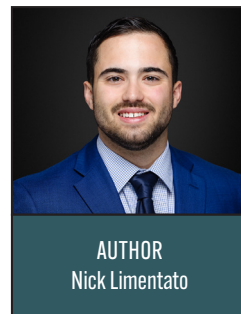
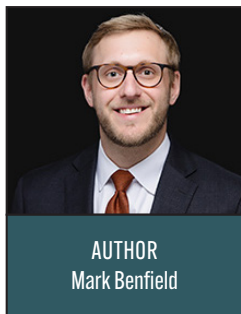
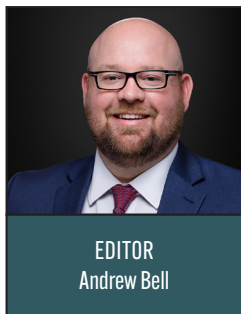


The Pulse



FEBRUARY 2025



LETTER FROM THE EDITOR

Andrew Bell

Rizz. Cap. Skibidi. Sigma. You've probably heard kids use these words or seen them on social media. Every new generation comes up with their own lingo, and older generations decipher and decode. It's not without its challenges, but it is good practice for our role as lawyers. As trial lawyers, specifically medical malpractice lawyers, our job is to find a way to connect with our jurors, while also demystifying the medical terminology. We need to communicate on their level in order to break these concepts down so these issues are digestible and allow them to make a decision in our client's favor. Aside from communicating with potential jurors, we must also communicate with a much more sophisticated audience, our clients –claims analysts and representatives, risk managers, physicians, nurses, in house counsel, etc.

Although the idea of a newsletter is not new or novel, we want to use The Pulse as a way to communicate with our clients and other industry partners. Our firm has a long tradition of being on the front lines and cutting edge of medical malpractice litigation. That is where we are comfortable. Through The Pulse, we want to share our ideas, current updates on the law, recent successes, and highlight some of the people in our firm doing fantastic work on a daily basis. However, I'm reminded of something I learned long ago "communication is a two-way street." So, if there is something that you would like to see in The Pulse, please let us know! Our primary goal is to serve our clients to the best of our ability. If there is a topic that you would be interested in hearing more about, or if there is a recent success that you've heard about our firm and want to know how we were able to get that done, let us know. After all, our successes are your successes.

Our intent is to send The Pulse out quarterly because everyone receives enough emails already. Please feel free to share with your circle or let us know if there are others that should be included.

THE PULSE

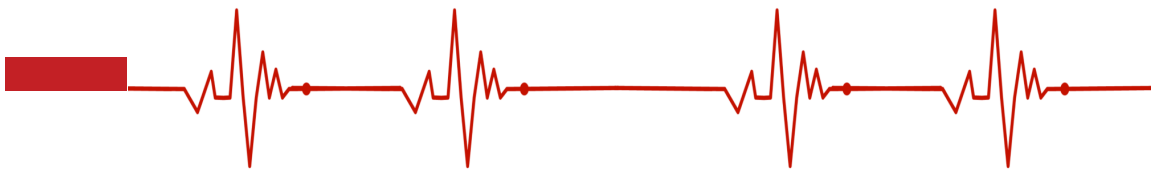


James and the Giant Immunity

Mike Denning

Who remembers COVID-19? Sometimes, it seems like it was a small annoyance decades ago. How quickly we forget. In fact, we are approaching the 5-year anniversary of the pandemic, including suspension of elective surgeries, stay-at-home orders, personal protective equipment shortages, and, notably, immunity granted to hospitals and healthcare providers under Governor Pritzker’s emergency disaster proclamations. For a number of years, plaintiffs and defendants watched the appellate court trends as this immunity was advanced. Many trial courts reserved ruling or denied these challenges without prejudice, waiting for some indication from the Illinois Supreme Court as to the true breadth and protection afforded to healthcare providers by these proclamations. In October 2024, the Ill. Supreme Court published a landmark decision confirming that the immunity found in the disaster proclamations is a “blanket” immunity if the facility or healthcare provider can meet certain conditions, prove certain facts, and if the facts fall within a certain timeframe.

In *James v. Geneva Nursing & Rehab. Ctr. LLC*, the Illinois Supreme Court addressed the scope of immunity granted to healthcare facilities during the COVID-19 pandemic. 2024 IL 130042. The plaintiffs, representing the estates of deceased nursing home residents, filed wrongful-death lawsuits against Geneva Nursing and Rehabilitation



Center, alleging that between March and May 2020, the facility negligently and willfully failed to control the spread of COVID-19, causing the residents' deaths. *Id.* ¶ 9.

The nursing home moved to dismiss the negligence claims, citing immunity under Executive Order 2020-19 issued by Governor J.B. Pritzker on April 1, 2020. *Id.* ¶ 10. The Governor entered this order pursuant to the Illinois Emergency Management Agency Act (IEMA), and it directed healthcare facilities to assist the state's COVID-19 response. *Id.* ¶¶ 6-7. In exchange for that assistance, the order offered qualified providers immunity from civil liability for any injury or death occurring while rendering such assistance, except in cases of willful misconduct. *Id.*

The central question was whether this immunity applied broadly to all acts of ordinary negligence by healthcare facilities during the pandemic or whether it was limited to actions directly related to COVID-19 treatment. The Illinois Supreme Court concluded that the immunity extended to any claims of ordinary negligence—not just those related to COVID-19—that occurred while the facility was rendering assistance to the state during certain times early in the pandemic (April 1-May 13, 2020). *Id.* ¶¶ 35-36.

This ruling has significant implications for certain medical malpractice claims in Illinois. Any allegations of ordinary negligence between April 1, 2020, and May 12, 2020, should be subject to dismissal or summary judgment if the provider or healthcare facility can support the challenge with appropriate evidence and affidavits establishing that they were assisting the state with its response to COVID-19. This may include accepting admission of COVID-19 patients, preserving PPE for use by healthcare providers, actively treating COVID-19 patients, and suspending elective surgeries...the list of potential sources of proof goes on and on. The immunity is based on Executive Orders 2020-19 and 2020-33. On May 13, 2020, Executive Order 2020-37 became effective, which in part permitted elective surgeries again. That order continued some aspects of immunity for facilities and providers, but it is contingent on their adherence to IDPH guidelines designed to preserve hospital capacity and protect healthcare workers. Providers that continued to postpone/cancel elective surgeries maintained the blanket immunity, but providers that began doing elective surgeries likely only have immunity for injuries relating to the "diagnosis, transmission, or treatment of COVID-19." There is likely no liability immunity in place after June 27, 2020.

We are now litigating several motions to dismiss and motions for summary judgment based on the *James* decision and will keep our clients advised of any developments in this regard. It's a great time to double-check that date of loss and cross-reference it with the dates listed above.



THE PULSE

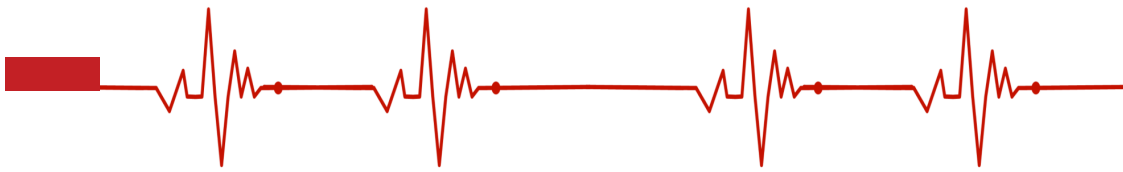
Wrongful Death and Remarriage: Damages After *Passafiume*

Mark Benfield and Nick Limentato

In *Passafiume v. Jurak*, 2024 IL 129761, the Illinois Supreme Court addressed the scope of material services damages recoverable in wrongful death actions. The issue before the Court was whether a plaintiff's remarriage should boundary the damages awarded for the loss of material services provided by the deceased spouse. This article provides an overview of material service damages and the holding in *Passafiume*.

The wrongful death statute in the relevant part provides:

Every such action shall be brought by, and in the names of, the personal representatives of such deceased person, and, except as otherwise hereinafter provided, the amount recovered in every such action shall be for the exclusive benefit of the surviving spouse and next of kin of such deceased person. In every such action the jury may give such damages as they shall deem a fair and just compensation with reference to the pecuniary injuries resulting from such death, including damages for grief, sorrow,



and mental suffering, and punitive damages when applicable, to the surviving spouse and next of kin of such deceased person.

740 ILCS 180/2(a). Illinois courts have long held that “one of the elements of pecuniary loss is the personal service of deceased.” *McFarlane v. Chicago City Ry. Co.*, 288 Ill. 476, 483 (1919). These damages include services that the spouse would have performed about the home and other intangibles “because they relate to his earning power and his disposition to continue to contribute to the welfare of his family.” *Allendorf v. Elgin, J. & E. Ry. Co.*, 8 Ill. 2d 164, 179 (1956) abrogated by *Richardson v. Chapman*, 175 Ill. 2d 98 (1997). A plaintiff’s remarriage cannot be considered in mitigation of damages in a wrongful death case. *Chicago & E.I.R. Co. v. Driscoll*, 207 Ill. 9, 16 (1903); *Watson v. Fischbach*, 54 Ill. 2d 498, 501 (1973).

In *Elliot*, the Illinois Supreme Court expanded the relief available under the Wrongful Death Act to include loss of consortium damages that were previously excluded under that act —*Elliott v. Willis*, 92 Ill. 2d 530, 540 (1982). If a loss of consortium claim is brought in a wrongful death action, damages for loss of consortium can only be recovered up to the date of the plaintiff’s remarriage (the “Carter rule”). *Carter v. Chicago & Illinois Midland Ry. Co.*, 130 Ill. App. 3d 431, 435 (4th Dist. 1985). Because loss of consortium damages are limited by the date of remarriage, the question of whether loss of material services are also limited by the date of remarriage has been subject to debate.

Prior to *Passafiume*, some Illinois appellate courts determined that damages for loss of material services should be limited to the period before the plaintiff’s remarriage and were part of a broader loss of consortium claim, which terminated upon remarriage: *Dotson v. Sears, Roebuck & Co.*, 157 Ill. App. 3d 1036, 1045 (1st Dist. 1987); *Dotson v. Sears, Roebuck & Co.*, 199 Ill. App. 3d 526, 530-531 (1st Dist. 1990); *Pfeifer v. Canyon Const. Co., Inc.*, 253 Ill. App. 3d 1017, 1029-1030 (2d Dist. 1993) *Passafiume* overruled these decisions, holding that in a wrongful death action, loss of material services is a distinct claim that can be recovered independently of loss of consortium. *Passafiume*, 2024 IL 129761, ¶ 14.

At issue in *Passafiume* was “whether, in a claim brought pursuant to the Wrongful Death Act (Act) (740 ILCS 180/0.01 et seq. (West 2014)), a plaintiff may be awarded damages for loss of material services beyond the date of the plaintiff’s remarriage.” 2024 IL 129761, ¶ 1. The Plaintiff sued the Defendants for negligence in their treatment of his deceased wife, asserting wrongful death and survival actions. *Id.* ¶ 3. The Defendants argued that damages for loss of material services should be limited to the period before the Plaintiff’s remarriage. *Id.* ¶ 4. The Plaintiff countered that these damages are separate from loss of consortium and should not be limited. *Id.* ¶ 5. The trial court agreed with the Plaintiff, allowing evidence of loss of material services beyond remarriage. *Id.* ¶ 6. The jury awarded the plaintiff damages, including for loss of material services, which an economist calculated the value being \$998,158 based upon a life expectancy of 78 years old and an hourly rate of \$14.99. *Id.* ¶ 11. The total damages awarded were \$1,697,531. *Id.* The Defendants appealed, arguing that material services are part of a loss of consortium claim and should be limited by remarriage. *Id.* ¶ 13. The appellate court affirmed the trial court’s ruling, concluding that remarriage does not limit damages for loss of material services. *Id.* ¶ 14. The Illinois Supreme Court subsequently affirmed the judgement of the appellate court. *Id.* ¶¶ 54-56.

Therefore, after *Passafiume*, remarriage does not limit the damages recoverable for the loss of material services in wrongful death actions. *Id.*

TRENDS: WHAT WE'RE DEFENDING



We continue to challenge Plaintiff's attempts to abuse "lost chance" doctrine and apply it to every medical malpractice case.

We are seeing an uptick in claims based on res ipsa loquitur, as it transfers the burden of proof to the defendant if allowed at trial.

We have successfully challenged the inclusion of emotional distress damages outside of the First Appellate District (Cook County) based on a split in appellate authority on numerous occasions.

Seeking to advance proportional lost chance damages instruction.

RECENT SUCCESSES

- [Roth, Nolan, and Drinkwine Team Up to Defend a Physician and His Group at a Jury Trial and Then On Appeal](#)
- [Drinkwine and Bitzer Secure Summary Judgment in U.S. District Court](#)
- [Hunsaker & Harmon Secure Trial Victory in Medical Malpractice Case](#)
- [Monfort and Benfield Obtain Dismissal with Prejudice in Fertility Fraud Case](#)



Meet Renee Monfort

OFFICE MANAGING PARTNER & SHAREHOLDER

CHAMPAIGN, IL

Renee represents clients throughout the state but calls our Champaign office home. For the last 30 years, she has focused her practice on defending clients and consulting with defense counsel in various types of complex civil litigation including professional liability, premises liability, and products liability. In addition, she provides general counsel to individual healthcare professionals, multi-specialty clinics, and hospitals on a wide range of administrative, policy, and risk management matters and represents clients in administrative proceedings before the Illinois Department of Financial and Professional Regulation and the Illinois Human Rights Commission.

Renee's professional liability practice includes working with clients before, during, and after litigation. Her non-litigation work with clients ranges from advising them regarding policies and procedures to counseling them regarding immediate crisis management and documentation. Pre-suit, she often assists with case evaluation and negotiation to avoid suit. If a case proceeds to litigation, she calls upon not only the firm's internal resources but also the external resources to which we have access in order to assemble the best team of lawyers and experts to defend the case. Then, she employs her farm-kid work ethic to see the case through to resolution. She has obtained favorable defense verdicts in multiple venues. In addition to defending clients, she consults with insurance carriers on cases defended by other defense attorneys to assist in developing litigation strategies and defense theories on the issues of liability, causation, and damages.

"The difference between this trial and my last one was that I felt like she really cared" is a quote from one of her clients after a recent trial victory.

In 2020, Renee was inducted into the American College of Trial Lawyers, composed of the best trial bar from the United States, Canada, and Puerto Rico. Fellowship in the College is extended by invitation, only after careful investigation, to those experienced trial lawyers of diverse backgrounds who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility, and collegiality. Lawyers must have a minimum of 15 years of trial experience before being considered for Fellowship. She has also received the highest AV ranking by Martindale-Hubbell and recognition as an Illinois "Leading Lawyer" and an Illinois "Super Lawyer." Renee served many years as an Adjunct Professor at the University of Illinois College of Law, teaching basic and advanced trial advocacy. Now she focuses her teaching efforts on training and mentoring attorneys within the firm to continue a tradition of excellence.

Renee volunteers with the Judicial Internship Opportunity Program (JIOP) Committee of the ABA to interview and provide opportunities to law students who are traditionally underrepresented in the profession. JIOP is a litigation section program dedicated to improving diversity and inclusion in the law. She also volunteers for the Sixth Circuit Local of the Illinois Lawyers Assistance Program (LAP), which helps lawyers, judges, and law students gain assistance with substance abuse, addiction, and mental health problems.

Renee is particularly thoughtful and strategic in her approach to practice, enjoying a challenge and taking pride in making a difference in every case, whether headed toward settlement or trial.

- Inducted into the American College of Trial Lawyers
- Former Adjunct Professor at the University of Illinois College of Law
- Rated AV Preeminent® Peer Review Rating by Martindale-Hubbell®



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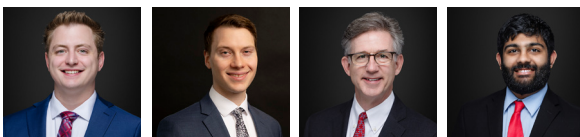
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