

HARDY ERICH
BROWN & WILSON

A Professional Law Corporation
1000 G Street, 2d Floor
Sacramento, CA 95814
Phone (916) 449-3800
Fax (916) 449-3888
heb@heb.com

Roundtable Newsletter

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CASE LAW UPDATE

(*Scognamillo v. Herrick* (2003) 106 Cal.App.4th 1139)

- **Case Facts:** In *Scognamillo v. Herrick* (2003) 106 Cal.App.4th 1139, the plaintiff introduced testimony at a default hearing regarding medical expenses and wage loss for two future back surgeries. Testimony indicated that the second surgery would only be preformed if the first surgery went well and the plaintiff showed “improvement.”
- **Damage Awards Are Subject to Review on Appeal:** The court first had to address whether damage awards are subject to review on appeal. The court held that they are reviewable when they are unsupported by sufficient evidence.
- **Damages for Second Surgery Were Unsupported by Sufficient Evidence:** The court then held that damages for the second surgery were unsupported by sufficient evidence, since the evidence in support could not “have been couched in more speculative terms.” Consequently, the court ordered the entire damage award for the second surgery vacated.
- **Trial Court Improperly Failed to Reduce Damages to Present Cash Value:** Lastly, the court held that the trial court had improperly failed to reduce the damages for future wage loss to present cash value. Therefore, the court ordered the wage loss for the first surgery reduced to present cash value.
- **Summary:** The court in *Scognamillo* broke no new legal ground. However, this case does serve to remind us of two important legal doctrines. First, that plaintiffs cannot claim speculative damages. Second, that all future wage loss claims must be reduced to present cash value.

SIDEBAR:

Damages which are not “based on a reasonable medical probability” are too speculative to be awarded.

Tort Law Department:

David S. Worthington, (916) 449-3817

dworthington@heb.com

Anders R. Morrison, (916) 449-3825

amorison@heb.com

Richard L. Alley, (916) 449-3883

ralley@heb.com

Johanna Berta, (916) 449-3880

jberta@heb.com

Elizabeth A. O'Brien, (916) 449-3891

ebrien@heb.com