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HEDONIC DAMAGES: EVALUATING THE INTANGIBLE LOSS OF LIFE AND LIMB

By: Stanley V. Smith

Evaluating intangible damages such as pain and suffering and the loss of life has always posed a substantial challenge for the courts. Recently, economic expert witness testimony based on an economic model of the value of life itself, which I first introduced in *Sherrod v. Berry*, 629 F. Supp. 159 (N.D. Ill 1985), served to assist juries in forming their conclusions based on objective evidence rather than mere speculation in these two difficult areas of tort liability.

Several decades ago, courts did not recognize the intangible value of household services. Today, of course, it is routinely computed as an element of pecuniary loss. Likewise, claims for the intangible value of life beyond lost earnings capacity were not recognized. In 1984, in *Bell v. City of Milwaukee*, a section 1983 case, an award was made for loss of the pleasure of living. Since then, more and more, the courts are allowing plaintiffs to recover for these intangible damages.

In *Sherrod v. Berry*, a Joliet Illinois police officer shot and killed a young man. In addition to establishing lost earning capacity, I was asked if I could provide expert economic guidance to the jury in forming a judgment regarding the enjoyment of living, distinct from lost earnings, which I termed the hedonic value of life (from a Greek root meaning pleasure). Of course, we value our lives for more than the income we generate. But can we quantify life's value? There has been a great deal of economic research as to the value of life. These studies served as the background from which I formulated an econometric model for the value of life, which the 7th Circuit Court of Appeals termed "invaluable" in helping the jury perform its duty in determining the hedonic value of life in the *Sherrod* case (827 F. 2d 195, 7th Cir. 1987).

So, how do economists value life? They don't. Society values life, in many different ways, hundreds of thousand of times every year. It is the economist's job to reveal the implicit price society puts on life, just as he reveals the implicit price society puts on the services rendered by a wife or a husband in the household.

One way is to examine the incremental amount of pay that workers on jobs with fatality risk demand as extra compensation for bearing that risk. One economist, for example, looked at the differential rates of pay to policemen in different cities with different risks to life on the job, taking into account other aspects of the job.

Another way is to examine the prices people pay for lifesaving measures such as seat belts, smoke detectors, ambulance services, etc. Government, industry and individuals are constantly making pricing decisions about compensation for extra risk to life, or about instituting risk reducing measures. Also, there have been some carefully crafted studies in which people have been questioned as to what they would pay to reduce certain risks such as in airline travel safety.

The results of these studies vary widely as one might expect, since we do not have a uniform opinion as to the value of life. However, many of the studies show a clustering in a range of from \$500,000 to \$3 million dollars and more. Further, the studies show that when the income component is known, the hedonic component can be shown to be a figure at least as great as, and often a multiple of, lost earnings capacity. The hedonic value of life is substantial.

My model tailors the economic evidence to the life of the specific individual and takes into account the partial loss of the hedonic value of life in instances of injury. Several states and Federal District courts have recognized this model and have accepted my testimony regarding hedonic loss as part of pecuniary damages both in death and injury. Testimony is pending in many states, including Illinois.

My hedonic model can also be used to establish the responsibility of a manufacturer in product liability. By examining the amount spent on lifesaving features of the product design, it can be shown that the manufacturer spent a certain sum per statistical life saved. That sum might be consistent with the broad range of societal norms or, alternatively, it might imply a low regard for the value of life implicit in the cost-benefit safety design process.

Hedonic damages - the concrete measure of the value of life, separate from lost earnings capacity, has just begun to be used in American courts. Its value to juries in making fair and just determinations of damages is apparent. Its use in future litigation is certain to increase. As with any method of proof, its value is limited only by the skill of the attorney and the ability of the economic expert.



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