall the event, which had occurred perhaps 2 years earlier. He began re-experiencing the pain, describing what he was feeling at the same time.

“I remember it was shortly after Thanksgiving”, “he began, “I couldn’t sleep. I tossed and turned and eventually went downstairs into the living room. No one was up. I poured myself a drink and sat down in the big chair by the fireplace.”

He slumps down in the chair, looking into the fire in his memory. “The fire hadn’t burned out yet, and the little flashing lights hadn’t been turned off on the Christmas tree we had put up only two days before I got fired.”

“I looked at the wrapped presents under the tree and wondered how I would pay for them now. I haven’t told my father yet. I knew it would break his heart and I didn’t know how to tell him. It would soon be Christmas. Two of my kids were looking at colleges. They were counting on me for support. I was so afraid I was going to let them down.”

The jury will be spellbound. The difference is his ability to tell a story rather than recount a few cold facts.

IV. CONCLUSION

Emotional distress damages are best proved by having your client, his friends or family members tell a story to demonstrate how the wrongful conduct has had an impact on his life. A story delivered by your client, or those that know him best, have a compelling way of making visible the “invisible” injury.