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Recommended Citation
David S. Lake, Traumatic Neurosis as a Distinct Cause of Action, 12 Clev.-Marshall L. Rev. 291 (1963)

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Traumatic Neurosis as a Distinct Cause of Action

*David S. Lake**

Every time the body suffers an injury, there are concomitant emotional effects. Because these effects frequently exceed the physical damage and sometimes are the only remaining vestiges of the injury, the lawyer more and more is seeking the aid of the psychiatrist and the psychologist.

He is well advised to do so, for he may otherwise be overlooking an important aspect of his client's case—*traumatic neurosis.*[1]

MUCH HAS BEEN WRITTEN about the so-called *traumatic neurosis.*[2] But in all the literature and litigation there is no clear cut agreement as to what, if anything, the term *traumatic neurosis* means. To further complicate matters, most cases dealing with traumatic neurosis are in the area of workman's compensation. Very few common law cases have dealt with *traumatic neurosis* by that name.

The purpose of this article is: (1) To define *traumatic neurosis* on a medico-legal basis. (2) To determine when damages may be recovered for traumatic neurosis through a review of recent cases.

Strictly speaking, there is no single ailment or disease known as "traumatic neurosis." Rather, it is a group of neuroses, characterized as having their onset following trauma. Laughlin[3] speaks of them as neurotic reactions which have been attributed

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[1] Loria, Traumatic Neurosis, 3 Lawyer's Medical Cyclopedia 139 (1959).

[2] See Goodrich, Emotional Disturbance as Legal Damage, 20 Mich. L. Rev. 497 (1922); Smith, Relation of Emotions to Injury and Disease, 30 Va. L. Rev. 193 (1944); Smith & Solomon, Traumatic Neuroses in Court, 30 Va. L. Rev. 87 (1943); Cantor, Psychosomatic Injury, Traumatic Psychoneurosis, 6 Clev.-Mar. L. Rev. 428 (1957); Koskoff, Tr. and Tort Trends 368 (1958); Miller, Compensation Neurosis, 4 J. For. Sci. 159 (1959); Crawfis, Conversion Hysteria, 26 Ins. Counsel J. 158 (1959); Neurosis Following Trauma: a Panel, 7 Med. Tr. T. 23 (1960); Sindell and Perr, Subjective Complaints v. Objective Signs, 12 Clev.-Mar. L. Rev. 42 (1963).

[3] Laughlin, The Neurosis in Clinical Practice, 633 (1956), states that the resulting emotional or physical consequences are highly variable in degree and in time of onset.

to or which follow a traumatic event or a series of such events. A clearer picture can be had if we define, individually, the words *trauma* and *neurosis.*

Trauma

The promiscuous use of the word *trauma* or *traumatic event* has led to much confusion. "Trauma is simply a force which invades the sanctity of the person. . . ." [4] This force may be physical,[5] chemical, electrical, or radiological; "it may even be emotional, causing an insult to one's psyche. . . ." [6] The psychiatric significance of the word trauma refers to harm caused by psychological factors rather than physical ones. Throughout the balance of this article, the words *trauma* or *traumatic* will indicate an emotional shock rather than physical blow or wound. According to some opinion a physical injury is never the direct cause of a neurosis.[7]

Neurosis

A neurosis,[8] is "an unconscious attempt to show a conflict by development of symptoms without any organic basis." [9] Or it is sometimes classed as a "functional nervous disorder without demonstrable physical lesion." [10]

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[4] 1 Cantor, Traumatic Medicine and Surgery for the Attorney 4 (1959).

[5] The use of the word *trauma* solely to connote a physical blow or a physical injury caused by physical contact has done much to cause confusion in both the courts and the literature about traumatic neurosis.

[6] Cantor, *op. cit. supra* n. 4; see also Ortkiese v. Clarson & Ewell Engineering, 126 So. 2d 556 (Fla. 1961) at 561, "Trauma is an injury, wound, shock, or the resulting condition or neurosis"; substantially the same definition in Lyng v. Rao, 72 So. 2d 53, 56 (Fla. 1954); Smith v. Garside, 76 Nev. 377, 355 P. 2d 849, 852 (1960).

[7] See 6 Am. Jur. Proof of Facts 229 (1960).

[8] As opposed to a psychosis, which can be characterized as "a major emotional disorder, in which a greater or lesser part of the reality accepted by other members of the patient's group or culture is rejected and replaced by private beliefs which are held so strongly as to be the major determinants of the patient's thought, feeling, and/or behavior." Schwartz, Neurosis Following Trauma, 4 Trauma 31, (1) (1959).

[9] Turner v. W. Horace Williams Co., 80 So. 2d 162, 163 (La. App. 1955); see also Chapman v. Finlayson, 197 F. Supp. 568, 107 P. 2d 196 (1940).

[10] McGill Mfg. Co. v. Dodd, 116 Ind. App. 66, 67; 59 N. E. 2d 899, 900 (1945); Tate v. Gullett Gin Co., 86 So. 2d 698, 702 (La. App. 1956); Williamson v. Bennett, 251 N. C. 498, 112 S. E. 2d 48, 50 (1960).

Neuroses Following Trauma

The American Psychiatric Association does not officially recognize the word *traumatic* as descriptive of a type of neurosis; rather they allude to the "neurotic reactions to trauma." Many other factors not related to trauma may act as precipitating causes of the neurosis. Modlin says, "A neurosis is a neurosis, whatever the particular precipitating stress. . . ." [11]

The neuroses following trauma are usually divided into two categories: the conventional neuroses, and the so-called traumatic neurosis.

Conventional Neuroses

There are six types of conventional neuroses.[12] Each type is characterized by a unique group of clinical symptoms. For example, the conversion reaction (also known as conversion hysteria) has its own set of symptoms. Here, strong emotions following trauma are *unconsciously* converted into easily identifiable symptoms, such as paralysis, muscular contractions, loss of sensation, or areas of numbness.[13] Although there is no organic basis for the symptom presented by the patient, *it should be stressed that there is nothing conscious in this sort of symptom.* It is a means of reacting to a severe emotional shock.[14]

Traumatic Neurosis

As the term is most commonly used, *traumatic neurosis* is a combination, symptomatically, of the conventional neuroses. The person involved has experienced a "clear and unavoidable perception of great and overwhelming danger, the threat of death or severe injury." [15] He may or may not have received an actual

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[11] Modlin, The Trauma in "Traumatic Neurosis," 2 Menninger Clinic Bul. 49, Vol. 24 (1960).

[12] They are anxiety reaction, dissociative reaction, phobic reaction, depressive reaction, conversion reaction, and obsessive-compulsive reaction. A detailed description of each of these neuroses is beyond the scope of this article. A good legally oriented treatment of this material can be found in: Schwartz, *op. cit. supra* n. 8; Laughlin, *op. cit. supra* n. 3; 3 Schweitzer, Proof of Traumatic Injuries, 160-168 (1961).

[13] Schweitzer, *op. cit. supra* n. 12.

[14] Schwartz, *op. cit. supra* n. 8. This seems to be the generally accepted view; "The statement that a financial settlement is the best cure is not accurate, as the litigation may be an aggravating factor in the patient's illness. He may try to dramatize his condition (both consciously and unconsciously) to impress his attorney, his physician, and to a great extent, himself"; Schweitzer, *op. cit. supra* n. 12 at 160, 161.

[15] *Id.* at 70.

physical injury. Following this emotional shock (which, in these cases, is often more severe and lasting than any physical injury that might have been received) he develops several symptoms. These include: fearfulness, insomnia, blackouts, fatigue, palpitation, headache, dizziness, nightmares (often a re-enactment of the traumatic event), tremors, irritability, etc. It is these symptoms which are labeled *traumatic neurosis.* And most of these symptoms are included in the legal and medical definitions of shock.[16] Now let us review the law with respect to *traumatic neurosis.*

Quite logically, if a given court will allow recovery for an item labeled fright, or shock, or mental disturbance, there should be no question of recovery when the plaintiff presents a proven *traumatic neurosis.* Further, there is considerable authority to the point that definite nervous disturbances or disorders caused by a mental or emotional shock and excitement are "physical injuries," for which damages may be recovered.[17]

In *Nelson v. Black,*[18] the court points out that the sufferer from *traumatic neurosis* is not a malingerer. His disability is not feigned, but real, although no basis for it can be found in any physical injury. The court, in *Williamson v. Bennett,*[19] concludes that:

> neurotic reactions accompanied by severe headaches, dizziness, crying spells, irritability, back pains and similar manifestations, resulting from fright caused by defendant's negligence are held to justify recovery on the ground that they amount to and should be regarded as "physical injuries."

There is no valid reason why recovery should not be allowed where the defendant's negligence causes a traumatic neurosis,

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[16] See Texas & P. Ry. Co. v. Moore, 329 S. W. 2d 293, 298 (Tex. Civ. App. 1959); *cf.* Haile's Curator v. Texas & P. Ry. Co., 60 F. 557, 559 (5th Cir. 1894); Blakiston, New Gould Medical Dictionary (2d ed., 1955).

[17] Dryden v. Continental Baking Co., 11 Cal. 2d 33, 77 P. 2d 833 (1938); *cf.* Edmen v. Vitz, 88 Cal. App. 2d 313, 198 P. 2d 696 (1948); Prosser, Law of Torts 39 (2d ed. 1955).

[18] 266 P. 2d 817 (Cal. App. 1954); *rev'd.* 43 Cal. 2d 612, 275 P. 2d 473 (1954) on the grounds that whether or not an injury was sustained was a question for the jury; the court in its opinion quotes from Herzog, Medical Jurisprudence Art. 388 at page 291, "Hysteria (conversion reaction) is a *disease* and the hysterical patient actually suffers the disabilities of paralysis, anesthesia, loss of power, or paroxysm, which he claims. Many physicians do not understand hysteria and because they cannot see any demonstrable evidences of organic disease, deny the existence of disease, and claim that the hysterical patient is simulating or malingering."

[19] 251 N. C. 498, 112 S. E. 2d 48 (1960); citing Kimberly v. Howland, 143 N. C. 398, 55 S. E. 778 (1906).

the same as where that negligence causes a broken arm, or cut leg. But, logical as it may seem, the courts are not in complete agreement. Two distinct philosophies appear in the recent cases: 1) The presence of *impact* and/or physical *injury* is necessary for recovery and/or 2) Recovery may be allowed without the presence of impact where mental disturbance is sufficiently proved.

Impact and/or Physical Injury Jurisdictions

Until recently, New York could claim the title as one of the last of the impact states. This dubious distinction was based on the decision in *Mitchell v. Rochester Ry. Co.*,[20] which denied recovery for a miscarriage caused by fright and shock occasioned by the negligence of the defendant. The following statement by the court has been cited as authority in almost thirty jurisdictions:

> While the authorities are not harmonious upon this question, we think the most reliable and better considered cases, as well as public policy, fully justify us in holding that the plaintiff cannot recover for injuries occasioned by fright, as there was no immediate personal injury—

The court was quite concerned that, should the right of recovery once be established (1) A "flood of litigation" would result; (2) The injury complained of (fright, shock, etc.) could easily be feigned without detection and (3) Damages must then rest upon mere conjecture and speculation.

Now that New York has relinquished her "impact" throne it has been snapped up by Pennsylvania, which holds that there can be no recovery of damages for fright or nervous shock unless it is accompanied by physical injury or physical impact.[21] *Bosley v. Andrews*[22] is often cited in those jurisdictions still requiring impact. In that case, a woman was chased by a trespassing bull, but she was not actually touched. The court used some excellent language to say "no impact, no recovery." This court went on to point out that there could be no recovery for phys-

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[20] 151 N. Y. 107, 45 N. E. 354 (1896), rev'd Battalla v. State, 10 N. Y. 2d 237, 219 N. Y. S. 2d 34 (1961).

[21] Cucinotto v. Ortman, 399 Pa. 26, 159 A. 2d 216 (1960); Gefter v. Rosenthal, 384 Pa. 123, 119 A. 2d 250 (1956); Potere v. City of Phila., 380 Pa. 581, 112 A. 2d 100 (1955).

[22] 184 Pa. Super. 396, 135 A. 2d 101 (1957), aff'd 393 Pa. 161, 142 A. 2d 263 (1958).

ical injury *as a consequence* of the fright.[23] However, any slight physical injury, such as an electrical shock,[24] is a sufficient foundation upon which to build an award for mental disturbance.

Ohio cases show substantially the same result,[25] with the added twist of foreseeability. Any injury negligently inflicted must be foreseeable as the probable result of that particular act of negligence.[26]

The *Sullivan*[27] case is a good example of Massachusetts logic. The plaintiff drank milk from a carton which contained a dead mouse and its fecal matter. She sustained no substantial physical injuries, but the emotional shock caused her to develop a rash over much of her body, made her nervous, and caused her blood pressure to increase. The court held that, as there was no injury from without (mental suffering was purely internal), there could be no recovery.[28] But even in Massachussets a gradual chipping away at this harsh rule is evident. A slight injury is enough to allow recovery for nervous shock.[29] A passenger of a railroad, who twists her shoulder when she jumps from her seat to escape danger from a broken window, can recover damages.[30]

Most of the Illinois cases hold that there must be a contemporaneous physical injury with the fright or emotional disturbance.[31]

Greenberg v. Stanley[32] typifies the rule in New Jersey that there must be impact or physical injury; but the slightest personal injury is enough to allow recovery. A pregnant woman who sustained personal injuries was allowed recovery for emo-

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23 *Ibid,* citing Koplin v. Louis K. Liggett Co., 322 Pa. 333, 185 A. 744 (1936).

24 Hess v. Philadelphia Transport Co., 358 Pa. 144, 56 A. 2d 89 (1948).

25 Barnett v. Sun Oil Co., 113 Ohio App. 449, 172 N. E. 2d 734 (1961); Davis v. Cleveland Ry. Co., 135 Ohio St. 401, 21 N. E. 2d 169 (1939); Koontz v. Keller, 52 Ohio App. 265, 3 N. E. 2d 694 (1936).

26 Davis v. Cleveland Ry. Co., *supra* n. 25; Barnett v. Sun Oil Co., *supra* n. 25, the court quotes approvingly from 39 O. Jur. 2d 494: "The doctrine of reasonable anticipation or foreseeability of the consequences of one's negligent act is clearly a part of the negligence law of Ohio. . . ."

27 Sullivan v. H. P. Hood & Sons Inc., 168 N. E. 2d 80 (Mass. 1960).

28 Citing Spade v. Lynn & Boston R. R., 168 Mass. 285, 45 N. E. 88 (1897) which was the forerunner of the present Massachusetts "injury from without" attitude.

29 Homans v. Boston Elevated Ry., 180 Mass. 456, 62 N. E. 737 (1902).

30 Freedman v. Eastern Mass. St. Ry., 299 Mass. 246, 12 N. E. 2d 739 (1938).

31 McCullough v. Orcutt, 14 Ill. App. 2d 503, 145 N. E. 2d 109 (1957).

32 51 N. J. Super. 90, 143 A. 2d 588 (1958), young mother in an auto accident resulting in severe psychosomatic disturbances and psychoneurosis.

tional upset and anxiety over possible injuries to her unborn child.[33]

Some courts hold that there must be malice, wilfulness, wantonness, or inhumanity to allow recovery for mental distress where there has been no accompanying physical injury.[34]

Oklahoma courts find themselves committed to the rule that there must be physical suffering or injury to the person.[35] However, they held that mental anguish induced by physical hunger pains was actionable.[36]

Arkansas relies on impact, but concedes that the impact may be constructive.[37]

Where a bus turned over, slightly injuring the plaintiff, who then suffered an hysterical reaction, a Montana court made an allowance for mental and physical pain and suffering, with the warning that the disability must have followed as the proximate consequence of the injury.[38]

The District of Columbia allows recovery only where the emotional disturbance was the secondary effect of a substantial physical injury,[39] and there must be an unbroken chain of causation.[40]

Virginia holds that mental anguish resulting from mere negligence, without physical injury, cannot be the basis of an action for damages.[41]

Texas allows recovery where the mental disturbance results

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33 Carter v. Public Service Coordinated Transport, 47 N. J. Super. 379, 136 A. 2d 15 (1957); *cf.* Buchanan v. West Jersey R. Co., 52 N. J. L. 265, 19 A. 254 (1890); Caspermeyer v. Florsheim Shoe Store Co., 313 S. W. 2d 198 (Mo. App. 1958).

34 Gambill v. White, 303 S. W. 2d 41 (Mo. 1957), unattended woman had premature delivery in hospital, no recovery allowed.

35 Redding v. United States, 196 F. Supp. 871 (W. D. Ark. 1961).

36 Thompson v. Munnis, 201 Okl. 154, 202 P. 2d 981 (1949).

37 Beaty v. Buckeye Fabric Finishing Co., 179 F. Supp. 688 (E. D. Ark. 1959); *cf.* Chicago, Rock Island & Pac. Ry. Co. v. Caple, 207 Ark. 52, 179 S. W. 2d 151 (1944).

38 Wilson v. Northland Greyhound Lines Inc., 166 F. Supp. 667 (D. Mont. 1958); *cf.* Bourke v. Butte Electric and Power Co., 33 Mont. 267, 83 P. 470 (1905).

39 Hamilan Corp. v. O'Neill, 273 F. 2d 89 (D. C. Cir. 1959).

40 Perry v. Capital Transit Co., 32 F. 2d 938 (D. C. Cir. 1929).

41 Herman v. Eastern Airlines Inc., 149 F. Supp. 417 (E. D. N. Y. 1957), where, after an emergency landing the plaintiff's intestate alleged nervousness, bruises, and soreness, the court held no recovery.

in a physical injury.[42] Or, if the act is wilful or intentional, damages are recoverable if the result should have been reasonably anticipated as a natural consequence of the wilful act.[43] However slow to recognize mental suffering as a cause of action, Texas does recognize that a neurosis, with its physical aches and pains, is a "physical injury" for which recovery can be had.[44] This is another example of clinging to an old rule, but allowing equitable causes to form exceptions to that rule.

Georgia follows a modified rule: if the mental suffering is followed naturally by physical injury which the defendant should have foreseen, recovery will be allowed for injury caused by fright alone.[45] However, if there is no physical injury to the person or no pecuniary loss, damages for mental anguish alone cannot be recovered.[46]

"No" Impact Jurisdictions

California is probably the most liberal state with respect to recovery for mental disturbance. The established rule is the one laid down in *Sloan v. Southern California Ry. Co.*,[47] where the court said:

> The real question presented . . . is whether the subsequent nervous disturbance of the plaintiff was a suffering of the body or of the mind. The interdependence of the mind and body is in many respects so close that it is impossible to distinguish their respective influence upon each other.

The plaintiff had a previous history of nervous shocks and paroxysm, but the court held that it was not material whether the

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42 Houston American Finance Corp. v. Travis, 343 S. W. 2d 323 (Tex. Civ. App. 1960), rehearing denied (1961), lender attempted to collect money owed; Sutherland v. Kroger Co., 110 S. E. 2d 716 (W. Va. 1959).

43 Stafford v. Steward, 295 S. W. 2d 665 (Tex. Civ. App. 1956).

44 Sutton Motor Co. v. Crysel, 289 S. W. 2d 631 (Tex. Civ. App. 1956), the court also points out that whether a neurosis is a proximate result of the fright is a jury question.

45 Hines v. Evans, 25 Ga. App. 829, 105 S. E. 59 (1920); Usry v. Small, 103 Ga. App. 144, 118 S. E. 2d 719 (1961).

46 Armstrong Furniture Co. v. Nickle, 105 Ga. App. 61, 123 S. E. 2d 330 (1961).

47 111 Cal. 668, 44 P. 320 (1896), note that case was decided the same year as Mitchell v. Rochester Ry. Co. *supra* n. 20, but 3000 miles apart, the plaintiff bought a ticket to travel to a distant city. Enroute she changed trains. However she was not given a ticket stub. The new conductor demanded that she pay or get off. She had no money so she was put off. After walking a mile she was given a ride to the next town where her sister lived.

defendant knew of the plaintiff's susceptibility to nervous disturbance.[48]

Virginia seems to be on both sides of the "impact" fence. Where the defendant's car struck a house, and the exterior wall fell in toward the plaintiff, who fainted and suffered aggravation of an old arthritic condition and a psychoneurosis, the court held this to be both mental and physical personal injury, and damages were allowed.[49] The only question in Virginia is whether the damage is of substance and easily identifiable in the person of the plaintiff.[50]

Wilful or wanton conduct will support an action for damages for mental suffering even where there is no physical injury of any sort.[51] In actions for personal injuries due to an intentional tort, physical injuries need not be sustained, as the mental suffering is usually considered an injury for which damages may be given.[52]

Where a truck struck the porch of a house, and the plaintiff in the house suffered fright and nervous shock, damages were recovered on the basis that the shock produced injuries which would be elements of damages had bodily injury been suffered.[53] But the negligence must be the proximate cause of the shock.[54]

Recovery is allowed in Florida if the emotional distress is inflicted in the course of intentional or malicious torts.[55] Some jurisdictions use the "natural and probable consequence test," as where the defendants put an oil drilling rig in a cemetery, stopping the plaintiffs from visiting the grave of their son.[56] Before

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[48] DiMare v. Cresci, 23 Cal. Rptr. 772, 373 P. 2d 860 (1962), which cites Sloan with approval.

[49] Penick v. Mirro, 189 F. Supp. 947 (E. D. Va. 1960), the court also held that if there is no actionable physical or pecuniary damage, willful or wanton conduct is necessary.

[50] *Ibid.*

[51] Olan Mills Inc. v. Dodd, 353 S. W. 2d 22 (Ark. 1962); Erwin v. Milligan, 188 Ark. 658, 67 S. W. 2d 592 (1934); Rogers v. Williard, 144 Ark. 587, 223 S. W. 15 (1920); Smith v. Aldridge, 356 S. W. 2d 532 (Mo. App. 1962), (blasting causing fear by parents for safety of children); Ackerman v. Thompson, 356 Mo. 558, 202 S. W. 2d 795 (1947).

[52] Skousen v. Nidy, 90 Ariz. 215, 367 P. 2d 248 (1961), rehearing denied (1962).

[53] Strazza v. McKittrick, 146 Conn. 714, 156 A. 2d 149 (1959).

[54] *Ibid;* also see Drlo v. Connecticut, 128 Conn. 231, 21 A. 2d 402 (1941).

[55] Slocum v. Food Fair Stores Inc., 100 So. 2d 396 (Fla. 1958).

[56] Busburs v. Graceland Cemetery Assoc., 171 F. Supp. 205 (E. D. Ill. 1958); *cf.* Eick v. Perk Dog Food Co., 347 Ill. App. 293, 106 N. E. 2d 742 (1952).

recovery can be had for mental suffering alone, there must be a breach of duty owed the plaintiff by the defendant.[57]

Clegg v. Hardware Mutual Casualty Co.[58] is a good example of traumatic neurosis. The case was submitted to the jury on the basis of the Louisiana doctrine which allows recovery for emotional damages even though unaccompanied by physical injury.[59]

Washington allows damages even in the absence of any physical injury, when caused by a wrongful act, intentionally done.[60] But the harm must be foreseeable.[61]

Where bodily injury follows fright or shock, South Carolina allows recovery in cases of negligence.[62]

The Wisconsin case of *Colla v. Mandella*[63] allowed a recovery for physical injury resulting from fright alone, even though a normal man (without heart trouble) would have suffered no substantial injury.[64] There need not be impact if the physical injury flows directly from the fright.[65]

After the *Colla* case came *McMahon v. Bergeson,*[66] where a psychiatrist testified that the plaintiff was suffering from an

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[57] Holland v. St. Paul Mercury Ins. Co., 135 So. 2d 145 (La. App. 1961); Lafitte v. New Orleans City & Ry. Co., 43 La. Ann. 34, 8 So. 701 (1890); Haile v. New Orleans Ry. & Light Co., 135 La. 229, 65 So. 225 (1914).

[58] 264 F. 2d 152 (5th Cir. 1959), Clegg was standing nearby where a truck, swerving to avoid hitting some school children, ran into parked cars and a gasoline pump, causing fire and widespread destruction. He was overwhelmed by fear, realizing for the first time that he was not the omnipotent and fearless man his phyche had envisioned him to be. After this event, Clegg experienced all the symptoms of traumatic neurosis. He further became very successful in business, which the psychiatrists said was causing further harm to him. The jury decided for the insurer on the basis of the evidence not proving causation to a clear enough degree.

[59] Ford v. State Farm Mut. Auto Ins. Co., 139 So. 2d 798 (La. App. 1962); Pecoraro v. Kopanica, 173 So. 203 (La. App. 1937); Klein v. Medical Building Realty Co., 147 So. 122 (La. App. 1933); Laird v. Natchitoches Oil Mill Inc., 10 La. App. 191, 121 So. 692 (1929).

[60] Browning v. Slenderella Systems of Seattle, 54 Wash. 2d 440, 341 P. 2d 859 (1959); United States v. Hambleton, 185 F. 2d 564 (9th Cir. 1950); Nordgren v. Lawrence, 74 Wash. 305, 133 P. 436 (1913).

[61] Christensen v. Swedish Hospital, 368 P. 2d 897 (Wash. 1962); Browning v. Slenderella Systems of Seattle, *supra* n. 57; Gadbury v. Bleitz, 133 Wash. 134, 233 P. 299 (1925).

[62] Padgett v. Colonial Wholesale Distributing Co., 232 S. C. 593, 103 S. E. 2d 265 (1958); Douglas v. Southern Railway, 82 S. C. 71, 63 S. E. 5 (1908).

[63] 1 Wis. 2d 594, 85 N. W. 2d 345 (1957).

[64] Citing with approval, Restatement, 2 Torts, Sec. 461; *cf.* Sundquist v. Madison Rys. Co., 197 Wis. 83, 221 N. W. 392 (1928).

[65] Pankopf v. Hinkley, 141 Wis. 146, 123 N. W. 625 (1909).

[66] 9 Wis. 2d 256, 101 N. W. 2d 63 (1960), auto accident without physical injury, an excellent case history of a neurosis caused by a traumatic event.

anxiety neurosis. The court said that recovery for neurosis follows the same rule as for emotional distress alone. However, where there is a pre-existing susceptibility to emotional disturbance on the part of the plaintiff, there can be no recovery unless the defendant had prior knowledge of that susceptibility.[67]

The most encouraging decision of the recent cases is *Battalla v. State.*[68] The infant plaintiff was placed in a chair lift at Bellayre Mountain Ski Center by a state employee, who failed to secure and properly lock the safety belt. As a result, the infant became frightened and hysterical upon descent, with resulting emotional injuries. The court held that there may be recovery for injuries, physical or mental, caused by fright negligently induced, specifically overruling *Mitchell v. Rochester Ry. Co.*[69] They stated that a rigorous application of the rule would be unjust as well as opposed to experience and logic, and further, that to add another exception to the present rule would merely add confusion to a situation which lacks the coherence which precedent should possess. The court quoted approvingly from *Woods v. Lancet,*[70]

> We act in the finest common law tradition when we adapt and alter decisional law to produce common law justice . . . Legislative action there could, of course, be, but we abdicate our own function, in a field peculiarly non-statutory, when we refuse to reconsider an old and unsatisfactory court-made rule.
>
> The only substantial policy argument of Mitchell is that damages or injuries are somewhat speculative and difficult to prove. However, the question of proof in individual situations should not be the arbitrary basis upon which to bar all actions.

This decision should have a great effect in those states which still follow the *Mitchell*[71] rule. It will be interesting to see what new rationale the courts will devise to maintain the "impact" rule.

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[67] *Ibid;* the court held for the defendant on the basis of pre-existing susceptibility; a strong dissent cited Colla v. Mandella, *op. cit. supra* n. 63 as reason for allowing recovery.

[68] 10 N. Y. 2d 237, 219 N. Y. S. 2d 34 (1961); see 66 Dickinson L. Rev. 239 (1962) for an extensive review of the *Mitchell* and *Battalla* cases.

[69] *Supra* n. 20.

[70] 303 N. Y. 349, 355, 102 N. E. 2d, 691, 694 (1951); citing also Comestock v. Wilson, 257 N. Y. 231, 177 N. E. 431 (1931).

[71] Mitchell v. Rochester Ry. Co., *supra* n. 20.

Fear For Another's Well-Being

While most states allow recovery for mental disturbance arising out of fear for one's own safety, they generally deny recovery for fright, shock, anxiety, or neurosis, precipitated by the fear for the safety and well being of another.[72]

An auto guest who suffered injuries could not recover for shock, strain, and anxiety to his pregnant wife, who had not been in the accident.[73] A pregnant woman, who suffered a miscarriage as a result of witnessing an accident involving her husband, was denied recovery.[74]

Most cases hold that the right to damages is personal, hence one cannot recover for fright and mental disturbance over injuries to another.[75] In cases other than death,[76] it is held that a parent cannot recover for his own mental distress and shock about personal injuries to his minor child.[77] There must be a duty owed directly to the party claiming damages and mental suffering.[78]

Conclusion

While the term *traumatic neurosis* has no place in current psychiatric nomenclature, it is reasonably descriptive of the plaintiff's problem. Whenever possible, the clinical description of the plaintiff's neurosis should be used, rather than this general term.

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[72] See 25 C. J. S. Damages § 67-70; *cf.* Williamson v. Bennett, 251 N. C. 498, 112 S. E. 2d 48 (1960), which gives a good review of past litigation in this area.

[73] McCullough v. Orcutt, *supra* n. 31.

[74] Reed v. Moore, 156 Cal. App. 2d 43, 319 P. 2d 80 (1957); *cf.* Clough v. Steen, 3 Cal. App. 2d 392, 39 P. 2d 889 (1934), death of plaintiff's child in same collision; Kelly v. Fretz, 19 Cal. App. 2d 356, 65 P. 2d 914 (1937), learning of physical injury to third party; Minkus v. Coca Cola Bottling Co. of Cal., 44 F. Supp. 10 (N. D. Cal. 1942).

[75] Vinet v. Checker Cab Co., 140 So. 2d 252 (La. App. 1962); Jines v. City of Norman, 351 P. 2d 1048 (Okla. 1960); Cushing Coca-Cola Bottling Co. v. Francis, 206 Okl. 553, 245 P. 2d 84 (1952); Van Hay v. Oklahoma Coca-Cola Bottling Co., 205 Okl. 154, 235 P. 2d 948 (1951).

[76] Honeycutt v. American General Ins. Co., 126 So. 2d 789 (La. App. 1960), rehearing denied 1961; Hughes v. Gill, 41 So. 2d 536 (La. App. 1949).

[77] Preece v. Baur, 143 F. Supp. 804 (E. D. Idaho 1956); Hayward v. Yost, 72 Idaho 415, 242 P. 2d 971 (1952); Bedard v. Notre Dame Hospital, 151 A. 2d 690 (R. I. 1959); Sumone v. Rhode Island Co., 28 R. I. 186, 66 A. 202 (1907); *cf.* Gaegler v. Thomas, 173 F. Supp. 568 (D. Md. 1959), where recovery was allowed to child where his mother was killed and father injured in automobile accident.

[78] Lahann v. Cravotta, 228 N. Y. S. 2d 371 (Sup. Ct. 1962); Berg v. Baum, 224 N. Y. S. 2d 974 (Sup. Ct. 1962).

Traumatic neurosis can be treated, but this is difficult while the litigation is pending, as the litigation tends to focus the patient's attention upon his disability. However, to stigmatize him because of this unconscious factor tends to prolong his illness and increase his damages.[79]

Most medical authorities will agree that a neurosis is more than mental suffering, and should be regarded as a physical ailment. Some of the more enlightened courts have agreed.

A review of recent cases indicates that a majority of states allow recovery for a *traumatic neurosis* if it can be proved:

1. That there was a duty of care owed directly to the plaintiff by the defendant.
2. That the defendant did some negligent act which frightened or shocked the plaintiff.
3. That the plaintiff's neurosis was a direct result of the defendant's negligent act.
4. That the plaintiff's neurosis is a physical injury.

Even in those states which still require an impact, the exceptions have considerably weakened the rule. The *Battalla* case should further weaken and, hopefully, overrule so useless a rule. It is a sad reflection on the law, when it will not accept medical proof of a mental injury.

One last warning: "traumatic neurosis" and "compensation neurosis" are not the same thing. The term "compensation neurosis" is used by a few doctors and lawyers to indicate that the plaintiff's neurosis will immediately be cured when he receives a money settlement. This is not true. Litigation tends to aggravate the patient's condition and hence to increase the damages.

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[79] See 6 Am. Jur. Proof of Facts, 215, 216 (1960).