

**RECOGNIZING AND PROVING  
DAMAGES OF TRAUMATIC NEUROSES**

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The lawyer carries the burden of weighing the benefit and detriment of a trial to his client in a special sense. The plaintiff's attorney may also have difficulty in securing settlement authority and communicating with his own client for obvious reasons.

Room exists for the growth and understanding of medicine and law in this area. It will be interesting to observe and possibly participate in the direction that each takes.

### Related References

1. Anxiety as to future disease, condition, or death there-from as element of damages in personal injury action, 71 ALR 2d 338.
2. Blasting: recovery of damages of emotional distress, fright, and the like, resulting from blasting operations, 75 ALR 3d 770.
3. Impact: right to recover for emotional disturbance or its physical consequences, in the absence of impact of other actionable wrong, 64 ALR 2d 100.
4. Marriage: damages for humiliation and suffering as recoverable from putative spouse by other for wrongfully inducing entry into or cohabitation under illegal, void, or nonexistent marriage, 72 ALR 2d 994.
5. 38 AM. Jur. 2d, Fright, Shock and Mental Disturbance § 1, p. 36-39.
6. 3 AM. Jur. Proof of Facts p 491, Proof 32.
7. 6 Am. Jur. Proof of Facts p 211, Hysteria (conversion reactions.)
8. Koskoff, Yale David, M.D., Ph.D., "The Nature of Pain and Suffering", Trial, Vol. 13, No. 7, p. 10, (July, 1977).
9. Shubow, Lawrence D.; Bergstresser, Clyde D., "Handling the Psychiatric Witness", Trial, Vol. 13, No. 7, p. 32, (July, 1977).
10. Golman, Daniel, "Who's Mentally Ill?", Psychology Today, Vol. 11, No. 8, p. 34 (January, 1978).

# **PROVING DAMAGES FOR PSYCHIC INJURIES**

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Of Psychic Injuries**

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## RECOGNIZING AND PROVING DAMAGES OF PSYCHIC INJURIES

“Psyche” is the mental life of an individual. “Psychic”, the adjective, pertains to the mental life. Strictly speaking, neither the case law nor the psychiatric nomenclature uses the terms extensively.

This outline is in no way exhaustive but merely summarizes some of the case situations in Alabama where the claim of mental anguish was in issue; it attempts to aid the attorney in recognizing and proving these damages.

Injuries to the mind have been reported in cases since the 14<sup>th</sup> century. Since then, there has been little agreement in the courts.

The cases are often sad, bizarre, sometimes funny, but always interesting.

### I. MENTAL ANGUISH CLAIMS IN ALABAMA CASES

A. Presence of Physical Injury and Simple Negligence. East Alabama Express Co. v. Dupes, 124 So. 2d 809; 271 Ala. 504 (1960). In East Alabama supra, the court allowed the plaintiff to testify that she worried about her injuries and held that her worry was a proper element of damage. (Note that testimony about fear, excitement, fright, and nervousness, have also been allowed. See Ingram v. State, 252 Ala. 497, 42 So 2d 36, 38; Hardie v. State, 260 Ala. 75, 69 So 2d 35; Alabama Power v. Edwards, 219 Ala. 162, 121 So. 543; Moss v. State, 19 Ala. App. 85, 96 So. 451).

B. Absence of Physical Injury with Presence of More Than Simple Negligence.

In Smith & Gaston Funeral Directors, Inc. v. Wilson, 262 Ala. 401, 79 So 2d 48 (1955), damages for mental anguish were allowed where trespass to property was committed with insult or contumely. (Court did not use the words “malice or intent”).

In a case of first impression, the Alabama court allowed damages for shame, humiliation, and mental anguish. The court found willful and malicious conduct. Holcome v. Whitaker, 294 Ala. 430, 318 So 2d 289 (1975).

C. Presence of Mental Anguish as a Result of Witnessing or Fearing Injury to Another and Simple Negligence with Absence of Physical Injury.

In Tyler v. Brown Service Funeral Home Co., 250 Ala. 295, 34 So 2d 203 (1948), the court held no such damages allowable. No duty ran to

plaintiff. (For right to recover damages in negligence for fear of injury to another or shock and mental anguish at witnessing such injury, see 29 ALR 3d 1337).

D. Presence of Physical Injury Produced by Emotional Stress and Simple Negligence with Absence of Direct Physical Injury or Impact.

Alabama Fuel & Iron Co. v. Baladoni, 73 So 205; 15 Ala. App. 316 (1916). Plaintiff's pregnant wife became unnerved and upset when she saw defendant shoot a dog, which was near their daughter. She (the plaintiff's wife) subsequently suffered a miscarriage on the following day. The plaintiff was allowed to recover for medical bills and for loss of services of his wife.

## II. CURRENT CLASSIFICATION OF MENTAL DISORDERS

### A. Mental Retardation

### B. Organic Brain Syndromes

1. Psychoses Associated with Organic Brain Syndromes
2. Non-Psychotic Organic Brain Syndromes

### C. Psychoses Not Attributed to Physical Conditions Listed Above (Schizophrenia, et al)

### D. Neuroses

### E. Personality Disorders and Certain Other Non-Psychotic Mental Disorders

### F. Psychophysiological Disorders

### G. Special Symptoms

### H. Transient Situational Disturbances

### I. Behavior Disorders of Childhood and Adolescence

### J. Conditions without Manifest Psychiatric Disorder and Non-Specific Conditions

## III. RECOGNITION AND DEVELOPMENT OF NEUROSES

A. Definition of Neurosis: Neuroses constitute one of the largest groups of mental disorders. There generally is no organic or structural change, but rather a condition chiefly characterized by anxiety and fear representing an

adaption to stress. Psychosis, a more severe mental disorder, involves a break with reality. The neurotic patient is more often aware that his mental functioning is disturbed.

B. Importance of Recognition: If the lawyer has a client suffering from a traumatic neurosis resulting from an injury received in an accident wherein the defendant was guilty of negligence, then certainly those damages are recoverable. Recognizing that the condition does or may exist is difficult initially, but may benefit both financial and emotional aspects of the client's situation. Appropriate referrals should be made for evaluation and treatment if indicated.

C. Identifiable Symptoms and/or Complaints: In interviewing the client and his family, the lawyer may determine that one or more of the following exists:

1. Loss of interest in sex
2. Headache, neck pain, backache
3. Shortness of breath
4. Fatigue and exhaustion
5. Repetitive dreams of the accident
6. Withdrawal from people and former relationships
7. Irritability
8. Startle reactions
9. Narrowing of interests
10. Crying for no apparent reason
11. Feeling of helplessness – dependency alternating with aggressiveness
12. Abnormal eating patterns
13. Trembling
14. Dizziness
15. Tension

16. Sleeplessness
17. Boredom
18. Inability to concentrate
19. Restlessness
20. Drowsiness

Phrases such as “functional overlay”, “bizarre pain patterns”, and “psychosomatic symptoms” found in his client’s medical records should alert the attorney to the possible existence of damages in other than the physical area.

D. Traumatic Types Frequently Seen in Damage Suits.

The most common types of traumatic neuroses that the lawyer encounters are:

1. Anxiety Neurosis – characterized by anxious over-concern extending to panic and frequently associated with somatic (pertaining to the body) symptoms. Anxiety is likely to occur without regard to specific situations or objects. This condition should be distinguished from normal apprehension or fear which results from realistically dangerous situations.
2. Depressive Neurosis – manifested by an excessive reaction of depression due to an internal conflict or an identifiable event. Medication is usually indicated.
3. Mixed Anxiety-Depressive Neurosis – merely a combination of the two neuroses described above.

It is normal to exhibit some neurotic behavior as a result of a stressful situation. The true neurosis, however, is distinguished by the continuation of the symptoms over an inappropriate length of time, and the failure of these symptoms to subside without professional counseling and/or medication.

E. Roles of Stress and Predisposition in Development.

If there is no organic cause for the mental disorder, it rarely, if ever, occurs without stress. Stress, however, can and will, if sufficiently severe and lasting, cause both psychological and physical damage. The factors involved in the development of a neurosis are the individual’s predisposition to neurosis and his tolerance level to stress.

“Both biologically and psychologically people differ in the amounts and types of stress they can withstand,” James C. Coleman, Psychology and Effective Behavior, (Scott, Foresman and Company, 1969), p. 190. One man’s pleasure is another man’s poison.

R. Robert Cohen, M.D. has written a book, Traumatic Neuroses in Personal Injury Cases, published by Trial Lawyers Service Company, 1970. The publication is not only a useful tool in preparing a neurosis case for trial, but also in preparing for the examination of defendant’s psychiatrist. His presentation simplifies and presents a tangible picture of an otherwise vague concept.

Dr. Cohen explains that predisposition plus stress equals neurosis.

(Predisposition + Stress = Neurosis)

It is commonly accepted in the field of psychiatry that everyone is predisposed to some extent. Therefore, the severity, duration and type of stress become important. Predisposition and stress are inversely proportional. It takes a lesser degree of stress to cause a neurosis if the individual is highly predisposed; however, even with slight predisposition, if the stress is severe enough, a neurosis will result.

#### **IV. COMMON DEFENSE TACTICS**

##### **A. Allegation of “Compensation Neurosis” or “Greenback Neurosis”.**

There are no such disorders found in the Diagnostic and Statistical Manual of Mental Disorders, Second Edition published by American Psychiatric Association. There is a hysterical neurosis, conversion type, causing such symptoms as blindness, deafness or other physical symptoms. Such a condition is characterized by an unconscious mechanism or dense converting the anxiety into a physical symptom more tolerable to the individual. This is referred to as “primary gain.” “Secondary gain” is also an unconscious reaction resulting from increased amounts of attention, affection and sympathy. This aspect of the illness may retard recovery. The defendant, however, will imply that terminating the lawsuit will terminate the illness.

##### **B. Argument that the Stress Causing the Neurosis is the Lawsuit.**

The plaintiff can usually counter the argument by proving that the symptoms appeared before the first visit to the lawyer’s office.

C. Suggestion that the Plaintiff was an Accident Waiting to Happen and that Anything Other than the Accident Could and Would Have Caused the Condition.

The use of lay witnesses who knew and can describe the plaintiff before the accident is an effective way to defuse this argument. Such can effectively illustrate that the plaintiff met and mastered the normal pressures of life with little, if any, ill effects prior to the accident.

D. Implication that the Plaintiff is Malingering.

This can be dangerous to the defendant if not based on reasonable facts. It is also difficult for the plaintiff to decide whether it should be dignified with a response. In fact, a malingerer is quite uncommon in such suits and can usually be discovered by an experienced psychiatrist in a few sessions.

## **CONCLUSION**

One out of five hospital beds are occupied by the mentally ill and it is said that fifty percent of the people who seek medical assistance have mental or emotional problems, which contribute to their aches and pains.

The personal injury lawyer is certain to handle cases involving mental disorders. They are challenging and demanding. They are different in that the jury verdicts are usually much greater or much less than the settlement ranges. Juries are suspicious of injury they cannot see and even more so if it is claimed to be an emotional one. They often reject or accept in toto the psychiatric testimony, even while being especially attentive.