



Compensation for help around the house

The last thing an injured person can afford is a housekeeper



BY MILES B. COOPER

"And a long-haul trucker is not going to have time to do chores around the house, correct?" The defense lawyer was cross-examining our economist about our injured client, a truck driver, and the figure calculated for household services losses.

"I can only answer that with two words: tuna fishing."

We saw the defense lawyer's stutter-step. Whatever he was expecting, it was not that. Landmine. Triggered. You could see the hesitation in his eye. He knew better. But curiosity got the better of him.

"Tuna fishing?" he asked tentatively.

"When I was asked to perform the analysis for those who suffered from the Exxon Valdez oil spill," the economist began. Boom. Landmine exploded. "I heard a similar comment from Exxon. Up there, the tuna boats are gone for weeks at a stretch. And waiting for them on their return? A chore list a mile long. The dishwasher isn't working. The toilet leaks. And so it goes. You think the list for those who work away from home is any shorter? Ask any fisher, trucker or firefighter. It is what they get shortly after the welcome home kiss."

Household services damages defined

The right to household services damages is set out in CACI 3903E: "To recover damages for the loss of the ability to provide household services, [name of plaintiff] must prove the reasonable value of the services [he/she] would have been reasonably certain to provide to [his/her] household if the injury had not occurred." These are economic damages – an important point we'll discuss later.

What are household services? The work someone used to do around the house but can no longer do. The items that fall under this umbrella are broad indeed. They include the expected: Vacuuming; Washing dishes; Laundry; Sweeping; Grocery shopping. And the unexpected: Restoring cars; Home renovation projects. These services are compensable damages.

Quantifying the loss

Many folks, defense lawyers in particular, believe that in order to get household services damages, you need receipts. What I mean by this is check stubs for housekeepers hired by the injured party to pay for replacement services. Or the equivalent for other services. This is a common misconception. One does not need to hire replacement services to get the benefit of the loss. The public policy behind this is sound – the last thing an injured person is going to be able to do while injured is spend more money. Instead, a loved one often takes on the activity. Or it simply ceases to be done.

Strategy point: Evaluate household services early and often

You're going to want to ask your client (and client's significant other, if there is one) several questions during the initial interview. What kinds of things did the client do around the house before the accident? Go through the litany of regular chores. And keep going into hobbies. Renovating and selling old homes. Small agricultural activities (raising chickens for example) outside of work. Restoring cars. You probe and you'll be surprised. Each of these activities has value as household services.

The discussion you have before the client's deposition is important. Many folks downplay their contributions. Or categorize them into men's or women's work. Remind them of the value in household services and that they need to talk about what they used to do before the accident. This is true for everyone else who may be deposed – the loss of consortium plaintiff, significant other, and any other collateral witnesses.

Do I need an expert?

Short answer: it helps, and for some losses is required. A jury can use its common experience to value domestic services. But more technical or professional services, the skilled mechanic restoring cars as an example, require expert testimony. (77 A.L.R.3d 1175.) The expert: an economist. If your case is big enough to have future damages, you should explore and likely add household services. Sometimes the defense lawyer fails to ask about this during deposition. You may need to provide a sheet to your economist with information from your client for the analysis.

Strategy point: The importance of economic damages

Don't underestimate the value of economic versus non-economic damages. Under Prop. 51, defendants are jointly and severally liable for economic damages. In most cases, if you settle with one defendant, have a collectability problem against a wrongdoer or are facing an empty chair, economic damages are your best friend. Household services can help here.

Conservative jurisdictions are another area where economic damages are important. We've tried cases where jurors are willing to give every penny of economic damages. But when it comes time to compensate for general damages, the purse tightens up. In these conservative jurisdictions, the more damage you can quantify as economic, the better your verdict.

The verdict?

In the case of the long-haul trucker, the jury gave every penny of the household-services damages requested. In other cases, they



have provided six-figure boosts to economic damages. Make sure your client is fully compensated – include them in your claim.

Miles B. Cooper is a partner at Rouda Feder Tietjen & McGuinn. He represents people with catastrophic injury and death claims. In addition to preparing his own cases, he associates in as trial counsel and consults on

trial matters. He has served as lead counsel, co-counsel, second seat and schlepper over his career and is a member of the American Board of Trial Advocates. Cooper's focus beyond litigation includes trial presentation technology. When not working on injury or death cases, he volunteers with the Volunteer Legal Services' pro bono programs.