American Educational Institute

CLAIMS LAW UPDATE

A SUPPLEMENT TO CLAIMS LAW COURSES IN CASUALTY, PROPERTY, WORKERS' COMPENSATION, FRAUD INVESTIGATION, AND AUTOMOBILE

Summer, 2025

AEI CLAIMS LAW QUIZ

LOSS OF PARENTAL CONSORTIUM

[*Ref. Damages Para. 3.06*]

FACTS: In 2005, Curtis Panoke was charged with second degree assault after an altercation at a homeless shelter. He was eventually placed in the custody of the Hawaii Department of Health ("DOH") and, because of his level of violence and aggression, was committed to the Hawaii State Hospital ("HSH"). In 2007, while at HSH, Panoke attacked and severely injured a nurse. As a result, the DOH contracted with GEO Care Inc. ("GEO"), a provider of evidence-based rehabilitation services, and Panoke was transferred to The Columbia Care Regional Center, a facility in South Carolina that focused on behavior health. At Columbia Care, Panoke and his roommates were involved in a violent altercation, but Panoke's request to move to a single room was ignored. In June of 2016, Panoke was attacked by his roommates while he slept and was left in a vegetative state.

Panoke's family filed a lawsuit against GEO and several other defendants alleging, among other things, negligence, gross negligence, and negligent infliction of emotional distress. The suit also included a loss of consortium claim by Panoke's adult child. GEO filed a motion for summary judgment based on the Hawaii Supreme Court's decision in *Halberg v. Young*, 41 Haw. 634 (Haw. 1957). According to the *Halberg* precedent, Hawaii did not recognize loss of parental consortium for non-fatal injuries. In Hawaii, a claim for loss of parental consortium was only recognized when the parent died.

The plaintiffs relied on *Masaki v. General Motors, Co.*, 71 Haw. 1 (1989), which dealt with a parent's loss of consortium claim for an adult child (filial consortium). In *Masaki*, the Hawaii Supreme Court not only held that a parent could recover for loss of consortium of an adult child who suffered a non-fatal injury, but stated that the parent's claim was merely the reciprocal of a child's claim for loss of consortium, implying that the court might have overruled *Halberg* had parental consortium been an issue in *Masaki*. The plaintiffs also relied on *Marquardt v. United Airlines*, 781 F.Supp. 1487 (D. Haw. 1992), in which the federal district court predicted that the Hawaii Supreme Court, given the opportunity, would overrule *Halberg* and recognize a child's claim for loss of parental consortium

resulting from non-fatal injuries.

QUESTION: Can a child recover for loss of parental consortium when his parent suffers a non-fatal injury?

ANSWER: Yes, according to the Hawaii Supreme Court in *HELG Administrative Services,* 549 P3d 313 (Haw. 2024). In *HELG*, the court overruled *Halberg* in favor of allowing both minor and adult children to recover for loss of parental consortium in cases involving non-fatal injuries. In reaching this result, the court was influenced by both the reasoning of *Masaki* and the "modern trend" among jurisdictions that allow recovery for loss of parental consortium.

The Hawaii Supreme Court began by considering GEO's argument that parental consortium should not be recognized based on *Halberg,* which rejected consortium claims filed on behalf of three children for injuries their mother suffered in an auto accident. In ruling against the children, the *Halberg* court, distinguishing between non-fatal and fatal injuries, was influenced by the idea that the health of an injured parent could eventually improve and that the parent could also recover damages from the tortfeasor, minimizing the impact that the non-fatal injury would have on the children:

> The argument is made that it is merely a difference in degree whether the action is for the death of the parent, which deprives the child permanently of parental care and support, or for a [non-fatal] injury, which would deprive the child temporarily of such care and support, and the principle is the same in both cases.
>
> However, such argument ignores the fact that where a parent has been injured by the negligent act of another the parent will recover from the other full damage which he has sustained, including such inability, if any, to properly care for his children, and thus the parent's ability to carry out his duty to support and maintain the child has not, in a legal sense, been destroyed or impaired by the injury to him. On the other hand, if the parent were killed, the parent's ability to support and educate the child ceases and the child has been deprived of this right and the child would be permitted to recover for such loss.

GEO also relied on decisions from other jurisdictions in support of the following policy reasons why a child's loss of consortium claim should not be permitted when a parent is alive:

> 1) the lack of precedent for such a cause of action; (2) the uncertainty and remoteness of the damages which would flow from such a cause of action; (3) the danger of duplication of recovery between the child and parents; (4) the unsettling effect that the creation of such a cause of action would have upon a parent's settlement negotiations with tortfeasors; (5) the increased risk of falsification in order to recover under such a cause of action; (6) the potential for increased insurance costs; (7) the potential harm to the integrity and sanctity of the family unit; (8) the lack of statutory authority for the

> creation of such a cause of action; and (9) the legal basis of a child's claim to the services of the parent under the substantive law of the state in question.

The Hawaii Supreme Court in *HELG*, however, rejected these arguments. More specifically, the court stated that the assumption in *Halberg* that an injury short of death could not permanently deprive a child of parental care and support was misguided, regardless of whether the child was a minor or an adult. The court was persuaded by the earlier Hawaii Supreme Court ruling in *Masaki*, which involved a claim of filial consortium. In *Masaki*, the Hawaii Supreme Court rejected both Hawaii precedent and common law principles that limit a parent's loss of consortium claim to cases in which a minor child died, and held for the first time that the parents of a severely injured adult child could recover for loss of filial consortium. The court in *Masaki* was persuaded by the idea that severe injury could have the same "deleterious impact" as death because the parent would be confronted by his loss whenever he spent time with the child and experienced the child's diminished capacity. The court also acknowledged the dynamics of the modern family relationship and held that loss of filial consortium should not be limited to cases involving injured minors, rejecting the common law view that a child's worth was related to his economic contribution to the family:

> Appellants maintain, however, that the Masakis are not entitled to recover for loss of filial consortium because Steven was twenty-eight years old at the time of his injury. We realize that a number of courts which recognize the parents' cause of action for loss of consortium of their children restrict the action to minor children. The rule is generally premised on the rationale that upon emancipation, parents are no longer entitled to the services and earnings of their children. We find such reasoning outmoded and illogical. At common law, the child, like the wife, was relegated to the role of a servant and considered an economic asset to the family. ...In the modern family, however, children have become less of an economic asset and more of a financial burden to their parents. Today children are valued for their society and companionship. ...Thus, services have become only one element of the consortium action while the intangible elements of love, comfort, companionship, and society have emerged as the predominant focus of consortium actions.

The *HELG* court cited this passage for the proposition that the common law view on consortium claims between parents and their children was "outmoded and illogical" and that the "intangible elements of love, comfort, companionship, and society have emerged as the predominant focus of consortium actions." While the court emphasized that it did not take overruling precedent lightly, it also stated that "stare decisis does not require courts to cling stubbornly to the past." The court noted that "the law on parental consortium nationwide has undergone dramatic change since *Halberg* was decided almost sixty years ago," and that today only a "bare majority" of states fail to recognize parental consortium claims. Citing cases in Montana, Ohio, Louisiana, Iowa, Texas, and Oklahoma, the Hawaii Supreme Court concluded that recognizing parental consortium was not only the just result in the case before it, but also the modern trend.

CONCLUSION: The Hawaii Supreme Court in *HELG* recognized a claim for parental consortium when a parent suffers a non-fatal injury, allowing his child to recover regardless of whether the child is a minor or an adult. In so doing, the court overruled the longstanding Hawaiian common law rule that limited parental consortium to cases in which the parent died. The end result is that Hawaii joined 20 other jurisdictions that recognize a child's right to recover for loss of parental consortium arising out of an injury to his parent.

Congratulations SCLA's

The following individuals earned their SCLA's in the months of April, May, June, and July 2025:

Anne M. Alfiler
USAA
San Antonio, TX

Alejandra Y. Bardales
Sentry Insurance
El Paso, TX

Rachel Barker
Kentucky Farm Bureau
Morehead, KY

Elizabeth C. Bates
Liberty Mutual
Indianapolis, IN

Rachel Billingsley
United States Liability Ins.
Wayne, PA

Benjamin Bland
GEICO
Virginia Beach, VA

Sheri Blankinship
Savers
Graham, WA

Jodi Bowlen
Auto-Owners
Akron, OH

Jeremy Burnham
Auto-Owners
Lansing, MI

Alberto Cadena
San Antonio, TX

Renae Chandler
Utica National Insurance
Buffalo, IA

Amy Childers
Auto-Owners
Dewitt, MI

Antoinette D. Clarke
State Farm Insurance
Snellville, GA

Jessica Cloud
Utica National Insurance
Belton, TX

Wendy Crain
United Fire Group
Tulsa, OK

Savannah Jordan Davidson
American Modern
Hamersville, OH

Sandra G. Domenack
Yuma, AZ

Juan J. Garcia
National General
Banning, CA

Bradley A. Ghere
RLI Corp
Peoria, IL

Jacob Guenther
GEICO
Lee's Summit, MO

Robert Hare
Agency Ins Co of Maryland
Elkridge, MD

Joshua Hester
NC Farm Bureau
Raleigh, NC

Steven Hightower
Georgia Farm Bureau
Rome, GA

Lynn Hill
Auto-Owners
Florence, SC

Joseph David Johnson
USAA
Chandler, AZ

Julie Jones
The Robison Group
Pueblo West, CO

Kristina E. Jones
Preferred Mutual Insurance
Brockport, NY

Leah C. Kouloumberis
Utica National Insurance
Dawsonville, GA

Brandon Linhart
Erie Insurance
Erie, PA

Ryan Lisenba
Auto-Owners
Conyers, GA

Jessica Ann Majecki
Utica National Insurance
Utica, NY

Delaney D. Moore
Sompo International
Seattle, WA

Simon Morris
TN Farmers Mutual Ins.
Chattanooga, TN

Amy L. Nelson
Federated Mutual Ins.
Overland Park, KS

Natalie E. Ness
Secura Insurance
Winneconne, WI

Kaylee O'Connor
Auto-Owners
Newnan, GA

Gabriela Orlando
USAA
Wimauma, FL

Sarah Osborne
Kentucky Farm Bureau
Elizabethtown, KY

Benjamin Joe Pearson
Auto-Owners
Cochran, GA

John M. Pemberton Sr.
Sedgwick
Madison, MS

Jeannine Plummer
Utica National Insurance
Buffalo, NY

Chris Rank
Auto-Owners
Dayton, OH

Clay Shoemaker
TN Farmers Mutual Ins.
Chattanooga, TN

Aaron Simpson
American Modern
Amelia, OH

Jordan Small
Kentucky Farm Bureau
Morehead, KY

Christopher Lee Steele
Allstate Insurance
Clarksville, TN

Kimberly Still
CorVel Corporation
Milwaukie, OR

David Stone
TN Farmers Mutual Ins.
Dresden, TN

Scott P. Traister
American Modern
Morrow, OH

Chiquita N. Watson
Auto-Owners
Newnan, GA

Jeremy Wilson
Auto-Owners
Columbus, OH

Joseph A. Wisard
National Interstate Insurance
Orrville, OH