

## Law Court Win for Chris Taintor

On June 26<sup>th</sup>, the Maine Supreme Judicial Court, sitting as the Law Court, handed down a long-awaited decision in [Smith v. Henson](#), holding that the damages recoverable for "pecuniary injuries" under the Wrongful Death Act are limited to the amounts that would have benefited the persons on whose behalf the suit is brought. NHD's [Chris Taintor](#) represented the prevailing defendants.

The appeal arose from a medical malpractice action in the Superior Court, brought by the parents of a young unmarried man who had recently graduated from college and was preparing for a career as an accountant, and who tragically died after his Lyme Disease went undiagnosed. The Defendants were represented by another firm throughout the litigation. However, NHD was consulted early on as appellate counsel, with the expectation that, given the overwhelming difficulty of mounting a persuasive liability defense, there would be a substantial verdict, including a large award for pecuniary injuries arising from the death. There was eventually an award to the Plaintiffs which included \$2,000,000 for the decedent's loss of future earnings.

The focus of the parties' dispute involved the interpretation of language in the [Wrongful Death Act](#) that allowed a jury to award damages as "fair and just compensation with reference to the pecuniary injuries resulting from the death." The centerpiece of the Plaintiffs' argument was a 2009 amendment to the Act. Before the amendment, the Act specified that damages for pecuniary injury could only be recovered by "the persons for whose benefit the action was brought." The amendment deleted that phrase, so the statute simply provided that damages for pecuniary injury could be awarded, but it didn't say to whom they could be awarded.

The Wrongful Death Act establishes a hierarchy of persons who are entitled to recover damages on account of a negligently caused death. For an adult without a spouse or children, recovery is for the exclusive benefit of the decedent's parents, if living. Consequently, the plaintiffs in Smith – that is, "the persons for whose benefit the action is brought" – were the decedent's parents. They took the position throughout the case that under the Act, as amended, they were entitled to recover damages for the loss of their son's lifetime earnings without having to prove that he would have provided them any support. The defendants, on the other hand, argued that the amendment had not changed the fundamental principle that the purpose of the Act is to compensate surviving members for their actual losses; thus, because the parents had no expectation that their son would support them, they suffered no "pecuniary injuries resulting from the death," and they were therefore entitled to no "compensation" under that part of the Act.

The trial judge agreed with the plaintiffs, denying the Defendants' motions for partial summary judgment and directed verdict, and permitting them to present their pecuniary injury claim to the jury. After the Superior Court denied a post-trial motion asking to have the pecuniary injury award thrown out, the Defendants brought their appeal, challenging only that component of the jury award, while taking no issue with the awards for the decedent's conscious suffering and for the parents' loss of their son's society and companionship.

On appeal, the Law Court vacated the award of damages for pecuniary injury. In a lengthy opinion, and with two

members dissenting, the Court reasoned that the legislative history of the 2009 amendment did not support the view that the Legislature intended to fundamentally broaden the right to recover damages for pecuniary injuries. Additionally, and importantly, the Court reasoned that allowing recovery by the *Smith* plaintiffs would be “in derogation of the black-letter common law principle that, in order to support compensatory damages, the wrongful conduct must have been the proximate cause of the underlying loss *to the claimant.*”

The net result of the Law Court’s decision, at least for now, is to confirm the principles that historically have limited the recovery of damages for wrongful death. Damages for the loss of a decedent’s income-earning capacity will be recoverable only by those who can demonstrate that they personally have suffered economic harm. It is reasonable to expect, however, that the battle over this issue will continue in the Maine Legislature