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Spousal Consortium Claims: Does a Good Marriage Have a Fair Market Value?

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Consortium Claims Does a Good Marriage Have a Fair Market Value?

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Cindy and David's Story.

When Cindy graduates from high school in Miami, Florida in 1997, she knows that joining the Marines is the next chapter in her life. The night before her physical examination, her recruiter gives her some advice: "Drink lots of water so that you make the minimum weight of 102 pounds."

Eighteen years later, Cindy is retired from the Marines and living in the Atlanta suburbs with her husband, David – also a retired Marine and now a police officer. They have two kids: David is 6, and Bianca is 3.

Cindy wakes up one Friday morning with a sore shoulder. She has no time to worry about her own aches and pains; there's too much to do. She gets up, makes breakfast for everyone, gets the kids ready for school and heads to her job at the construction company.

Saturday morning the pain is worse. Much worse. But, again, Cindy gets up and takes the kids to the neighborhood playground. Her shoulder is hurting, and she is low on energy. She takes the kids home early from the playground and gets in bed.

Later that day, she feels feverish and gets the chills. During the night, she wakes up and has to rush to the bathroom to vomit. She gets back in bed for a few more hours but, again, has to rush to the bathroom to vomit. This time, she also has diarrhea. She is really sick.

Early Sunday morning, David lifts Cindy's shirt to look at her shoulder blade. He sees a patch of skin that is red, warm and swollen. Her shoulder is killing her. Literally!

What Cindy and David do not know is that Cindy's shoulder blade is infected with Group A Strep – the same bacteria that gives us strep throat. Somehow, this bacteria has gotten trapped deep inside Cindy's muscles. It is festering and devouring Cindy's flesh. Unless she gets appropriate care, she will be dead in 48 hours or less.

David is not a doctor, but he does not like the way Cindy's shoulder blade looks. They decide to take her to the brand new urgent care around the corner from their home – the one that invited their family to the grand opening a few months ago with jumpy houses and free health screenings. It's owned by a large reputable regional hospital.

At the urgent care, Cindy rates her shoulder blade pain at 8 out of 10 and explains that it came on gradually over the last 48 hours. She tells them that there was not any kind of triggering event like a fall or sudden spike of pain while lifting something. She also tells them that the vomiting and diarrhea only occurred over the last 8 hours.

The nurse takes her vital signs. Her resting heart rate is faster than normal – 110 beats per minute. Her fever is 101.3 degrees. Her blood pressure is 96/56. Cindy is septic, maybe severely septic, but the nurse fails to realize it and puts Cindy and David in an exam room without conveying any urgency to the doctor.

The urgent care doctor never touches Cindy. He never lifts her t-shirt to examine the skin of her shoulder blade. Instead, he diagnoses her with viral gastroenteritis and a shoulder strain. He prescribes medicine to settle her stomach and some other medicine to help with the shoulder pain and inflammation but no antibiotics for Cindy's raging infection.

David fills the prescriptions and, over the next 24 hours, follows the doctor's orders to a "T." Cindy does not improve, and the red, hot, swollen area on her shoulder blade gets bigger and starts heading down towards her hip and underneath her armpit towards her heart. Early Monday morning, they decide that they have given the urgent care doctor's strategy enough time, and they head to a local ER.

The ER doctors and nurses recognize that Cindy is suffering from an infection. They put her on broad-spectrum antibiotics and IV fluids. They run some tests on Cindy's blood that reveal that Cindy is suffering from a major infection and is severely septic, but no one in the emergency room sounds the alarm that triggers the hospital's sepsis protocol. Instead, they admit her to the hospital and turn her care over to a hospitalist.

The hospitalist examines Cindy and orders a routine CT scan and asks the radiologist to call her with the results. The CT is not performed until 2 ½ hours later. The radiologist fails to call the hospitalist as requested, and the hospitalist never follows up.

That evening Cindy's blood pressure drops despite having received several liters of IV fluids. She is in septic shock and dying. The hospitalist admits her to ICU. The intensive care doctor examines Cindy, looks at the CT and, after several more hours, considers that Cindy might be suffering from flesh-eating bacteria, medically known as "Necrotizing Fasciitis." It's now almost midnight, and Cindy needs emergency surgery.

Four hours later, Cindy is in the operating room where three surgeon will explore the possibility of necrotizing fasciitis. Surgery immediately confirms the diagnosis: as soon as the surgeons cut into Cindy's shoulder, the opening drains cloudy, smelly fluid, and there is an enormous amount of dead tissue in Cindy's shoulder and flank area. She loses her entire latissimus dorsi muscle and several other muscle groups around her shoulder blade

But that's not the end of it. Not even close. Over the next several weeks, Cindy's body struggles to regain its equilibrium. Her blood pressure remains low, and her hands and feet slowly turn black because they are not getting the blood supply that they require. She has gangrene.

Cindy eventually undergoes amputations of both legs below the knee, her right arm above the elbow and most of the fingers on her left hand. But she is alive. Four months later, she returns home to David, David, Jr. and Bianca.

Surprising Focus Groups.

Before filing suit for Cindy and David, we conducted David Ball-style focus groups. Among other things, we wanted to understand how potential jurors would react to David's claim for loss of consortium. After telling them the story of what happened to Cindy, our moderator explained David's claim:

David has a claim too. Georgia law recognizes that the marriage has been damaged, not just Cindy. David's claim is for that damage. Cindy can't help with the kids like she used to; she can't help with running the household like she used to, anything from paying the light bill to cleaning up after dinner. She's a different partner, romantically. She's a different partner, emotionally. All the time that she will be spending dealing with her medical needs and her physical limitations is time that she won't have for David and the family. Their marriage is strong and they will get through it all together. They're doing great so far. But their marriage will be fundamentally different.

To our surprise, during deliberations, the remarks from our focus group jurors' included the following:

- "David's claim is stupid!"
- "That claim is ridiculous!"
- "That's one of those frivolous claims that they just throw in! Give him zero!"
- "If we give him any money, how do we know he won't leave her!?"
- "If we give him anything, we should just roll that into her claim."
- "She's the one that is suffering. [He doesn't deserve money] just because he can't have a normal romantic life."

The general sentiment from some of these jurors was one of disdain and disgust: *Men are disgusting. All they care about is sex. His injured wife has lost her arms and legs, her body is butchered and scarred, and all he can think about is getting laid. What a pig!*

How do we avoid these negative reactions and obtain justice for David in the form of a verdict that reflects and honors his significant losses and his altered life? Separately, is there a way to alleviate jurors' concerns that the husband will "take the money and run"?

Consortium Verdicts in Georgia

Loss of consortium claims have generated large verdicts in Georgia over the last several decades.¹ Here are just a few examples:

- \$18 million to husband; \$30 million to brain-injured wife 2017²
- \$5 million to husband, \$12.7 million to injured wife in 2009³
- \$3 million to wife, \$12 million to injured husband in 2015⁴
- \$1.5 million to wife, \$7 million to injured husband in 1990⁵
- \$1.5 million to wife, \$5.2 million to injured husband in 2013⁶
- \$750,000 to wife, \$3.7 million injured husband in 2014⁷
- \$750,000 to wife, \$250,000 to injured husband in 1997⁸ (This is not a typo.)
- \$500,000 to husband, \$2 million to wife in 1993⁹
- \$210,000 to husband, \$2.6 million to wife in 1999¹⁰

Based on these numbers, a serious injury case can include a serious consortium recovery. But how do we do that? How do we overcome the visceral reactions about Cindy and David's sexual relationship that overwhelm the conversation about the multi-faceted impact on their marriage?

The Truth about Marriage

We must identify and deal with every issue in our cases with honesty. With that in mind, what is the truth about marriage? Only after we answer this question and share it with the jury can we gain the jury's respect and guide them to a verdict that gives full justice to the spouses of our injury victims.

We all have the primordial ability to sense when someone is not being completely honest with us; although, we are not consciously aware of how we are making these determinations. Psychologist Carl Rogers suggests that it is through a principle of congruence.¹¹ As Josh Karton teaches us, communication is 7% words, 38% tone-of-voice and 55% body language. If we are being honest, then our words, tone of voice and body language are congruent with one another – they match. If they are incongruent, then our audience intuitively knows it and distrusts us.

¹ While some states might allow consortium claims for common law marriages and non-marital relationships, Georgia does not. In fact, if Cindy and David were to divorce before a verdict is returned, David's consortium claim would evaporate.

² Trabue, Fulton County State Court [not yet reported].

³ WL 6226665

⁴ WL 3346385

⁵ WL 600755

⁶ WL 11021323

⁷ WL 5662726

⁸ WL 636111

⁹ WL 519783

¹⁰ WL 1491032

¹¹ "On Becoming a Person, A Therapist's View of Psychotherapy," Carl R. Rogers, Mariner Books, 1961, Page 34.

The term "congruent" is one I have used to describe the way I would like to be. By this I mean that whatever feeling or attitude I am experiencing would be matched by my awareness of that attitude. When this is true, then I am a unified or integrated person in that moment, and hence I can be whatever I deeply am. This is a reality which I find others experience as dependable.¹²

* * *

With one individual we recognize that he not only means exactly what he says, but that his deepest feelings also match what he is expressing. Thus whether he is angry or affectionate or ashamed or enthusiastic, we sense that he is the same at all levels. . . . We furthermore recognize that he is acceptant of his immediate feelings. We say of such a person that we know "exactly where he stands." We tend to feel comfortable and secure in such a relationship.

With another person we recognize that what he is saying is almost certainly a front or a façade. We wonder what he really feels, what he is really experiencing, behind this façade. We may also wonder if he knows what he really feels, recognizing that he may be quite unaware of the feelings he is actually experiencing. With such a person we tend to be cautious and wary. It is not the kind of relationship in which defenses can be dropped or in which significant learning and change can occur."¹³

Mindful of Rogers' concepts of congruence, we must be very careful in our relationship with the jurors. We must offer transparency in which our real feelings are evident; we must offer acceptance of the prospective jurors as separate persons with value in their own right, regardless of their biases that offend us; and we must offer a deep empathic understanding that enables us to see their private worlds through their own eyes.

So what is the truth about marriage?

Marriage is hard! We hope to choose our spouse well, but there is no way to anticipate all of the twists, turns, bumps and pitfalls that will test the marriage. There is no way to predict whether our marriages will survive. A successful marriage is the combination of luck, hard work and a stubborn refusal to quit.

Even a marriage that has stood the test of time - say 25 years - is a delicate balance. You have to pay attention to it. You have to nurture it. There is no autopilot; no cruise control. You cannot let go of the wheel or take your foot off the gas. You will never reach a point where the work is done and you can just sit back, let go and enjoy the fruits of your labor. We, as individuals, are constantly evolving; so our marriages must evolve too.

¹² Id., p. 50.

¹³ Id. Pp. 282-283.

There are certainly good times - easy times, where the relationship requires less effort or may even seem effortless. When making your spouse laugh is easy. Where your mutual need for physical contact is on the same schedule. When your children seem to be finding their way in the world and are not going to turn out to be serial killers. There are definitely good times.

But marriage, like everything, is cyclical. The good times are followed by challenging times - phases of doubt and discord. Times when the marriage just feels like a business: coordinating the logistics of shuttling the kids to their activities; managing their educational and behavioral issues at school; to medicate or not to medicate; paying the bills; doing the laundry; cutting the grass; cooking the meals that everyone will actually eat. There is work to be done, and most of that work has nothing to do with love, romance or the individual needs of the spouses.

So what happens to the marriage when a spouse is seriously injured? What happens to that delicately balanced relationship?

Depending on the extent of the injury, the marriage may utterly collapse and have to be rebuilt. For a period of time or for the rest of time, the injured spouse will have no ability to contribute anything. All of the marital responsibilities will fall on the non-injured spouse. Everything! The injured spouse will be emotionally unavailable because they are unavoidably absorbed in their own predicament, suffering and recovery. Hopefully, the injured spouse recovers and their ability to contribute to the marriage returns, but not always. Either way, a **new** marriage emerges.

This new marriage may or may not bear any resemblance to the old marriage. It may not even survive for very long. It will certainly never be the same.

How do we talk to jurors about this loss? How do we help them understand it and value it? I suggest that we start by having this kind of honest conversation with them at every opportunity but primarily during jury selection and opening statement. Only then can we hope to gain their trust and step into the role of mentor.

How do we talk about the value of Marriage?

Is marriage like a stock portfolio? "Yesterday's close was at \$125, but today it dropped to \$77. So, we ask the jury for the difference of \$48." Is it possible that the marriage is strengthened by the experience? That they have withstood the crisis and now know, more than ever, that they can count on one another? Have they learned that their marriage transcends physical appearance or the ability to cut the grass or do the laundry? Hopefully, that can happen, but, if it does and the marriage is now **more** valuable, how can we pursue a lost consortium claim?

The answer may lie in affirming that the marriage is not ruined; that it is **not** less valuable than before, but that it is **different**. Version 1 of the marriage was Monet's *Water Lilly's*; version 2 is Jackson Pollack's *Autumn Rhythm*. Both are valuable, but they are very different.

Instead of treating the value of marriage like a stock portfolio, take a closer look at the component parts of the marriage from before and after the injury. Instead of the offensive proposition that the marriage is now worth less, explore the value of the lost components of version 1 of the marriage:

- Cindy and David will never take a long walk on the beach.
- Cindy and David will never hold hands.
- In a tornado warning, Cindy cannot get out of bed to help get the kids in the basement. In fact, she will probably have to be carried by David.
- Their role in society has changed: instead of the police officer and his wife, it's the heroic amputee and her husband. Before Cindy was injured, David was somewhat of a celebrity. He was the only police officer living in their neighborhood or attending their church. That felt good. He has always wanted to be a hero; that's why he joined the Marines and that's why he became a police officer. He's on the SWAT Team and often finds himself in life-threatening situations. Telling those stories and receiving the attention and appreciation from his community is important to him. But ever since Cindy's injury, she is the celebrity. Everyone asks him about her and how she's doing. People think of him as "Cindy's husband," not as "the police officer that they know." When the elementary school calls, they want Cindy to come speak to the class, not David. The spotlight is on her now, not him. He misses his former life, but it's gone, and it's not coming back.
- Cindy can still bear children but another child is a very different proposition. Even the simple task of holding an infant is difficult (and perhaps dangerous) for a person with only one arm. Bathing one of those slippery little creatures is hard enough with all of your extremities. Changing diapers is probably impossible, and dressing the child presents a whole new set of challenges: snaps and buttons. These and other similar tasks would fall exclusively on David, potentially creating more tension in the relationship. They have enough on their collective plate; another child is out of the question.
- David has to help her
 - Dress herself
 - Zip zippers
 - Put her earrings in
 - Put her watch on
 - Fold socks
 - Tie shoelaces
 - Dance
 - Chase David around the bedroom
 - Skinny dip
 - Eat in a restaurant without calling attention to herself
 - Put her hair in a ponytail
 - Shave her left underarm
 - Hike
 - Open or close jars and Ziploc bags
 - Take things out of the oven
 - Do heavy cleaning

These losses have value, individually and in the aggregate.

The assertion of a consortium claim does not have to be based upon a claim that the marriage is ruined. Be positive about the marriage and your clients' future together but acknowledge the losses. The dream of what their marriage would be is lost. Growing old together looks very different than they had imagined on their wedding day. But, by staying together, they have shown the courage to let go of that dream and envision a new one. They are an inspiration. Make the jury want to be part of their journey and to help them realize their goals together.

Many jurors are afraid that if they return a large consortium verdict, the spouse will "take the money and run." We must find arguments that extinguish that fear; that help our jurors understand that their marriage, as a whole, is not diminished by the experience but strengthened. Something like:

It enters our minds that Cindy and David's marriage might not survive this tragedy. But when we watch them and we see how they treat each other and when we hear David tell us how proud he is of Cindy, we know that David and Cindy's bond has been strengthened through this incredible crisis. To each other, they are like no one else. No one else could fill this roll in their lives. They have survived the unimaginable. Like two pieces of steel that have been heated and hammered and beaten into shape, Cindy and David are permanently joined.

Do No Harm!

Should every injury case involving a married victim include the spouse's loss of consortium case? I say, "No."

In smaller cases, the claim will become a distraction and may arm conservative jurors with arguments that the plaintiffs are merely trying to "grow the size of the jackpot." Even in cases involving significant injuries, we must think carefully about whether we are serving our clients' interest by contending that the marriage has been damaged. I have made this mistake. I once heard my client echo my arguments back to me with tears streaming down her face: "I am not the wife I used to be!" I will never make that mistake again!

Strategic Considerations.

a.) Hire Co-Counsel.

Atlanta trial lawyer Tommy Malone counsels that "a good consortium case deserves its own lawyer." I agree for many reasons.

During discovery, they will have their own examination of each witness, including the defendants and the defendants' experts. At trial, co-counsel will have their own jury selection, opening statement, examination of every witness and closing argument. More generally, you will have a compatriot for case strategy.

Perhaps most importantly, however, the jury's perception of the consortium claim will be fundamentally altered. Each time the consortium lawyer is on their feet, the jury is reminded that there is a separate claim for the uninjured spouse. When it comes time to fill out the verdict, the jury will not be surprised by the blank for consortium losses; they will have been expecting it all along.

Nelson Tyrone did a beautiful job of this in a trial with Lloyd Bell. Lloyd represented the injured husband, suffering from complex regional pain syndrome, and Nelson represented the wife. When Nelson introduced himself to the jury, he said something like, “When you see me stand up during the trial – whether it is to speak to you, address the judge or to ask questions of a witness – think of me as the family because the family has been injured too, and the family has questions and concerns that you will need to evaluate during your deliberations.” By saying this, Nelson became a physical reminder to the jury throughout the trial that it was not just about the injury to the husband but to the family as well.

You will have to give up the fee on the consortium claim; otherwise, if the defendants discover that both attorneys are sharing in the consortium fee, the court could deem you to be co-counsel, not co-plaintiffs. Even so, the addition of quality co-counsel should increase the value of both claims and offset that sacrifice. You will also need to enter into a joint prosecution agreement in order to preserve the confidentiality of attorney-client communications and work product material.¹⁴

b.) The Range of Consortium Damages.

There is a spectrum of the types of damages experienced by the uninjured spouse. On one end of the spectrum, there are losses that are inextricably intertwined with the marital relationship. On the other end are the pains and sufferings that the uninjured spouse experiences that arguably have nothing to do with the marriage.

The easiest example of this loss is the impact upon the sexual relationship, which is clearly a loss of consortium intertwined with the marriage. Examples of the uninjured spouse’s wholly personal experience include his or her personal observations of the events surrounding the injury: Like a surreal nightmare, David watched Cindy’s hands and feet turn black. Before they amputated her right arm, the nurses removed Cindy’s engagement and wedding rings and gave them back to David. For months, David was overwhelmed with fear that Cindy would die. ‘What will happen to me if she dies? How will I take care of the kids? What woman will want me saddled with two children that are not hers?’

After those fears subsided, he was anxious about what their lives would be like when Cindy came home. These are horrible feelings of helplessness. There is even shame: *Is God angry with me? Did I do something to deserve this? Is that why this is happening to Cindy? Is this somehow my fault?*

The defense will argue that David’s personal experiences surrounding the crisis are purely personal: The anxiety, fear, helplessness, shame, etc. - are isolated to the uninjured spouse; they do not directly affect the marital relationship and thus should not come into evidence. But how can these emotions and experiences not affect the marital relationship? They must! If they affect the individual, then they necessarily affect the marriage.

¹⁴ The form agreement that I use is available upon request.

The principle of the butterfly effect is that small changes in complex systems can have dramatic consequences - a butterfly flaps her wings in Kenya, and that flapping kicks off a series of events that ultimately results in a hurricane in the Dominican Republic.

A marriage is certainly a complex system, and small changes can have a significant impact. Anyone who has ever been married or a long-term romantic relationship knows this to be true: an odd look or a subtle intonation can start an argument that sets in motion a cascade of events that changes the relationship forever.

The emotional experiences of the uninjured spouse are more than just a small change and are therefore likely to have a significant impact on the relationship. By pointing out this causal link to the Court, we may successfully establish the admissibility of the uninjured spouse's individualized experience of the health crisis.

Proof of losses.

Through what witnesses should you prove the consortium losses? More precisely, through what witnesses should you **not** prove the consortium losses? The uninjured spouse should **not** be a proponent of their claim. Ideally, the uninjured spouse can testify that they love their spouse more than ever and that the crisis has strengthened their bond.

David should testify about the amazing things that Cindy has accomplished since her injury. He should tell the story of seeing Cindy take her first step in her prosthetic legs. He should show the jury some of the many ways that she has figured out how to accomplish tasks with only part of one hand. He should tell the story of Cindy training for the Marine Marathon and of how it felt to meet her at the 25th mile marker to help her get out of the recumbent bicycle and change to her prosthetic running legs so that they could run the final 1.2 miles together. He should talk about how proud he is of her, how much he admires her determination, of what a wonderful example she is to their children, and of how she is his perfect wife and soul mate.

David should stay far away from the pettiness of the details. For example, even though Cindy only has part of one hand and half of the other arm, she has somehow figured out how to fold the laundry. Almost, that is. She can't "top-turn" socks. "Top-turning" is where you put the pair of socks side by side and turn the top of one over onto the other so that the pair stays together. You have to have two hands to do that; there's no way around it. Consequently, David has to top-turn all of the socks. David is often not at home when Cindy does the laundry, so Cindy piles the socks on David's bedside table – all of them: Bianca's tiny pink Hello Kitty socks, David Jr.'s Batman and Superman socks and David Sr.'s socks. Cindy doesn't have socks anymore.

David sometimes has trouble finding time for this job. He is a busy guy. Over time, the sock pile gets big and socks tumble off of his bedside table onto the floor. Cindy, annoyed by this unfinished task, has to pick them up and put them back on the pile. When David gets home from work, Cindy asks, "Could you please fold the socks." David, exhausted from a long day on patrol, just wants to drink a beer and relax. Folding socks is not high on his list. He suggests, "Why don't we ask your mother to help

with this task? I have trouble finding time to do it, and she comes over every day anyway and is always asking how else she can help.” Cindy is already guilt-ridden with how much her mother helps and does not want to ask her to do anything else. Besides, it only takes a few minutes. David should do it.

This sock pile is the butterfly’s wings. Cindy walks by the pile of socks 20 times a day, if not more. It is a constant reminder of her physical impairment and of her need to ask others for help. The sock pile is one of the many additional burdens that she places on David. She walks by that sock pile, and thinks,

How in the Hell did I get here? I was a Marine for God’s sake, and now I have to ask my husband or my mother to help fold the damn socks. Shit!

Why doesn’t David just fold the socks? Doesn’t he know that I walk by them over and over again every day? Doesn’t he know that it infuriates me that I have to ask for help? Doesn’t he know what that damn pile of socks represents?

And when David comes home, he has no idea that the butterfly effect has been swirling all day and has evolved into a full-blown hurricane.

So, who should tell this story at trial? Should David take the stand and explain to the jury that he now has to fold the socks:

Before Cindy was injured, she always folded the socks. Now, I have to fold the socks, and I want the jury to put some money in the verdict for the fact that I know have to fold the socks.

I think not. Jurors will respond to this triviality as insensitive: “She lost her arm and her legs and you’re complaining about folding the socks?!?!”

Instead, Cindy should “**give the jury permission**” to acknowledge David’s losses by explaining how this has affected him. If appropriate, she should express her own guilty conscience for not being the spouse that she once was. Cindy should use the socks as an example of the many things that David now has to do. She can share her frustration of walking by the sock pile, explaining the emotional process that it triggers in her.¹⁵

Friends and family can expand the juries’ understanding of the precise nature of these losses. These witnesses have nothing to gain from their testimony; so the jury will be less suspicious of them. Imagine hearing the sock-folding story from Cindy’s mother, Clarisa. She sees the pile of socks on David’s bedside table and asks Cindy about it.

“Do you want me to fold those socks, Cindy?” she asks.

“No, thank you. That’s David’s job.”

¹⁵ Getting Cindy to a place where she can recognize and express these realities is going to require the help of a psychodramatist.

“Oh, let me do it, sweetheart. David works hard. He doesn’t have time for that.”

“No. That’s David’s job. You do enough already.”

“But David already does so much too. He has to help you with taking your legs on and off. He has to help you bathe yourself. He has to brush Bianca’s hair every day. He does so much. Let me fold the socks, Cindy.”

“No. That’s David’s job.”

“Are you sure?”

“Yes, mama, I’m sure.”

When the story is heard from a perspective other than David’s, there is less opportunity for it to be misinterpreted as David complaining about the marriage, which some jurors will be offended by.

c.) **Motivating Conservative Jurors.**

Jurors will respond in a variety of ways. More empathetic jurors will embrace the emotional aspects of the consortium claim. But what do we do with our less empathetic jurors - the engineers, the accountants, the tort reformers?

These jurors may respond to conservative notions that marriage is the bedrock of our society. Our culture values marriage. Our laws provide considerable benefits to married couples - tax benefits, credits and exemptions, inheritance rights and other legal privileges. Our legal system also includes obstacles to divorce. These legal constructs constitute recognition that our society values marriages and seeks to protect it.

Our laws legally recognize and promote the value of marriage by creating the claim for lost consortium. The Georgia pattern jury charge¹⁶ expresses this principle:

A married person has a right to recover for the loss of consortium, sometimes called loss of services, of the spouse. You should be careful to remember that services the law refers to are not only **household labor** but also **society, companionship, affection**, and all **matters of value** arising from marriage.

There does not have to be any direct evidence of their value, but the measure of damages is their reasonable value, as determined by the enlightened conscience of impartial jurors taking into consideration the nature of the services and all the circumstances of the case.

Take the opportunity to expand upon the terminology. “Society” is the condition of those living in companionship with others, or in a community, rather than in isolation. They are known in their community, in their place of worship, in their neighborhood, in their jobs as a couple. As a couple, they

¹⁶ Check the pattern charge in your state.

are perceived in a certain way and that perception is forever changed by a serious injury to one of them. “Companionship” means to accompany, assist, or live with another in the capacity of a helpful friend. “Affection” is defined as a fond attachment, devotion, or love.

Jurors’ duty - their responsibility, and their job - is to adhere to these conservative principles and to protect the institution of marriage by returning a significant verdict that acknowledges its great value. A small verdict would be disrespectful and would do nothing to preserve these conservative values.

Conclusion.

These are my personal thoughts and ruminations regarding how to properly present a consortium claim. They are based on my own experiences representing couples at trial and upon conversations that I have had with brilliant people like Lloyd Bell, Joe Fried, Nelson Tyrone, Maren Chaloupka, Louise Lipman and Mary Joe Amatruda.

Just taking the time to think about the uniqueness of these claims is vitally important. There is no cookie-cutter approach to helping our juries understand our clients’ plight. We have to take the time to listen to our clients and to fully discover their stories. In the right case, a professional psychodramatist may be necessary to fully discovering the story and avoiding causing additional emotional trauma. Trust your instincts; there is more than one way to do it right.