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ILLINOIS LAW MANUAL

CHAPTER XIV

DAMAGES

C. LOSS OF CONSORTIUM

In Illinois, under certain circumstances, an injured person's spouse is entitled to damages for "loss of consortium." I.P.I. 32.04 (2000). Loss of consortium has been defined to include the support, society, companionship, and sexual relationship that a husband or wife has been deprived of to date, and which he or she is reasonably certain to be deprived of in the future, due to the claimed injury to or death of a spouse. Schrock v. Shoemaker, 159 Ill. 2d 533 (1994); Elliott v. Willis, 92 Ill. 2d 530 (1982); Dini v. Naiditch, 20 Ill. 2d 406 (1960). The tort of loss of consortium is an action based on an injury to the personal relationship established by the marriage contract. Both husbands and wives have the right to a loss of consortium claim, under proper circumstances, for negligent injury to a spouse.

Brown v. Metzger, 104 Ill. 2d 30 (1984).

Loss of consortium reflects "loss of personal benefits and satisfaction the surviving spouse enjoyed as a result of a highly individualized relationship with a particular person." Pfeifer v. Canyon Constr. Co., 253 Ill. App. 3d 1017 (1993); Kubian v. Alexian Bros. Medical Ctr., 272 Ill. App. 3d 246 (1985).

The injured claimant and the spouse making the loss of consortium claim must have been married at the time of the injury. Sostock v. Reiss, 92 Ill. App. 3d 200 (1980); Allen v. Storer, 235 Ill. App. 3d 5 (1992). Being engaged at the time of the injury, or

having cohabitated for a long period of time, would not be sufficient to give rise to a claim for loss of consortium. Sostock v.

Reiss, 92 Ill. App. 3d 200 (1980); Medley v. Strong, 200 Ill. App. 3d 488 (1990).

However, where two persons have a valid marriage under the laws of the state in which they are domiciled, they may still be entitled to a loss of consortium claim. (People who are domiciled in Illinois and have crossed state lines for the purpose of getting married may not be entitled to recover.) Allen v. Storer, 235 Ill. App. 3d 5 (1992).

In a wrongful death action, the surviving spouse can recover damages for loss of consortium of the deceased spouse. Elliott v. Willis, 92 Ill. 2d 530 (1982). A spouse's recovery for loss of consortium is reduced by the comparative negligence of the injured spouse, even where the person making the loss of consortium claim was not themselves negligent. Recovery for loss of consortium is reduced by the same percentage of comparative negligence attributed to the injured/deceased plaintiff in his or her cause of action for personal injuries. Blagg v. Illinois F.W.D. Truck & Equipment Co., 265 Ill. App. 3d 14 (1994).

Recovery for future loss of consortium is not reduced to present cash value. Drews v. Gobel Freight Lines, Inc., 144 Ill. 2d 84 (1991). Loss of consortium is recoverable under the former Structural Work Act, in the case of either death of or injury to the claimant's spouse. Pickett v. Yellow

Cab Co., 182 Ill. App. 3d 62, (1989); Harvel v. Johnston City, 146 Ill. 2d 277, 166 (1992); Schrock v. Shoemaker, 159 Ill. 2d 533 (1994).

The fact that the injured spouse had an extramarital sexual relationship, which had been discovered by the deprived spouse, is relevant to damages for loss of consortium. Countryman v. County of Winnebago, 135 Ill. App. 3d 384 (1985).

A cause of action for loss of consortium is governed by the same statute of limitations applicable to the underlying injury. 735 ILCS 5/13-203. Filip v. North River Insurance Co., 201 Ill. App. 3d 351 (1990); Blagg v. Illinois F.W.D. Truck & Equipment Co., 265 Ill. App. 3d 14 (1994).

No recovery for punitive damages is allowed under a loss of consortium claim. Hammond v. North American Asbestos Corp., 97 Ill. 2d 195 (1983). It can be argued in an uninsured motorist or underinsured motorist claim that a separate claim for loss of consortium should not be allowed because most policies of insurance provide for the payment of damages under personal injury coverages for “bodily injury.