Spouse Awarded $1,000,000 for Loss Of Consortium Claim

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Loss of consortium is the term most often used by judges and lawyers to refer to the claims of physically uninjured spouses in personal injury cases brought by their physically injured mates. The claim arises when a physically injured person cannot as a result provide his or her spouse with the services, companionship, love, affection and sexual relations enjoyed before the accident.

The loss of consortium claim is usually not a significant one unless the physically injured spouse has suffered a devastating, long-lasting injury such as paralysis, incontinence, loss of sexual function or inability to walk.

Judges in New York tell juries in personal injury cases that in determining the loss of consortium damage amounts they are to consider following factors and traits of the physically injured spouse:

- disposition and temperament
- social life
- services rendered in supervising the household
- acts of affection, love and sexual intercourse

It's obvious that these elements of the claim are vague and I can tell you from experience that juries often misunderstand them. As a result, loss of consortium awards range from shockingly low or even nothing at all to amazingly high. The appellate courts do not hesitate to exercise their powers, in New York under CPLR 5501, to increase or decrease loss of consortium verdicts when they find the amounts awarded deviate from what is reasonable compensation.

Here are some of the **higher awards** sustained in New York for loss of consortium claims:

- Villaseca v. City of New York (Appellate Division, 1st Dept., 2008) - a Bronx County jury awarded Diane Villaseca $1,800,000 for her loss of consortium claim in connection with an $8,000,000 pain and suffering award for her husband who suffered loss of vision after nine surgeries (his pain and suffering claim was reduced to $5,000,000, as we noted previously here). On appeal, Ms. Villaseca's award was reduced to **$750,000** ($250,000 past, $500,000 future), with the court noting that she had assumed full responsibility for household chores, cooking and helping her husband move about.
- Bissell v. Town of Amherst (Appellate Division, 4th Dept., 2008) - an Erie County jury awarded Sherry Bissell $3,000,000 for her loss of services claim ($1,000,000 past, $2,000,000 future) in connection with her husband Peter's fractures of his lumbar vertebrae from a workplace fall that left him paralyzed, incontinent and sexually dysfunctional. Ms. Bissell took over all aspects of her husband's hygienic care. The appeals court reduced her award to **$1,000,000** ($250,000 past, $750,000 future).

- Hopper v. Regional Scaffolding & Hoisting Co., Inc. (Appellate Division, 1st Dept., 2005) - a Bronx County jury awarded Laurel Hopper $1,500,000 ($300,000 past, $1,200,000 future) in connection with her husband Bill's spinal injuries from an elevator hoist drop. He underwent a T10-12 laminectomy and suffered ruptured blood vessels that led to a spinal cord stroke. He was left in constant pain, incapable of sitting long and with frequent urinary urge. His wife became his caregiver. His prognosis was poor and the $1,800,000 pain and suffering award was upheld on appeal and the loss of consortium award was reduced to **$800,000** ($200,000 past, $600,000 future).

In some cases, juries have awarded nothing at all, or too little. For example, in Barnaby v. Gold Construction Corp. (Appellate Division, 1st Dept., 2008), the judge in a non-jury damages only trial in Bronx County awarded nothing at all to the spouse and only $50,000 to a laborer who fell at work sustaining a fractured ankle and torn meniscus in his knee. A **new trial was ordered** because the judge failed to state why he didn't make an award for loss of consortium, especially in view of the fact that Ms. Barnaby was left with a spouse largely confined to their home and unable to do any household chores.

Don't get the impression that loss of consortium claims are often in the $750,000 to $1,0000,000 range. They aren't. **Typical awards in significant but non-catastrophic injury cases** are more along the line of the following cases:

- Orlikowski v. Cornerstone Community Federal Credit Union (Appellate Division, 4th Dept., 2008) - **$15,000** (injured spouse awarded $200,00 for discectomy and future spinal fusion)
- Vertsberger v. City of New York (Appellate Division, 2nd Dept., 2005) - **$85,000** (injured spouse awarded $1,4000,000 for shattered elbow)
- Courtney v. Port Authority of New York (Appellate Division, 2nd Dept., 2007) - **$100,000** (injured spouse awarded $1,050,000 for lower leg compartment syndrome, foot drop and several surgeries)

Insider's Tips:

1. When there's a divorce or the spouses separate after the accident, the loss of consortium claim will be negatively affected. There's no spousal claim for the time period after the separation and any award for the prior time when they were together will likely be much less than had the jury not known about the marital strife. Savvy lawyers will either avoid adding the loss of consortium claim at all or they will try to get the uninjured spouse to drop the claim. Jurors do not want to hear about the divorce or the separation. As Maryland attorney Ron Miller has noted, they want to see the spouses sticking together "for better or worse."
2. Usually, a loss of consortium claim is included in (i.e,, derivative of) a personal injury claim and counts toward the limit of liability under any applicable liability insurance policy. In some cases, though, for example in Tennessee under the Government Torts Claim Act, the loss of consortium claim is separate. (h/t Day on Torts)

Tidbit:

Loss of consortium claims began in England in 1846 via statute as Lord Campbell's Act and were originally paired in a Latin expression: "per quod servitium et consortium amisit," translated as "in consequence of which he lost her society and services."