



Voodoo Economics?

Loss Of Parental Training And Guidance: The New Battleground In Medical Malpractice Damages

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Executive Summary

One new tactic plaintiff counsel use to avoid the cap on noneconomic damages is to seek damages for diminished educational prospects resulting from "loss of parental training and guidance" and characterize those damages as an economic loss. Defense counsel should argue that the damages, even if provable, are inherently noneconomic because they are based on underlying facts that are indistinguishable from loss of society and companionship.

In addition, defense counsel must be prepared to attack the factual foundation for these damages by requiring actual proof of the activities of the deceased parent that relate to educational prospects, and by attacking any expert testimony under Daubert principles.

Since the advent of caps on noneconomic damages¹ in medical malpractice cases in Michigan, plaintiffs' counsel have been trying to get around them, or, at the very least, fashion a theory of recovery to increase the amount of economic damages that can be awarded. The latest innovative measure we have seen from our fair brethren across the aisle is the theory that minor children of the deceased suffer **economic** damages through the "loss of parental training and guidance." While potentially applicable in all wrongful death tort actions, we are seeing this novel approach in medical malpractice cases as a vehicle to compensate for the "cap" on noneconomic damages by "beefing" up economic loss. It is important to be acquainted with this theory as it could result in an increase of several million dollars in requested economic damages if allowed by the court. What follows is an analysis of this theory along with some ideas about how to defend against it when it arises. The place to begin is with some background on the subject to provide context for the analysis and conclusions.

In wrongful death cases in which the heirs include minor children of the deceased, the Decedent's estates are now seeking to recover damages pursuant to the wrongful death act for the "loss of parental training and guidance" as it relates to the children's educational attainment. The theory behind a claim for damages for "loss of parental training and guidance" is that the death of the mother or father and the resulting loss of the training and guidance they provided to the children places the children at an increased risk of not attending college and, as a result, they will earn less income during their lifetime. In an effort to support this theory, plaintiff attorneys are submitting testimony from economists who calculate the expected earnings for a college graduate and compare this to the expected earnings for a high school graduate. The economist then characterizes the difference in these two levels of earning as the value of the loss of parental training and guidance suffered by the children as a result of their mother or father's death.

Although damages for loss of parental training and guidance are cognizable in Michigan, and have been for many years, there are a number of issues which arise when the estate of the deceased attempts to prove such damages, including submitting sufficient testimony from the appropriate witnesses to establish such a loss and whether testimony from an economist as to the value of the loss is sufficiently reliable to be deemed admissible. While ultimately a **Daubert** challenge to any proposed testimony from an economist regarding damages based on a loss of educational attainment theory is recommended, the most important issue to a potential settlement or verdict will be whether damages for "loss of parental training and guidance" are deemed noneconomic to which the damage caps apply.



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Loss of Parental Training and Guidance – a Cognizable Claim in Wrongful Death Cases.

The Wrongful Death Act² ("the Act") provides the exclusive method for a plaintiff to seek damages for wrongful death as there is no common law right to recover.³ In addition to damages for certain expenses and for the decedent's pain and suffering, the Act allows beneficiaries to claim damages for the loss of financial support and for the loss of society and companionship of the deceased. MCL 600.2922(6) provides:

In every action under this section, the court or jury may award damages as the court or jury shall consider fair and equitable, under all the circumstances including reasonable medical, hospital, funeral and burial expenses for which the estate is liable; reasonable compensation for the pain and suffering, while conscious, undergone by the deceased person during the period intervening between the time of injury and death; and damages for the loss of financial support and the loss of the society and companionship of the deceased.

Until 1971, the Act limited damages to the surviving spouse or next of kin as

a result of the decedent's death to "pecuniary injury." With the enactment of 1971 PA 65, the legislature amended the Act by deleting the phrase "pecuniary injury," thus allowing juries to award such damages as it "shall deem fair and just, under all of the circumstances, . . . [including] recovery for the loss of the society and companionship of the deceased." Although the language of the Act specifically provides for damages for loss of society and companionship, it does not include damages for "loss of parental training and guidance."⁴ However, loss of parental training and guidance as an element of damages in a wrongful death case is specifically referenced in the Michigan Civil Jury Instructions.⁵ M Civ JI 45.02 provides:

If you decide the plaintiff is entitled to damages, you shall give such amount as you decide to be fair and just, under all the circumstances, to those persons represented in this case. Such damages may include the following items, to the extent you find they have been proved by the evidence:

(reasonable medical, hospital, funeral and burial expenses)

(reasonable compensation for the pain and suffering undergone by [name of decedent] while [he / she] was conscious during the time between [his / her] injury and [his / her] death)

(losses suffered by [name of surviving spouse / name of next of kin] as a result of [name of decedent]'s death, including:

loss of financial support

loss of service

loss of gifts or other valuable gratuities

loss of parental training and guidance

loss of society and companionship

Which, if any, of these elements of damage has been proved is for you to decide, based upon evidence and not upon speculation, guess, or conjecture. The amount of money to be awarded for certain of these elements of damage cannot be proved in a precise dollar amount. The law leaves such amount to your sound judgment. Your verdict must be solely to compensate for the damages and not to punish the defendant. (Emphasis added).

Although not listed as an element of damages in the Act or specifically defined by case law, a claim for the loss of parental training and guidance is really no different from a claim for loss of society and companionship. The compensation provided under the Act for the loss of the society and companionship of the deceased is "for the destruction of family relationships that result when one family member dies."⁶ Although specific factors to be accounted for are not identified, the Court of Appeals has stated that "the only reasonable means of measuring the actual destruction caused is to assess the type of relationship the decedent had with the claimant in terms of objective behavior as indicated by the

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time and activity shared and the overall characteristics of the relationship."⁷ These parameters for proving loss of society and companionship fit squarely within those provided by the Supreme Court and Court of Appeals when an Estate seeks damages for the children of the deceased.

Indeed, even before the 1971 amendment to the Act which specifically allowed for loss of society and companionship claims, the Michigan Supreme Court in *Sipes v Michigan Cent R. Co.*,⁸ recognized that the pecuniary loss suffered by an infant for the wrongful death of a parent included damages such as loss of parental training and guidance. However, the plaintiff is required to present specific evidence to establish that the deceased parent was capable of and actually did provide such training and guidance to the children. The fact that the decedent was a parent, in and of itself, does not substantiate such a loss in the children's lives. The Court held:

The pecuniary loss to an infant, in the death of a parent, may go beyond consideration of food, shelter, clothing, and like material comforts, and include the expense of supplying such degree of nurture, and intellectual, moral, and physical training, as the evidence shows such parent was, by reason of ability, character, and temperament, capable of giving. Mere parentage, however, does not carry such a showing. Evidence relating to the nurture bestowed, and revealing the intellectual powers and moral character of the person, is available, and must be introduced to show the extent of what would have been supplied by the deceased had he lived, and, by reason of his death, need now be bought and paid for. To measure what has been lost, it is necessary to consider the capacity of the parent to bestow. Without such light, the jury would have to apply their

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own standards, based on their individual experiences, and these would, of necessity, 'be as various as their tastes, habits, and opinions.' . . . And the result would therefore be reached without considering the parent at all.⁹

Later, in *Berger v Weber*,¹⁰ the Supreme Court extended these damage claims to cases in which the parent is negligently injured and further defined a child's claim for loss of society and companionship to include love, companionship, affection, society, comfort and solace as well as services. The Michigan Court of Appeals also recognized in *Westfall v Venton*¹¹ that "children may recover from the tort-feasor for the unlawful death of a parent where loss of love, companionship and guidance have been proven."

Ultimately then, damages for "loss of parental training and guidance" are clearly allowed in Michigan in wrongful death cases. Moreover, these damages emanate from the losses suffered by the child as a result of no longer having the nurturing and supportive parental rela-

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tionship which, one would argue, helps to mold the child into the type of adult he or she will become.

Evidentiary Support is Essential

However, there must be sufficient evidence to support a claim that the relationship between the parent and child was one that included the parent supplying positive intellectual, moral and other such parental training and guidance, that the parent was capable of giving such guidance and that the death of the parent has created a void in the child's training and guidance which must now be bought and paid for. If these evidentiary burdens can be met, defense counsel must ensure that the trial court recognizes that such claims for damages are no different from the loss of society and companionship of the deceased parent. This is critical because, if so characterized, then the noneconomic damage caps in medical malpractice cases must apply.

Claims for Loss of Training and Guidance Are Noneconomic In Nature.

In *Berger*, although the Supreme Court rejected the defendants' argument that recognizing a child's independent cause of action for injury to a parent was too speculative, the court made clear that the damages were an "intangible loss" such as pain and suffering and most certainly were not economic in nature:

We are not convinced that the injury to the child is too speculative to award damages. Courts, law review commentators and treatise writers all recognize that the child suffers a genuine loss. While the loss of society and companionship is an intangible loss, juries often are required to calculate damages for intangible loss. Awards are made for pain and suffering, loss of society and companionship in wrongful death actions, and for loss of spousal consortium.

Evaluating the child's damages is no more speculative than evaluating these other types of intangible losses.¹²

Distilled to its essence, a claim for loss of parental training and guidance is no different from a claim for loss of society and companionship damages, which are "clearly noneconomic."¹³ Indeed, each claim for damages is measured by the loss suffered as a result of losing the positive attributes of a parental or family relationship.

In order to be certain the losses are deemed noneconomic, however, defense counsel must be careful to distinguish damages for the loss of parental training and guidance from damages for the loss of household services performed by a parent for his or her children. As to the latter category of damages, and as further discussed below, the Court of Appeals has deemed certain household services performed by a parent in a wrongful death case to be economic in nature and not subject to the medical malpractice damage cap.¹⁴ This distinction will not always be easy as there could conceivably be overlaps between the training and guidance provided by a parent and the "services" performed by a parent, including reading to or with children, helping with homework and the like. With this in mind, the defense practitioner would be well served by serving interrogatories or conducting other discovery in an effort to clarify which components of a claim for loss of household services actually comprise services performed by a parent for his or her child.

In *Thorn v Mercy Memorial Hospital*¹⁵, the decedent's estate sought to recover damages for the economic value of the loss of household services that the decedent mother provided to her minor children. The services claimed to have been lost included services the mother "was accustomed to perform in the household; services ordinarily performed by [the mother] and special services uniquely per-

formed by a mother."¹⁶ Plaintiff's economist used the American Time Use Survey and the hourly rate of a live-in aide to determine the value of the loss of household services at \$225 per day.¹⁷ The services the economist considered included: "physical care for children; playing and doing hobbies with children; reading to/with children; talking to/with children; helping with homework/education-related activities; attendance at children's events; taking care of children's health care needs' [sic] and dropping off, picking up, and waiting for children." The economist also included "secondary activities" done at the same time as the primary listed activities such as cooking dinner.¹⁸ The court determined that these specific services performed by the mother for her minor children amounted to "replacement services," a well-recognized component of damages recoverable by a person injured because of medical malpractice.¹⁹

The court then turned to the issue of whether the loss of these services performed by the mother constituted an economic or noneconomic loss. Notably, the plaintiff argued that the loss of these services were "quantifiable and, therefore, should not be construed as being commensurate with the noneconomic compensation available for the more esoteric damages incurred for loss of society and companionship."²⁰ The Court of Appeals agreed and distinguished this claim for damages for loss of services from an independent action for loss of consortium (which is precluded under the Act) and a claim for loss of society and companionship damages allowed under the Act.²¹

In so holding, the court looked to the medical malpractice damage cap statute, MCL 600.1483, "to discern the nature and character of the damages available to plaintiff."²² After noting that the statute does not provide a definition of economic loss, the court concluded that MCL 600.1483 did not provide the answer to the question of whether loss of household services damages were economic or non-

economic "or fully delineate the components of a noneconomic loss. . ." ²³ Thus, the court looked to the statutes pertaining to product liability actions relating to injury or death for guidance.²⁴ In particular, the *Thorn* court looked to MCL 600.2945, which distinguishes between economic and noneconomic losses:

(c) "Economic loss" means objectively verifiable pecuniary damages arising from medical expenses or medical care, rehabilitation services, custodial care, loss of wages, loss of future earnings, burial costs, loss of use of property, costs of repair or replacement of property, costs of obtaining substitute domestic services, loss of employment, or other objectively verifiable monetary losses.

* * *

(f) "Noneconomic loss" means any type of pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, humiliation, or other nonpecuniary damages.

The court determined that the definitions contained within MCL 600.2945 were instructive in determining the nature of the claim for loss of services in *Thorn*. The court stated:

We note that the definition of "economic loss" is consistent with prior versions of the [Wrongful Death Act], which focused on pecuniary damages. The definition of noneconomic loss under this statutory provision parallels the historical progression of the WDA, which initially precluded recovery for nonpecuniary damages, such as loss of society and companionship, grief, and mental anguish. The definition in MCL 600.2945(f) is also consistent with the definition of noneconomic loss in MCL 600.1483(3).

Although damages recoverable under the WDA are determined by the underlying action, it is nonsensical to construe the nature or character of those damages as being variable depending on the theory of liability. What comprises an economic loss in a medical malpractice action must be the same as what constitutes an economic loss under a different theory of tort liability. To find otherwise would be not only confusing, but also would lead to inconsistent and inequitable results when an injury is fatal.²⁵

The court concluded that the loss of the mother's household services to her children fit into the economic loss definition as damages for the cost of replacement services which were "separate and distinguishable from compensation for loss of society or companionship" and, as economic damages, were not subject to the damages cap.²⁶ In other words, the loss in *Thorn* was objectively verifiable.

Damages for Loss of Educational Attainment Are Not Objective

Although plaintiffs will rely on *Thorn* to argue that certain services performed by a parent are economic in nature, *Thorn* can be distinguished from cases with alleged damages for loss of parental training and guidance as valued by a "loss of educational attainment" in that these types of damages cannot be **objectively** verified. In *Thorn*, the damages sought were for the cost of paying someone to be physically present to perform the daily services no longer being performed by the mother – helping with homework, reading to the children, attending school/sport events, cooking dinner – all of which had objectively verifiable replacement costs.

Conversely, loss of parental training and guidance leading to loss of educational attainment damages must be measured by the detriment to the child over time as a result of not having the positive influence of a parent in their life –

an esoteric computation which is incapable of being supported by the testimony of an economy expert. For example, an economist relying on a loss of educational attainment theory performs two calculations in order to determine the value of the loss of parental training and guidance. First, the economist researches what a college graduate may be expected to earn and then researches what a high school graduate would expect to earn. The difference between these two figures is then characterized as the "economic" loss suffered by the minor children because the economist's theory is that children of a single parent are less likely to go to col-

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lege. We see at deposition, however, that the economist has no knowledge or real information regarding what parental training and guidance, if any, the deceased parent actually provided to his or her children. Also, the economist cannot testify that it is more likely than not that the children will **not** proceed to college as a result of their mother or father's death. Because damages for loss of educational attainment cannot be objectively verified, they **must** be classified as noneconomic in accordance with the *Thorn* decision.

Decisions in Other States

Given the scarcity of Michigan case law regarding damages for loss of parental training and guidance, it is helpful to look to other states for guidance, a number of which treat damages for loss of parental training and guidance as non-

economic in nature. For example, the Alaska Civil Pattern Jury Instructions indicate that the jury may make an award for "the fair value of the loss of the enjoyment, care, guidance, love and protection" suffered by the child or children as a result of injury to a parent as an item of noneconomic loss.²⁷ Furthermore, Maryland's statute governing damages for wrongful death defines noneconomic damages as: "In an action for wrongful death, mental anguish, emotional pain and suffering, loss of society, companionship, comfort, protection, care, marital care, parental care, filial care, attention, advice, counsel, training, guidance, or education, or other noneconomic damages . . ."²⁸

Additionally, the case of *Kallas v Carnival Corporation*²⁹ is particularly instructive when examining the legal issues regarding a damage claim for loss of parental training and guidance. Not only did the court find that the opinion of plaintiff's expert (who testified that the value of the loss of parental training and guidance was the difference in earnings between a college graduate and a high school graduate) was unreliable under Federal Rule of Evidence 702, but the court also conducted a review of case law from across the country regarding this type of damage claim and determined that there "is not any uniform standard recognized by courts for determining the value of lost parental training and guidance."³⁰ Notably, however, although recognizing that other courts did allow damages for loss of parental training and guidance in certain situations, the *Kallas* court was unable to find "any case in which a child's *potential* lost income due to risk of not attending college was used as a factor for determining the loss."³¹ This decision should prove particularly helpful in those cases where the plaintiff's economist seeks to characterize the loss of parental training and guidance as a loss of educational attainment by the child, as opposed to those cases in which the loss of parental train-

ing and guidance is characterized by looking at the value of the household services performed by the mother or father for the benefit of their children.

Furthermore, a review of the cases identified by the *Kallas* court³² in which damages for loss of parental training and guidance were awarded serves to highlight the fact that this type of claim is an intangible loss which is incapable of being computed with mathematical certainty and, therefore, is properly characterized as noneconomic in nature. See, e.g., *Solomon v Warren*³³ (finding that damages for loss of parental training and guidance “cannot be computed with any degree of mathematical certainty) and *Southlake Limousine & Coach, Inc v Brock*³⁴ (finding that testimony of economist on loss of parental training and guidance was inadmissible and that jury should be able to determine intangible losses like this based on its own experiences and through the testimony of survivors). Other cases have made similar findings. See, e.g., *Ed Wiersma Trucking Co v Pfaff*³⁵ (including loss of parental training and guidance as an example of emotional damages recoverable under the wrongful death act) and *Johnson Controls v Forrester*³⁶ (same).

Admissibility of Expert Testimony – *Daubert*

If the plaintiff is able to provide sufficient testimony to support a claim that the deceased parent provided training and guidance which has now been lost to the children, and if the trial court actually determines the nature of the claimed loss is economic, the next query is the admissibility of proposed testimony from an economy expert that the value of the loss of parental training and guidance is measured by the decreased income of the children due to their loss in educational attainment.

Once again, it is imperative that the plaintiff present **fact witnesses** to determine if the deceased parent furnished training and guidance and what loss, if

any, the children have suffered. It is hard to imagine how an economist could have any reliable basis as to the relationship between the parent and child or the damages actually suffered by the child as a result of losing the parent’s training and guidance. More importantly, it should be argued that calculations by an economist of a child’s potential lost income are too attenuated and speculative to be reliable and admissible at the time of trial.

If, however, an economist is not precluded from testifying, the trial court must be forced to perform its gatekeeping responsibilities and fully examine the basis for the economist’s opinions on loss

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of parental training and guidance at a *Daubert* hearing prior to allowing the testimony at trial.

The trial court’s gatekeeping function stems from both MRE 702 and MCL 600.2955. MRE 702 provides that an expert may provide opinion testimony only if “(1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.” This language was added to MRE 702 on January 1, 2004. The staff comment to MRE 702 makes clear that the amendment was made in order to more closely conform MRE 702 to Federal Rule of Evidence 702 and to incorporate the United States Supreme Court’s holding in *Daubert v Merrell Dow Pharmaceuticals, Inc.*,³⁷ requiring

trial judges to act as “gatekeepers” to exclude unreliable expert testimony.³⁸ However, “[i]n both its former and current incantations, MRE 702 has imposed an obligation on the trial court to ensure that any expert testimony admitted at trial is reliable.”³⁹ Indeed, a trial court may admit expert opinion testimony only once it has ensured that the testimony meets MRE 702’s standards of reliability.⁴⁰

As the Supreme Court further explained, the trial court is required “to ensure that each aspect of an expert witness’s proffered testimony — including the data underlying the expert’s theories and the methodology by which the expert draws conclusions from that data — is reliable.”⁴¹ “While the exercise of this gatekeeper role is within a court’s discretion, a trial judge may neither ‘abandon’ this obligation nor ‘perform the function inadequately.’”⁴²

In addition to MRE 702, the Michigan legislature also enacted MCL 600.2955 in an “apparent attempt to codify” the United States Supreme Court’s holding in *Daubert*.⁴³ Unlike MRE 702, which applies in all cases in which expert testimony is used, §2955 only applies “in an action for the death of a person or for injury to a person or property.” MCL 600.2955(1) provides that scientific opinion testimony is not admissible unless the trial court first determines that the opinion is reliable and will assist the trier of fact. In making this determination, the trial court must examine both the opinion and the basis for the opinion and “shall” consider all of the seven specific factors set forth in the statute.

Submitting testimony from an economist that the proper measure of the loss of parental guidance and support to a child whose parent is deceased is the difference between his or her projected college degree compensation and his/her projected high school compensation assumes that the child will not attend or will not graduate from college. This opinion obviously is premised on an event that

has not even had the chance to occur yet: the child's matriculation at a post-secondary institution. Clearly, this is an assumption which could not possibly be supported by any evidence in the case and, as such, is untethered to any scientific validity, is entirely speculative and should not be admitted into evidence under MRE 702 and MCL 600.2955.

Conclusion

Although cognizable in Michigan, damages for loss of parental training and guidance in wrongful death medical malpractice cases must be supported by sufficient evidence that the parent possessed the moral, intellectual and physical capability to provide positive training and guidance, actually had such a relationship with the child and, as a result of the parent's death, the child, by no longer having that relationship, has suffered a loss. In order to be reliable and thus admissible, this evidence should be presented through the testimony of witnesses, such as family members or close friends, who were familiar with the parent and child, not a retained economy expert.

If part of the damages claimed include "loss of educational attainment," defense counsel must evaluate whether there is a need to depose the younger children. Moreover, school records, interviews with school counselors and relatives as well as discovery regarding college funds must be considered.

Next, defense counsel must argue in the trial court that these damages for the loss suffered by the child by growing up without the guidance and support of a parent is not objectively verifiable and thus noneconomic in nature to which the damage caps apply. Moreover, if plaintiff is also requesting damages for loss of services by the parent, the defense practitioner must discern through discovery the exact elements plaintiff is claiming comprise each damage claim to make certain that there is no double-dipping.

If testimony from an economist is

submitted in support of this claim for damages, the litigator must be prepared to carefully cross examine the economist on the basis of his/her opinions and make certain that these opinions are tested in a *Daubert* hearing. More often than not, the expert will be ill-equipped to provide the substance to their claims and eventually will need to fall back on out-dated and unreliable research. Ultimately, we suspect that the experts will make some one-sided effort to get the children lined up to support their views, but the courts still should be very suspect of a child whose economic interest is clearly a factor in what he or she states, before even considering whether the damages are objectively verifiable. We believe there is simply no way for the plaintiff to project into the future whether the loss of a parent to an 8 year old child from, say Royal Oak, Michigan, means that child will never go to college or whether a 10 year old child from Grand Rapids, Detroit, Traverse City, Los Angeles, Atlanta — take your pick — will likewise be affected. There is no objectively verifiable monetary loss on this calculation.

Ultimately, be prepared, though, to push this as it has been our experience that judges are reluctant to address the point before trial. If these types of damages are allowed in as "economic" loss, it could mean a verdict giving millions of dollars, depending on the number of children included in the decedent's estate.

Endnotes

1. MCL 600.1483 limits noneconomic damages to either \$280,000 or \$500,000 depending on the nature of the injury. These caps are adjusted by the state treasurer at the end of each calendar year. The current caps for 2010 are \$408,200 and \$729,000.
2. MCL 600.2922.
3. *Jenkins v. Patel*, 471 Mich 158, 164; 684 NW2d 346 (2004).
4. MCL 600.2922(6).
5. Jury instructions are entitled to some level of deference as they constitute the work of a committee created by the Michigan Supreme Court. *Taylor v Michigan Power Co.*, 45 Mich App 453, 457; 206 NW2d 815 (1973).
6. *McTaggart v Lindsey*, 202 Mich App 612, 616; 509 NW2d 881 (1993), citing *Crystal v Hubbard*, 414 Mich 297, 326; 324 NW2d 869 (1982).

7. *McTaggart, supra*, citing *In re Claim of Carr*, 189 Mich App 234, 239; 471 NW2d 637 (1991).
8. 231 Mich 404, 406-407; 204 NW 84 (1925).
9. *Id.*
10. 411 Mich 1, 14, 303 NW2d 424 (1981).
11. 1 Mich App 612, 622, 137 NW2d 757 (1965).
12. *Berger, supra*, 411 Mich 1, 16.
13. *Jenkins, supra*, 471 Mich 158, 168.
14. *Thorn v Mercy Memorial Hospital*, 281 Mich App 644; 761 NW2d 414 (2008).
15. 281 Mich App 644; 761 NW2d 414 (2008).
16. *Thorn v Mercy Memorial Hospital*, 483 Mich 1122; 767 NW2d 431 (2009).
17. *Id.*
18. *Id.*
19. *Thorn*, 281 Mich App at 660-661.
20. *Thorn*, 281 Mich App at 647.
21. *Thorn*, 281 Mich App at 663.
22. *Id.*
23. *Id.* at 664. MCL 600.1483(3) defines "noneconomic loss" as "damages or loss due to pain, suffering, inconvenience, physical impairment, physical disfigurement, or other noneconomic loss."
24. *Id.* at 664-665.
25. *Id.* at 665. On July 7, 2009, the Michigan Supreme Court denied the Defendants applications for leave to appeal. *Thorn v Mercy Memorial Hospital*, 483 Mich 1122; 767 NW2d 431 (2009). On January 29, 2010, the Supreme Court denied the motion for reconsideration. *Thorn v Mercy Memorial Hospital*, ___ Mich __; 777 NW2d 149 (2009).
26. *Thorn*, 281 Mich App at 666-667. Notably, however, the *Thorn* court did not make any findings regarding the reliability or admissibility of the economist's opinions regarding the value of these economic damages.
27. AL Civil Pattern Jury Instructions 20.09-1 (Revised 1990).
28. Md. Rev. Stat. § 11-108(a)(2)(i)(2) (West 2009)
29. 2009 WL 901507, Docket No. 06-20115, March 30, 2009 (United States District Court for the Southern District of Florida).
30. *Id.* at * 7.
31. *Id.*
32. *Id.* at *7-8.
33. 540 F2d 777, 788 (5th Cir. 1976).
34. 578 NE2d 677, 682 (Ind. Ct. App. 1991).
35. 643 NE2d 909 (Ind. Ct. App. 1994).
36. 704 NE2d 1082 (Ind. Ct. App. 1999).
37. 509 US 579, 589 (1993).
38. Although the language of FRE 702 and MRE 702 is similar, "the trial court's obligation under MRE 702 is even stronger than that contemplated by FRE 702 because Michigan's rule specifically provides that the court's determination is a precondition to admissibility." *Gilbert v DaimlerChrysler Corporation*, 470 Mich 749, 780 n 46; 685 NW2d 391 (2004).
39. *Gilbert v DaimlerChrysler Corporation*, 470 Mich 749, 780; 685 NW2d 391 (2004).
40. *Id.* at 782.
41. *Id.* at 779-783.
42. *Id.* at 780 (citations omitted). See also *Craig v Oakwood Hospital*, 471 Mich 67; 684 NW2d 296 (2004).
43. *Greathouse v Rhodes*, 242 Mich App 221, 238; 618 NW2d 106 (2000).