

# General Damages Claims in a Personal Injury Case

By Guy O. Kornblum

Life goes from a challenge to a struggle when a client suffers a serious personal injury. This is reflected in that client's general damages claim.

The key instructions for general damages in CACI are 3900, 3902, 3905 and 3905A.

CACI 3905A sets forth the following:

Physical Pain, Mental Suffering and Emotional Distress

(Non-economic damage)

(1) Past and future physical pain/mental suffering/loss of enjoyment of life/disfigurement/physical impairment/inconvenience/grief/anxiety/humiliation/emotional distress [insert other damages].

No fixed standard exists for deciding the amount of these non-economic damages. You must use your judgment to decide a reasonable amount based on the evidence and your common sense.

To recover for future non-economic damages, the plaintiff must prove that he or she is reasonably certain to suffer that harm.

For future general damages, determine the amount in current dollars paid at the time of the judgment will compensate [name of plaintiff] for future pain and suffering. This amount of non-economic damages should not be further reduced to present cash value because that reduction should only be performed with respect to economic damages.

Given this discretion afforded to the finder of fact, what do you consider in proving and arguing for damages caused to your client for the trauma, injury and limitations an injury has caused?

First, you need to let a jury know what the claim is all about. I suggest using the language of the jury instruction quoted to let the jury know what the nature of the claim is. Then give the jury some examples of the impact the injury has had on your client. Do not be bashful. But be honest. Focus on the real impact the injury has on your client's lifestyle. Refresh the jury's recollection of what your client and other witnesses said about the injuries' impact on your client's life. How is it different? Have others noted the difference? What has this done to your client's emotional state, image, self-confidence and self-perception? Is your client now reclusive rather than outgoing as before the injury? Has your client's social activity changed? Was that client actively employed but now relegated to a life of loneliness and absence from the stimulation of work and those relationships? How is life now different – and less enjoyable – from what it was before? How

has it changed and what is the impact on your client who is now faced with a new and less enjoyable life?

What follows is a checklist of areas which you might consider in assessing and defining the areas which impact your client's general damages claims.

## Daily tasks

First, review your client's daily routine and how it has changed. What challenges do they have that they did not have before? They may be physical difficulties or emotional ones, or both. Also ask those close to your client how this normal routine has changed. There is a whole host of daily activities that a person engages in, so go through the day from first waking up to bedtime, including activities relating to personal care. Have the client relate the frustration with normal grooming and self-care issues that are impacted by the injuries.

Also, a client may be restricted in other daily tasks such as errands, driving, moving about a home, and just getting from place to place during the day. This is a good point to do a "day in the life" review, which can be captured in a video for illustrating your client's frustration from the inability to navigate a "normal day" in their life.

## Frustration

Your client is likely to be frustrated with these changes and the effort to face and overcome them. Trying to get back to where they were before the injury can be frustrating, especially if the client cannot "get there." "As before" will never be again, and the reality of that fact can



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be enormously hard for any client to accept. What once was will never be! This is another area that needs to be explored in detail, so a jury will understand how normal tasks and relationships are in the past. Everything is just harder and, in some cases, impossible to complete or enjoy. This includes *relationships* with spouses, family, friends and colleagues.

### **Self perception**

These challenges are likely to impact your client’s self-image. Where before a client may go through the day with normal effort, the exertion needed now is likely to draw attention, and exhibited frustration noticed. This can be embarrassing and can contribute to the client’s overall emotional impact.

### **Hobbies and interests**

Examine any hobbies or interests your client cannot now enjoy because of changed circumstances. This can include recreational activities and simply “downtime” when they seek to recharge their batteries. It may be difficult or even impossible for a client to escape the impact of the injury caused by the wrongdoer. Spend time getting your client to talk about the impact this has on their emotional state. Recreational activities may now be restricted. What did the client enjoy as an “escape” from the pressures of the day? We all have something we try to do to ease the pressures of

life. Are these now unavailable or limited, increasing their frustration from these changed circumstances?

### **Witnesses**

I find that the general damages claim is sometimes better described by others rather than the client. Of course, your examination of the client on these issues can be compelling. Some are better at relating this aspect of their testimony than others. If they are shy, reluctant or just cannot “get the words out,” then family members, close friends or work associates are even more critical as witnesses in this component of your client’s case.

### **Perceived Burden on Others**

Most of us do not want to depend on others because we want to take care of ourselves. So, when a client is injured and has to look to others, particularly close family members and good friends for help, it can understandably be demoralizing. This is another avenue of worry, anxiety and frustration, plus the inconvenience of needing to have others do for you what you formerly did for yourself. This help does not always come when the client needs it, but when others can provide the assistance.

### **Future/Retirement Plans**

Obviously, a serious injury is going to interfere with life plans. We all have

anticipations about how life will unfold. It is basic human nature to think about this. Whatever your client’s thoughts are on this topic, they are impacted by a serious, enduring injury. The disappointment in not being able to fulfill these plans will be evident in most cases. If not, draw them out by encouraging your client to talk about them and the impact the injury has had on their thoughts of the future.

### **The “Worry and Fret Component”**

This emotional category includes the ongoing “fret and worry” that will likely persist in a victim’s mind. It is always there and never retreats. It can be the first thought upon waking and the last thought before dosing off. It can result in sleep disturbance and lack of concentration, particularly if the client is not fully occupied and must endure time alone or with nothing to do. The mind is not “occupied” and will drift at this point, but the lingering thought of this changed life will be there to remind your client of what happened and how life has dramatically and suddenly worsened.

Overall, the proof of your clients’ general damages claim should focus on how life is different post-injury. What has changed as a result of the injury to your client? This is the part of the case that needs to be explored and portrayed to give your client the best chance for a significant general damage award for this aspect of the injury claim. Dig deep with your client so the full story of the impact of the injury is heard by the court and jury and tell that part of the story so a jury essentially “feels” the impact of the injury on your client’s life. ■