DAMAGES

by

Judge Lynn M. Egan

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I. Elements of Damages

When considering the appropriate elements of damages in a particular case, the Illinois Pattern Jury Instructions are a good initial resource. The IPI provides guidance about the following elements of damages:

- General measure of damages instructions: IPI 30.01 – 30.23
- Wrongful death damages: IPI 31.01 – 31.13
- Damages to spouses and family members: IPI 32.01 – 32.06
- Mitigation of damages: IPI 33.01 – 33.02
- Future damages & mortality tables: IPI 34.01 – 34.05
- Punitive damages: IPI 35.01 – 35.02
- Damages under Dram Shop Act: IPI 150.13 – 150.14
- Damages under the Drug or Alcohol Impaired Minor Responsibility Act: IPI 155.04 – 155.05
- FELA damages: IPI 160.13 – 160.16
- Damages under Magnuson-Moss Act: IPI 185.09 – 185.12
- Eminent domain damages: IPI 300.42 – 300.60
- Contract damages: IPI 700.13
- Insurance bad faith damages: IPI 710.07
- Fraud & deceit damages: IPI 800.05 – 800.07

II. Burden of Proof

"Damages must be proved to be recovered." *Chrysler v. Darnall, 238 Ill.App.3d 673, 680 (1st Dist., 1992).* This basic concept is easily understood with the objective elements of damages, such as medical expenses or lost wages, but can be challenging with the more subjective elements, such as pain and suffering, loss of consortium/society or future damages. Thus, it is helpful to look at cases interpreting the specific elements of damage for guidance.

III. Specific Line Items

Although it is without dispute that only those elements of damages that have been proved by the evidence should be considered by the trier of fact, lawyers and judges are well advised to remain aware of ongoing issues related to certain specific elements.

A. Medical Expenses

In order to recover for medical expenses, a plaintiff must prove that the bills are paid or that he/she is liable to pay them, that they were incurred as a result of defendant's negligence & that the charges are reasonable. *Baker v. Hutson, 333 Ill.App.3d 486 (5th Dist., 2002). Accord, Arthur v. Catour, 216 Ill.2d 72, 82 (2005).*

CAUTION: Demonstrating that a bill was paid or is fair & reasonable is but one part of the required foundation for admission of medical expenses. "It must be emphasized that offering a paid bill or the testimony of a knowledgeable witness that a bill is fair and reasonable merely satisfies the requirement to prove reasonableness. The proponent must also present evidence that the charges were necessarily incurred because of injuries caused by the defendant's negligence. Only then have the evidentiary requirements for admission into evidence been satisfied." *Id. See also, Fraser v. Jackson, 2014 IL App (2d) 130283.*

NOTE: Do not forget application of the collateral source rule. *See, Arthur v. Catour, 216 Ill.2d 72 (2005)(Plaintiff may present the jury with the total amount billed by health care providers, even if the providers accepted a lesser amount due to agreements with insurance carriers. "It is well established that damages recovered by the plaintiff…are not decreased by the amount…received from insurance proceeds, where the defendant did not contribute to the payment of the insurance premiums.")*

B. Pain & Suffering

What is pain & suffering and when is an award for this element appropriate? The traditional line item for pain and suffering is not meant to include injuries limited solely to emotional distress. Instead, "an award for pain and suffering is proper where there is evidence of physical injury." *Carter v. Azaran, 332 Ill.App.3d 948 (1st Dist., 2002). But see, Holston v. Sisters of The Third Order of St. Francis, 165 Ill.2d 150, 173 (1995)("Accompanying mental anguish" included as part of pain & suffering.).* Additionally, there must be evidence that the plaintiff was conscious of his or her pain and suffering. *Id.* However, this does not mean a plaintiff must present *medical* testimony establishing consciousness. *Id. See, Drews v. Gobel Freight Lines, 144 Ill. 2d 84 (1991)(Photos of crushed car admissible as circumstantial evidence of conscious pain & suffering.).* It is sufficient if lay witnesses describe the plaintiff's actions "together with evidence concerning the injuries…to support a pain and suffering claim." *Id.* Although medical testimony is not required, evidence from a health care professional that a particular injury is likely to cause pain is relevant when determining whether a plaintiff actually experienced pain. *Id.*

NOTE: An award for pain & suffering is not automatically required merely because the plaintiff received an award for medical expenses. *Chrysler v. Darnall, 238 Ill.App.3d 673 (1st Dist., 1992)("It is well established that a verdict of liability with an award of damages for medical expenses but not for pain and suffering is entirely*

proper."). See also, Snover v. McGraw, 172 Ill.2d 438 (1996)(There is no inherent inconsistency in awarding damages for medical expenses, but not for pain & suffering.).[1] *Accord, Balough v. Northeast Illinois Regional Commuter Railroad Corporation, 409 Ill.App.3d 750, 774-775 (1st Dist., 2010); Orava v. Plunkett Furniture Company, 297 Ill.App.3d 635, 637 (2d Dist., 1998) & Chrysler v. Darnall, 238 Ill.App.3d 673 (1st Dist., 1992)("It is well established that a verdict of liability with an award for damages for medical expenses but not for pain and suffering is entirely proper.").*

CAUTION: Per diem arguments that direct jurors to use a formula and suggested dollar amount for pain and suffering are improper. *Caley v. Manicke, 24 Ill.2d 390 (1962).* Why? Such argument is improper because "pain and suffering have no commercial value to which a jury can refer in determining what monetary allowance should be given"…and suggesting a formula creates "an illusion of certainty, thereby discouraging "reasonable and practical consideration." *Id. at 392-393.* For examples, see *Watson v. City of Chicago, 124 Ill.App.3d 348 (1st Dist., 1984)(argument was permissible) & Ramirez v. City of Chicago, 318 Ill.App.3d 18 (1st Dist., 2000)(argument was improper).*

Significantly, this rule does NOT apply to medical expenses. *Lepore v. Chicago Transit Authority, 2011 IL App (1st) 092576-U, ¶ 29. ("Precedent establishes that per diem arguments are only improper where they refer to pain & suffering.").*

C. Disability, Loss of a Normal Life & Disfigurement

Disability is understood as the "absence of competent physical, intellectual, or moral powers,***[or an] incapacity caused by physical defect or infirmity." *Obszanski v. Foster Wheeler Construction, Inc., 328 Ill.App.3d 550 (1st Dist., 2002). See also, Lewis v. Avila, 405 Ill.App.3d 1192 (1st Dist., 2011).*

Loss of a normal life is a component of disability that compensates "for a change in the plaintiff's lifestyle." *Jones v. Chicago Osteopathic Hospital, 316 Ill.App.3d 1121, 1135 (1st Dist., 2000).* It is formally defined in IPI 30.04.02 as "the temporary or permanent diminished ability to enjoy life. This includes a person's inability to pursue the pleasurable aspects of life." Is this element of damages appropriately included when the plaintiff's injury occurred prenatally or at birth? Stated differently, is "lifestyle change" a prerequisite to a loss of normal life award? Although *Jones, supra,* raised this issue, the answer is probably "no."[2] In fact, a number of courts have held that "loss of a normal life" can be used interchangeably with "disability," even though the two have different definitions. *See, Burcham v. West Bend Mutual*

[1] *In Snover, the Illinois Supreme Court expressly rejected the "reversal per se" approach when a jury awards an amount for medical expenses but no corresponding amount for pain & suffering or disability.*

[2] *In Foley v. Fletcher, 361 Ill.App.3d 39 (1st Dist., 2005), the jury returned a verdict that included $5 million for loss of a normal life in a birth injury case. However, the Appellate Court did not address the issue of "lifestyle change."*

Insurance Company, 2011 IL App (2d) 101035, ¶ 19 & Stift v. Lizzadro, 362 Ill.App.3d 1019 (1st Dist., 2005).

NOTE: Although disability and loss of a normal life are both recognized as compensable elements of damages (*Holston v. Sisters of the Third Order of St. Francis*, *165 Ill.2d 150, 175 (1995))*, a plaintiff must choose between these two elements because it is improper to include both on a verdict form. *Baker v. Hutson, 333 Ill.App.3d 486 (5th Dist., 2002)("'Loss of a normal life' was approved as an alternative to 'disability' because of concerns that the term 'disability' was often misunderstood and led juries to disregard a proper element of damages or to duplicate damages."). See also, Committee Comment to IPI 30.04.01("The Committee recommends that either "disability" or "loss of a normal life" be used, but not both.").*

In contrast to disability, disfigurement is interpreted as "'less complete, perfect or beautiful in appearance or character.'" *Kresin v. Sears, Roebuck & Company, 316 Ill.App.3d 433 (1st Dist., 2000). See also, Walter v. Somasundaram, 2012 IL App (2d) 120800-U("that which impairs or injures the beauty, symmetry, or appearance.").*

D. Loss of Consortium/Society

Loss of consortium is separate and distinct from loss of society. The former evolves out of the marital relationship and belongs exclusively to an injured spouse. The Illinois Supreme Court defined it as an "interference with the continuance of a healthy and happy marital life and injury to the conjugal relation." *Blagg v. Illinois F.W.D. Truck & Equipment Company, 143 Ill.2d 188, 199 (1991).* IPI No. 32.04 defines loss of consortium more specifically as "society, companionship & sexual relations between husband and wife." Not surprisingly, the postmarital discovery of a premarital injury cannot create a cause of action for loss of consortium. *Monroe v. Trinity Hospital-Advocate, 345 Ill.App.3d 896, 899 (1st Dist., 2003).*

Loss of society can be a separate element of damages for parents, children and siblings and is defined as the "deprivation of the companionship, guidance, comfort, love and affection of the deceased." *In Re Estate of Williams, 223 Ill.App.3d 505 (5th Dist., 1992).* Significantly, there is a presumption of pecuniary injury to parents for the loss of a child's society. *In Re Estate of Finley, 151 Ill.2d 95 (1992).*

NOTE: Parents may not recover for loss of society of a non-fatally injured child. *Vitro v. Mihelcic, 209 Ill.2d 76 (2004).* Similarly, a child cannot recover for loss of society of a non-fatally injured parent. *Karagiannakos v. Gruber, 274 Ill.App.3d 155 (1st Dist., 1995).*

What does it mean to enjoy a presumption of pecuniary loss? First, the presumption is rebuttable. Second, even in the absence of any direct evidence of loss, the presumption works to establish plaintiff's *prima facie* case as to this element of damages. *Chrysler v. Darnall, 238 Ill.App.3d 673, 679 (1st Dist., 1992).* Importantly,

however, this presumption does not apply to siblings. Even though siblings can claim loss of society stemming from the death of a sibling, they must prove their damages. *Id.* Yet, siblings do not necessarily need to provide direct testimony about their relationship with their deceased sibling in order to receive an award for loss of society. *Jones v. Chicago Osteopathic Hospital, 316 Ill.App.3d 1121, 1137 (1st Dist., 2000).*

CAUTION: Because jurors are not allowed to apportion wrongful death damages among survivors, the verdict form should not contain separate lines for each survivor. *Barry v. Owens-Corning Fiberglass Corporation, 282 Ill.App.3d 199, 204-205 (1st Dist., 1996).* Instead, "the statute clearly envisions a single jury award, with the judge who heard the case to distribute the money to the survivors based on a certain statutory formula." *Id. at 205. Accord, Jones v. Chicago Osteopathic Hospital, 316 Ill.App.3d 1121, 1137 (1st Dist., 2000). See also, 740 ILCS 180/2 (West 2014).* In fact, not only does Section 180/2 of the Wrongful Death Act require judicial apportionment, but so too does Cook County Circuit Court Rule 6.5(1)(a). Judicial apportionment is based on the "proportionate percentages of the eligible beneficiaries' dependency on the decedent." *Johnson v. Provena St. Therese Medical Center, 334 Ill.App.3d 581 (2d Dist., 2002).*

Damages for loss of consortium and loss of society are not reduced to present cash value. *Drews v. Gobel Freight Lines, Inc., 144 Ill.2d 84 (1991); Lorenz v. Air Illinois, Inc., 168 Ill.App.3d 1060 (1st Dist., 1988)*. This principle is formally incorporated into IPI 31.12 ("Damages for [loss of sexual relations][loss of society] are not reduced to present cash value.").

Additionally, a worker's compensation lien does NOT attach to a loss of consortium award. *Glenn v. Johnson, 198 Ill.2d 575, 585 (2002).*

NOTE: Punitive damages are not recoverable in loss of consortium claims. *Hammond v. North American Asbestos Corporation, 97 Ill.2d 195 (1983).* Additionally, recovery for loss of consortium is limited by the injured spouse's comparative negligence. *Blagg, supra. See also, Flath v. Madison Metal Services, 212 Ill.App.3d 367, 379 (5th Dist., 1991).*

CAUTION: Because loss of consortium is a derivative claim that is predicated on the directly injured spouse's claim, it must be supported by an underlying tort claim; without such a claim by the directly injured spouse, there can be no claim for loss of consortium. *Flesor v. Unisource, 2014 IL App (1st) 132559-U.*

Also, loss of consortium terminates upon remarriage of the surviving spouse, but cohabitation short of marriage does not impact the recovery for loss of consortium. In fact, it is irrelevant. *Martin v. Illinois Central Gulf Railroad, 237 Ill.App.3d 910 (1st Dist., 1991). See also, McClain v. Owens-Corning Fiberglass Corporation, 139 F.3d 1124 (7th Cir., 1998).* However, separation or infidelity during marriage may be relevant to a loss of consortium claim because they may demonstrate a

diminishment in the value of the claim. *Countryman v. County of Winnebago, 135 Ill.App.3d 384 (2d Dist., 1985).*

E. Lost Wages/Profits/Earning Capacity

While it is without question that lost wages and profits may be recovered in appropriate cases, and that expert testimony is not necessary, there are specific foundational requirements. *LaFever v. Kemlite, 293 Ill.App.3d 260 (1st Dist., 1997); Aardvark Art v. Lehigh/Steck-Warlick, 284 Ill.App.3d 627 (2d Dist., 1996).*

For instance, loss of future earnings may be recovered only when they are reasonably certain to occur; evidence that is remote or merely speculative is improper. *Carlson v. City Construction Company, 239 Ill.App.3d 211 (1st Dist., 1992).* Thus, it has been deemed error to admit testimony about future earnings based merely upon an "ambition for advancement." *Id.* Instead, the plaintiff must establish that he had the ability and opportunity to realize the ambition. *Id.* Additionally, there must be some evidence that plaintiff's injury was permanent and that it prevented him from continuing employment. *LaFever v. Kemlite, 293 Ill.App.3d 260 (1st Dist., 1997), as modified on denial of rehearing.*

Lost profits do not need to be proven with absolute certainty. Prairie Eye Center, Ltd. v. Butler, 329 Ill.App.3d 293 (4th Dist., 2002) & Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc., 199 Ill.2d 325 (2002)

F. Future Damages & Increased risk of future harm

As with all elements of damages, requests for future damages must be supported by evidence which demonstrates the damage is reasonably certain to occur. Thus, claims for possible future injuries such as cancer or AIDS have been rejected unless there is proof of actual exposure to a harmful agent. *Majca v. Beekil, 183 Ill.2d 407 (1998).*

Claims for increased risk of future harm represent a bit of a departure from established precedent regarding future damages and are governed by the Supreme Court decision in *Dillon v. Evanston Hospital, 199 Ill.2d 483 (2002),* which allowed recovery for damages less than 50% likely to occur. Although absolute certainty is unnecessary in this context, the increased risk of future injury must still be proven within a reasonable degree of certainty and must be proximately caused by defendant's negligence. *Kamp v. Preis, 332 Ill.App.3d 1115 (5th Dist., 2002). See also, Foley v. Fletcher, 361 Ill.App.3d 39, 51 (1st Dist., 2005)($1 million award for infant's increased risk of future harm due to scoliosis or hip dislocation vacated because experts failed to specify the level of increased risk or the probability of these injuries occurring.).* The concept of increased risk of future harm is now commonplace (*Knollenberg v. Kincade, 2012 IL App (4th) 120125-U & Corwin v. Investigative Protection Agency, 2012 IL App (1st) 111983-U))* and formally incorporated in IPI 30.04.03 and IPI 30.04.04, the latter of which provides jurors with

the requisite calculation for such damages. ("To compute damages for increased risk of future harm only, you must multiply the total compensation to which the plaintiff would be entitled if [specific condition] were to occur by the proven probability that [it] will in fact occur.")

CAUTION: IPI 30.04.03 & IPI 30.04.04 should only be given when the plaintiff alleges damages that are less than 50% certain to occur. Further, attorneys must be specific in identifying the Dillon-type of future damages in the jury instructions when plaintiff also seeks future damages that are more certain to occur.

G. Wrongful Death (740 ILCS 180/2) vs. Survival Damages (755 ILCS 5/27-6)

The basic distinction between wrongful death and survival damages is as follows: wrongful death actions cover the time after death & compensate the next of kin for their loss due to the death. In contrast, survival actions allow for recovery of damages personally sustained by the deceased up to the time of death. *Carter v. SSC Oden Operating Company, LLC, 2012 IL 113204, ¶ 34.*

In terms of relevant evidence under a wrongful death claim involving a child, the birth of subsequent children is irrelevant to the parent's claim for loss of society for the deceased child. *Simmons v. University of Chicago Hospitals & Clinics, 162 Ill.2d 1 (1994).*

Punitive damages are not recoverable under either Act. As to the Survival Act specifically, see *Vincent v. Alden-Park Strathmoor, 241 Ill.2d 495, 503 (2011)(Generally, the right to seek punitive damages does not survive the death of the injured party.).*

Pecuniary losses, such as money, benefits, goods or services, are reduced to present cash value. However, awards for loss of society are not similarly reduced. *IPI 31.12 & IPI 32.02 -- IPI 32.06.*

NOTE: Traditionally, damages for bereavement by the next of kin were not recoverable under the Wrongful Death Act. *Dorsey v. State, 63 Ill.Ct.Cl. 177, 207 (1st Dist., 2011).* However, effective May 31, 2007, the Act was amended so as to expressly allow damages for the "grief, sorrow and mental suffering of the next of kin." *740 ILCS 180/2. See also, Mankowski v. Nemec, 2014 IL App (2d) 140154, ¶ 65.* This additional element of damage is incorporated into IPI 31.01 – 31.06.

NOTE: Effective in 1999, the Wrongful Death Act was also amended to incorporate a modified approach to the comparative fault of the decedent's beneficiaries so that their fault is no longer a complete bar to their recovery. *Johnson v. Best Western Corporation, 2012 IL App (1st) 111837-U, ¶ 47-48.*

CAUTION: Medical expenses are recoverable under the Survival Act, not the Wrongful Death Act, a fact that must be taken into consideration during settlement

negotiations, as well as trial, because failure to properly allocate the settlement amount between plaintiff's individual theories of recovery may preclude a nonsettling defendant from receiving a setoff after verdict. *Thornton v. Garcini, 237 Ill.2d 100 (2009). Accord, Jackson v. Matthews, 2012 IL App (1st) 102221-U (party seeking setoffs bears the burden of proving what portion of prior settlement was allocated to the claim for which he is liable.).*

IV. Statutory Reduction of Damages: 735 ILCS 2-1205, 2-1205.1 & 2-1207

Sections 2-1205 & 2-1205.1 represent an "exception to the collateral source rule & allow a…judgment to be reduced…" by the amount paid by third parties. *Perkey v. Portes-Jarol, 2013 IL App (2d) 120470, ¶ 93.* The intent behind the legislation was to eliminate duplicative recoveries. Despite the fact that several statutory provisions allow for post-judgment reduction of damages, very few defendants invoke them. Thus, it is important to understand the scope of the following provisions:

- Section 2-1205 -- reduction of awards for medical expenses & lost wages in medical malpractice cases.
- Section 2-1205.1 -- reduction of awards for medical expenses (not lost wages) in all tort cases other than medical malpractice.
- Section 2-1207 – reduction of excessive punitive damage awards.

Both sections 2-1205 & 2-1205.1 include the following limitations:

- Reductions are timely only if made within 30 days of judgment or the time allowed by the court. *See, Flavell v. Ripley, 247 Ill.App.3d 842 (2d Dist., 1993).*
- Reductions shall not apply to the extent there is a right of recoupment through subrogation, trust agreement, lien or otherwise; all reductions are limited to the dollar amount of the right of recoupment. *York v. El-Ganzouri, 353 Ill.App.3d 1, 47 (1st DIst., 2004), affirmed 222 Ill.2d 147.*
- Reductions shall not reduce the judgment by more than 50% of the total verdict;
- Judgment shall be increased by the amount of any insurance premiums or direct costs paid by plaintiff for the collateral benefits in the 2 years prior to injury or death.

Section 2-1205 contains the additional caveat that no reductions are allowed for medical expenses that are directly attributable to the defendant's negligence. This has been interpreted to mean the actual services involving negligence, not subsequent services made necessary by the negligence.

Section 2-1205.1 does not apply unless the medical expenses exceed $25,000. *Hosier v. Dulgar, 2013 IL App (4th) 120640-U.*

NOTE: Defendant bears the burden of proving plaintiff's insurer does NOT have a right of recoupment. *York, supra.* Additionally, defendant bears the burden of producing admissible evidence on this point in a timely manner. *Perkey, supra.*

CAUTION: There is no requirement that the right of recoupment be perfected in order to avoid reduction under the statute. *First Springfield Bank v. Galman, 299 Ill.App.3d 751, 764 (4th Dist., 1998), reversed on other grounds, 188 Ill.2d 252 (1999).*

Additionally, a generalized, nonitemized verdict does not prevent application of the statute. *DeCastris v. Gutta, 237 Ill.App.3d 168 (2d Dist., 1992).*

V. Quotient Verdicts – What Are They?

A quotient verdict results from advance juror agreement to reach a verdict by adding different damage figures suggested by each individual juror and then accepting the average of the total as the final verdict. *Urbas v. Saintco, Inc., 264 Ill.App.3d 111, 135 (5th Dist., 1994).* Although jurors may "experiment" by considering such amounts, advance agreements to use the average amount as the final verdict is improper and will vitiate a verdict reached under such an agreement. *Illinois Central R.R. Company v. Able, 59 Ill. 131 (1871).* This continues to be the law in Illinois. *Stone v. Mitek Industries, Inc., 2014 IL App (3d) 120122-U, ¶ 48.* In fact, "this prohibition was incorporated into Illinois Rule of Evidence 606(b)(adopted January 1, 2011)." *Id.*

CAUTION: Although older cases conflict about the use of juror affidavits to establish that the final judgment was a quotient verdict,[3] the current view is that such affidavits are strictly verboten. *Carroll v. Preston Trucking Company, Inc. 349 Ill.App.3d 562, 570 (1st Dist., 2004)("We believe that, under current supreme court cases, juror affidavits cannot be used to impeach a jury verdict on the ground that it was reached through an impermissible quotient method unless it can be shown that the decision to employ it was the result of extraneous influences.") Accord, Stone v. Mitek Industries, 2014 IL App (3d) 120122-U.* Thus, *Department of Transportation v. J.W. Graham, 130 Ill.App.3d 589, 593 (5th Dist., 1985) is not good law and should not be relied upon.*

VI. Additur & Remittitur

Additur and remittitur are both judicial interventions that allow courts to correct verdicts that are deemed erroneous or excessive.

Additur may be used "to correct an omission of easily calculated damages" (*Sheth v. SAB Tool Supply Company, 2013 IL App (1st) 110156, ¶ 90)* or when the jury award bears no reasonable relationship to the loss suffered by plaintiff. Typically,

[3] *See, City of Pekin v. Winkel, 77 Ill.56, 58 (1875)("Can it be that a busy body about the purlieus of the court shall communicate such information, and shall it inspire belief, and must the court act on it? We think not. It would be the destruction of trials by jury, should it be permitted."). But see, Kelley v. Call, 324 Ill.App.3d 143 (3d Dist., 1944)(Affidavit of foreman was considered because it was used in support of the verdict, not to impeach it.)*

additur is applied when the omission concerns liquidated damages. Importantly, additur is not appropriate where the jury makes credibility determinations based on conflicting testimony. *Id. at ¶ 84.*

CAUTION: Additur may only be awarded where the defendant consents to it. However, failure to consent after the court concludes the verdict is erroneous will mandate a new trial on damages only. *Merrill v. Hill, 335 Ill.App.3d 1001, 1008 (2d Dist., 2003).*

Remittitur is an agreement by plaintiff to reduce the portion of a jury verdict which is excessive and to accept the sum which has been judicially determined to be proper. *Roach v. Union Pacific Railroad, 2014 IL App (1st) 132015.* It has long been accepted in Illinois as promoting the administration of justice. *Best v. Taylor Machine Works, 179 Ill.2d 367, 412 (1997).* It is premised on the notion that courts have a duty to correct excessive verdicts, which are defined as those verdicts that fall outside the range of fair and reasonable compensation, result from passion or prejudice or are so large so as to shock the judicial conscience. *Id.*

NOTE: Plaintiff must consent to remittitur. *Roach, supra.* Failure to do so after the court concludes the verdict is excessive mandates a new trial.

Significantly, the Appellate Court can remit the damages to a proper amount. *Brannen v. Seifert, 2013 IL App (1st) 122067.*