

THE EFFECT OF INFLATION ON DAMAGES FOR FUTURE LOSSES

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Under the modern view expressed by a majority of jurisdictions, including California, the effect of anticipated inflation is a proper factor to be considered by the jury in arriving at an award for damages for future losses.

As early as 1948, California law approved consideration of inflation as a matter of economic reality. In *Kircher v. Atchison, T. & S. F. Ry. Co.* (1948) 32 Cal.2d 176, 187, the Court stated:

It is a matter of common knowledge, and of which judicial notice may be taken, that the purchasing power of the dollar has decreased to approximately one-half what it was prior to the present inflationary spiral [citations omitted], and the trier of facts should take this factor into consideration in determining the amount of damages necessary to compensate an injured person for the loss sustained as a result of the injuries suffered.

See also *Burke v. City and County of San Francisco* (1952) 111 Cal. App. 2d 314, 321-322.

In *Miles v. City of San Rafael* (1974) 42 Cal.App.3d 230, 243, the court upheld a verdict of \$4,025,000 for an 11-year old disabled boy and rejected the defendant's argument that the inflation rates were too high. The court stated that anticipated future increases in medical expenses may be considered by the jury and that expert testimony may be used with regard to a "subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact," citing Evidence Code section 801.

Also, in *Rodriguez v. McDonnell Douglas Corp.* (1978) 87 Cal. App.3d 626, 662, the Court rejected the defendant's argument that in making the award it was improper for the jury to take into account inflationary trends. The court noted that California law has long approved consideration of the factor of inflation as a matter of economic reality.

In *United States v. English* 521 F.2d 63 (9th Cir. 1975), the court, applying California law, recognized



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the propriety of considering future inflation in awarding damages, stating: "We hold that a trier of fact may take into account future estimates of changes in the purchasing power of money in arriving at a damage award under California law." The Court cautioned that the estimate of future inflation must be supported by sound and substantial economic evidence. *Id.*, at pp. 74-76. The correctness of this decision was recognized by the United States Supreme Court in *Jones & Laughlin Steel Corp. v. Pfeifer* (1983) 462 U.S. 523, 541; 76 L. Ed. 2d 768; 103 S. Ct. 2541.

Similarly, *United States v. English, supra*, was followed and approved in *Sauers v. Alaska Barge*, 600 F.2d 238, 244-246, (9th Cir. 1979), which held that the district court erred in refusing to adjust an award to reflect the impact of future inflation in view of the sound and substantial evidence presented by the plaintiff pertaining to the impact of inflation.

In *Maheu v. Hughes Tool Co.* 569 F.2d 459, 477 (9th Cir. 1977), a diversity action under California law, an estimate of future inflationary trends was taken into account when computing future lost earnings.

The need to consider the effect of inflation on damage awards also was noted in *Vesey v. United States* 626 F.2d 627, 631-632, (9th Cir. 1980) where the court recognized that an inflation factor can increase the award of damages in a wrongful death action. The decision, however, was based upon plaintiff's failure to connect offered evidence that related to inflationary trends to the expected erosion of the decedent's future earning capacity. I.e., the plaintiff failed to meet the requirements set forth in *United States v. English, supra*, which requires that the trier of fact, in awarding damages, only consider estimates of future changes and the purchasing power of money which are based on sound and substantial economic evidence. Other Ninth Circuit cases recognizing that anticipated inflation is a proper factor to be considered by the trier of fact in determining the amount of future losses are *Alma v. Manufacturer's Hanover Trust Co.* 684 F.2d 622 (9th Cir. 1982); *Shaw v. United States* 741 F.2d 1202 (9th Cir. 1984); and *Hollinger v. United States* 651 F.2d 636 (9th Cir. 1981).

Plaintiffs' attorneys should always present expert economic testimony concerning inflation and request that the jury be instructed that inflation is a proper factor to be considered in determining the amount of damages for future loss *before* reducing future losses to present value. ■

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