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William J. Knight

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and "formalisms" of the primary purpose test it was designed to replace, the subjective motives of the taxpayer are no longer controlling. Thus, the origin test should lead to more consistent results.

Bruce Achille Gaudin

FUTURE INFLATION AND DAMAGE AWARDS

Although money damages awarded in a tort action cannot make the victim whole again, the award provides the only means available to compensate the plaintiff for his injury and to place him in a position roughly equivalent to that which he enjoyed before the accident.¹ In arriving at a figure that will theoretically reimburse the victim for his loss, various factors must be considered.² One important component often ignored in calculating the amount of damages is the possibility that inflation may occur in the future. At the outset it should be noted, however, that the only portion of the plaintiff's award that may be affected by inflation is the sum given for some future economic deprivation, such as loss of future wages or future medical expenses; future economic developments are irrelevant to items such as pain and suffering or past medical expenses which represent losses that have already accrued at the time of judgment.

The need to adjust damage amounts to allow for future inflation is sharpened by the impact of the technique, termed reducing to "present value," often used by the courts to calculate future damages. An award for loss of future wages should exactly compensate the victim for what he would have received had he not been injured; it should not place him in a better monetary position than he would have enjoyed had he received his future salary in periodic payments.³ If the victim is *presently* given the total dollar amount of damages that the fact-finder has determined he is entitled to, he has been over-compensated to the extent of the "earning power" of the sum he receives.⁴ A sum of money available at present is worth more than an

1. See *Chesapeake & Ohio Ry. Co. v. Kelly*, 241 U.S. 485, 489 (1916).

2. *United States v. Boykin*, 49 F.2d 762 (5th Cir. 1931) (present value of lump sum award); *Gaspard v. Le Maire*, 245 La. 239, 158 So. 2d 149 (1963) (effects of past and present inflation); *Brown v. S.A. Bourg & Sons, Inc.*, 239 La. 473, 118 So. 2d 891 (1960) (victim's life expectancy); *Edwards v. Sims*, 294 So. 2d 611 (La. App. 4th Cir. 1974) (probability of future job promotion).

3. *Chesapeake & Ohio Ry. Co. v. Kelly*, 241 U.S. 485, 489 (1916).

4. "So far as a verdict is based upon the deprivation of future benefits, it will afford more than compensation if it be made up by aggregating the benefits without taking account of the earning power of the money that is presently to be awarded. 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." *Id.*

identical sum of money received at any time in the future because the recipient may invest the entire amount and garner interest. Therefore, since the plaintiff is awarded his damages in a lump sum and not over a period of time, the aggregate of the periodic payments must be reduced.

Early in this century, the United States Supreme Court in *Chesapeake & Ohio Railway Co. v. Kelly*⁵ explicated the proper mode of reducing to "present value." The sum to be awarded for future wages is the amount which, if received at the time of judgment and invested, yields the total amount of the lost wages if both interest and principal were paid periodically over the span of the loss at the times and in the amounts plaintiff would have received his wages. The Court in *Kelly* reasoned that at the end of the period for which the loss is calculated, the fund would be completely depleted and the plaintiff would be in no better position because he had received a lump sum than if he had continued to work and receive his paycheck.⁶

The assumption underlying the "present value" method of calculation is that the economy will remain stable and that the purchasing power of a certain sum of money does not vary appreciably from year to year. While that assumption may have been valid at the turn of the century, it is no longer so today because of the presence of inflation.⁷ Inflation is a persistent upward movement in the general price level which results in a decline in purchasing power for a given amount of money.⁸ The effects of inflation thus undercut the basis for present value reduction and an award made without considering the effects of future inflation often undercompensates the victim.⁹

Many courts have refused to consider inflation, reasoning that calculating its continued probable future impact is too speculative and that its effects may be offset by spiraling interest rates or by the victim's investing in appreciating assets.¹⁰ The Fifth Circuit Court of

5. 241 U.S. 485 (1916).

6. *Id.* at 492.

7. See generally Henderson, *Some Recent Decisions on Damages; With Special Reference to Questions of Inflation and Income Taxes*, 40 INS. COUNSEL J. 423 (1973).

8. *Hearings on Cost Escalation in Defense Procurement Contracts Before the House Comm. on Armed Services*, 93d Cong., 1st Sess. 230 (1973). See also THE AMERICAN COLLEGE DICTIONARY 623 (1963).

9. See, e.g., U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index for June, 1974, at 24 (Sept. 1974), showing that the Consumer Price Index has risen from a base of 100 in 1967 to 147 in June, 1974.

10. See *Frankel v. Heym*, 466 F.2d 1226 (3d Cir. 1972); *Williams v. United States*, 435 F.2d 804 (1st Cir. 1970); *Furumizo v. United States*, 245 F. Supp. 981 (D. Hawaii 1965), *aff'd*, 381 F.2d 965 (9th Cir. 1967).

Appeals in the recent case of *Johnson v. Penrod Drilling Co.*,¹¹ a Jones Act proceeding, used similar reasoning to reverse the lower court's damage award that had been increased to account for future inflation. Although the court took judicial notice of the worsening inflationary conditions, it was influenced by the strong governmental countermeasures against inflation and noted that "[t]he worsening of inflation might as readily foretell a recession or a depression as its continuity."¹²

It seems, however, that future inflation computations are no more speculative than any other determinations that must be made to calculate damages that are routinely submitted to the judge or jury, such as the present value of a lump sum award,¹³ the probability of future job promotion,¹⁴ or the life expectancy of the victim.¹⁵ The proper inquiry is not whether a particular factor is speculative but, rather, the degree of probability with which it can be predicted.¹⁶ That the courts have long reduced awards to present value demonstrates that it is proper in calculating damages to consider the probability that the nation's economy will act in a particular way in the future.

The court in *Johnson* also stated that the higher interest rates that have traditionally accompanied inflation would mitigate the failure to allow for future inflation.¹⁷ Other courts have made a similar argument, contending that the effect of inflation may be offset by the victim's investing in appreciating assets.¹⁸ However, the erosive

11. 510 F.2d 234 (5th Cir. 1975) (rehearing en banc), *aff'g* 469 F.2d 897 (5th Cir. 1972).

12. *Id.* at 236.

13. *See, e.g.*, *Plourd v. Southern Pac. Transp. Co.*, 513 P.2d 1140 (Ore. 1973). In allowing a 5% increase per year for future inflation when computing plaintiff's future wage loss, the court stated that this calculation was no more speculative than to assume that the 5% interest rate used to compute the present value of the award would remain stationary during the plaintiff's lifetime. *Id.* at 1146.

14. *See, e.g.*, *Edwards v. Sims*, 294 So. 2d 611, 616 (La. App. 4th Cir. 1974).

15. *See, e.g.*, *Brown v. S.A. Bourg & Sons, Inc.*, 239 La. 473, 118 So. 2d 891 (1960).

16. *See Schnebly v. Baker*, 217 N.W.2d 708, 727 (Iowa 1974): "The principal argument for allowing consideration of future inflation is that an upward price movement is probable" *See also Plourd v. Southern Pac. Transp. Co.*, 513 P.2d 1140, 1146 (Ore. 1973): "[W]e do not think that it is 'pure speculation,' as contended by defendant, for a qualified expert witness to infer from such a past history of inflation . . . that during the next 23 years wage rates will continue to increase at an average of at least 5% per year."

17. *Johnson v. Penrod Drilling Co.*, 510 F.2d 234, 236 (5th Cir. 1975).

18. *Frankel v. Heym*, 466 F.2d 1226 (3d Cir. 1972) (refusing to allow consideration of inflation in personal injury action claiming that rising interest rates would offset rising inflation). *See also Schnebly v. Baker*, 217 N.W.2d 708 (Iowa 1974); *Raines v.*

effect of inflation is not offset by the *possibility* that the victim might invest his award in appreciating assets, or that interest rates will rise, especially since the victim's present need for money, coupled in many cases with a lack of requisite investment skill, prevents successful hedging against inflation.¹⁹ Moreover, it would seem that any risk involved because of adverse economic contingencies should be borne by the tortfeasor, not the victim.

Jurisdictions recognizing future inflationary erosion as a component of damage awards have adopted one of three approaches to assess the impact of decreased purchasing power. Some courts hold that no definite percentage figure for future inflation need be established to calculate the final award; future inflation is just another factor for the judge or jury to consider in awarding damages.²⁰ This method, adopted by the only two Louisiana courts to consider the question,²¹ allows the jury to consider future inflationary trends without the presentation of any specific evidence. Since the finder of fact at the trial level has great discretion in setting damages, unless an award is manifestly erroneous, a reviewing court may not disturb it.²²

Other courts which allow a consideration of future inflation do so by assigning a definite figure to both the present value reduction and the future inflation factor.²³ Expert testimony may be admitted to aid the courts in setting figures²⁴ and often statistics from the

New York Cent. R.R., 129 Ill. App. 2d 294, 263 N.E.2d 895 (Ill. App. 1970) (rev'd on other grounds).

19. See *Schnebly v. Baker*, 217 N.W.2d 708 (Iowa 1974) (rejecting argument that victim might hedge against future inflation by investing in assets such as land). But see *Raines v. New York Cent. R.R.*, 129 Ill. App. 2d 294, 263 N.E.2d 895 (Ill. App. 1970) (rev'd on other grounds) (reversible error to allow testimony concerning the difficulty of hedging against inflation).

20. See, e.g., *Brown v. S.A. Bourg & Sons, Inc.*, 239 La. 473, 118 So. 2d 891 (1960); *Edwards v. Sims*, 294 So. 2d 611 (La. App. 4th Cir. 1974); *Henwood v. Moore*, 203 S.W.2d 973 (Tex. Civ. App. 1947).

21. *Brown v. S.A. Bourg & Sons, Inc.*, 239 La. 473, 118 So. 2d 891 (1960); *Edwards v. Sims*, 294 So. 2d 611 (La. App. 4th Cir. 1974).

22. See, e.g., *Anderson v. Welding Testing Laboratory, Inc.*, 304 So. 2d 351 (La. 1974); *May v. Finest Foods, Inc.*, 303 So. 2d 192 (La. App. 4th Cir. 1974).

23. See *Pierce v. New York Cent. R.R.*, 304 F. Supp. 44 (W.D. Mich. 1969), which used an arbitrary 5% inflation figure to offset an equally arbitrary 5% present value decrease. The case was remanded for other reasons concerning the issue of damages. 409 F.2d 1392 (6th Cir. 1969). "Arbitrary" as used in this note refers to a figure which has at one time received the approval of an appellate court and has thereafter been used by lower courts without resorting to evidence on the issue in each case.

24. *Scruggs v. Chesapeake & Ohio Ry.*, 320 F. Supp. 1248 (W.D. Va. 1970) (accepting expert witness' computation of loss of future earnings in wrongful death action including a 3% yearly increase in plaintiff's earnings to account for future inflation); *Plourd v. Southern Pac. Transp. Co.*, 513 P.2d 1140 (Ore. 1973) (accepting expert

Bureau of Labor Statistics are used as well.²⁵ Once the value of the future loss is determined, it becomes merely a matter of mathematical calculation to compute the lump sum award. One court has even used the inflation factor without allowing any reduction for present value.²⁶

The preferable method of approaching the problem is taken by those courts which presume conclusively that the effects of future inflation will offset any present value reduction; therefore, no adjustment whatever is made in the gross amount awarded for future damages.²⁷ This method has the advantage of simplicity, and, by considering both present value and future inflation, avoids subjecting either party to the full brunt of the vagaries of economic fluctuations. However, whichever method is used, it seems that a consideration of the inflation factor is preferable to no consideration at all.

William J. Knight

THE PARTNER'S RIGHT OF DISSOLUTION

Two brothers entered into a partnership agreement which provided that the partnership would "terminate upon the death of either party." When one brother became disenchanted with the business, he petitioned for dissolution, claiming that the agreement created a partnership of unlimited duration which could be dissolved unilaterally at any time. Reversing both lower courts, the Louisiana supreme court agreed with the plaintiff's contention and *held* that in the absence of bad faith, a partnership which is terminable at death may be dissolved of right at any reasonable time. *Stone v. Stone*, 292 So.

witness' computation of loss of future earnings including 5% yearly increase in wages because of future inflation, based on expert's computation of the past history of inflation).

25. *Gowdy v. United States*, 271 F. Supp. 733 (W.D. Mich. 1967) (expert testimony in personal injury action using data from the Bureau of Labor Statistics). *Cf. Sadler v. Wagner*, 5 Wash. App. 77, 486 P.2d 330 (1971) (dicta in personal injury suit noting that it is proper to admit "authoritative tables" into evidence, though giving no indication as to what court would consider an "authoritative table"). *But see Pierce v. New York Cent. R.R.*, 304 F. Supp. 44 (W.D. Mich. 1969) (although noting statistics from the Bureau of Labor Statistics, the court used an arbitrary 5% figure).

26. *Scruggs v. Chesapeake & Ohio Ry.*, 320 F. Supp. 1248 (W.D. Va. 1970).

27. *Beaulieu v. Elliott*, 434 P.2d 665 (Alas. 1967) (court presumed inflation was "here to stay," and felt that future inflation would offset a present value reduction); *Schnebly v. Baker*, 217 N.W.2d 708 (Iowa 1974) (evidence presented by expert witness tended to show that a present value reduction would be offset by future inflationary increases).