

Federal Judge in Virginia Rules that Awards for Future Damages Must be Reduced to Present Value

In personal injury litigation involving allegations of catastrophic injury, plaintiffs often supplement their damages claim by seeking to introduce the estimated cost of their ongoing and future medical care and services. Defendants cringe at the thought of this dollar figure reaching a jury, and argue that fairness demands that such claims for future damages be reduced to present value. While the Supreme Court of Virginia has yet to rule on this issue, a recent opinion issued by Judge James P. Jones in the United States District Court for the Western District of Virginia may serve as a guide when the issue inevitably comes before the state's highest court.

Mavity v. MTD Products, Inc., 714 F.Supp.2d 577 (4th Cir. 2010), was a products liability personal injury case against the manufacturer of a ride-on lawnmower, brought before the federal court based on diversity jurisdiction. The plaintiff was seriously injured when the mower, which he was operating, overturned and landed on top of him. As a result of the incident the plaintiff suffered multiple fractures in his spine, leading to a host of complications, includ-

ing ongoing neurological deficits in his legs.

The plaintiff hired a Life Care Planner as an expert witness to prepare a preliminary life care plan outlining the projected costs of the plaintiff's future medical treatment. The defendants moved to exclude the future costs projections, arguing that such projections must be calculated at present value. The plaintiff maintained that Virginia law did not require that the projections be calculated at present value.

The rationale behind the defendant's argument in favor of present value is that the award for future damages would be received by the plaintiff all at one time, rather than over a period of time. The Supreme Court of the United States acknowledged in Chesapeake & Ohio Railway v. Kelly, 241 U.S. 485, 491, 36 S.Ct. 630, 632 (1916), "it is self-evident that a given sum of money in hand is worth more than the like sum of money payable in the future."

Because the events giving rise to Mavity took place in Virginia, the court was required to apply Virginia substantive law. However, because Virginia has not ruled on whether future damages must be reduced to present value, the Mavity court was called upon to interpret existing Virginia law and predict how the Virginia Supreme would come down on the issue. Judge Jones looked to a number of sources for guidance in making his decision, including the Second Restatement of Torts, which reads: damages for "future pecuniary losses arising from a tort is the present worth of the full amount of the loss of what

would have been received at the later time." Restatement (Second) of Torts, § 913A (1979). Judge Jones also cited to The American Law of Torts § 8.13 at 569 (2003), noting that the majority view is that "awards for future medical expenses, like those for lost future earnings, should be calculated at present value."

Ultimately, Judge Jones concluded that Virginia law requires awards for future medical expenses to be based on the present value. Clearly, his decision was influenced by the severity of the plaintiff's injuries and the measure of future damages that he was claiming (the plaintiff's future damages were projected to be between \$232,231.54 and \$403,457.14 over a 20 year period). In a footnote sure to be frequently quoted by Virginia defense attorneys, Judge Jones stated, "Where the amount claimed is large and the time frame is long, present value seems particularly appropriate in order to be fair." Obviously, in cases involving smaller dollar amounts and shorter time frames, the issue is not nearly as critical.

In Mavity, Judge Jones not only ruled that Virginia requires a reduction of future damages to present value, but also placed the burden of presenting evidence of the present value on the plaintiff. In fact, Judge Jones seemed to not even consider the issue, appearing to take for granted that this burden rests with the plaintiff. Additionally, Judge Jones excluded the plaintiff's Life Care Planning expert from testifying



upon the basis that her projections were not based on the present value. Judge Jones stated that the Life Care Planner did not possess the requisite qualifications to calculate the present value of her projections, and therefore excluded her testimony completely. However, the Supreme Court of Virginia, interpreting federal law, has previously held that it is the defendant's burden to present evidence on the issue, in the case CSX Transportation, Inc. v. Casale, 247 Va. 180, 441 S.E.2d 212 (1994).

Casale was a personal injury action brought under the Federal Employers' Liability Act (FELA). The plaintiff in the case claimed permanent injuries, as well as future lost wages and loss of earning capacity, and introduced evidence at trial of future damages. Both par-

ties in the case agreed that federal law entitled the defendant to a jury instruction advising that an award of future damages should be based on the present value. However, the court found that it was the defendant's burden to present evidence on the present value which would enable the jury to make a rational determination as to present value of the plaintiff's future damages. The court reasoned that the reduction to present value was analogous to mitigation of damages, in which the burden of proof rests on the defendant.

While neither Mavity nor Casale is binding on Virginia courts interpreting Virginia law, it seems probable that Virginia courts will eventually mandate that future damages be calculated at present value. Whether it is the plaintiff's

or defendant's burden of going forward with evidence of the present value remains to be seen, but defendants will certainly attempt to persuade the Supreme Court of Virginia to use Mavity as its blueprint when inevitably faced with this issue.



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