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Louisiana Manufacturer, Tennessee Accident– Which State's Prescription Rules Apply?

Marchesani v. Pellerin-Milnor Corp.,
248 F.3d 423 (5th Cir. 2001).

The plaintiff Marchesani was injured at his place of employment in Tennessee when a dye machine manufactured in Louisiana released hot, caustic chemicals and steam over his body. Tennessee products liability law restricts suits to claims brought within ten years following the date the product was first purchased for use. Louisiana law contains no such restriction. Plaintiff brought his suit in Louisiana and the parties squabbled over which state's law would apply.

The trial court thought the case was clear: Tennessee law applied and summary judgment was granted for the defendant. The Fifth Circuit, however, was stumped by the question. The Fifth Circuit certified two questions to the Louisiana Supreme Court: 1) which state's substantive law governs the case?; and 2) even if Tennessee's substantive law governs, would Louisiana's conflict of law principles require that Louisiana law be applied to the prescription question?

Stay tuned.

- *Madeleine Fischer*

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Expert Testimony Not Admissible On Hedonic Damages

Abadie v. Metropolitan Life Ins. Co.,
00-344 (La.App. 5 Cir. 5/8/01), 2001 WL 485173 (La.App. 5 Cir., May 08,
2001).

Hedonic damages have been defined as loss of enjoyment of life. Plaintiffs sometimes retain an expert, typically an economist or CPA, to "calculate" the value of the such damages. As a general rule, such expert testimony has been disallowed in both Louisiana state and federal courts. Recently, the Louisiana Fifth Circuit Court of Appeal in the cited case ruled that the trial court erred in allowing an expert economist to testify as to the value of a tort victim's loss of enjoyment of life.

Despite a *Daubert* hearing during which the expert agreed that the testimony had a very limited function, that the determination rests with the fact finder, that hedonic damages were but one component of the damages, that his methodology was unique, and that he had not published any material on the matter, the trial court admitted the testimony. The court later reversed its position, and

instructed the jury to disregard the testimony.

The jury went on to award a lump sum. By subtracting out the special damages, the court of appeal determined the jury awarded \$2,484,014.00 in general damages. The court noted that: "A lump sum judgment is presumed to award all items of damages claimed, and appellant's burden of proving an abuse of discretion is more difficult because the intent to award a specific amount for a particular item is not readily ascertainable." *Reichert v. Bertucci*, 684 So.2d 1041, 1044 (La.App. 4th Cir.1996); *writ denied*, 688 So.2d 511 (La. 1997).

The Court of Appeal agreed that it was error to allow expert testimony on hedonic damages.

We agree with the statement in *Foster v. Trafalgar House Oil & Gas*, 603 So.2d 284, (La.App. 2nd Cir.1992), that economic theories which attempt to extrapolate the "value" of human life from various studies of wages, costs, etc., have no place in the calculation of general damages. See also *Mistich v. Volkswagen of Germany, Inc.* 94-0226 (La.App. 4th Cir. 6/25/97), 698 So.2d 47, wherein the court determined to reject the testimony of Dr. Wolfson on this same issue: "[Hedonic damages] refers to damages for loss of enjoyment of life. They are included in the concept of general damages because, like pain and suffering, they cannot be quantified with any degree of 'pecuniary exactitude' or measured definitely in terms of money." *Id.*, at 51. We agree that it was error for the court to permit that testimony.

The Court of Appeal also found that the error was not reversible since the "court instructed the jury to ignore that testimony, and there is nothing in the record to indicate that this instruction was lost on the jury." The Court of Appeal, finding that the award was not inflated as a result of the expert's calculations, went on to analyze the general damage award and found that the award, "although high, is not so much so as to be excessive."

For other cases disallowing expert testimony on hedonic damages see: *Pick v. American Medical Systems, Inc.* 1997 WL 149985 (E.D.La.); *Faciame v. Hubert B. Rhodes* 1997 WL 680609 (E.D.La.); *Trabucco, M.D. v. Hilton Hotels Corp.* 1994 WL 419846 (E.D.La.); *Simmons v. Hartford Insurance Company* 786 F.Supp. 574 (ED La. 1992); *Craft v. Matlack, Inc. and Gaylord Container Corporation.* 1992 WL 124406 (E.D. La.); *Chustz v. J.B. Hunt Transport, Inc.*, 659 So.2d 784 (La App 1st Cir. 1995); *Longman v. Allstate Ins. Co.*, 635 So.2d 343 (La.App. 4th Cir.1994); *James "Sonny" Foster, Jr. v. Trafalgar House Oil & Gas*, 603 So.2d 284 (La App 2nd Cir 1992).

- [Robby Walsh](#)

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Louisiana's Fourth Circuit Affirms Punitive Damage Judgment

In re New Orleans Train Car Leakage Fire Litigation,
2000-0479 (La. App. 4 Cir. 6/27/01), ____ So.2d ____, 2001 WI 737680

This class action suit arose out of a chemical leak from a railroad tank car and the resulting fire in a residential area of New Orleans. The jury found all nine defendants liable for compensatory damages and several defendants liable for punitive damages. All but three of the defendants settled, and the three non-settling defendants appealed. The Louisiana Fourth Circuit Court of Appeal affirmed the trial court's judgment, which included a punitive damages award of \$850 million, reduced from the jury's punitive damages verdict of \$2.5 billion. In addition, the Court held that under Louisiana law, plaintiffs are not entitled to prejudgment interest on punitive damages.

- [Meredith Young](#)

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Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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