



Legal Stressors on Providing Recoverable Damages for Mental Anguish

By Erik S. Heninger

One of the current challenges facing attorneys in Alabama is determining the existence and extent of psychological and physical damages that apply to particular cases. Questions abound as to whether emotional damages are available in certain causes of action and, if so, how the degree of the damage can be proven. Where does the court draw the line and why? Furthermore, can these emotional damages be understood or quantified for mediation, settlement or argumentative purposes? These questions and more should be considered when the lawyer reviews the facts of his or her case and attempts to claim emotional damages exclusively or coupled with other compensable injuries.¹

Physical Damages versus Emotional Damages

To appreciate the limits the courts have set for recovering mental anguish or pain and suffering damages we must understand the physical and/or psychological effects of an “injury.” The word “pain” is derived from the Latin word *poena*, meaning punishment. Pain is defined by the International Association for the Study of Pain (IASP) as “an unpleasant sensory and emotional experience associated with actual or potential tissue damage, or described in terms of such damage.”² This definition



reflects the now well-accepted premise that pain can occur without any discernable trauma at all, or can persist beyond the expected healing period. Furthermore, pain has unique physiologic and psychological components that contribute to the pain experience. The pain experience, both physical and mental aspects, is unique to each individual. No two people, even those with similar etiologies for their pain, will experience pain in exactly the same way.

Physiologically, pain involves sensitivity to chemical changes in the tissues and then interpretation that these changes are harmful.³ The natural stimulus for “superficial pain” is injury: cutting, crushing, burning, etc.⁴ In the injured area, the receptors are excited or primed by bradykinins (a nonapeptide which stimulates pain receptors), coming from the circulation, and by histamine, prostaglandins, serotonin and potassium ions locally, from injured tissues. A complex physiologic arrangement in the dorsal horn of the spinal cord has been postulated to control or modulate incoming pain impulses. From these impulses, the brain is able to “perceive” an injury including the location, degree and, possibly, cause of pain.

The IASP’s definition of pain illustrates that it is a *perception*, not really a sensation, which can be compared with hearing or seeing. This perception is real, whether or not harm has occurred or is occurring. Cognition is involved in the formulation of this perception. There are emotional consequences and behavioral responses to the cognitive and emotional aspects of pain.

Pain is a significant physical stressor that may induce or exacerbate psychological distress. A significant proportion of patients who have chronic pain, regardless of its cause and origin, experience psychological symptoms in the course of their illness. In most chronic pain patients, psychological disturbances are not the primary cause of pain but are the consequence of unrelieved pain and its effects on the quality of life. Some of the common

psychological disturbances associated with chronic pain include depression, anxiety, sleep disturbances and decreased sexual activity. These factors can lead to physical de-conditioning and disability, and prolonged psychological distress often leads to pain behavior. “Pain behavior” is considered that behavior which occurs in the context of specific events whether internal or external, cognitive or affective, and is followed by consequences emanating from a variety of sources occurring continuously or intermittently with potentially variable effects depending on the complexity of the situation.⁵ These events can be physical, psychological, social or any combination thereof.

The concepts of pain and suffering are frequently mixed and sometimes confused in dialogue, especially because pain is commonly used as if it were synonymous with suffering. Yet, pain and anguish are distinct phenomena. Suffering, or anguish, is loosely defined as a “state of severe distress associated with events that threaten the intactness of the person.”⁶ Not all pain causes suffering, and not all suffering expressed as pain or coexisting with pain, stems from pain. In other words, individuals can experience pain without a physical injury and, likewise, can sustain an injury without experiencing pain or a consistent degree of pain.

So what does this mean for everyday practitioners? It is widely accepted that damages for mental anguish can form a substantial part of compensatory damages for torts involving physical injury.⁷ As the very term “mental anguish” suggests, there are psychological damages which are separate and distinct from the physical aspect of an injury. The Alabama Supreme Court attempts to catalogue a few psychological aspects of an “injury” in *Daniels v. East Alabama Paving, Inc.* 740 So.2d 1033 (1999), which reads:

“when connected with a physical injury, [the term mental anguish] includes both the resultant mental sensation of pain and also the accompanying feelings of

distress, fright and anxiety. As an element of damages [it] implies a relatively high degree of mental pain and distress; it is more than mere disappointment, anger, worry, resentment, or embarrassment, although it may include all of these, and *it includes mental sensation of pain resulting from such painful emotions as grief, severe disappointment, indignation, wounded pride, sham, despair and/or public humiliation . . .* [A]s a ground ... for compensable damages or *an element of damages, it includes the mental suffering resulting from the excitation of the more poignant and painful emotions, such as grief, severe disappointment, indignation, wounded pride, shame, public humiliation, despair, etc.*" (emphasis in original).

Thus, just as the medical texts suggest, mental anguish is not a condition limited to suffering painful sensations due to the exposure of a physical injury, but also includes disturbances to a person's psyche.

Clearly, there are few who have suffered injuries or witnessed a loved one's injury that can divorce the mental aspect of pain from the physical. The two travel hand in hand. A more difficult question arises when a physical injury is lacking. Does the fact that we do not see a limp or scar suggest that an individual is not injured? The court recognized this dilemma long ago in *Vinson v. Southern Bell Telephone & Telegraph Co.*, 188 Ala. 292 (1914):

"'Injury to the person' is ... synonymous with bodily hurt, bodily harm. Great physical effort may be immediately productive of that character of hurt or

harm. If such effort produces physical exhaustion it is open, at least, to be concluded that bodily harm or hurt has, though not visibly manifested in impaired physique, resulted ... It has never been supposed that only permanent injuries were injuries to the person; nor that only visible injuries or injuries susceptible of being discovered or known through any of the five senses of another observing the person alleged to have suffered injury were injuries to the person."

Technological, psychological and psychiatric advances in testing and research demonstrate that mental injuries can be as debilitating as their physical counterparts. For these reasons, courts around the country, including Alabama, have struggled to define the parameters of mental anguish claims. These efforts are also an attempt to supplant the inherent distrust of an individual's claim of injury without a corresponding physical manifestation. To that end, Alabama courts have established loose guidelines (required proof, standard of review, etc.) that need to be understood when pleading or defending against a mental anguish claim.

The Alabama Supreme Court, in *Taylor v. Baptist Medical Center*, 400 So.2d 369 (1981), specifically rejected the longstanding rule requiring physical injury, stating "to continue to require physical injury caused by culpable tortious conduct, when mental suffering may be equally recognizable standing alone, would be an adherence to procrustean principles which have little or no resemblance to medical realities." *Taylor* merely ratified the longstanding principle that emotional damages are, and should be considered, separate and distinct from the physical.

In Alabama, "there is no fixed standard for determining the amount of compensatory damages a jury may award for mental anguish." *Delchamps, Inc. v. Bryant*, 738 So.2d 824 (1999). The amount awarded is left to the jury's sound discretion subject only to review by the court for clear abuse of that discretion. *Southern Pine Electric Cooperative v. Burch*, 878 So.2d 1120 (2003). A plaintiff is required only to present some evidence of mental anguish and, if he presents such evidence, the question of how much compensation he is entitled to for mental anguish is a question for the jury. *Hathcock v. Wood*, 815 So.2d 502 (2001). Mental anguish includes anxiety, embarrassment, anger, fear, frustration, disappointment, worry, annoyance, and inconvenience. *Volkswagon of America, Inc. v. Dillard*, 579 So.2d 1301 (1991). "Claims for damages for mental anguish need not be predicated upon the presence of physical symptoms." *Alabama Power Co. v. Harmon*, 483 So.2d 386 (1986).

Attorneys must be cognizant that merely pleading mental anguish in a case with or without an injury will not survive appellate review unless the plaintiff meets certain criteria and presents direct evidence regarding the effect of the mental anguish on the plaintiff. In negligence actions in which the plaintiff seeks compensatory damages for emotional distress, Alabama now follows the "zone of danger" test, "which limits recovery of mental anguish damages 'to those plaintiffs who sustain a physical injury as a result of defendant's negligent conduct, or who are placed in immediate risk of physical harm by that conduct.'" *City of Mobile v. Taylor*, 938 So.2d 407 (2005). For a plaintiff to recover for emotional distress, he must show not only that "it was reasonably foreseeable to the defendant that the plaintiff would be placed at risk of physical injury," but also that "he, in fact, suffered emotional distress."

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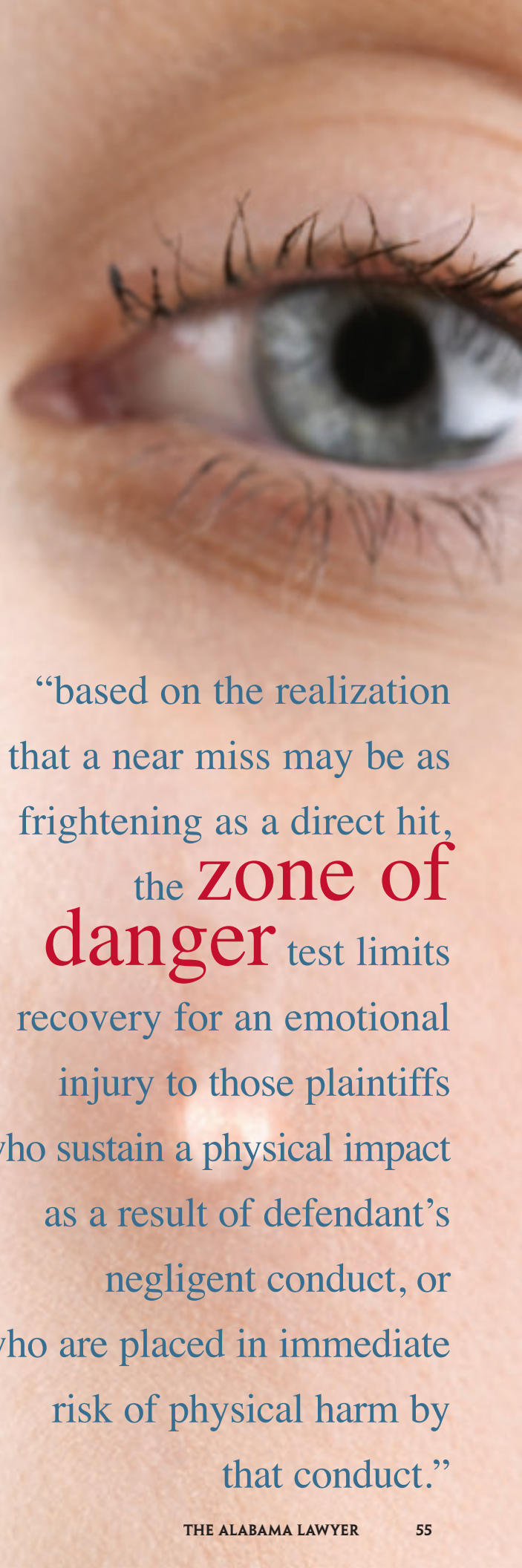
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In *AALAR v. Francis*, 716 So.2d 1141 (1998), the defendant car rental company negligently rented a vehicle to plaintiffs which continued to be improperly listed as stolen on the National Crime Information Center database. One evening, the driver, C.J. Francis, was approached by a police officer because of the erroneous listing. While attempting to retrieve rental papers from the glove compartment, the police officers pulled a gun. While this occurred, F.N. Francis, C.J.'s mother, along with another authorized individual, witnessed the events from inside the mother's home. Neither plaintiffs suffered a physical injury. The Alabama Supreme Court held that F.N. Francis was not entitled to mental anguish damages because she was outside the "zone of danger" and never physically threatened or at risk for physical injury. However, C.J. Francis was entitled to present his claim for mental anguish to the jury since he was in the zone of danger and feared for his personal safety. The *AALAR* court observed through other jurisdictions that "based on the realization that a near miss may be as frightening as a direct hit, the zone of danger test limits recovery for an emotional injury to those plaintiffs who sustain a physical impact as a result of defendant's negligent conduct, or who are placed in immediate risk of physical harm by that conduct."

Juxtaposing two factually similar cases provides even more insight to Alabama's application of the "zone of danger" test. In *White Consolidated Industries, Inc. v. Wilkerson*, 737 So.2d 447 (1999), the plaintiffs alleged various tort and contract claims against an air conditioning manufacturer following a fire which destroyed their home. At the time of the fire, the Wilkersons were away from their home and neither of them sustained physical injuries. Applying the "zone of danger" test, the Court ruled that the plaintiffs were not entitled to emotional damages because they were away from their home—outside a "zone in which they would have been at immediate risk of physical harm."

In contrast, plaintiffs who find themselves within the "zone" would be able to recover emotional damages regardless of physical injuries. When a surge of electrical power was caused to pass from the transmission lines into the electrical circuitry of the plaintiffs' home, while the plaintiffs were asleep, igniting a fire which destroyed the house, the plaintiffs were allowed to recover emotional damages despite no physical injuries. *Alabama Power Co. v. Murray*, 751 So.2d 494 (1999). The plaintiffs provided testimony that they awoke during the night to find their home ablaze. Although fortunate to safely escape with their children, the plaintiffs stood in the street and watched everything they owned destroyed by the fire. Finding that the plaintiffs "were within the zone of danger negligently created by the [defendant], and because they presented some evidence of their mental anguish, the questions whether to award damages for emotional distress was one for the jury to answer in the exercise of its discretion as fact-finder."

Despite the supreme court's express adoption of the zone of danger test in *Taylor* and its progeny, other appellate decisions indicate the court's willingness to forgo such an analysis and allow recovery for emotional damages in noteworthy cases.⁸ Cases in which the court has ignored a zone of danger analysis and allowed the plaintiff to proceed with mental anguish claims include: city negligence causing continuous raw sewage in plaintiffs' home resulting in property damage⁹; negligent maintenance of drainage ditch causing property damage in home¹⁰; mental anguish as a



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result of malicious prosecution¹¹; breach of contract¹²; defamation¹³; Title VII retaliation claims¹⁴; willful misrepresentation¹⁵; reckless desecration of a burial ground¹⁶; wrongful retention of deceased relative's remains¹⁷; and mishandling of a dead body.¹⁸

A common assumption among lawyers is that mental anguish claims are available only when an attendant physical injury exists. In fact, the general rule is that a plaintiff cannot receive damages for mental anguish arising from a breach of contract "unless the contractual duty or obligation is so coupled with matters of mental concern or solicitude, or with the feelings of the party to whom the duty is owed, that a breach of that duty will necessarily or reasonably result in mental anguish or suffering." *Moore v. Beneficial Nat. Bank USA*, 876 F. Supp. 1247 (M.D. Ala. 1995). Contractual obligations and duties which touch upon mental concern or solicitude are more common in the area of bad faith or general breach of an insurance contract. See *Independent Fire Ins. Co. v. Lunsford*, 621 So.2d 977 (1993). In *National Insurance Association v. Sockwell*, 829 So.2d 111 (2002), the court affirmed an award of \$201,000 where there was evidence from the plaintiff that she experienced aggravation of a pre-existing condition because of her worry and anger. There was no independent medical evidence of this aggravation and her direct testimony was sufficient.¹⁹ *Sockwell* illustrates that evidence of mental anguish must be viewed from the plaintiff's perspective to determine if the evidence supports the plaintiff's suffering. See *Orkin Exterminating Co. v. Jeter*, 832 So.2d 2538 (2001).

Furthermore, the court will view "the evidence of mental anguish claimed by each plaintiff to determine if that particular person should recover; one plaintiff's mental anguish cannot bootstrap the awarding of damages to the other plaintiff or plaintiffs." *George H. Lanier Memorial Hospital v. Andrews*, 901 So.2d 714 (2004). "The inquiry is not whether traumatic events have occurred, but whether the plaintiff has actually suffered as a result of those events." "When a plaintiff's testimony amounts to little more than the obvious notion that dealing with the traumatic event was 'hard' or 'humiliating,' [the Court] has consistently remitted damages."

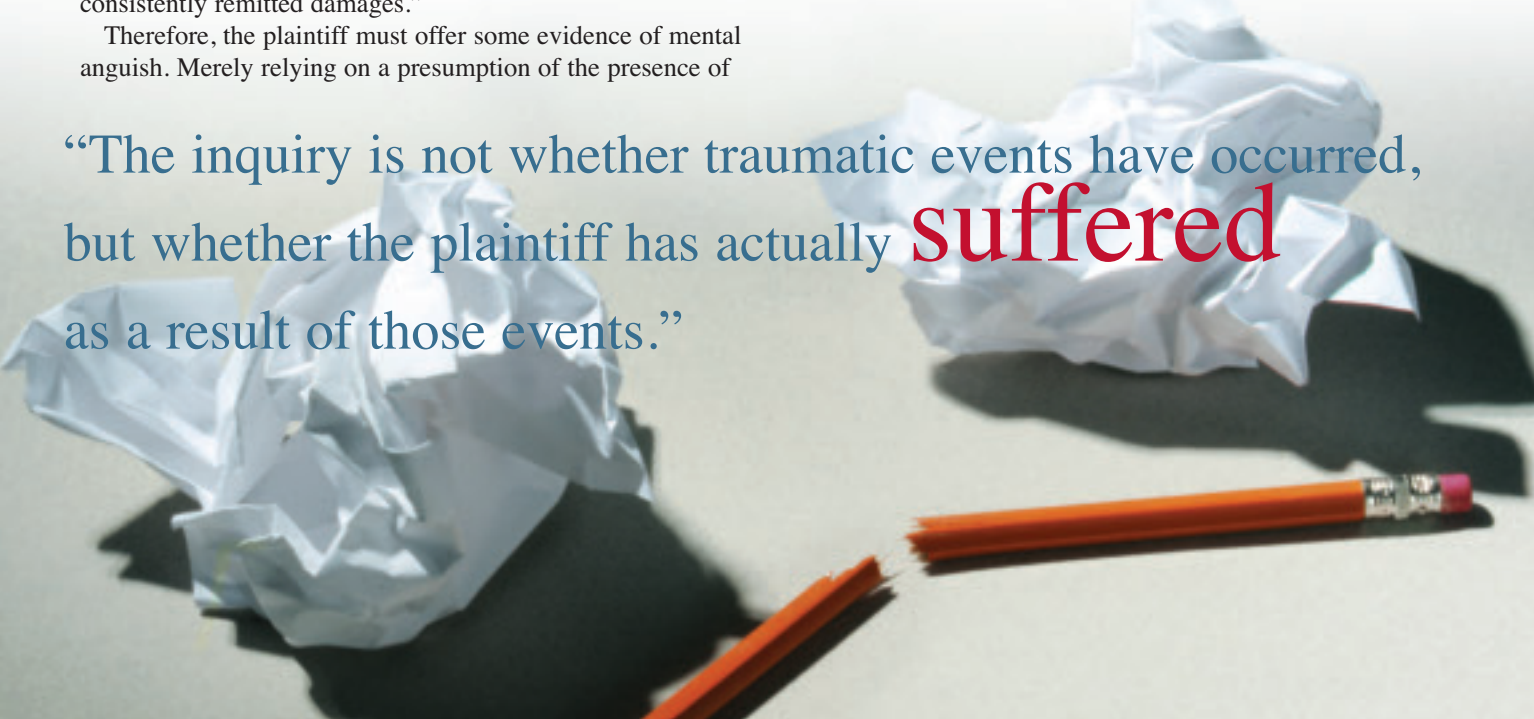
Therefore, the plaintiff must offer some evidence of mental anguish. Merely relying on a presumption of the presence of

mental anguish without testimony is treading dangerous water. In *Kmart v. Kyles*, 723 So.2d 572 (1998), during the third trial of a malicious prosecution claim against the defendants, plaintiff failed to offer testimony concerning the mental anguish she claimed to have suffered as a result of the prosecution.

Considering the "paucity of evidence presented by the plaintiff," the court concluded that the jury had abused its discretion in awarding \$100,000 in compensatory damages and remitted the verdict to \$15,000. Similarly, the plaintiff in *Life Insurance Company of Georgia v. Foster*, 656 So.2d 333 (1994), testified that the alleged fraud "affected me a lot." The court stated that "from this limited evidence, we agree that the jury could infer that Foster had suffered some measure of mental anguish and emotional distress . . . ; however . . . Foster's scant testimony of mental anguish and emotional distress, without more, does not support [the verdict]." The court then reduced the plaintiff's verdict of \$250,000 in compensatory damages to \$50,000.

Alabama law also allows lay witness testimony regarding mental anguish of a plaintiff. However, the testimony is only admissible regarding the fact of mental anguish, and is not admissible regarding the cause of the mental anguish. *Fomby v. Popwell*, 695 So.2d 628 (1997). In *Fomby*, the witness was allowed to testify that the plaintiff was "worried" but was not allowed to testify about the cause of the plaintiff's worry. Although in the *Fomby* case, the witness was not allowed to testify about why the plaintiff was worried, two years later the Alabama Court of Civil Appeals did allow witnesses to testify that a plaintiff was scared and agitated when planes flew low over his house. *Seale v. Pearson*, 736 So.2d 1108 (1999). The court determined that the jury used that evidence, along with testimony from the plaintiff, to find that a mental anguish award was proper in the nuisance case because the low flights were made with "malice, insult, inhumanity, or contumely."

As can be seen, juries and courts recognize the impact of mental anguish on a plaintiff and are willing to compensate for those injuries. To ensure the client receives the full range of compensation, the attorney must be prepared to supply adequate proof of these injuries to the jury as well as the appellate court.



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Appellate Review

Mental anguish claims present peculiar problems for jurists and courts sitting in review of verdicts for mental anguish. As discussed above, mental anguish may exist with or without a physical injury. Yet, an appellate court's approach to determining the validity of a verdict for mental anguish rests on whether a physical injury occurs. Although rare, there are instances in which Alabama courts have found damages for mental anguish to be excessive even when coupled with a physical injury.²⁰ Under Alabama law, the presence of physical injuries or physical symptoms is not a prerequisite for a claim for damages for mental anguish. However, Alabama courts will give "stricter scrutiny to an award of mental anguish where the victim has offered little or no direct evidence concerning the degree of suffering he or she has experienced." *Kmart v. Kyles*, 723 So.2d 572 (1998). But, "the strict scrutiny rule established in *Kyles* is inapplicable in a case where the plaintiff suffers physical injury or pain in conjunction with emotional distress." The *Sockwell* opinion makes evident that the new strict scrutiny rule will not apply where the plaintiff suffers mental anguish or emotional distress in connection to a physical injury. What Alabama courts have not done is set out specific parameters regarding how this strict scrutiny test will be applied or how far a plaintiff must go to justify an award for mental anguish when a physical injury is lacking.

In *Kyles*, the Alabama Supreme Court examined a verdict of \$200,000 (\$100,000 compensatory and \$100,000 punitive damages) for malicious prosecution after two mistrials. The plaintiff presented evidence that she was arrested, spent a few hours in jail and had out-of-pocket expenses of \$4,000 in attorney's fees and bail bond. During the third trial, the plaintiff presented evidence of mental anguish that she cried on one occasion when she phoned her husband to tell him she had been arrested. The opinion highlighted that in the two previous mistrials *Kyles* produced much more evidence of mental anguish. In the absence of similar testimony during the third trial, the court concluded that this was a tactical decision by the plaintiff in an attempt to limit the scope of cross-examination. In suggesting that the plaintiff accept a reduced amount, the court noted that "although *Kyles* presented

substantial evidence indicating that certain events occurred,... she presented no testimony or other evidence indicating that those events caused her to suffer great mental anguish." Thus, in *Kyles*, the court appeared to be raising the evidentiary burden already borne by the plaintiff. Stated explicitly, the court will not consider "indirect evidence" of mental anguish sufficient to support a substantial verdict. However, in *Sockwell*, the court states that "*Kyles* did not alter the law as previously established in Alabama... and that once the plaintiff has presented some evidence of mental anguish, 'the question of damages for mental anguish is for the jury.'" This seeming incongruity is even more obscure when considering the context of the *Kyles* opinion was to address "the strength of the presumption of correctness to be placed on the jury's award...." The well-established law in Alabama is once a plaintiff presents some evidence of mental anguish, the question whether he should recover for such mental anguish, and, if so, how much, is a question reserved for the jury. *Sockwell, supra*. Furthermore, "a jury's verdict is presumed correct, and that presumption is strengthened by the trial court's denial of a motion for a new trial." *Cochran v. Ward*, 935 So.2d 1169 (2006). Although clouded by equivocation, practitioners should take away from *Kyles* a warning that only direct evidence from the plaintiff of mental anguish will be accepted when reviewed under the strict scrutiny standard.

The supreme court's position in *Kyles* appears to be a limited departure from well-established law in Alabama. The opinions following *Kyles* on mental anguish suggest that any "strict scrutiny" on jury verdicts should be limited to an extremely narrow situation. For example, in *Liberty National Life Ins. Co. v. Daugherty*, 840 So.2d 152 (2002), the plaintiff was awarded \$300,000 in a defamation suit for mental anguish over a two-year period. The plaintiff testified that he began to suffer from stress, depression, fear, worry, and sleeplessness because of the defendant's conduct. In the opinion, while noting the new presumptions under *Kyles*, the court referenced a long line of Alabama cases in stating, "[T]he amount of the jury's award is left to the jury's sound discretion, and the jury's award will not be set aside absent a clear abuse of discretion. Also, a jury's verdict is presumed correct, and that presumption is strengthened by the trial court's denial of a motion for



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new trial.” Since the plaintiff and his wife testified to the extent and duration of his mental anguish and emotional distress direct evidence the court affirmed the jury’s verdict.

Thus, the line appears to be drawn for when the court will apply strict scrutiny to a jury verdict for mental anguish: (1) no physical injury, and (2) little or no evidence of the effect of mental anguish on the plaintiff. Apart from these limited circumstances, any award for mental anguish or emotional distress will remain the province of the jury. The court also offers this piece of advice: “While the virtue of stoically dismissing one’s suffering by limiting any description of it to a few terse words has its place, the courtroom is not one of them if the person suffering is a plaintiff who expects a significant award to pass judicial scrutiny.” *Delchamps v. Bryant, supra*.

Perhaps a more important and practical question is how counsel for each party addresses the pressure of increased appellate scrutiny. Decisions to limit the amount of mental anguish testimony occurs in every courtroom for fear the plaintiff will come across as a whiner. In light of *Kyles*, a jury’s “presumption” that defendant’s conduct would cause significant emotional distress without evidence of its actual affect will no longer pass judicial muster. Where to draw the line in direct testimony or even whether to cross-examine a witness on the issue and provide more direct evidence is an issue that must be considered in each trial with each witness. For the plaintiff, the only indication from the court is that it must be done to some extent.

For those cases in which evidence of mental anguish is proffered, there remain a few specific items of interest that need to be addressed. Mental anguish cases tend to be reviewed on a case-by-case basis. If the plaintiff has only been “upset” or “concerned,” the potential for reduction by an appellate court increases dramatically, as was seen in *Kyles*. The court has made note of several factors which will be considered in the review of a verdict for mental anguish. Three factors are consistently referenced and reviewed: the nature, severity and duration of the mental anguish.²¹ Each of these factors must be considered by the practitioner when deciding what testimony needs to be elicited from the witness. In *Horton Homes, Inc. v. Brooks*, 832 So.2d 44 (2001), the plaintiff presented testimony that the situation was stressful, he lost sleep over the situation and his wife testified that he was a nervous wreck, “edgy” and would get upset and cry. Based on this testimony, the court upheld a verdict of \$138,000 in compensatory damages for mental anguish. Further, in *Southern Energy Homes, Inc. v. Washington*, 774 So.2d 505 (2000), the court upheld a verdict of \$350,000, of which a large part was allocable to mental anguish damages. The court noted the plaintiff presented evidence that he experienced anger, embarrassment and disruption of his sleep over a period of almost five years. “Evidence that Washington had experienced such feelings over such an extended period supports the jury’s finding of mental anguish under the standard in *Kyles*.” The cases following *Kyles* illustrate that the plaintiff must show the effects of mental anguish at least in duration and the form of distress (i.e. crying, anger, sleeplessness) in order to be entitled to this form of damages.

As juries have identified the need for compensating emotional damages and indicated a willingness to do so, the courts have provided a bleary compass to navigate the minefield of appellate review. For several years now, attorneys have been besieged with warnings and admonitions of the inadequacy of evidence verifying the nature, severity and duration of emotional damages. For

the unsuspecting lawyer, beware: blindly plodding through witness examinations while ignoring the specific nuances of proof is a direct path to your own pain and suffering. ▲▲▲

Endnotes

1. This article is limited in scope to damage claims available in general tort and contract actions. This article does not address the separate and distinct tort of outrage. For a glimpse of outrage in Alabama see: *Am. Rd. Service Co. v. Innon*, 394 So. 2d 361 (Ala. 1980); *Continental Cas. Ins. Co. v. McDonald*, 567 So. 2d 1208 (Ala. 1990); *Ex parte Lumberman’s Underwriting Alliance*, 662 So. 2d 1133 (Ala. 1995).
2. Christine Miaskowski, “Principles of Pain Assessment,” in *The Neurological Basis of Pain* 195 (Marco Papagallo et al., eds., 2005).
3. Don Ranney, *Anatomy of Pain*.
4. Raymond Adams, *Principles of Neurology* 63 (5th ed. 1994).
5. Daniel M. Doleys, *Psychological and Behavioral Assessment*, www.pain.com/sections/professional/Journals/journalfull.cfm?id=102
6. Jyontsna Nagda, “Definitions and Classifications of Pain,” in *Principles and Practice of Pain Medicine* 51 (Carol A. Warfield et al. eds., 2d ed. 2004).
7. W. Page Keeton, et. al., *Prosser and Keeton on the Law of Torts*, § 12, at 55 (5th ed. 1984).
8. See M. Lee Huffaker, *Recovery for Infliction of Emotional Distress: A Comment on the Mental Anguish Accompanying Such a Claim in Alabama*, 52 Ala. L. Rev. 1003 (2001).
9. See *Carson v. City of Prichard*, 709 So.2d 1199 (Ala. 1998).
10. See *City of Mobile v. Jackson*, 474 So.2d 644 (Ala. 1985).
11. See *Kmart v. Kyles, supra*; *Delchamps, Inc. v. Bryant*, 738 So.2d 824 (Ala. 1999); *USF&G v. Miller*, 117 So. 668 (Ala. 1928); *Thompson v. Kinney*, 486 So.2d 442 (Ala. Civ. App. 1986).
12. See *Lawyers Title Ins. Corp. v. Vella*, 570 So.2d 578 (Ala. 1990); *B & M Homes, Inc. v. Hogan*, 376 So.2d 667 (Ala. 1979); *Stead v. Blue Cross Blue Shield of Ala.*, 346 So.2d 1140 (Ala. 1977).
13. See *Slack v. Stream*, ___ So.2d ___, 2008 WL 162618 (Ala.).
14. See *Tucker v. Housing Authority of Birmingham Dist.*, 229 Fed. Appx. 820 (11th Cir. 2007).
15. See *Holcombe v. Whitaker*, 318 So.2d 289 (Ala. 1975).
16. See *Whitt v. Hulsey*, 519 So. 2d 901 (Ala. 1987).
17. See *Levite Undertakers Co. v. Griggs*, 495 So. 2d 63 (Ala. 1986); see also *Wadley v. St. Vincent’s Hospital*, No. CV-2004-1257-RSV, 2006 WL 2061785 (Ala. Cir. Ct. 2006) (extending claims for mishandling of a deceased non-viable fetus).
18. See *SCI Alabama Funeral Services, Inc. v. Brown*, 770 So. 2d 97 (Ala. Civ. App. 1999).
19. *Id.* See also, *Wal-Mart Stores, Inc. v. Goodman*, 789 So.2d 166 (Ala. 2000); *Liberty National Life Insurance Company v. Daugherty*, 840 So.2d 152 (Ala. 2002) (affirming award of \$300,000 where only testimony was from plaintiff and his wife about depression, inability to sleep and worry).
20. See *Consolidated Freightways, Inc. v. Pancheco-Rivera*, 524 So. 2d 346 (Ala. 1988); *Coca-Cola Bottling Co. v. Parker*, 451 So. 2d 786 (Ala. 1984).
21. *Alabama Power Co. v. Murray*, 751 So.2d 494 (Ala. 1999); see also *Southern Pine Electrical Cooperative v. Burch*, 878 So.2d 1120 (Ala. 2003) (upholding an award of \$19,900 because plaintiff was without electricity for 34 days); *Liberty National Life Ins. Co. v. Daugherty*, 840 So.2d 152 (Ala. 2002) (upholding verdict of \$300,000 for mental anguish which occurred over a period of two years).



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