

NEW MEXICO INJURY ATTORNEY BLOG

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Loss of Consortium Claims: Discovery Can be Brutal

New Mexico Uniform Jury Instruction 13-1810A allows for the recovery of damages by the plaintiff's children or spouse for loss of consortium which is defined as the "loss of the society, guidance, companionship and sexual relations resulting from the plaintiff's injuries."

The allowance of damages for the loss of sexual relations is most closely identified with a loss of consortium action. And it is this element that is most prone to invasive and embarrassing discovery by the defendant's attorneys.

The claim implies strong emotional bonds and active sexual relations between the plaintiff and his or her spouse. The defense attorneys will go to great lengths to tear down any suggestion by the plaintiff's spouse that any such emotional bonds or regular sexual activity was present in the relationship.

To do this, the defendant's attorneys will often hire private investigators to pry into every detail of the relationship or lack of relationship between the plaintiff and his or her spouse. They will try to find any indication of strain on the relationship to show that there was no true loss. As you might imagine, what they most hope to find is infidelity. They will try to find both present and past infidelity. The goal is to tear down the relationship and the credibility of the parties in the eyes of the jury.

Discovery, and especially depositions, on loss of consortium claims can be brutal, embarrassing and even humiliating. The scope of discovery is very broad allowing the defense attorney to ask almost any question no matter how invasive or seemingly irrelevant. Depositions questions need not be relevant to be asked. It is only necessary that the question could possibly lead to the discovery of other admissible evidence.

The broad scope of discovery opens up questioning about the plaintiff and his or her spouse's sexual histories. This includes questioning about every conceivable topic related to sex including sexually transmitted diseases, unplanned extramarital pregnancies, birth control practices, sexual activities and virtually every other issue concerning the pre-marital and extramarital sexual practices of the Plaintiff and his or her spouse. If that is not enough, the attorneys can ask some rather explicit questions about the current sexual activities inside the marital relationship.

The findings from discovery and depositions can be both embarrassing and extremely harmful to the loss of consortium claims. In addition, juries can be pretty unforgiving, somewhat puritan and often hypocritical so that the evidence raised on the loss of consortium claims harms the primary personal injury claims made by the plaintiff.

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Before pursuing loss of consortium claims, every plaintiff must honestly assess his or her situation. What will the defense find? How will a jury view that evidence? How would the most sexually conservative, self-righteous, moralistic, judgmental person in a sexually conservative, self-righteous, moralistic, and judgmental community view the evidence? That person is quite likely on the jury and he or she is absolutely unforgiving of the plaintiff's transgressions.

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