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## ILLINOIS LAW MANUAL

### CHAPTER XIV DAMAGES

#### D. LOSS OF SOCIETY AND COMPANIONSHIP

In Illinois, a decedent's lineal and collateral "next of kin," in the case of death, or family members, in the case of injury and not death, may be entitled to damages for their loss of society and companionship. Allendorf v. Elgin, Joliet & Eastern Ry. Co., 8 Ill. 2d 164 (1956), reversed on other grounds by Richardson v. Chapman, 175 Ill. 2d 98 (1997).

Such loss of society and companionship has been interpreted to mean benefits of a pecuniary value (that which can be valued in money), including goods, services, society and companionship which one would have received from the decedent/injured had they not died or suffered the injury. Bullard v. Barnes, 102 Ill. 2d 505 (1984); Seef v. Sutkus, 145 Ill. 2d 336 (1991); but see also Lee v. CTA, 152 Ill. 2d 432 (1992).

"Society" is defined as the mutual benefits that each family member receives from the others' continued existence, including love, affection, care, attention, instruction, training, companionship, comfort, advice and guidance, and protection. Bullard v. Barnes, 102 Ill. 2d 505 (1984); Simmons v. University of Chicago Hospitals and Clinics, 247 Ill. App. 3d 177 (1993).

It is important to note that "companionship" is included in the definition of "society." Accordingly, society and companionship are not recoverable as separate elements of damages.

Rather, they are used to describe and define one type of recoverable damage.

Loss of society and companionship gives rise to fairly intangible considerations, thus allowing latitude to juries. Not surprisingly, verdicts for this element of damages are highly variable. As seen by the above definitions of pecuniary injury and society, it would be difficult to question an assessment of the worth of a family member's love, training, companionship, guidance, etc.

Parents may recover for loss of both their minor and adult children's society in a wrongful death action. Bullard v. Barnes, 102 Ill. 2d 505 (1984); Ballweg v. Springfield, 114 Ill. 2d 107 (1986); Woltering v. Outboard Marine Corp., 245 Ill. App. 3d 684 (1993).

Furthermore, parents are entitled to a presumption of such loss or injury, which presumption may be rebutted with proper evidence (e.g., that parent and child were estranged). However, for a minor child, there is no presumption of lost earnings, and rearing expenses are subject to deduction from loss of society damages, and any loss of income that is proven. Bullard v. Barnes, 102 Ill. 2d 505 (1984).

A sibling has been allowed to recover loss of society damages for the death of a brother/sister under the Wrongful Death Act. Estate of Finley, 151 Ill. 2d 95 (1992). However, unlike surviving spouses and lineal heirs, siblings are not entitled to any presumption of loss of society damages and are only allowed to recover proven wrongful death

damages. Id. However, a parent may not recover loss of society following a non-fatal injury to his or her child. Doe v. McKay, 183 Ill. 2d 272 (1998); Dralle v. Ruder, 124 Ill. 2d 61 (1988).

Additionally, there is authority, albeit inconclusive, to the effect that a minor child cannot recover damages for loss of society, following a non-fatal injury to the child's parent. Van De Veire v. Sears, Roebuck & Co., 178 Ill. App. 3d 794 (1989); Karagiannakos v. Gruber, 274 Ill. App. 3d 155 (1995). Courts have recognized a child's claim for loss of society for the death of a parent. In re Estate of Keeling, 133 Ill. App. 3d 226 (1985); Weise v. Weise, 178 Ill. App. 3d 938 (1989).

Mental anguish is not recoverable under a claim of loss of society or wrongful death. Bullard v. Barnes, 102 Ill. 2d 505 (1984); Seef v. Sutkus, 205 Ill. App. 3d 312 (1990); Turner v. Williams, 326 Ill. App. 3d 541 (2001).