

### **30.05.01 Measure of Damages--Emotional Distress--Past and Future**

The emotional distress experienced [and reasonably certain to be experienced in the future].

*Notes on Use and Comment Revised May, 2016.*

#### **Notes on Use**

This element is to be inserted between the two paragraphs of IPI 30.01 when the evidence justifies its use and when the court rules that damages for emotional distress can be claimed.

In *Thornton v. Garcini*, 237 Ill.2d 100, 928 N.E.2d 804, 809, 340 Ill.Dec. 557, 562 (2010), the Illinois Supreme Court held that expert testimony is not required to recover damages for emotional distress, overruling *Hiscott v. Peters*, 324 Ill.App.3d 114 at 126, 754 N.E.2d 839 at 850, 257 Ill.Dec 847 at 858 (2d Dist. 2001) which held that expert testimony was required to recover damages for emotional distress. *Hiscott* involved an appeal from a verdict for the plaintiff in a motor vehicle collision where the jury returned an itemized verdict for past medical expense, past pain and suffering, future pain and suffering, disability, disfigurement and emotional distress. See Notes on Use for B45.03A and B45.03A2 for itemization of damages on the verdict form to provide separate lines for past and future loss.

#### **Comment**

Where the plaintiff has sustained personal injuries due to the defendant's negligence or other personal tort, the plaintiff is entitled to recover all damages which are the natural and proximate result of the tort. *City of Chicago v. McLean*, 133 Ill. 148, 153, 24 N.E.527, 528 (1890). Where the defendant's negligence inflicts an immediate physical injury, Illinois courts allow recovery for the mental disturbance accompanying the injury. In *Babikian v. Mruz*, 2011 IL App (1<sup>st</sup>) 102579, 956 N.E.2d 959, 353 Ill. Dec. 831, the jury returned a verdict for the plaintiff in a medical malpractice action with separate line items for pain and suffering for permanent abdominal pain and emotional distress for a decline in her mental health. The appellate court rejected the defendant's claim that the award of emotional distress damages were duplicative of the plaintiff's recovery for pain and suffering. The court also rejected defendant's contention that emotional distress damages are allowed only in causes of action for intentional or negligent infliction of emotional distress. The court held that the rule in Illinois is just the opposite, that damages for emotional distress are available to prevailing plaintiffs in cases involving personal torts such as medical negligence, citing *Clark v. Children's Memorial Hospital*, 2011 IL 108656, 353 Ill. Dec. 254, 955 N.E.2d 1065 (2011), a wrongful birth case. *Id.* ¶19, 956 N.E.2d at 964, 353 Ill. Dec. at 836. See also *Cummings v. Jha*, 394 Ill. App. 3d 439, 915 N.E.2d 908, 333 Ill. Dec. 837 (5<sup>th</sup> Dist. 2009) where the court affirmed a medical malpractice verdict for plaintiff including separate line items for pain and suffering and mental distress.

Also, under certain circumstances, a plaintiff can recover damages for negligent infliction of emotional distress even in the absence of a physical impact. *Rickey v. Chicago Transit Auth.*, 98 Ill.2d 546, 457 N.E.2d 1, 75 Ill.Dec. 211 (1983); *Corgan v. Muehling*, 143 Ill.2d 296, 574

N.E.2d 602, 158 Ill.Dec. 489 (1991); *Lewis v. Westinghouse Electric Corp.*, 139 Ill.App.3d 634, 487 N.E.2d 1071, 94 Ill.Dec. 194 (1st Dist.1985); *Courtney v. St. Joseph Hosp.*, 149 Ill.App.3d 397, 500 N.E.2d 703, 102 Ill.Dec. 810 (1st Dist.1986); *Robbins v. Kass*, 163 Ill.App.3d 927, 516 N.E.2d 1023, 114 Ill.Dec. 868 (2d Dist.1987); *Koeller v. Cook County*, 180 Ill.App.3d 425, 535 N.E.2d 1118, 129 Ill.Dec. 353 (1st Dist.1989); *Seef v. Sutkus*, 205 Ill.App.3d 312, 562 N.E.2d 606, 150 Ill.Dec. 76 (1st Dist.1990), *aff'd on other grounds*, 145 Ill.2d 336, 583 N.E.2d 510, 164 Ill.Dec. 594 (1991); *Allen v. Otis Elevator Co.*, 206 Ill.App.3d 173, 563 N.E.2d 826, 150 Ill.Dec. 699 (1st Dist.1990); *Hayes v. Illinois Power Co.*, 225 Ill.App.3d 819, 587 N.E.2d 559, 167 Ill.Dec. 290 (4th Dist.1992); *Leonard v. Kurtz*, 234 Ill.App.3d 553, 600 N.E.2d 896, 175 Ill.Dec. 653 (3d Dist.1992); *Jarka v. Yellow Cab Co.*, 265 Ill.App.3d 366, 637 N.E.2d 1096, 202 Ill.Dec. 360 (1st Dist.1994). *See also Kapoulas v. Williams Ins. Agency, Inc.*, 11 F.3d 1380 (7th Cir.1993).

The United States Supreme Court has recognized a cause of action for negligent infliction of emotional distress under the Federal Employers' Liability Act. *Consolidated Rail Corp. v. Gottshall*, 512 U.S. 532, 114 S.Ct. 2396, 129 L.Ed.2d 427 (1994). *See Chapter 160, infra.*