

## **HOW TO MAXIMIZE PAIN AND SUFFERING IN AN ALABAMA PERSONAL INJURY CASE**

George Allen Moore

Johnston, Moore & Thompson

400 Meridian Street, Suite 301

Huntsville, AL 35801

(256) 533-5770

[www.alabamajusticecenter.com](http://www.alabamajusticecenter.com)

A person injured by the negligent or wrongful conduct of another is entitled to recover "pain and suffering" damages. The phrase "Pain and Suffering" is used in Alabama to describe compensable damages for physical pain or mental anguish that results from a personal injury. Mental anguish includes emotional distress. Pain and Suffering damages in Alabama includes not only physical pain but also an injured person may recover for fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation, indignity, embarrassment, apprehension, terror or ordeal.

Injured persons commonly suffer great interruption in their lives. Small details and mundane routines become painful and difficult. Sleepless nights, stiffness, pain, fear of undergoing medical treatment or worrying that one might not fully recover from a physical or emotional harm are common thoughts and experiences. Other injured people become nervous and worry about their jobs, home life, and overall health. When a person is seriously injured in a personal injury accident, the person's mind often races with a flood of fears and worries. Embarrassment and indignity frequently accompany being disabled or disfigured from a personal injury accident.

In general, courts have not attempted to draw distinctions between the elements of "pain" on the one hand, and "suffering" on the other. The concept of "pain and suffering" has served as

a convenient label under which an injured person may recover general damages. These experiences are so common that they are hardly questioned as authentic symptoms of an accident.

Alabama has no fixed monetary standard to compensate for physical pain and mental anguish. Compensation is left to the good sound judgment and discretion of the jury in each case to decide what amount would reasonably and fairly compensate the injured person for the physical pain and mental anguish that the injured person suffered as a result of the injury. Because there is no fixed monetary standard, an injured person in Alabama must be able to accurately describe the frequency, severity and duration of the pain, but the severity, frequency, and length of time that these symptoms and experiences last are hard fought over in litigation. Unfortunately, the injured person, pre-occupied with the sudden onset of the accident, the pain, and interference in the quality of his or her life, may fail to record what is happening in his or her life. Compensable forms of emotional stress need to be documented if a lawsuit is likely, contemplated or underway. The problem that many injured people face is trying to reconstruct all their thoughts that plagued them as they suffered living day by day after being injured.

Whether it is presenting information to an insurance claims adjuster, a mediator, an arbitrator or to a jury or a judge at time of trial, comprehensive and accurate description of the emotional distress is essential to maximizing recovery. One easy and simple solution is to keep a daily of how you are doing, your thoughts, and your emotions, your concerns about your injury, recovery, and financial affairs during recovery. This diary should be marked "FOR MY ATTORNEY" even if you don't yet have an attorney. By labeling the daily diary "FOR MY ATTORNEY" that may preserve the attorney-client privilege and maintain the confidentiality of your thought processes. Naturally, during discovery, settlement or trial, these elements of "pain and suffering" will have to be fully disclosed and explored. By having a contemporaneous record, you will be in much better position to explain your "pain and suffering" and maximize your personal injury recovery.