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Housekeeping (Tort): Court of Appeal Increases the Exposure

Tort claims for compensation for housekeeping just became more substantial. In the Court of Appeal decision of *McIntyre v. Docherty* (May 29, 2009) the Court said as follows in the introductory paragraph:

"While courts in this and other jurisdictions have allowed damages for housekeeping losses, this case presents an opportunity for this court to consider certain aspects of such awards".

In "considering" this head of damages, the Court of Appeal has created an "opportunity" for Plaintiffs to build-up claims for housekeeping for even the rudimentary claims. It is important to understand this decision as Plaintiffs will assuredly use the framework set-out by the Court of Appeal to try and maximize entitlement to claims for housekeeping.

Framework

The Court of Appeal explained that there is a framework from which a Plaintiff may put forth a claim for housekeeping losses. The Court found that a Plaintiff may be found entitled to compensation for both a pecuniary award for housekeeping losses and a non-pecuniary award for his loss of self-worth from an inability to contribute personally to the well-being of the household. This framework includes three different types of claims that a claimant

may argue for entitlement to housekeeping. It is important to note that a claimant may receive compensation for one, two, or all three categories at the same time. The first two categories are non-pecuniary and the last one pecuniary.

Work Left Undone

Where the Plaintiff is unable to perform some or all the housekeeping tasks, and where a third party (i.e. family member / service provider) does do the work for the injured party, work will likely be left undone. The Plaintiff's pre-accident housekeeping responsibilities may have provided him with a sense of identity and self-worth. The loss of this ability to engage in his pre-accident housekeeping abilities is intangible but is still compensable.

Work Done By The Plaintiff With Difficulty

A Plaintiff may continue to perform her pre-accident housekeeping work but with difficulty and over an extended period of time. To the extent that the Plaintiff's inefficiency also results in a less clean and organized household, this is a loss of an amenity that the award for non-pecuniary damage would also take into consideration.

These two aspects of non-pecuniary housekeeping claims are to be assessed in a manner similar to the assessment of non-pecuniary damages for pain and suffering (general damages). The Court of



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Appeal said that courts are to assess the components of this loss based on the plaintiff's pre-accident housekeeping activities, the particulars of any increased pain /suffering, any diminishment in the housekeeping performed, and the impact on the standard of the Plaintiff's pre-accident housekeeping.

Work Done by Others

If the Plaintiff incurs an out-of-pocket loss by hiring a replacement homemaker, the Plaintiff is entitled to compensation. This includes for monies paid by the Plaintiff or an obligation to pay a housekeeper for services rendered. Such a pecuniary claim for housekeeping benefits has been clarified by the court to also include the following:

"...any expenditures for one-time housekeeping projects to maintain the home as well as other pecuniary losses such as cost of order-in, restaurants, cleaning services, home repair, home maintenance, and yard services."

If a Plaintiff can prove an increase in the amount of Pizza Pizza delivery she engaged post accident on account of her inability to cook, this is potentially compensable.

Effect Of This Decision

The Court of Appeal appears to have now clarified that there are two subsets of claims for housekeeping benefits: (1) non-pecuniary and (2) pecuniary losses. A claimant can receive compensation for a non-pecuniary housekeeping claim because she is upset that her home is no longer as tidy as it was pre-accident, and on account of her pain while cleaning her home. Previously it was thought that the latter was subsumed in the claim for general damages for pain and suffering. Now, a claimant may ultimately receive compensation for non-pecuniary damages for (a) loss of housekeeping functions; and (b) pain and suffering on account of loss of function. This sounds like double recovery to me.

The ability to compensate a claimant for pecuniary loss with respect to housekeeping is well established. If a claimant pays someone for housekeeping services, or promises to pay, then they are entitled to compensation. Yet, based on the reasoning of the Court, if the claimant is paying someone to perform housekeeping in their home, and still feels a loss of identity because he is unable to perform these activities himself, then the claimant is potentially entitled to compensation for both the pecuniary and non-pecuniary heads of housekeeping damages.

Conclusion

It would not be surprising if Plaintiff counsel begins to separate-out their demands for settlement for housekeeping benefits to include a pecuniary and non-pecuniary component. For instance, a claimant may put forth a claim for: (1) a pecuniary loss of housekeeping services provided by a Plaintiff's mother for services provided based on a promise to pay, and (2) a claim for non-pecuniary housekeeping benefits on account of the fact that she is ashamed that her own mother has to clean her home. At this juncture, it is unclear how a Court would assess the value of a non-pecuniary housekeeping claim. One thing is for certain that emanates from this decision, the value of the housekeeping claim is certainly not going down.

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