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No Expert, No Problem: To Reduce Future Damages To Present Value, Experts Need Not Apply

by Calder C. Mellino

Injured plaintiffs can recover compensation for the future costs of medical needs that result from their injuries. However, before a jury can include money in a verdict for future damages, the amount must be reduced to present value. Therefore, a question may arise in a case where future damages are sought as to whether testimony from an expert in economics is required. The answer under existing precedent of both the Supreme Court of Ohio and the Eighth District Court of Appeals is no.

The Supreme Court of Ohio held that expert testimony is not required for a plaintiff to recover future damages.[1] The Court specifically held that the reduction of future costs to present value is within the province of the jury.[2] Following this precedent, the Eighth District Court of Appeals ruled that expert testimony is not required to reduce a life care plan to present value.[3]

Moreover, valuation of future damages can and may *already* be calculated in "present value" and need not be reduced.[4] Proper reports, deposition preparation, and additional questions at deposition can preempt attacks on evidence of future damages.

Under Ohio law, "a plaintiff is entitled to an award of damages to compensate him for losses which he is reasonably certain to incur in the future."[5] These losses often take the form of costs for medical care and treatment, accommodations, nursing companions and respite care, equipment, medication, and therapy.

Expert testimony is required to show that the recommendations in the life care plan are medically necessary and that plaintiffs are reasonably certain to incur these costs in the future or, in other words, that they will need treatment and assistance.[6] Once a treating physician or other medical professional determines the future treatment an injured plaintiff is reasonably certain to need, another expert, such as a life care planner, can determine the costs of this treatment.

These costs must be reduced to "present value" and defendant is entitled to a jury instruction to that effect.[7] Critically though, the Supreme Court of Ohio held in *Sahrbacker v. Lucern Products, Inc.* that an expert is not required to help the jury calculate the present value of these costs.[8] Rather, "It is settled that reduction to present value lies within the province of the jury."[9]

Applying the precedent of *Sahrbacker*, the Eighth District Court of Appeals confirmed in *Daniels v. Northcoast Anesthesia Providers, Inc.* that the plaintiff "did not have to offer expert testimony reducing the life care plan to present value."[10] The argument that *Sahrbacker* does not apply to medical claims was specifically rejected in this decision written by Judge Melody Stewart, shortly before she joined the Supreme Court of Ohio.[11]

Attempts to exclude evidence of future damages when not reduced to present value by an economist often cite to *Reeder v. Suggs*.[12] This case did not

involve a life care plan.[13] Further, the Supreme Court of Ohio considered this unreported Third District case from 1982 in deciding *Sahrbacker* and determined it was not in conflict with the holdings therein.[14]

To preempt this argument nonetheless, a plaintiff's life care planner or similar expert should be careful not to account for economic matters such as interest, rate of return, or inflation when calculating the costs of future medical needs. Opposing counsel often recites a script of questions in their deposition of this expert to kindle a dispute, such as confirming that the expert is not an economist and did not calculate "present value" or otherwise reduce the future costs of medical care. Without these variables factored into their summations, there is nothing to "reduce" from the total amount of a life care plan or similar report.

The witness can therefore explain that no reduction is necessary because the calculations are already based on the present-day costs of care. If the witness is not provided the opportunity to properly explain this during opposing counsel's examination, plaintiffs' counsel should create a clean record at the end of the deposition with their own line of questioning to this effect. Additionally, an expert can preemptively include language in their report to this same end.

The law on this issue is clear; yet, defendants manage to confuse the issue. By providing a clear, consistent explanation and properly preparing experts for this attack, counsel for plaintiffs can ensure that injured victims have an opportunity to present the full amount of their future damages to the jury. ■

End Notes

1. *Sahrbacker v. Lucem Products, Inc.*, 52 Ohio St.3d 179, 556 N.E.2d 497 (1990).
2. *Id.* at 179, citing *Maus v. New York, Chicago, & St. Louis Rd. Co.*, 165 Ohio St.281, 135 N.E.2d 253 (1956).
3. *Daniels v. Northcoast Anesthesia Providers, Inc.*, 8th Dist. Cuyahoga No. 105125, 2018-Ohio-3562, 120 N.E.3d 52.
4. *Id.* at ¶ 54.
5. *Galayda v. Lake Hosp. Sys., Inc.*, 71 Ohio St.3d 421, 425, 1994-Ohio-64, 644 N.E.2d 298, citing *Pennsylvania Co. v. Files*, 65 Ohio St. 403, 407, 62 N.E. 1047 (1901); *Roberts v. Mut. Mfg. & Supply Co.*, 16 Ohio App.3d 324, 475 N.E.2d 797 (1984).
6. *Riedel v. Akron Gen. Health Sys.*, 8th Dist. Cuyahoga Nos. 104962 & 104968, 2018-Ohio-840, 97 N.E.3d 508, ¶ 31, citing *Marzullo v. J.D. Pavement Maintenance*, 8th Dist. Cuyahoga No. 96221, 2011-Ohio-6261, 975 N.E.2d 1("[E]xpert testimony is required to support future treatment, expenses, medical care, permanency of injuries, length of health impairment, and pain and suffering.").
7. *Galayda, supra*, at 425, citing *Maus, supra*, paragraph one of the syllabus.
8. *Sahrbacker*, at 179. *See, e.g. Chesapeake & Ohio No. Ry. Co. v. Adams*, 207 Ky. 668, 269 S.W. 1009 (1925); *Prince v. Kansas City So. Ry. Co.*, 360 Mo. 580, 229 S.W.2d 568 (1950); *Jacobsen v. Poland*, 163 Neb. 590, 80 N.W.2d 891 (1957); *Meier v. Bray*, 256 Ore. 613, 475 P.2d 587 (1970).
9. *Sahrbacker*, at 179, citing *Maus, supra*.
10. *Daniels*, at ¶ 57.
11. *Id.*
12. *Reeder v. Suggs*, 3d Dist. Allen No. 1-81-46, 1982 Ohio App. LEXIS 15782, 1982 WL 6822.
13. *Id.*
14. *Sahrbacker, supra*.