

Can an Ohio Jury Award \$0 for Pain and Suffering Even When It Finds That Plaintiff Was Injured? It Depends.

By Phillip Sarnowski

Non-economic damages for pain and suffering are a source of constant consternation for Ohio courts because of their intangible properties and unquantifiable characteristics, which is why the subject is normally left for juries to determine. But like Courts, juries also struggle with identifying a monetary figure for “pain and suffering.” Ohio appellate courts frequently decide whether such jury awards are against the manifest weight of evidence.

One recent case presented the question: Is a jury award of \$0 for pain and suffering against the manifest weight of the evidence when the jury found that the plaintiff was, in fact, injured and the jury awards the plaintiff’s medical bills? *Berardo v. Felderman-Swearingen*, 2020-Ohio-4271, ¶¶ 16–17. The First District Court of Appeals in *Berardo* held that such an award is against the manifest weight of the evidence. This holding falls on one side of a split in authority among Ohio courts, with the majority of jurisdictions holding that a jury may award medical expenses without damages for pain and suffering and a minority of jurisdictions holding that such an award is against the manifest weight of evidence.

The *Berardo* decision might have turned out differently if it was not filed in Hamilton County (Cincinnati), Ohio. For example, if the plaintiffs had filed suit in another Southwest Ohio county, Montgomery County, the jury award likely would have been affirmed. This is because the Second District Court of Appeals, along with the majority of Ohio jurisdictions, has held that a jury is not required to award pain and suffering when medical expenses are awarded. See, e.g., *Haller v. Daily*, 2nd Dist. Montgomery No. 19420, 2003-Ohio-1941, ¶ 17; *Herceg v. Lifson*, 4th Dist. Washington No. 18CA17, 2019-Ohio-4072, ¶ 11, *appeal not allowed*, 157 Ohio St.3d 1563, 2020-Ohio-313, 138 N.E.3d 1155, ¶ 11 (2020); *Welch v. Ameritech Credit Corp.*, 10th Dist. Franklin No. 04AP-1123, 2006-Ohio-2528, ¶ 43; *Metter v. Konrad*, 8th Dist. Cuyahoga No. 85271, 2005-Ohio-4290, ¶ 15; *Higgins v. Huntsman*, 9th Dist. Summit No. 22564, 2005-Ohio-6920, ¶ 17.

The Supreme Court of Ohio has refused to consider this question, despite a recent appeal to the Court that would resolve the split in authority. See *Herceg v. Lifson*, 157 Ohio St.3d 1563, 2020-Ohio-313, 138 N.E.3d 1155, ¶ 11 (2020) (*appeal not accepted for review*).

Therefore, it is crucial to understand and appreciate how a case’s particular venue can determine the parameters of a jury verdict, especially with respect to the mercurial topic of non-economic damages. Here at Roetzel, our attorneys are constantly tracking decisions like *Berardo* to best serve our clients.

If you would like more information on this or other issues relating to transportation, please contact any of the listed attorneys.

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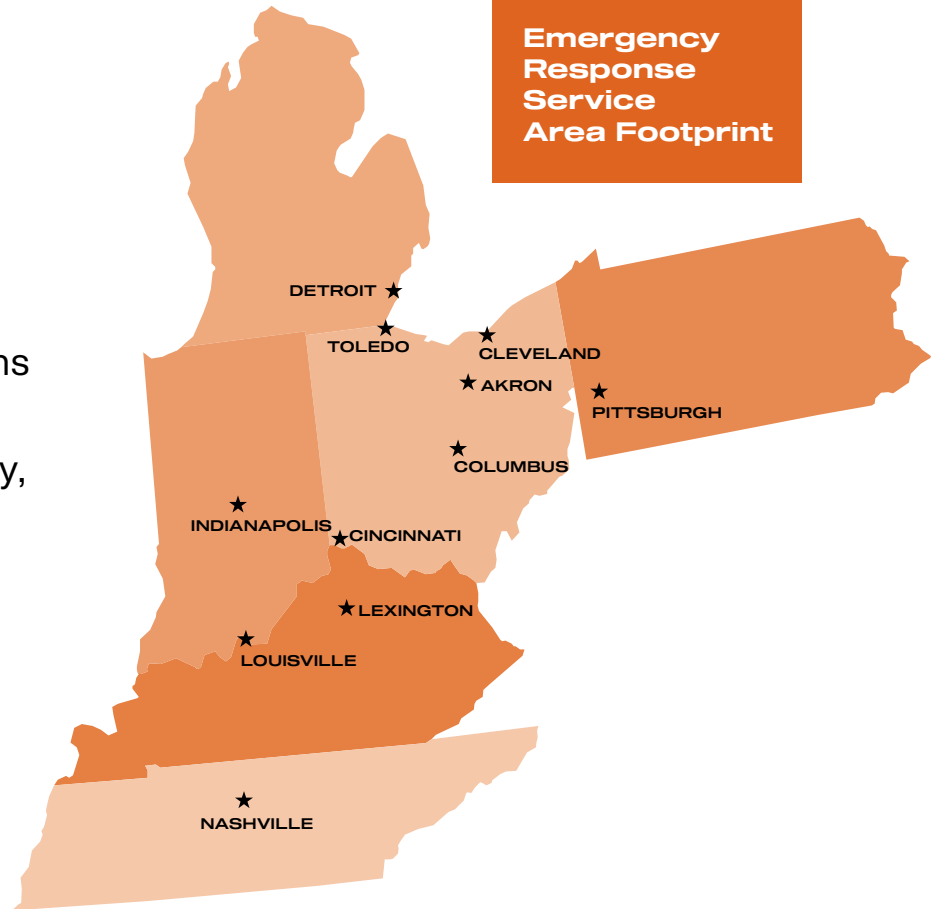
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