

From: Tim Fitzgerald  
Sent: Wed Sep 17 16:31:37 2008  
**Gallagher Sharp Newsflash: Damages**

Today, September 17, 2008, the Supreme Court of Ohio held that in a personal injury action damages can be awarded for the home health care services that an injured husband or wife receives from his or her spouse. The Court resolved a conflict between appellate districts by holding that the proper measure of such damages is not the lost income or wages resulting from the supporting spouse taking time off work but the market value of the home health care services provided in caring for the injured spouse.

*Hutchings v. Childress*, Slip Opinion No. 2008-Ohio-4568, arose out of an automobile accident that caused Nancy Hutchings to suffer a traumatic brain injury. Because of the debilitating nature of the injuries, her husband, John, became Nancy's care giver. He spent time away from his job duties as a financial planner to attend to Nancy's needs because she required continuing care. John also took over all Nancy's household activities. A lawsuit was filed by Nancy to recover for her injuries and damages and John sought compensation for his loss of consortium. At trial, evidence and expert testimony were presented of the economic loss the family suffered due to John caring for his wife; but no evidence was presented -- by way of a life-care plan, for example -- as to what it would have cost to hire professional nursing care for Nancy. The trial court refused to instruct the jury that it could award damages for John's loss of income during the time he spent caring for Nancy. Although the jury returned a verdict in the Hutchings' favor, they appealed the trial court's order refusing to instruct the jury that it could award as damages the income John lost as a result of his staying home and providing care to his wife. The Court of Appeals affirmed the trial court but certified its decision to the Supreme Court of Ohio because its opinion on the issue was in conflict with *Depouw v. Bichette*, 162 Ohio App.3d 336, 2005-Ohio-3695, 833 N.E.2d 744, a decision from another appellate district.

While noting that one spouse providing care to an injured spouse is "priceless" and "to be admired and encouraged," the Court's majority opinion, written by Justice Paul Pfeifer, observed that "a tortfeasor should not expect to benefit from the gratuitous care given to an injured party by a family member." Joining the majority of other jurisdictions that have decided the issue, the Supreme Court of Ohio held that an injured spouse may recover the value of the care provided by the uninjured spouse but that such recovery cannot be measured by the wages lost when the uninjured spouse is required to take time off from his or her regular employment. Instead, such damages are to be determined based upon the fair market value of the home health care provided by the uninjured spouse. In adopting this measure of damages, the Court stated that "[t]he care a spouse provides is not more valuable to an injured plaintiff because of the nature of the job held by the person providing the care."

The link to the opinion is <http://www.sconet.state.oh.us/rod/docs/pdf/0/2008/2008-ohio-4568.pdf>

If you have any questions, please e-mail or call:

Tim Fitzgerald  
Appellate Practice Group Manager  
Tom Cabral  
General Litigation Practice Group Manager  
GALLAGHER SHARP  
Bulkley Building - Sixth Floor  
1501 Euclid Avenue  
Cleveland, Ohio 44115-2108  
Telephone: (216) 241-5310  
tfitzgerald@gallaghersharp.com  
tcabral@gallaghersharp.com  
www.gallaghersharp.com