

modify the phrase "and his capacity to earn money during his probable working life." I decline to do so because the plaintiff's alternative interpretation reasonably gives meaning to the entire statute.

Zurn argues that its interpretation is mandated by the New Hampshire Supreme Court's recent decision in Thibeault v. Campbell, 136 N.H. 698, 704 (1993). In Thibeault, the court ruled that a new trial was required to determine the amount of damages to be awarded on plaintiff's wrongful death claim. In determining that the damages found by the jury were excessive, the court addressed two of the plaintiff's specific arguments without mentioning the subject of hedonic damages. Given the heated debate that has accompanied this important issue and the number of divergent lower court opinions on the subject, it is unlikely that the court would have disposed of this issue *sub silentio*. Accordingly, I decline to read the decision as broadly as Zurn suggests.

Zurn's Motion to Dismiss Plaintiff's Claim for Hedonic Damages (document no. 39) is denied.

SO ORDERED.

Paul Barbadoro
United States District Judge

August 17, 1993

cc: Jeffrey S. Cohen, Esq.
Timothy Smith Reiniger, Esq.
David L. Nixon, Esq.
Matthew Schafner, Esq.