

Chicago Daily Law Bulletin.



Lawyers should take the reins with future damages

December 19, 2011

By Jeffrey J. Kroll — jeff@kroll-lawfirm.com

Kroll is the principal at the Law Offices of Jeffrey J. Kroll in Chicago. He founded his firm with 17 years' experience representing victims and their families, and he has achieved settlements and verdicts in a wide range of cases, from trucking accidents to medical malpractice to sports safety cases.

Most people do not know about the Elf on a Shelf, yet it has been a godsend to the Kroll family this holiday season. We have convinced my 3-year-old daughter, Lily, that all discussions about her misdeeds must take place in front of our elf, Bif, who without bias, reports to Santa Claus (the judge and jury).

For better or for worse, instant gratification will be a staple in my little daughter's life. She will never know a world without ubiquitous, wireless Internet access where books can be downloading immediately, movies and music available with a swipe of a finger and — if she decides to go to law school one day — legal research conducted exclusively online. Yet, at 3 years old, thankfully, she is still innocent enough to believe in the magic of the season ... and, more importantly, the power of Bif.

Like most 3-year-olds, she doesn't understand that despite engaging in the required "good behavior" that will prove to Santa she is a good girl deserving of toys, she will not receive everything that she asked for on her Christmas list. We do not spoil our children. Candidly, I think it can only be a disserve to them as they get older. With the news of an ongoing mortgage foreclosure crisis, failing foreign currencies and U.S. debt at about \$15 trillion, I am not foolish enough to believe that 3-year-olds are the only ones who struggle to appreciate the value of money. For example, did you know, in 2010, it cost the U.S. Mint 1.79 cents to make a penny and 9.22 cents to make a nickel? (U.S. Mint 2010 Annual Report, p. 29.) What is the point of all this? Maybe we all could benefit from an Elf on the Shelf to hold us financially accountable.

My firm represents individuals who have been severely injured as a result of someone else's negligent acts. One of the most difficult tasks we have is ensuring our clients receive full

and fair compensation. Before entering into a settlement or suggesting an amount of compensation to a jury, we must determine a sufficient amount of money that will provide for the individual well beyond the date of trial. Often, our clients' lives have been shattered by unnecessary and unexpected injuries. Many can no longer work or care for themselves.

In my humble opinion (with the full disclosure that I am a plaintiff's attorney), the injured party deserves the benefit of the doubt. This isn't just a "holiday, be generous" message. (Although, I am in the spirit this year; Christmas music plays in my office even as I write this article.) Who will care for the injured if their settlement or verdict award does not cover medical and daily living costs well into the future? I have yet to hear of Santa and his elves stuffing stockings with prescription medications, physical therapy, joint replacement surgeries or checks to cover insurance premiums. No one can depend on the future of Medicare and Medicaid either — nor should they have to. The harm perpetrated on the injured will consistently ripple through the individual's family, emotionally and economically. Not only do family members live with the changed — depressed and likely disabled — person, but often they also must care for the victim of negligence. The cynic will say "Well, that's the family's job. They should take care of them." But how fair is that?

The only way to protect the victim and the family, and to provide them with some piece of mind when it comes to future finances, is to maximize damages for future medical expenses, lost earnings, even future pain and suffering, disability, disfigurement and loss of consortium. Speculative damages, you might say. But there is nothing speculative about the ongoing pain and suffering that my clients will endure. Nor is there anything speculative about the medical care that they will require for the rest of their lives.

Then, there is the whole business of future damages discounted to present cash value. All future damages, except for pain and suffering, disfigurement, disability and loss of society and consortium, must be reduced to present cash value. This has become the preferred method of determining future damages. While there is no requirement that the trial attorney present actuarial or statistical evidence to the jury to determine present cash value (*Robinson v. Greeley & Hansen*, 114 Ill.App.3d 720, 725 (2d Dist.1983)), it certainly can be helpful at times. Of course, mortality tables also help plot the course. But how do we plan for other economic and political changes? Right now, the future of health care in this country is unknown. Regardless of which side of the aisle you prefer, we will all be affected by the changing American medical infrastructure at some point. Medical costs seem to be rising as quickly and as steadily as the cost of college. Life-care planners and economists can help us plan for our clients' futures, but we are ultimately the clients' advocates and must direct the outcome.

Most lawyers understand what it is like to be burned by spending 1.79 cents to make a penny. We embrace, sometimes all too willingly, the saying that "you have to spend money to make money." However, when it comes to maximizing damages for clients, and actually covering their future losses, we must be proactive and adequately compensate them. We cannot deprive our clients of even a penny.

So, when Christmas is over, and our elf messenger Bif returns to the North Pole for a year of rest with the big guy and his reindeer, my wife and I will resort back to the conventional ways of keeping our children in check ... by threatening great bodily harm. Just kidding.

Seriously though, we are prepared for the inevitability of parenting struggles. The question remains, however, if attorneys are prepared for the inevitability of securing enough money for injured and disabled clients in our ever-changing economy. That is no laughing matter.

©2011 by Law Bulletin Publishing Company. Content on this site is protected by the copyright laws of the United States. The copyright laws prohibit any copying, redistributing, or retransmitting of any copyright-protected material. The content is NOT WARRANTED as to quality, accuracy or completeness, but is believed to be accurate at the time of compilation. Web sites for other organizations are referenced at this site, however the Law Bulletin does not endorse or imply endorsement as to the content of these web sites. By using this site you agree to the [Terms, Conditions and Disclaimer](#).