

Hedonic Damages Cases Involving Stan Smith from 1985 to the Present (7/22/2023)

This list includes all cases on LEXIS that include reference to Dr. Stan V. Smith (or Stanley v. Smith in earlier cases) and “hedonic damages,” starting with *Sherrod v. Berry* in 1985, and continuing to the present. Descriptions of the decisions were developed by Thomas R. Ireland. An asterisk indicates that Thomas Ireland was retained as a defense expert in that case. This list will be updated as necessary in the future. Thomas R. Ireland, 7/10/2022.

1985

(1) *Sherrod v. Berry*, 629 F. Supp. 159 (N.D.Ill. 1985), aff'd, 827 F.2d 195 (7th Cir. 1987), vacated, 835 F.2d 1222 (7th Cir. 1987), rev'd on other grounds, 856 F.2d 802 (7th Cir. 1988). This was the first case in which Stanley V. Smith was permitted to testify about hedonic damages. U.S. District Court Judge George N. Leighton admitted and commented favorably about Smith's testimony, but the case was ultimately reversed on other grounds.

1986

No decisions.

1987

(2) *Sherrod v. Berry*, 827 F.2d 195 (7th Cir. 1987), rev'd on other grounds, 835 F.2d 1222 (7th Cir. 1987). The appeal from defense included a claim that Stanley V. Smith should not have been permitted testify about hedonic damages at the trial court level in 1985. The 7th Circuit held that it was not error for Smith to be allowed to testify and that Smith’s testimony had been “invaluable” to the jury.

1988

No decisions.

1989

(3) *Kasnia v. Brothers Aviation*, 1989 U.S. Dist. LEXIS 19566 (E.D. WI 1989). This decision was reached under Michigan state law regarding hedonic damages and loss of society and relationship. Judge Robert W. Warren excluded testimony from Stanley Smith saying:

"The problem of translating the loss resulting from an accident into money **damages** is always a complex and often imprecise calculation." *Willinger*, 241 Pa. Super. 456, 469, 362 A.2d 280, 286-87 (1976). But the Michigan courts and legislature have established guidelines to assist the jury in calculating loss compensation, and **hedonic damages** or **damages** for loss of life's pleasures is not one of the elements of recovery in a wrongful death action under the loss of society and companionship. Accordingly, the Court GRANTS defendants' motion

in limine to preclude the introduction of any and all evidence concerning *hedonic damages* or *damages* for the loss of enjoyment of life in this trial on the ground that this evidence is irrelevant. This order precludes the plaintiff's expert Stanley V. Smith from testifying as to his opinion concerning the value of the Kasnia's loss of society and companionship claim.

1990

(4) *Birdsell v. Board of Fire and Police Commissioners of the City of Litchfield*, 1990 U.S. Dist. LEXIS 14961 (C.D. IL 1990). The court granted defendant's motion in limine to bar the hedonic damages testimony of Stan Smith, saying:

The Court agrees with the Defendants that the testimony on hedonic damages would confuse or mislead the jury and furthermore, would not be relevant. The real basis of the Court's opinion is that this Court is not aware of any valid legal basis or authority for extending hedonic damages from death civil rights cases to this case, where it is alleged the Plaintiff was terminated from his job without due process. Simply state evidence of such damages is not relevant.

(5) *Polyak v. Reus, Inc.*, 1990 Minn. App. LEXIS 815 (MN App. 1990). The Minnesota Court of Appeals said:

Minnesota Courts have never recognized loss of enjoyment of life as a separate element of damages . . . There is no Minnesota authority for a specially worded instruction on loss of enjoyment of life and we decline to impose such a requirement here. . . Dr. Smith would have testified about how to calculate damages for loss of enjoyment of life. Because Polyak's evidence consisted of his emotional reaction to the shooting and not loss of enjoyment of life, there was no foundation for Dr. Smith's testimony. . . Therefore the trial court's exclusion of Smith's testimony was proper.

(6) *Mapp v. Karos*, 1990 U.S. Dist. LEXIS 21306 (E.D. WI 1990). Stanley V. Smith (later Stan V. Smith) was excluded from testifying about dollar values for the life of decedent in a wrongful death action as not relevant to damages allowed under the act. Smith's calculations for loss of society and relationship were also excluded because:

[T]estimony as to an average relationship without being specific to the decedent's relationship with her children will not assist a jury. In Wisconsin, an award for the loss of society and companionship must be based on the specifics of the relationship in question, just as the loss of enjoyment of life must be grounded in the age, health, habits, and pursuits of the injured party [in a personal injury case].

(7) *Sterner v. Wesley College, Inc.*, 747 F.Supp. 263 (D.De.1990). Rejected hedonic damage

testimony by Stan V. Smith.

1991

(8) *Fetzer v. Wood*, 211 Ill.App.3d 70 (Ill.App.2 Dist. 1991). The Illinois Court of Appeals upheld a trial court decision not to admit hedonic damage testimony about loss of the enjoyment of life to be provided by Stan V. Smith. The court reasoned from the fact that expert economic testimony is not permitted with respect to pain and suffering and said:

Here, the proposed economic expert testimony would be overly speculative and would serve to invade the province of the jury, and we see no abuse of discretion in the exclusion of such evidence.

(9) *Southlake Limousine and Coach, Inc. v Brock*, 578 N.E.2d 677 (1991). Indiana's 3rd District Court of Appeals ruled that the trial court decision to admit hedonic damage testimony by Stan V. Smith was improper and should not be allowed in a retrial. The court said:

Expert testimony on the value of life should not have been admissible in a wrongful death case. It could not provide a measure of the loss of love and affection to the surviving spouse nor of the loss of parental guidance and training to the surviving children. Professor Smith even testified to that effect. The most Professor Smith could do was place a value on the life of the decedent. His testimony regarding the loss felt by survivors was inadmissible speculation.

1992

(10) *Mercado v. Ahmed*, 756 F. Supp. 1097 (N.D. IL 1991). This order of Judge James B. Zagel excluded testimony of Stan V. Smith regarding an injured child's loss of enjoyment of life (hedonic damages). In reaching his decision to exclude the testimony of Smith, Judge Zagel discussed said:

This kind of evidence is well described in T. Miller, *Willingness to Pay Comes of Age: Will the System Survive*, 83 Nw. U.L. Rev. 876 (1989). In brief, Miller notes that economists are researching the "ways to measure the value that individuals place upon reducing the risk of dying" by examining the markets. *Id.* at 878-79. They examine "what people actually pay -- in dollars, time discomfort, and inconvenience -- for small reductions in health and safety risks." *Id.* at 879. Of particular significance, economists have estimated the values people place on risk reduction based on the following factors: 1) the extra wages employers pay to induce people to take risky jobs; 2) the demand and price for products -- such as safer cars, smoke detectors, houses in polluted areas, and life insurance -- that enhance health and safety; 3) the tradeoffs people make among time,

money, comfort, and safety -- in studies involving pedestrian tunnel use, safety belt use, speed choice, and drivers' travel time; and 4) surveys that ask people about their willingness to invest money to enhance their health or safety. *Id.* at 880-81.

However, there is no basic agreement among economists as to what elements ought to go into the life valuation. There is no unanimity on which studies ought to be considered. There is a lack of reliability. In fact, Smith was prepared to testify based on seventy or eighty studies; Miller relies on twenty-nine; in *Sherrod v. Berry*, 629 F. Supp. 159, 163 (N.D. Ill. 1985), Smith testified on the basis of fifteen studies. Smith acknowledged that more studies could be done on the willingness-to-pay issue. In particular Smith noted that further studies will focus on a set of consumers to uncover when these consumers make or do not make choices for safety, and these results may help establish validity. The fact that the bottom lines of most studies (between less than \$100,000 to more than \$2,000,000) arguably do not wind up very far apart (by some definitions of "very far") may be coincidence and not the result of the application of a scientific method.

Survey of attitudes and views of others as a basis for concluding something is true is not necessarily wrong. Some science as it comes into court is the result of consensus by practitioners of some area of expertise that a certain law of nature is correct. What is wrong here is not that the evidence is founded on consensus or agreement, it is that the consensus is that of persons who are no more expert than are the jurors on the value of the lost pleasure of life. Even if reliable and valid, the evidence may fail to "assist the trier of fact to understand the evidence or determine a fact in issue" in a way more meaningful than would occur if the jury asked a group of wise courtroom bystanders for their opinions.

(11) *Johnson v. Inland Steel Company*, 140 F.R.D. 367 (N.D.Ill. 1992). Interpreting both Indiana and federal standards for wrongful death damages by a two magistrate judge panel, the court said:

We find that any evidence relating to loss sustained by survivors such as 'hedonic damages,' going beyond pecuniary loss are appropriate matters for inclusion in this law suit. Since these matters are appropriate, expert testimony by qualified individuals would certainly be allowed into evidence. Moreover, taking into account that hedonic value of human life is difficult to measure, expert testimony becomes exceedingly important and may be of particular use to the trier of fact in this case. *Sherrod v. Berry*, 827 F.2d 195 (7th Cir. 1987). Accordingly Inland's motions seeking to bar expert testimony as to damages for decedent's loss of quality of life, and for the value of decedent's services are, DENIED.

(12) *Bramlette v. Hyundai Motor Company*, 1992 U.S. Dist. LEXIS 13080 (N.D.Ill. 1992). Judge Zagel's decision in *Mercado v. Ahmed*, 756 F. Supp. 1097 (N.D. IL 1991) was cited in excluding the testimony of Dr. Stan V. Smith in this wrongful death action under Illinois law.

(13) *Buckhalter v. Burlington N. R.R.* (N.D. MS 1992). The Court excluded hedonic damages testimony by Dr. Stan V. Smith, saying:

The record suggests that Smith, in addition to offering testimony on hedonic damages or damages for the loss of enjoyment of life, also intended to offer damages relating to "loss of relationship. Damages for loss of companionship and society of the decedent are allowable under Mississippi law. Nevertheless, the court, in reviewing Smith's proposals, [footnote omitted] finds that the facts and figures offered by Smith are largely speculative and may unduly prejudice a jury. While the figures offered in Smith's tables are one person's way of attaching a quantitative figure to a qualitative value, the jury, composed of laypersons who presumably value their own life and loved ones, is equally equipped to place a quantitative value on decedent's companionship, affection and society should the case call for such a determination. See generally *In Re Air Crash Disaster at New Orleans, La.*, 795 F.2d 1230, 1233 (5th Cir. 1986) ("the trial judge ought to insist that a proffered expert bring to the jury more than the lawyer can offer in argument"). For all of these reasons, the testimony of Smith will be excluded in its entirety.

(14) *Moore v. Kroger Co.* 800 F. Supp. 429 (N.D. MS 1992). The Court postponed making a decision about whether to allow hedonic damage testimony by Dr. Stan V. Smith in a wrongful death action. The Court said:

Having held that *hedonic* damages are not recoverable as a separate form of damages, the court nevertheless declines to limit the testimony of [Stan V.] Smith, Moore's proposed expert on such damages, until the substance of his testimony can be more fully explored at trial. In the past, the undersigned has rejected speculative figures that attempt to quantify an injured person's emotions when a jury of lay persons is equally equipped to make the determination. . . . The possibility exists that he may testify on matters helpful to the trier of fact in traditionally recognized areas. Accordingly, Smith's testimony will be considered at trial for its evidentiary value, helpfulness and prejudicial effect under *Federal Rules of Evidence* 702, 703 and 403. If confusing, unhelpful or prejudicial, it will be excluded.

1993

(15) *Doe v. TAG, Inc.*, 1993 U.S. Dist LEXIS 16356 (N.D. Ill. 1993). In one of the first decisions regarding hedonic damages after the Daubert decision the Court said:

In this case, the plaintiffs intend to introduce [Stan] Smith's testimony to establish -- through economic principles -- the value of Doe's future loss of enjoyment of life. There is no binding Seventh Circuit precedent suggesting that such economic testimony is sufficiently reliable to be admissible . . . The court therefore follows the

well-reasoned opinion of *Mercado v. Ahmed*, 756 F. Supp. 1097 (N.D. Ill. 1991). .
. Because Smith's testimony would not assist the trier of fact in reaching its decision,
his testimony is irrelevant -- and must be excluded.

(16) *Patch v. Glover*, 618 N.E.2d (Ill.App.1 Dist. 1993). An Illinois Court of Appeals upheld a trial court decision not to admit hedonic damage testimony about loss of society Stan V. Smith. The court said:

The type of evidence Smith offered would, out of necessity, provoke an extended line of inquiry into Patch's relationships with family members and friends, who are not entitled to recover under the [wrongful death] act, so that their loss of society could be factored out of the gross value of the loss of society. All of which would serve no purpose other than to distract the jury from its real task which is to apply their common sense to assess the value of society lost by the plaintiff and the children. Moreover, Smith's testimony on this issue would mislead the jury into believing the false notion that the distinct and personal relationship that one has with his wife and children has commercial value which can be determined by a comparison to the value that society places on the non-monetary contributions of the statistically average person. It is our belief that the type of evidence that plaintiff sought to introduce through Smit, h's testimony would be the antithesis of a reasonable and practical consideration of the fair and just compensation for the loss of society suffered by the spouse and next of kin of a decedent under the peculiar facts of any given case.

(17) *Laing v. American Honda Motor Co.*, 628 So. 2d 196 (LA App. 1993). Citing *Foster v. Trafalgar House of Oil and Gas*, 603 So.2d 284 (1993) which had been decided during or after Laing, the Court said that the trial court's admission of testimony by Dr. Stan V. Smith might have been in error, but:

The jury did not award the \$ 2,200,000 figure calculated by Dr. Smith as the loss of enjoyment of life suffered by Tommy Laing, but made an award of \$ 1,350,000 for Laing's loss of enjoyment of life *and* mental anguish. (Emphasis added). Honda cross-examined Dr. Smith extensively and presented their own expert in economics, Dr. Jerome Staller, on the issue of hedonic damages. Regardless of whether Dr. Smith's testimony should have been allowed, there is ample evidence in the record to support the jury's award of \$ 1,350,000 to Laing for loss of enjoyment of life and mental anguish.

The economic expert presenting hedonic damages testimony in *Foster* was Dr. Luvonia Casperson, not Dr. Smith.

1994

(18) *Sullivan v. United States Gypsum Company*, 862 F. Supp. 317 (D.Kan. 1994). This decision excluded the testimony of Stan V. Smith in a wrongful death action based on Kansas Law. Federal District Judge John W. Lungstrum said:

This court's concern is that the willingness-to-pay studies upon which Mr. Smith's calculations are based have no apparent relevance to the particular loss of enjoyment of life suffered by a plaintiff due to an injury or death. The studies relied on by Mr. Smith do not use methodology designed to calculate the loss of enjoyment of life, yet are nonetheless extrapolated by Mr. Smith into what he claims to be valid data for calculating damages for both Mr. and Mrs. Sullivan's loss of enjoyment of life. Mr. and Mrs. Sullivan suffered totally distinct and different damages (Mrs. Sullivan died, Mr. Sullivan faces living without the support and companionship of his wife), yet, under Mr. Smith's analysis their damages are identical, save only an adjustment for differing the expectancy. The court finds that the proffered testimony of Mr. Smith simply fails in any real terms to provide a measure of the loss and affection to Mr. Sullivan due to his wife's death. The court does not believe that the distinct and personal relationship that Mr. Sullivan enjoyed with his wife has commercial value which can be determined by a comparison to the alleged value that society places on the contributions of a statistically average person.

(19) *Longman v. Allstate Ins. Co.*, 635 So.2d 343 (La. App. 4 Cir. 1994). The Louisiana Court of Appeals, citing *Foster v. Trafalgar House of Oil and Gas*, 603 So.2d 284 (1993), affirmed the decision of the trial court judge to exclude the hedonic damages testimony of Dr. Stan V. Smith in a personal injury case, saying:

The statement by the trial judge indicates that the trial judge primarily based his decision excluding the testimony of Stan Smith on the facts that 1) the proffered evidence would not assist the jury in determining how to compensate the plaintiff for his general damages and 2) the plaintiff was capable of explaining how his injuries had affected his lifestyle. Having reviewed the proffered testimony we agree with the trial court's finding that the proffered evidence would not have assisted the jury in determining the value of the plaintiff's loss of enjoyment of life as a result of his injuries. Additionally, having reviewed the testimony of the plaintiff, we find that the plaintiff was extremely capable of explaining how his life had been affected by this accident. For these reasons, we find that the trial court did not abuse its discretion when it refused to allow Stan Smith to testify.

1995

(20) *Ayers v. Robinson*, 887 F. Supp. 1049 (N.D.Ill. 1995). This decision rejected hedonic damage testimony by Stan V. Smith. It quoted extensively from Brookshire and Smith, *Economic/Hedonic Damages* (1990) and extensively evaluated Ted Miller's "The Plausible

Range for the Value of Life—Red Herrings among the Mackerel,” *Journal of Forensic Economics*, 1990, 3(3) in performing a Daubert test of the admissibility of Stan Smith’s version of hedonic damages testimony. The Daubert analysis considered Smith’s proffered testimony on the basis of five factors: (1) benchmark, (2) adjustments, (3) pedigree, (4) empirical data and (5) underlying assumptions. The decision pointed out that the \$3.5 million “central tendency” benchmark was based on results “rang[ing] from the high several hundred thousands well into several millions.” The Court said:

In sum, neither the \$3.5 million or the \$2.5 million benchmark rests upon any scientific method or procedure, so that testimony regarding either one is inadmissible under the scientific knowledge prong of Rule 702.” . . . [T]he low probative value of such testimony (ill fitting data) is substantially outweighed by the danger of unfair prejudice (a false appearance of tailoring to the individual case). . . Unfortunately for Stan Smith, the surname Smith seems to be about the only thing they have in common. . . [I]t is frankly bogus to massage numbers [from the Value of Life literature], as both Hedonic Damages [Brookshire and Smith] and Plausible Result [Miller] have done, to create a deceptive appearance of precision rather than the true picture of an enormous spread in ‘value,’

The Court also criticized the underlying assumptions of the “willingness to pay” model.

(21) *Adams v. Miller*, 908 S.W.2d 112 (1995). Kentucky is a state in which losses in a wrongful death action are losses to the estate, not to survivors. The Kentucky Supreme Court in *Adams* cited the standard as in *Louisville and N. R. Co. v. Eakins’ Adm’r*, 103 Ky. 465, 530 (1898) as follows: “The damages recoverable in [a] wrongful death action have been clearly defined and limited almost from its inception. The damages are such sum as will fairly and reasonably compensate the decedent’s estate for the destruction of the decedent’s earning power and do not include the affliction which has overcome the family by reason of the wrongful death (emphasis in original).” On that basis, the Adams court held that loss of parental consortium is not recoverable in a wrongful death action. The Adams court also held that:

This court recognizes that there is measurable value to one’s life other than his or her earning capacity. However, this value is already recoverable in the recognized category of mental suffering. There is no need to allow for the recoupment of hedonic damages as a separate category of loss.

The Court cited *Economic/Hedonic Damages* (1990) by Michael Brookshire and Stan V. Smith for its definition of hedonic damages.

(22) *Anderson v. Nebraska Department of Social Services*, 538 N.W.2d 732 (Neb. 1995). The trial court decision was reversed and remanded in part because the trial court judge had admitted the hedonic damages testimony of Dr. Stan V. Smith in a personal injury action. The dissent by

C. J. White argued that the error in admitting the testimony of Dr. Smith was harmless. He agreed that it was in error to admit Smith but found that error harmless on the basis that:

Any error in admitting Stan Smith's testimony is harmless. Smith's methodology is by his own concession unorthodox. The Nebraska Department of Social Services (DSS) points out in its brief that not only is Smith one of the few alleged experts on hedonic damages, but in fact most of the reported decisions on this subject involve Smith and the much-debated value of his opinions. Smith's analysis applies a quasi-scientific spin to what may seem like a simple issue, which may not be the best method of gauging the value of enjoyment of life. Nevertheless, the receipt of Smith's testimony in this case hardly cries out for a remand. At trial, Smith testified that Bridgette Anderson suffered a loss of enjoyment of life in an amount between \$ 2,442,000 and \$ 2,817,000; the trial judge awarded \$ 300,000 in hedonic damages. Smith testified that Candy Anderson suffered losses valued between \$ 1,950,000 and \$ 2,127,000; the trial judge awarded \$ 25,000. The trial judge stated in his written judgment that the court was not bound by Smith's calculations, noting that Smith's testimony was no more helpful than the testimony of a physician who stated that an injured person suffers pain more greatly than does the general public.

(23) *Talle v. Nebraska Department of Social Services*, 541 N.W.2d 30 (Neb. 1995). The Nebraska Supreme Court reversed and remanded the trial court decision in part because the trial court judge allowed Dr. Stan V. Smith to testify about hedonic damages in this personal injury action. The Court said:

The department's final claim is that the district court erred in receiving the testimony of Stan Smith, an economist who established a formula for calculating the value of lost enjoyment of life. Smith is the same economist whose testimony on the value of lost enjoyment of life was held inadmissible in *Anderson/Couvillon*. In that case, we held that the three models on which Smith bases his formula for calculating the value of lost enjoyment of life were flawed in one way or another and that his testimony failed to satisfy Neb. Evid. R. 702, *Neb. Rev. Stat. § 27-702* (Reissue 1989). As his testimony and the models on which he bases his formula were substantially the same in this case as they were in *Anderson/Couvillon*, the district court erred in admitting his testimony.

(24) *Estate of Sinthasomphone v. City of Milwaukee*, 878 F.Supp. 147 (E.D. WI 1995). This decision rejected hedonic damage testimony by Stan V. Smith for the following reason:.

The problem with Mr. Smith's testimony is that he is attempting to quantify something which cannot truly be determined: what is the value of a human life? He rests his determination on a number of studies which are in themselves grounded in the science of economics--which, in the first place, is not quite like

physics. Does this mean that his testimony will not assist the jury or will mislead them? I am not, at this point, convinced of that. His testimony may conceivably be useful for the jury to have some starting point in their attempt to place a value on life. On the other hand, his testimony may be the kind of "junk" that should not be heard in court of law. At trial, after a short offer of proof as to the nature of the testimony, I will make a final decision on whether this evidence can be presented. The plaintiffs may not make any reference to it in opening statement.

(25) *Chustz v. J.B. Hunt Trans.*, 659 So. 2d 784 (LA App. 1995). The Court's entire opinion was:

WRIT GRANTED. The trial court's ruling allowing Dr. *Stan Smith* to testify regarding "*hedonic* damages" is vacated and relators' motion to exclude the testimony of Dr. Smith regarding "*hedonic* damages" hereby is granted. *Foster v. Trafalgar Oil and Gas*, 603 So. 2d 284 (La. App. 2d Cir. 1992)

1996

(26) *Kurncz v. Honda Motor Company, Ltd., et al.*, 166 F.R.D. 386; 1996 U.S. Dist. Lexis 6132 (W.D.Mich.1996). A motion in limine was granted to preclude the hedonic damage testimony of Stan V. Smith. The decision of Chief Judge Richard Alan Enslin extensively cited *Ayers v. Robinson*, 887 F. Supp. 1049 (N.D.Ill. 1995) and other legal decisions excluding hedonic damages, and said in this personal injury case that:

The loss or denial of hedonic, or enjoyment of life, values is compensable under Michigan law. The Court will so instruct the jury. But, the Court concludes that the balance of the applicable factors weigh against finding Mr. Smith's "willingness to pay" testimony is reliable and helpful within the meaning of *Daubert* and *Fed. R. Evid. 702*. While it may be sufficient science for passing regulations, It is poor science for the courtroom. Even if the evidence were not to be analyzed under *Rule 702*, it would fail *Rule 403*.

1997

(27) *Crespo v. City of Chicago*, 1997 U.S. Dist. LEXIS 12820 (N.D. IL 1997). U. S. District Court Judge Charles P. Kocoras Rejected hedonic damage testimony by Stan V. Smith, saying:

[L]ike Judge Shadur, we are unconvinced that the [hedonic damage] theory is helpful to the jury. We presently are of the opinion that the jury is able to decide for itself, without the assistance of an economics expert, the value that our society places on a human life. Therefore, we will presently grant the motion to bar the testimony on *hedonic* damages. The plaintiffs have argued that they should be

allowed to make an offer of proof at trial on the issue of *hedonic* damages. We will allow them to do so, and to move that we reconsider this decision at that time.

(28) *Smith v. Ingersoll-Rand*, 1997 U.S. Dist. LEXIS 23443 (D.N.M. 1997); aff'd 214 F.3d 1235 (2000). The Court said that Stan V. Smith was correctly admitted to explain the concept of hedonic damages based on New Mexico law, but without providing specific calculations for the plaintiff.

(29) *Brereton v. United States*, 973 F. Supp. 752 (E.D. MI 1997). Dr. Stan V. Smith was excluded from testifying about hedonic damages in a wrongful death action governed by Michigan law. The Court said:

Plaintiffs seek to admit Mr. Smith's testimony to assist the factfinder in placing a value upon the survivors' loss of society and companionship caused by the death of Albert Brereton. Mr. Smith has calculated the value of Albert Brereton's life based upon his expected life-span, a statistical individual's willingness to pay for safety, to endure on-the-job safety risks, and the costs of government health and safety regulations. *See* Stan V. Smith letter to Robert G. Lewendowski, dated Dec. 19, 1996; Government's supplemental brief at exh. A. Mr. Smith asserts that this value of life --or the value of preserving the ability to live a normal life-- "is also a measure of the value placed on the loss of relationship or society and companionship." *Id.* Thus, not only is the statistically-calculated value of life a measure of hedonic value to an individual, it also is an estimate of the value of that individual's relationship to his survivors. *Id.* at 3. I find, however, that even if one were to accept Mr. Smith's testimony as producing a scientifically reliable value of the decedent's life, the conclusion that this same figure provides a value of that person's relationship to his or her survivors is unfounded.

(30) *Scharrel v. Wal-Mart Stores, Inc*, 949 P.2d 89 (CO. App. 1997). Cert. denied by Colo. Supreme Court. Hedonic damage testimony by Stan V. Smith was improperly admitted at the trial court level.

1998

(31) *Loth v. Truck-a-way Corporation*, 60 Cal. App. 4th 757 (CA App.1998). This decision held that the hedonic damages testimony of Stan V. Smith was not admissible because:

A plaintiff's loss of enjoyment of life is not 'a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact[.]' No amount of expert testimony on the value of life could possibly help a jury decide that difficult question. A life is not a stock, car, home, or other such item bought and sold in some marketplace. Smith's impersonal method of valuing life assumes that for the most part, all lives have the same basic value. That has democratic appeal, but Smith used no democratic process in reaching that

conclusion or selecting which benchmark figures to consider in setting the baseline figure. There is no statute Smith could have turned to for guidance. Our legislature has not decreed that all injured plaintiffs of the same age and with the same degree of disability should recover the same hedonic damages; nor has it assigned set values in referring to the amounts of jury verdicts in other cases. (Citations omitted). Because counsel may not ask the jury to give the same amount of damages in another case, it would be inconsistent to permit an expert witness to do so.

(32) *Lewis v. Alfa Laval Separation*, 128 Ohio App. 3d 200; 714 N.E.2d 426 (OH App. 1998). This decision affirmed the trial court's decision to allow the hedonic damages testimony of Dr. Michael Bookshire as falling within the "shaky but admissible" prong of *Daubert v. Merrell Dow Pharmaceuticals* (1993). Dr. Stan Smith was mentioned in the decision in reference to his co-authorship with Dr. Brookshire of *Economic/Hedonic Damages: The Practice Book for Plaintiff and Defense Attorneys* (1990) and in the context of similarities between method used for hedonic damages testimony by Drs. Brookshire and Smith. Judges on the Ohio Court of Appeals indicated that they would not have admitted hedonic damages testimony by Dr. Brookshire.

1999

(33) *K.M. Leising, Inc. et al. v. Butler*, 1999 Miss.App. Lexis 591 (1999). The majority ruled as follows:

Stan Smith, the *hedonic* damages expert, did not testify as to any precise damage figures. Instead, he testified concerning the methodology used by economists in the field of hedonics and showed how the methodology may be used by a fact-finder in attempting to assess loss of enjoyment of life damages. For example, he testified that if the fact-finder, using the methodology discussed, determined in this case that Butler had a 50% loss of enjoyment of life, the amount of damages would be \$ 683,203 or if the fact-finder determined that Butler had a 66% loss of enjoyment of life, the amount of damages would be \$ 910,932, and a 57% loss of enjoyment of life, the amount of damages would be \$ 778,851. He was careful to state that he could not say and was not saying what percentage of loss of enjoyment of life Butler had suffered. He also made clear that the figures were just illustrative.

From the dissent of C. J. McMillan:

As I understand the majority's view, there is no real dispute that Smith's evidence ought to have been excluded. The majority simply takes the position that the error in admitting Smith's testimony was harmless. . . I cannot agree that Smith's testimony can be brushed aside as harmless evidentiary clutter in the record of an otherwise acceptable trial.

(34) *Saia v. Sears Roebuck and Co.*, 47 F.Supp. 2d 141 (D. MA.1999). Hedonic damages testimony by Stan V. Smith was not allowed. The Court said:

In support of its opposition to Defendants' motion in limine, Plaintiffs point to a significant number of cases in which Dr. Smith claims to have testified with respect to "intangible damages." (*See* Pl. Mem. (Docket No. 41) at Exh. 2.) But numbers do not an argument make. *Cf. Joiner*, 522 U.S. at 146 ("nothing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert."). As a review of the published case law reveals, quite a number of federal decisions have rejected such expert testimony, in particular Dr. Smith's testimony. The court's own *Daubert/Kumho* analysis of the present record -- detailed below -- convinces the court that Dr. Smith's proffered testimony in the instant matter should not get to the jury. The cases specifically cited by Plaintiffs in counterpoint do not convince the court otherwise.

2000

(35) *Smith v. Ingersoll-Rand*, 214 F.3d 1235 (2000). The 10th Circuit described the trial court decision in detail in affirming the trial court decision to allow Stan V. Smith to explain the concept of hedonic damages, but without providing specific calculations for the plaintiff. The 10th Circuit indicated that the trial court had been in error in assuming that *Daubert v. Merrell Dow Pharmaceutical, Inc.*, 509 U.S. 579 (1993) did not apply to Smith's testimony, but that this was not reversible error because Smith had not provided specific numbers in explaining the conceptual meaning of hedonic damages. The 10th Circuit said:

The concept of hedonic damages is premised on what we take to be the rather noncontroversial assumption that the value of an individual's life exceeds the sum of that individual's economic productivity. In other words, one's life is worth more than what one is compensated for one's work. The assumption that life is worth more than the sum of economic productivity leads to the equally noncontroversial conclusion that compensatory awards based solely on lost earnings will under-compensate tort victims. The theory of hedonic damages becomes highly controversial when one attempts to monetize that portion of the value of life which is not captured by measures of economic productivity. Attempts to quantify the value of human life have met considerable criticism in the literature of economics as well as in the federal court system. Troubled by the disparity of results in published value-of-life studies and skeptical of their underlying methodology, the federal courts which have considered expert testimony on hedonic damages in wake of *Daubert* have unanimously held quantifications of such damages inadmissible. . . Here, Stan Smith only testified to the definition of loss of enjoyment of life, which he described as 'an estimate of the value of a person's being for enjoyment of life as opposed to the value of a person's doing or their economic productive capacity, whether it's in the

marketplace, in the business, or in the household as a service.’ . . . As the district court correctly noted, New Mexico state law permits both recover of hedonic damages and allows ‘an economist to testify regarding his or her opinion concerning the economic value of a plaintiff’s loss of enjoyment of life. . . . The district court also made an appropriate decision regarding reliability, excluding the quantification which has troubled both courts and academics, but allowing an explanation adequate to insure the jury did not ignore a component of damages allowable under state law.

2001

(36) **Christofferson v. City of Great Falls*, 2001 ML 2326; 2001 Mont. Dist. LEXIS 3560. (Mont. Dist. 2001). This is an order of Judge Kenneth Neill granting a motion in limine barring the hedonic damages testimony of Dr. Stan V. Smith after a Daubert hearing, with specific considerations of: (A) Testability; (B) Peer Review; (C) Potential Rate of Error; and (D) Degree of Acceptance. Under “Testability,” the Court said:

Dr. Ireland testified that the methodology could not be tested. Dr. Smith admitted only that the underlying studies . . . could or had been tested. Dr. Ireland further pointed out that while many of the predictions of economists in damages testimony can be validated in retrospect if not otherwise (for example, predicted rates of inflation, salary escalations, etc.), no such retrospective validation is possible with hedonic damages.

Under “Peer Review,” the Court said: “Publication . . . does not equate to peer review.” Under “Potential Rate of Error,” the Court cited *Hein v. Merck & Co*, 868 F. Supp. 230 (M.D. Tenn. 1994) in saying that “Expert valuation in hedonic damages has been roundly criticized for the wide variation reached by various experts in calculating values of an anonymous life, from for example \$100,000 to \$12,000.” Under “Degree of Acceptance,” the Court said:

Dr. Ireland cites to a 1999 survey of forensic economists in which only 25% indicated they were willing to consider presenting hedonic damage testimony and 75% would not. . . . Certainly a cottage industry has sprung up around this theory of hedonic damages in which numerous forensic economists are willing to come forward and testify for one side or the other. Any time there is a market for a particular type of expert testimony as there clearly is here, one should not be surprised that there will be experts ready to avail themselves of that market. A review of the cases and literature cited in the cases reveals that there is anything but a professional consensus that Dr. Smith’s theory is valid.

The Court also concluded that hedonic damages testimony failed a separate “relevance” test based on the fact that purchases of smoke detectors were not relevant to measure the quality of someone’s life.

(37) *Kansas City Southern Railway Company, Inc. v. Johnson*, 798 So.2d 374 (MS 2001). The trial court judge had admitted the hedonic damages testimony of Stan V. Smith. This decision held that hedonic damage testimony in a personal injury case could be admitted at the discretion of the trial court judge and affirmed the trial court. This decision was later rendered obsolete by passage of legislation to specifically preclude hedonic damages testimony by an economic expert

2002

(38) *Buxbaum v. Trustees of Indiana University*, 2002 ML 2937; 2002 Mont. Dist. LEXIS 3141 (Mt Dist. 2002). A motion to exclude the testimony of Stan Smith on hedonic damages was granted.

(39) *Davis v. Rocor International*, 226 F.Supp.2d 839 (S.D.Miss. 2002). A *Daubert* standard was applied to the proffered expert testimony of Dr. Stan Smith in several areas. The hedonic damages testimony of Stan Smith was rejected on the grounds of not assisting the trier of fact to understand or determine an issue in this case. The loss of society testimony of Stan Smith was rejected on the basis of lack of evidence showing loss of society based on percentages in this personal injury action and on the basis that Smith, as an economist, has not been shown to be qualified as an expert with respect to relationship values. The loss of household services testimony of Stan Smith, projected on the basis of 40 percent, was rejected because there was no showing that Smith, as an economist, is independently qualified to make that determination and that Plaintiffs had not shown that Smith's opinion would assist the trier of fact in understanding the evidence presented at trial.

(40) *Anderson v. Hale*, 2002 U.S. Dist. LEXIS 28281 (W.D. Ok. 2002). This decision excluded the hedonic damages testimony of Dr. James Horrell, but allowed Horrell to testify about earning capacity and lost services. Plaintiffs had relied upon the decision in *Smith v. Ingersoll-Rand*, 214 F.3d 1235 (10th Cir. 2000) in arguing that Horrell's testimony was admissible. The Court held that *Smith v. Ingersoll-Rand* was not relevant because that decision involved issues in New Mexico law that were not relevant in Oklahoma. The Court said:

In *Smith v. Ingersoll-Rand*, the district court was called upon to rule on the admissibility of the proposed expert testimony of *Stan Smith*, the reputed father of the theory of hedonic damages. The district court excluded Smith's testimony purporting to quantify hedonic damages but did allow Mr. Smith to testify "about the meaning of hedonic damages." *Smith*, at 1244. It is unmistakably clear from the Tenth Circuit's opinion, affirming the judgment of the district court, that the indispensable predicate for the admission of *Stan Smith's* testimony about the meaning of hedonic damages was that "hedonic damages are explicitly allowed under New Mexico law" *Id.*

2003

(41) **Wilson v. Sundstrand Corporation*, 2003 U.S. Dist. LEXIS 4 (N.D. IL 2003). This order denied a defense motion to strike the testimony of Dr. Stan V. Smith on behalf of the plaintiffs. The action was a 1929 Warsaw Convention action involving an airplane crash in Indonesia that had killed 26 passengers, none of whom was American. By the deadline for expert reports, Smith had provided a full report for only one of the 26 decedents, none of whom was an American. The primary basis for the motion to exclude Smith's testimony was the failure of the plaintiffs to provide full reports by the disclosure deadline. Smith's calculations included a variety of damage elements, including loss of enjoyment of life (hedonic damages). Judge Kennelly held that this was inadequate and that complete reports should be filed for all decedents. Judge Kennelly sanctioned plaintiff attorneys with a fine and set the trial date further in the future, but did not exclude Smith on that basis. Judge Kennelly said:

Smith's original report regarding one of the deceased passengers adequately explained Smith's opinions, the basis for those opinions, and his reasoning, and plaintiffs state without contradiction that the supplemental reports for the other twenty-five follow a similar format. The apparent flaws exposed by Sunstrand may provide ample ammunition for cross examination of Smith, and they conceivably provide a basis for challenging some or all of his testimony via a motion in limine, but they are not of sufficient magnitude to warrant striking the original or supplemental reports or barring Smith from testifying at trial..

2004

(42) **Durham v. Marberry*, 356 Ark. 481; 156 S.W.3d 242 (Ark. 2004). The Arkansas Supreme Court held that a 2001 Arkansas survival action Ark. Code Ann. § 16-62-101 (Supp. 2003) created a new element of damages in circumstances of wrongful death called "loss of life" and that an injured plaintiff did not have to have survived beyond the fatal injury to have the right to recover this loss element. The Court indicated that "loss of life" and "loss of enjoyment of life" are different elements even though "both are hedonic." Regarding economic experts, the court said:

Though the appellants do not argue this point on appeal, the appellees have noted that the appellants retained an economist to provide expert testimony about loss-of-life damages. This expert testimony was the subject of a motion in limine filed by the appellees, requesting that the expert testimony be excluded. However, the trial court did not reach the issue of the motion in limine because it granted summary judgment on the claim for loss-of-life damages. In a case decided three decades ago by this court, we determined that there is no hard and fast rule to determine compensatory damages for non-pecuniary losses:

"No rule has been established - and in the nature of things none can be - for determining what compensation should be paid for loss of life, for pain and suffering, for loss or decrease of earning power, for mental anguish accompanied by physical injury, for loss of

companionship, and for the various elements entering into damage actions.”
 Clark & Sons v. Elliott, 251 Ark. 853, 857, 475 S.W.2d 514, 517 (1972). While we do agree with the appellees that the determination of damages is within the purview of the jury, without a trial court ruling or order before us on the issue of expert testimony, this issue is not ripe for consideration.

[Although not named in the decision, Stan V. Smith was the plaintiff expert proffering value-of-life damages and Thomas R. Ireland was the defense expert opposing such testimony.]

2005

(43) **Dorn v. Burlington Northern Santa Fe Railroad Company*, 2005 U.S. App. 1887 (9th Cir. 2005). This was an appeal of a wrongful death decision under Montana law, not an FELA action. The trial court judge had permitted Stan V. Smith to present hedonic damages testimony, but had not allowed Thomas R. Ireland to testify in opposition to the validity of hedonic damages testimony. As one a number of errors that resulted in a reversal of the trial court decision, the 9th Circuit held that it was in error for the trial court not to have admitted Ireland’s testimony. The 9th Circuit evaluated Montana’s position on hedonic damages and the admissibility of expert testimony on hedonic damages as ambiguous and therefore did not hold that the admission of Smith’s hedonic damages testimony was reversible error. It did, however, express concerns about the validity of that testimony.

(44) *Scheck v. Dalcorsio*, 2005 N.J. Super. Unpub. LEXIS 178; 2005 WL 3543177 (N.J. Super. 2005). The New Jersey Superior court remanded the decision to the trial court on other grounds, but required that the trial court judge conduct an *N.J.R.E. 104* hearing regarding whether the hedonic damages testimony was admissible. Smith had been excluded from testifying at the original trial. The Superior Court provided lists of decisions favoring and opposing hedonic damages testimony as part of its decision.

(45) *Bolden v. AMTRAK*, 2005 U.S. Dist. LEXIS 52805 (E.D. LA 2005). In response to defendant’s motion in limine in a wrongful death action, Dr. Stan V. Smith was excluded from testifying about loss of enjoyment of life, loss of household services, and loss of society and relationship. Smith’s excluded testimony for loss of household services included ordinary household services, advice and counsel services, and companionship services.

(46) *Lewis v. City of Chicago*, 2005 U.S. Dist. LEXIS 63709; 2005 WL 8178978 (N.D. IL 2005). The court said:

The individual defendants move to bar or limit Lewis' expert economist, Stan Smith, from testifying regarding losses attributable to: (a) lost wages and employee benefits, (b) replacement services, such as advice, counsel, guidance and instruction, (c) enjoyment of life, and (d) society or relationship . . . Lewis concedes the motion with respect to Smith's opinions about loss of advice, counsel, guidance and instruction, loss of accompaniment

services, loss of value of life, and loss of society or relationship. . . . Lewis' concession is not surprising given the number of courts that have excluded testimony in these categories. See, e.g., *Mercado v. Ahmed*, 974 F.2d 863 (7th Cir. 1992); *Ayers v. Robinson*, 887 F. Supp. 1049 (N.D. Ill. 1995) *Doe v. Tag, Inc.*, 1993 U.S. Dist. LEXIS 16356, at *7-9 (N.D. Ill. Nov. 16, 1993); *Saia v. Sears Roebuck & Co., Inc.*, 47 F. Supp. 2d 141 (D. Mass. 1999). Accordingly, the motion *in limine* is granted with respect to Smith's testimony relating to loss of advice, counsel, guidance and instruction, loss of accompaniment services, loss of value of life and loss of society or relationship.

2006

(47) *Santillan v. Schaafsma*, 2006 U.S. Dist. LEXIS 108851 (C.D. IL 2006). This decision extensively cited *Ayers v. Robinson*, 887 F. Supp, 1049 (1995) in excluding the hedonic damages testimony of Dr. Stan V. Smith. This decision also provides a good review of decisions for and against the admission of hedonic damages testimony as of 2006.

2007

(48) *McCloud v. Goodyear Dunlop Tires N. Am., Ltd.*, 2007 U.S. Dist. LEXIS 1501, (C.D. IL 2007). The Court ruled:

Defendant has brought a Renewed Motion to Strike the Second Expert Report of Stan Smith - Plaintiff's expert on the issue of hedonic damages. Plaintiff does not oppose the merits of the Motion since Plaintiff is no longer pursuing hedonic damages. Accordingly, Defendant's Motion is GRANTED.

(49) *McMullin v. United States*, 515 F. Supp. 2d 914 (E.D. Ark. 2007). This is a judicial ruling in a Federal Tort Claims Act (FTCA) case involving a medical malpractice wrongful death action. An economist was apparently not involved in this case. Judge Eisele held that the Arkansas Survival Action statute applies to medical malpractice in spite of some controversy in the Arkansas Courts about whether the Arkansas Medical Malpractice Act changed this application. This meant that Judge Eisele had to make an award under Ark. Code. Ann. § 16-62-101(b), which says: "In addition to all other elements of damages provided by law, a decedent's estate may recover for the decedent's loss of life as an independent element of damage (as modified in 2001)." Judge Eisele reviewed the decision in *Durham v. Marberry*, 356 Ark, 481 (2004) which is the only appellate interpretation of the 2001 addition to the Survival Act. He found no guidance in that decision. He indicated that he had found two U.S. District Court decisions in which interpretations of this section were made. In one of the two, the judge awarded \$400,000, but spoke of the vagueness of the new statutory language. In the other, the judge had permitted the testimony of Dr. Stan V. Smith, but that judge did not find Smith's testimony "persuasive" and awarded amounts of \$81,068.91 and \$71,463.91. Judge Eisele also discussed a 2006 Note by Ali M. Brady, "The Measure of Life: Determining the Value of Lost Years after *Durham v. Marberry*," 59 Ark. L. Rev. 125 at some length. After extensive

discussion, Judge Eisele awarded \$600,000 for loss-of-life damages.

2008

(50) *Richman v. Burgeson*, 2008 U. S. Dist. LEXIS 48349 (N.D. Ill. 2008). This was a memorandum by Judge Joan B. Gottschall ruling on a number of motions in limine, including one to exclude the hedonic damages testimony of Stan V. Smith, Ph.D. The motion with respect to Dr. Smith was granted in part and denied in part in a wrongful death case under Section § 1983 of the federal Civil Rights Act. The judge held that Dr. Smith could testify about the concept of the value of life, but could not give dollar values which, the judge held, were not sufficient reliable or helpful to a jury. Dr. Smith was permitted to opine “that ascertaining the value of life requires consideration of Jack Richman’s leadership role in his community, his love of music, and his environmental activism.”

(51) **Slater v. Jelinek*, 2008 U.S. Dist. LEXIS 136270 (D. NE 2008). By agreement of the parties in this case, loss of guidance services, loss of enjoyment of life and loss of society and relationship calculations of Dr. Stan V. Smith were excluded by senior judge Lyle E. Strom.

2009

(52) *Garner v. United States*, 2009 U.S. Dist. LEXIS 16350 (E.D. Ark. 2009). This order interpreted Tennessee law as not allowing an award for the lost enjoyment of life in a wrongful death action and therefore excluded the direct hedonic damages portion of the economic expert report of Dr. Stan V. Smith, but did not exclude his values for lost consortium, holding that Tennessee law allowed for such damages to be awarded to survivors.

(53) *Lee v. Overbey*, 2009 U.S. Dist. LEXIS 138766 (W.D. AR 2009). Federal Judge Robert T. Dawson had allowed Dr. Stan V. Smith to testify about loss-of-life damages and Dr. Gary Skoog had been proffered by defense as a rebuttal witness. The Plaintiff moved to exclude Skoog’s testimony. Judge Dawson interpreted Dr. Skoog’s report and deposition testimony to have argued that “it is improper to utilize loss-of-life damages as compensation in litigation.” Judge Dawson granted Plaintiff’s motion to preclude Skoog from expressing his opinions regarding whether loss-of-life damages should be recoverable under Arkansas law, but allowed Skoog to testify in opposition to the methodology used by Smith to arrive at loss-of-life damages. Note: This memorandum was apparently published the first time on LEXIS in February of 2018.

2010

(54) *Estate of Shearer v. T & W. Tool and Die Corporation*, 2010 WL 2870266; 2010 U.S. Dist. LEXIS 73197 (E.D.KY 2010). The Court held that the hedonic damages testimony and loss of relationship testimony of economic expert Dr. Stan V. Smith was not admissible under Federal Rule 702 and *Daubert* Standards. The reason given for non-admissibility, however, was that there is no right to recover for loss of enjoyment of life or loss of relationship in a Kentucky

wrongful death action. Thus, Smith's testimony was precluded as irrelevant to the issues to be resolved in litigation. There was no assessment of the scientific merits of hedonic damages testimony.

2011

(55) *Smith v. Jenkins*, 2011 U.S. Dist. LEXIS 47742 (D. MA 2011). In a case involving a claim of fraud, defendant's appealed partly based on the basis that economic testimony by Stan V. Smith should not have been excluded. The court said:

Smith's damages were based solely on the expert testimony of Dr. Stanley Smith, a forensic economist (who is not related to the plaintiff), which defendants argue should not have been admitted. It is true that Dr. Smith's testimony was hardly a model of exactitude, and in retrospect, it perhaps should have been excluded, but it is equally true that from every appearance, the jury did not base its damages award on those portions of Dr. Smith's relatively brief testimony that veered from the mundane into the purely speculative. (The court instructed the jury to disregard Dr. Smith's attempt to import a wholly conjectural potential tax liability into his "willingness to pay" econometric model and refused to admit his written report in evidence). It appears rather that the jury based its far less ambitious awards against those defendants it found liable on a common-sense assessment of the impact that the ruin of Smith's credit had (and will have) on his emotional health and future earning prospects. . .

As the court is of the view that Dr. Smith's testimony (to the extent the jury was permitted to consider it) had no pernicious influence on the damages award, it will reject this argument.

(56) *Anastasion v. Credit Service of Logan, Inc.*, 2011 U.S. Dist. LEXIS 116271 (D. UT 2011). The Court granted a motion in limine to exclude the hedonic damages testimony of Stan V. Smith in a credit loss case involving no physical injury. The Court said:

[W]ith respect to Dr. Smith's testimony regarding reduction in the value of Plaintiff's life, or hedonic damages, the Court will grant Defendant's Motion. Plaintiff argues in her Reply that this evidence should be admissible, arguing that Dr. Smith is extremely qualified, that his testimony is based on reliable economic and scientific methods, and that it has received extensive peer review and acceptance. Plaintiff further states that hedonic damages are "used by every federal regulatory agency." However convincing these arguments may be, they do not change the fact that hedonic damages are used to approximate the loss of the value of life, and therefore are used in cases involving death or injury. As Plaintiff herself states, when "every federal regulatory agency" uses hedonic damages, it is "in analyzing the potential impact to life or limb." Furthermore, the three Tenth

Circuit cases that have mentioned hedonic damages all involve either physical injury or loss of life. As Plaintiff has not suffered the loss of life or limb, testimony regarding hedonic damages will not assist the trier of fact. Therefore, the Court will grant Defendant's Motion with respect to this testimony. (Footnotes omitted.)

2012

(57) *Bailey v. Nyloncraft, Inc.*, 2012 U.S. Dist. LEXIS 122120 (E.D. MI 2012). Judge George Caram Steeh granted defendant's Daubert motion in limine to exclude the "loss of society" testimony of Stan V. Smith, pointing out that "plaintiffs do not cite a single published opinion in which Smith's loss of society/companionship testimony has been admitted over a Daubert challenge." The decision reviews claims made by the plaintiffs in favor of hedonic damages testimony, including 19 affidavits from economists "that purportedly reflect a general consensus in the relevant community that evaluation of loss of society damages can be ascertained with a reasonable degree of scientific certainty." The judge added that:

[M]any of the affidavits do not address the use of 'value of life' figures to calculate the value of loss of society damages, many are duplicates and some are from Stan Smith himself. These affidavits do not negate the economists' responses in a 2009 survey in the *Journal of Forensic Economics* which asked economists if they would be willing to calculate hedonic damages in an injury case. Of the economists who responded, 83.6% responded because such damages 'are far too speculative to quantify' and '[t]his should be left up to the trier of fact.'

Judge Steeh concluded that: "Smith's testimony concerning loss of society damages is inadmissible because it is irrelevant and unreliable."

(58) *Bolden v. Walsh Group*, 2012 U.S. Dist. LEXIS 44351 (N.D. IL 2012). This was a putative class action filed by twelve black employees. U.S. District Judge Joan Humphrey Lefkow limited the testimony of Dr. Stan V. Smith regarding his class damages calculations and excluded Smith's hedonic damages projections entirely, saying:

Walsh objects to Smith's calculation of hedonic damages, which Smith describes as the damages attributable to the class members' "loss of enjoyment of life" as a result of Walsh's discriminatory employment practices. His method is based on a "willingness to pay" model for calculating the value of a life, which looks at consumer purchases, wage risk premiums, and regulatory cost-benefit analysis to determine a value that society places on an individual human life. (Smith Rep't, App'x E at 1.) Smith concludes that the statistical value of a human life is \$4.2 million and estimates that black Walsh employees would sustain a 10 percent loss of enjoyment of life as a result of racial discrimination. (Id. at 2.) In support, Smith cites an article that describes a conceptual approach for

applying estimates of the loss of the pleasure in life (referred to as hedonic damages) in personal injury cases. See Edward P. Berla, Michael L. Brookshshire & Stan V. Smith, Hedonic Damages and Personal Injury: A Conceptual Approach, J. of Forensic Economics, Vol. 3, No. 1, pp. 1-8 (1990). As Smith admitted in his deposition, however, he is aware of no studies that apply hedonic damages in the context of a hostile work environment or otherwise discriminatory environment. (Smith Dep. at 173-74.) His estimate of a 10 percent loss in enjoyment of life is an assumption that is not subject to any scientific testing, and the estimate may vary depending upon the fact-finder's determination of individualized damages. (Id.; Smith Rebuttal Rep't at 18-19.) Plaintiffs have cited no case or peer-reviewed article where hedonic damages were used to determine the "loss of enjoyment of life" that results from employment discrimination. Smith's calculation of hedonic damages will be excluded.

2013

(59) **Allen v. Bank of America*, 2013 U.S. Dist. LEXIS 37815 (D. Md. 2013). This case had to do with alleged bank violations of provisions of state and federal law in the provision of mortgage servicing and mortgage payment services to the Allens. Plaintiffs offered Stan Smith as an economic expert to testify about hedonic damages and loss of credit expectancy by the Allens. Judge Catherine Black granted a defense motion to exclude Smith's testimony on hedonic damages, but reserved judgment regarding his credit expectancy calculations. She said:

BANA has moved to exclude all of the testimony of the Allens' designated damages expert, Stan V. Smith, asserting that he is unqualified to offer his proposed expert opinions and that the opinions themselves are irrelevant and unreliable. The Allens seek to offer his testimony on two types of damages they allegedly suffered because of BANA's actions: loss of credit expectancy and "hedonic damages" (also known as "loss of enjoyment of life"). The Allens, in turn, have moved to exclude the expert BANA seeks to offer to rebut Smith's testimony. For the reasons set forth below, Smith's testimony on "hedonic damages" will be excluded (as will any testimony by BANA's expert rebutting as much), but the parties' motions will otherwise be denied without prejudice as the relevance and reliability of their expert opinions on the Allens' credit expectancy is an issue for trial.

BANA's argument seeking to exclude Smith's testimony on "hedonic damages" largely focuses on Smith's qualifications and the reliability of his opinions on this issue. Setting aside the question of Smith's credentials and methods, which raise significant doubts about his proposed expert opinions, the court finds that any testimony on so-called "loss of enjoyment of life" or "hedonic damages" would not "help the trier of fact to understand the evidence or determine a fact in issue" as required by Fed. R. Evid. 702(a). See, e.g., *Mercado v. Ahmed*, 974 F.2d 863, 870-71 (7th Cir. 1992). While the Allens are correct that they may seek "noneconomic damages" for emotional injuries they suffered because of BANA's

actions, (citations deleted) a jury is perfectly capable of determining such damages without any expert testimony (citations deleted). The court is not convinced that an expert whose opinion is based almost entirely on asking lay persons how a particular event has affected their enjoyment of life would provide any assistance to the jury in making that determination for themselves. Accordingly, BANA's motion to exclude testimony on this topic will be granted.

(60) *Case v. Town of Cicero*, 2013 U.S. Dist. LEXIS 148656 (N.D. IL 2013). Item H in this memorandum concerned the admissibility of hedonic damage testimony by Stan V. Smith in this personal injury claim. Magistrate Judge Daniel G. Martin limited Smith's testimony as follows:

Smith may explain what hedonic damages mean and the general factors that are ordinarily considered part of such damages. No dollar amount may be cited, nor may Smith propose any methodology by which the jury could calculate Nicholas' hedonic damages. This testimony will help the jury carry out its fact-finding function to determine an appropriate amount of damages.

(61) *Smith v. Dorchester Real Estate, Inc.*, 2013 U.S. App. LEXIS 20785 (1st Cir. 2013). In an appeal from a federal district court in Massachusetts, the 1st Circuit held that it was reversible error for the trial court to have admitted the hedonic damage and loss of credit expectancy testimony of Stan V. Smith (not the plaintiff). The 1st Circuit also remanded to the trial court a consideration of Dr. Smith's loss of time calculations. The decision provided extensive explanation of the methods used by Smith for each of Smith's calculations, with extensive citations of previous decisions disallowing Smith's hedonic damages testimony. The court also rejected Smith's method for calculating the value of lost credit expectancy as a mere possibility and unhelpful to a jury, saying: "Absent evidence to the contrary, Smith's loss of future credit expectancy at the rate calculated by Dr. Smith was merely in the realm of possible harm. As such, it was speculative and should have been excluded." The court went on to stress that loss of credit expectancy was a compensable harm if properly calculated.

(62) *Johnson v. Redd*, 2013 N.J. Super. Unpub. LEXIS 2739 (N.J. Super. 2013). This opinion provides written explanation for the granting of a defense motion to exclude the hedonic damages testimony of Dr. Stanley V. Smith in a personal injury action. Smith was permitted to testify as to the plaintiff's lost wages and household expenses. The court cited *Scheck v. Dalcorso*, 2005 N.J. Super Unpub. LEXIS 178 (NJ Super 2005) as the only previous New Jersey decision with respect to hedonic damages. Smith had also been excluded in that decision. The decision reviewed the "willingness to pay" (WTP) approach in some detail as well as Smith's method for using WTP studies and extensively cited *Smith v. Dorchester Real Estate, Inc.*, 2013 U.S. App. LEXIS 20785 (1st Cir. Oct. 15, 2013) in holding that Smith's testimony did not meet the requirement of New Jersey's Frye standard. The court also held that Smith's "impairment ratings" of 40% and 80% were arbitrary and therefore unreliable.

(63) *Carrillo v. Las Vegas Metro. Police Dep't*, 2013 U.S. Dist. LEXIS 114781 (D. NV 2013). A

motion by plaintiff to reopen discovery to admit the hedonic damages testimony of Dr. Stan V. Smith was denied.

2014

(64) *Farring v. Hartford Fire Insurance Company*, 2014 U.S. Dist. LEXIS 33488 (D. NV). This two page order of Judge James C. Mahan denied a defense motion limine to exclude the hedonic damages testimony of Stan V. Smith under the standards of Daubert and Kumho. No mention was made in this order of prior federal court decisions to exclude hedonic damages testimony. Judge Mahan stated that because the “willingness to pay” literature “determines conclusions through observations of large amounts of data, its reliability is not in doubt.” The judge also said that: “Dr. Smith’s work has been published in countless peer-reviewed academic journals, and that the particular theories he uses in this case are included in textbooks relied upon by numerous universities across the country. While some economists disagree with Dr. Smith’s conclusions, his methodology has a strong following in the field.” This is the first federal court decision in a case reported by LEXIS that has allowed hedonic damages testimony under a Daubert standard.

(65) *Stokes v. John Deere Seeding Group*, 2014 U.S. Dist. LEXIS 21725 (C.D. IL 2014). This decision of Judge Sara Darrow excluded the hedonic damages testimony of Stan Smith. Her decision extensively discussed the Value of Statistical Life (VSL) literature, the method used by Stan Smith to derive his hedonic measures from the VSL literature, and makes it clear that the judge does not consider Smith’s methodology to be reliable. She said: “There is no basis, scientific or otherwise, for asserting that the only components of life’s value are economic productivity and enjoyment.” She also cited Michael L. Brookshire, et al, “A 2009 Survey of Forensic Economists: Their Methods, Estimates, and Perspectives,” 21 J. Forensic Econ. 5 (2009) to indicate that the hedonic damage approach of Smith has not been shown to be “generally accepted within the scientific community,” indicating that 83.8% of 173 respondents would refuse to calculate loss of enjoyment of life in an injury case and 82.2% of 174 respondents would critique a calculation of hedonic damages. She pointed out that while the survey was voluntary,

[T]he overwhelming negative response must least raise strong doubts as to whether Dr. Smith’s methodology can be termed ‘generally accepted.’ For this reason and because Dr. Smith’s method relies on unfalsifiable and unsubstantiated inferences, as described, it is unreliable.

Judge Darrow went on to deny a request from the plaintiff that, should court exclude Dr. Smith’s testimony on the plaintiff’s personal hedonic damages calculations, Smith would still be permitted to “explain the concept” of hedonic damages. She said:

The only sufficient testimony Dr. Smith could provide covers matters already “obvious to the layperson” . . . A jury has no need for an expert to make the banal observation that the value of life exceeds a person’s economic productivity.

(66) *Laetz v. Hyundai Motor America*, 2014 WL 12768503 (W.D. MI 2014). U.S. District Judge Janet F. Neff excluded non-economic damages opinions of Dr. Stan V. Smith, plaintiff's economic expert, saying:

Smith, as an economist, may testify concerning calculations of loss of income and the value of the decedent's services based on Plaintiff's testimony, but Smith may not testify regarding non-economic damages such as for the decedent's loss of loss of life's enjoyment (hedonic damages) or the loss of society and companionship of the decedent's mother or daughter, which is a question for the trier of fact.

2015

(67) *Castrillon v. St. Vincent Hospital and Health Care Ctr.*, 2015 U.S. Dist. LEXIS 69530 (S.D. IN 2015). This memorandum from Judge William T. Lawrence excluded the testimony of Stan V. Smith on both the Plaintiff's hedonic damages and wage loss. With respect to hedonic damages, Judge Lawrence said:

Even assuming Dr. Smith arrives at his "value of life" number in a scientifically reliable way, reducing it by, say, 25 percent would arrive at the value of a life that has been cut short by 25 percent, not at a life that is of the same duration but 25 percent less enjoyable. In order to be useful to the jury, Dr. Smith would have had to start with the value of the enjoyment of the Plaintiff's life but-for the events at issue in this case and then reduce that figure by the percentage of enjoyment she has lost; instead, he started with what he purports to be the overall value of her life. Dr. Smith offers no explanation why he believes the value of a person's life is the same as the value of the enjoyment of a person's life, and, as the First Circuit held [Citing *Smith v. Jenkins*, 732 F.3d 51, 66 (1st Cir. 2013)], "[t]hat Dr. Smith may equate [the two] is not enough to bridge that gap." Accordingly, Dr. Smith's testimony regarding hedonic damages lacks a factual basis and therefore fails to satisfy Rule 702 and will not be admitted. [Footnotes removed from quotation.]

On wage loss, Smith had made speculative assumptions with respect to both the Plaintiff's pre-injury earnings and post-injury earnings that Judge Lawrence rejected, particularly given that the Plaintiff was earning more at present than projected by Smith.

(68) *State ex rel Children, Youth & Families Dep't*, 2015 N.M. App. LEXIS 67 (N.M. App. 2015). This decision is an appeal from sanctions by the Children, Youth and Families Department (CYFD) imposed as a result of "contumacious" refusal to comply orders of the district court. CYFD had made housing arrangements for two children that the district court had specifically forbidden. In determining the amount of sanctions to be imposed, the district court had allowed Stan Smith to present hedonic damages testimony. The Court of Appeals noted that Alberico/Daubert standards did not apply in New Mexico courts to "expert testimony by an economist that is based solely upon experience and training." Thus, the Court of Appeals held

that the district court did not err in not applying the *Alberico/Daubert* standard for scientific reliability of the economist's testimony. The Court of Appeals, however, added that: [T]he basis of Smith's opinions provided rich fodder for cross examination."

(69) *Passmore v. Barrett*, 2015 U.S. Dist. LEXIS 66225, (N.D. IN 2015). This is the denial of a Motion to Bar Opinion Testimony from Stan Smith. Smith initially offered opinions in this wrongful death action about the decedent's "loss of value of life; and loss of society or relationship," which defendants argued were not permitted under Ind. Code § 34-23-1-1. The plaintiff agreed to withdraw those categories, but defendants continued to challenge Smith's testimony on "loss of wages and employee benefits and loss of household/family housekeeping and house management services." The Court agreed with Plaintiffs that those damages are allowed under Ind. Code § 34-23-1-1 and denied the defense motion to exclude Smith's testimony on those damages. The Court indicated that defense could file a motion requesting an extension to retain a damages expert to counter the testimony of Smith.

(70) *Crawford v. Franklin Credit Management*, 2015 WL 13703301 (S.D. N.Y. 2015). This was an order of Federal District Court Judge Kimba M. Wood ruling on motions in limine filed by the defense. One of the challenged experts was Dr. Stan V. Smith, an economist. Judge Wood ruled individually on seven different damage areas: "(1) excess costs; (2) loss of equity; (3) additional interest on car loans; (4) the loss of credit expectancy; (5) the value of time spent by Linda Crawford; (6) loss of wages and employee benefits; and (7) the reduction in value of life." Judge Wood denied defense motions to exclude Smith's testimony on excess costs, loss of credit expectancy, and additional interest costs on car loans, but precluded Smith from testifying about loss of equity, loss of time spent, loss of wages and benefits, and reduction in value of life. Explanations were provided for each loss category. Loss of time spent was precluded because:

Smith provides no justification for which Crawford's time should be valued at a rate similar to that which is paid to bookkeepers, clerks, secretaries and assistants, as opposed to, for instance, paralegals, human resource officers or customer service agents.

Smith's reduction in the value of life testimony was precluded based on a number of cited decisions and a reference to Thomas R. Ireland, "The Last of Hedonic Damages: Nevada, New Mexico, and Running a Bluff, J. Legal Econ, October 2009, at 91, 92-97.

2016

No decisions regarding both Dr. Stan Smith and hedonic damages.

2017

(71) *Smith v. Auto-Owners Insurance Company*, 2017 U.S. Dist. LEXIS 115937 (D. N.M. 2017). Dr. Stan V. Smith was permitted to testify about the concept of hedonic damages, but not to

provide an dollar values related to that concept. Judge Stephan M. Vidmar said:

New Mexico allows an injured party to recover hedonic damages. UJI 13-1807A NMRA. The concept of hedonic damages is premised on "the rather noncontroversial assumption that the value of an individual's life exceeds the sum of that individual's economic productivity." *Smith*, 214 F.3d at 1244 (10th Cir. 2000). The Tenth Circuit and numerous cases from this District have excluded expert testimony on hedonic damages from an economist who attempts to testify to a specific dollar figure, benchmark figures, or a range of values to be used in calculating such damages, but have allowed testimony about the concept of hedonic damages and the broad areas of human experience the factfinder should consider in determining those damages. *Id.* at 1245-46; *Kretek v. Bd. of Comm'rs of Luna Cty.*, No. 11-cv-0676 KG/GBW, 2014 U.S. Dist. LEXIS 188299, at *4 (D.N.M. Feb. 26, 2014) (unpublished); *Flowers v. Lea Power Partners, LLC*, No. 09-cv-0569 JAP/SMV, 2012 WL 1795081, at *4 (D.N.M. Apr. 2, 2012) (unpublished); *BNSFRy. Co. v. LaFarge Sw., Inc.*, No. 06-cv-1076 MCA/LFG, 2009 WL 4279849, at *1 (D.N.M. Feb. 9, 2009) (unpublished). I will follow this well-established law and will allow Dr. Smith to testify about the concept of hedonic damages and the general method for calculating them within the parameters set out in the cases. However, he will not be allowed to testify as to any certain dollar amount quantifying the alleged hedonic losses. *See Smith*, 214 F.3d at 1245-46.

2018

(72) *Smith v. Auto-Owner's Insurance Company*, 2018 U.S. Dist. LEXIS 6970 (D. N.M. 2018). This was an order of Federal Judge Stephan D. Vidmar that responded to a number of different motions in limine, one of which was a request to exclude "any expert testimony or evidence attempting to quantify hedonic damages." Judge Vidmar indicated that the plaintiff made no substantive argument in opposition to this or eight other proposed exclusions and granted all nine exclusions asked for by the defendant. The real focus of this order was on testimony by medical providers, which was discussed in greater detail. Stan Smith's role in this case had been identified in *Smith v. Auto-Owners Insurance Company*, 2017 U.S. Dist. LEXIS 115937 (D. N.M. 2017)

(73) *Rascon v. Brookins*, 2018 U.S. Dist. LEXIS 2018 (D. AZ 2018). This order of Federal Judge John J. Tuchi allowed the testimony of Dr. Stan V. Smith's calculations on loss of future earnings were admissible, but his opinions with respect to loss of life or loss of value of life in this wrongful death action were not admissible. Judge Tuchi discussed the Ninth Circuit decision of *Dorn v. Burlington N. Santa Fe R.R. Co.*, 397 F.3d 1183, 1195 (2005) and said:

The Court agrees with the Ninth Circuit's evaluation that Dr. Smith's quantification of hedonic damages does not accurately project the value people

place on the enjoyment of life, but rather an altered figure that could reflect many different government policy judgements. Further, even if the figure only reflected what the public spends out of its own pockets on safety devices, this spending "is probably influenced as much by advertising and marketing decisions made by profit-seeking manufacturers . . . as it is by any consideration by consumers of how much life is worth." *Smith v. Jenkins*, 732 F.3d 51, 66-67 (1st Cir. 2013) (quoting *Mercado*, 974 F.2d at 871). The Court finds that Dr. Smith's calculations are too speculative and unconnected to how an individual values their life and is therefore not sufficiently tied to the facts of the case and is unhelpful to the jury in determining the "loss of value of life". Under Rule 702, Dr. Smith's "loss of value of life" testimony is inadmissible. *See, e.g., Daubert*, 509 U.S. at 591 ("scientific validity for one purpose is not necessarily scientific validity for other, unrelated purposes"); *Ayers v. Robinson*, 887 F. Supp. 1049, 1064 (N.D. Ill. 1995) (ruling, after an extensive analysis of the methodology involved, that Dr. Smith's testimony failed to survive *Daubert* analysis and was unhelpful to the jury).

(74) *Starling v. Banner Health*, 2018 U.S. Dist LEXIS 28747 (D. AZ 2018). This order of Federal Judge Neil V. Wake granted a defense motion to exclude the hedonic damages testimony of Dr. Stan V. Smith in this wrongful termination case, citing particularly *Dorn v. Burlington N. Santa Fe R.R. Co.*, 397 F.3d 1183, 1195 (9th Cir. 2005) (dictum), but also *Stokes v. John Deere Seeding Grp.*, No. 4:12-cv-04054-SLD-JAG, 2014 WL 675820, at *5 (C.D. Ill. Feb. 21, 2014) (quoting *Ayers*, 887 F. Supp. at 1060). Smith had assumed a 25 percent reduction in the plaintiff's enjoyment of life about which Judge Wake said:

Moreover, the arbitrariness of the "conservative" 25 percent reduction is troubling. As before, Smith "provides no explanation or method for calculating the conservative factor based on data or theories originating from economic research, leaving the Court with no option but to conclude that the conservative value is derived through unmethodical, subjective 'eyeballing.'" . . . Smith admits that he is conservative when approaching "matters that don't have a high degree of specificity." (Doc. 216-1, Ex. A at 153:2-4.) Although experts need not be certain, Smith does not point to anything justifying the manner in which he exercises this conservative discretion.

Judge Wake also responded to Smith's claim that approximately 224 state and federal courts had admitted Smith's hedonic damages testimony, as follow:

Starling points out that Banner did not offer a rebuttal expert opinion on Smith's methodology. The law does not require it to offer such a witness. Starling also posits, based on Smith's declaration, that Smith's "hedonic damages testimony has been allowed by approximately 224 state and federal courts around the country." (Doc. 230 at 12.) Yet Starling does not demonstrate that any of those courts discussed or considered the cases discussed above and in Banner's briefing. He does not describe Smith's role in those 224 cases or the testimony that Smith gave.

Banner Health also challenged Smith's testimony about the lost earnings of the plaintiff. Smith's testimony about front pay was excluded on the basis that front pay is an equitable remedy only to be determined after a jury's verdict, but that Smith could testify about back pay.

(75) *Diperna v. Chicago School of Professional Psychology*, 2018 U.S. App 17426 (N.D. IL 2018). One of the parts of this decision was to uphold the trial court's decision that Stan Smith's hedonic damages testimony would not be helpful to the jury. Jennifer DiPerna was a student pursuing a master's degree in clinical psychology at The Chicago School of Professional Psychology (TCSPP), a private, non-profit institution. After TCSPP disciplined DiPerna for posting an image to her personal Instagram account that TCSPP considered offensive, DiPerna filed this lawsuit alleging breach of contract and negligence. Subsequently, DiPerna was dismissed from the program for plagiarism. Smith calculated DiPerna's loss of enjoyment of life resulting from these events. The trial court granted summary judgement the defendant on all counts, including the trial court's determination that loss of enjoyment of life damages were not available in a case of this sort.

(76) **Glisson v. Correctional Medical Services, Inc.*, 2018 U.S. Dist. LEXIS 216420 (S.D. IN 2018). Judge Sarah Evans Barker granted a defense motion to exclude the hedonic damages testimony of Dr. Stan V. Smith. Judge Barker held that Dr. Smith had not reliably explained how he had arrived at an annual value of \$131,199 per year for life enjoyment from the Value of Statistical Life literature, but also emphasized that:

[E]ven if Dr. Smith's methods of calculation were reliable, the VSL studies on which his expert opinion depends establish only how the overall value of a life is measured in the field of economics, not how enjoyment of life is measured, which is the relevant question the jury must resolve in awarding hedonic damages.

(77) *Hannibal v. TRW Vehicle Safety Sys., Inc.*, 2018 U.S. Dist. LEXIS 134318 WL 377500 (E.D. AR 2018). The value of life testimony of Dr. Rebecca Summary was excluded by Federal District Judge J. Leon Holmes, saying:

No court applying Arkansas law has ruled as to whether expert testimony may be admitted to assist the jury in determining loss of life damages. An overwhelming majority of courts from other jurisdictions, however, have concluded that the methodology adopted by Dr. Summary does not meet the *Daubert* standards and may not be admitted into evidence. *Smith v. Jenkins*, 732 F.3d 51, 66 (1st Cir. 2013); *Kurncz v. Honda North America, Inc.*, 166 F.R.D. 386, 388-89 (W.D. Mich. 1996). . . ("Even assuming that Dr. [Stan V.] Smith's formula is a reliable measure of the value of life, it was of no assistance to the jury in calculating Smith's loss of enjoyment of life.").

(78) *Families Advocate, LLC v. Sanford Clinic N*, 2019 U.S. Dist. LEXIS 60438 (D. N.D. 2019). This decision of Magistrate Judge Alice R. Senechal to recommend the exclusion of the testimony of Dr. Stan V. Smith on hedonic damages, loss of consortium, loss of guidance and counsel, and loss of accompaniment services. Judge Senechal recommend Smith's exclusion in all of those areas. Her recommendation that Smith's testimony be excluded includes several pages describing the opinions of Dr. David D. Jones in support of the defense motion to exclude Smith's testimony. Judge Senechal's recommendation to exclude Smith's testimony was accepted by federal district Judge Timothy Brooks in *Families Advocate v. Corp. V*, U.S. Dist. LEXIS 56845 (D. N.D. 2019).

(79) *Families Advocate v. Corp. v. Sandford Clinic N*, 2019 U.S. Dist. LEXIS 56845 (D. N.D. 2019). This was an order excluding the testimony of economic expert Dr. Stan V. Smith, who had proffered testimony about loss of enjoyment of life, loss of relationship, loss of advice and counsel, and loss of accompaniment services, all of which were previously recommended for exclusion in a report of the magistrate judge. Federal Judge Timothy L. Brooks said in conclusion:

Dr. Smith's opinions are marinated in a proprietary blend of theoretical "studies" (developed for use in other contexts), and peppered with arbitrary "benchmarks" a la ipse dixit, and, finally, tabulated with present value spreadsheets to give the illusion of forensically precise calculations in D.M.'s specific case. Beyond the illusion, the reality is more akin to hocus pocus. And this Court is certainly not alone in finding Dr. Smith's methodologies suspect and unreliable. ¹Link to the text of the note Dr. Smith's calculations are based on arbitrary figures and assumptions that are unrelated to the facts of the case. An expert's calculations should be excluded when they are "so fundamentally unsupported that [they] can offer no assistance to the jury." *Wood v. Minn. Mining & Mfg. Co.*, 112 F.3d 306, 309 (8th Cir. 1997) (citations omitted).

The problem here is not so much whether Dr. Smith reviewed and incorporated facts from D.M.'s medical findings, as it is Dr. Smith's unreliable methodology--which cannot be properly applied to the facts in this case, at least not in any meaningful or reproducible manner.

(80) *Soria v. United States Bank N.A.*, 2019 U.S. Dist LEXIS 70068 (C.D. CA 2019). This case involved an injury to the credit of Samuel Soria because of identity theft by an employee of U.S. Bank. The plaintiff economic expert was Dr. Stan V. Smith, who projected losses of credit expectancy and the value of the lost time Soria had spent dealing with inaccurate reporting. The court excluded Smith's testimony on loss of credit expectancy, describing Smith's testimony as follows:

According to Dr. Smith, Soria could have borrowed as much as \$60,000 in year 2016 dollars. (Dkt. 66-1 [Declaration of Dr. Stan V. Smith] Ex. 1 [Expert Report, hereinafter "Smith Rep."] at 5.) Because Soria's credit score declined from 735-740 to 524, however,

Soria would have to pay a higher interest rate to obtain this line of credit. (Id. at 4-6.) Based on a peer-reviewed article that Dr. Smith coauthored, Dr. Smith estimated Soria would pay an increased 12 percent per year in costs as a result of his lower credit score. (Id.) The increased cost would last for seven years, the length of time a delinquency remains on a credit report. (Id.) Based on this, Dr. Smith calculated Soria's loss of credit expectancy to be \$28,252.

The Court indicated that this part of Dr. Smith's testimony was inadmissible because Smith provided no analysis regarding how he arrived at the figure of \$60,000, which was significantly in excess of Soria's annual earnings during the previous three years. However, the Court allowed Smith's testimony regarding Soria's allegedly lost time, valued at \$27.67 in 2017 dollars, indicating that the hourly value goes to the weight, but not the admissibility of Smith's testimony. Smith had also calculated hedonic damages for Soria, but the plaintiff had withdrawn that claim before this decision.

(81) *Knaack v. Knight Transportation Inc.*, 2019 U.S. Dist. LEXIS 75480; 2019 WL 1982523 (D. NV 2019). In this case, the defense had moved to exclude Dr. Stan V. Smith's testimony about loss of family advice, counsel, guidance, instruction and training services and loss of accompaniment services. Federal Judge Larry R. Hicks denied the defense motion, saying that:

[Defendants also argue that hedonic damages (loss of relationship) should be excluded and the loss of accompaniment damages is really another way to obtain hedonic damages. In Dr. Smith's testimony, he articulates the difference between hedonic and other household services damages and why he finds them different. However, the record shows that plaintiffs do not intend to argue for hedonic damages, nor did Dr. Smith include this opinion in his report.

Plaintiffs argue that Dr. Smith and Mr. Weiner (defendants' expert) used a similar methodology for calculating loss of household/ family advice, counsel, guidance, instruction and training services and loss of accompaniment services, and came to similar conclusions. Finally, defendants also argue that hedonic damages (loss of relationship) should be excluded and the loss of accompaniment damages is really another way to obtain hedonic damages. In Dr. Smith's testimony, he articulates the difference between hedonic and other household services damages and why he finds them different. However, the record shows that plaintiffs do not intend to argue for hedonic damages, nor did Dr. Smith include this opinion in his report.

(82) *McKay v. City of St. Louis*, 2019 U.S. Dist. LEXIS 55690; 2019 WL 1436972 (E.D. MO 2019).

Regarding Dr. Stan V. Smith and "hedonic damages," Federal District Judge John A. Ross said:

The issue of *hedonic* damages is derivative of any constitutional violation Plaintiff may have suffered. In light of the Court's ruling that Defendants are

entitled to summary judgment and qualified immunity, it concludes that Dr. [Stan] Smith's testimony regarding damages is moot and that nothing in Dr. Smith's report affects the Court's analysis of Plaintiff's substantive § 1983 claims.

(83) **Cramer v. Equifax Info. Servs.*, 2019 U.S. Dist. LEXIS 161062 (E.D. MO 2019). This memorandum by Federal District Judge Charles A. Shaw excluded hedonic damages testimony by Dr. Stan V. Smith, plaintiff's economic expert. This was a case that involved an alleged injury to the plaintiff's credit caused by actions of Equifax Information Services under the Fair Credit Reporting Act (FCRA), but no physical injury was involved. Regarding hedonic damages, Judge Shaw said:

[E]ven if hedonic damages were appropriate in an FCRA case, plaintiff has not shown that Dr. Smith's testimony is necessary or reliable in assisting the trier of fact to understand or determine a fact in issue in this case. See *Saia v. Sears Roebuck & Co.*, 47 F. Supp. 2d 141, 149 (D. Mass. 1999) (expert testimony on hedonic damages, purporting to calculate injured plaintiff's loss of enjoyment of life based on "willingness to pay" model which considered consumer behavior, wage risk premiums, and regulatory cost-benefit analysis, was unreliable whether evaluated as scientific or as "technical or other specialized" knowledge) (citing to various federal courts rejecting expert testimony on hedonic damages, in particular Dr. Smith's); see also *Allen v. Bank of Am., N.A.*, 933 F. Supp. 2d 716, 734 (D. Md. 2013) ("The court is not convinced that an expert whose opinion is based almost entirely on asking laypersons how a particular event has affected their enjoyment of life would provide any assistance to the jury in making that determination for themselves."); *Kurncz v. Honda N. Am., Inc.*, 166 F.R.D. 386, 388 (W.D. Mich. 1996) ("The willingness to pay model on the issue of calculating hedonic damages is a troubled science in the courtroom, with the vast majority of published opinions rejecting the evidence."). For these reasons, Dr. Smith's testimony regarding hedonic damages will be excluded.

However, Judge Shaw also ruled that Smith would be permitted to testify about loss of credit expectancy if the plaintiff was able to develop a basis for arguing that there was some tangible loss and would be able to testify about the value of plaintiff's loss of time spent resolving her credit problems.

(84) *Michon v. Campbell*, 2019 U.S. Dist. LEXIS 230156 (N.D. IL 2019). The hedonic damages testimony of Dr. Stan V. Smith was excluded by Federal District Judge Harry D. Leinweber. Michon had asked the Court to adopt the "middle ground" approach taken in *Richman v. Burgeson*, 2008 U.S. Dist. LEXIS 48349 (N.D. Ill. June 24, 2008) of allowing Smith to testify about the general nature of hedonic damages without offering quantification. Judge Leinweber declined to do so and said:

As many, if not most, courts in this District and elsewhere have reasoned, Dr. Smith's methodology for ascertaining *hedonic* damages is not scientifically reliable. This Court agrees with that point and is not inclined to allow the testimony of *hedonic* damages generally when the underlying methodology is unsound. Moreover, such testimony will serve only to confuse the jury. The Court thus adopts the view held by the majority of courts in this District and finds that Dr. Smith's proffered testimony on *hedonic* damages fails to satisfy *Rule 702* and *Daubert*. Accordingly, Defendants' Motion to Exclude Expert Testimony (Dkt. No. 125) is granted.

2020

(85) *Jennings v. Nash*, 2020 U.S. Dist. LEXIS 26611 (W.D. MO 2020). Hedonic damages testimony of Stan V. Smith was excluded under the Daubert standard with citations to a number of other federal district court decisions reaching the same conclusion.

(86) *Banks v. Eighth Judicial Dist. Court of Nev.*, 2020 Nev. App. Unpub. LEXIS 30; 2020 WL 283402 (NV App. 2020). This one-page decision denies a writ of mandamus challenging, in part, an exclusion of portions of the testimony of economic expert Stan V. Smith. In denying the writ, the Court noted that:

[T]he district court's order does not foreclose the plaintiff's expert, Dr. Smith, from testifying at trial but only imposes certain conditions on his doing so, including that he lay a detailed foundation for his opinions.

The challenged order of Susan H. Johnson in *Banks v. Diaz* (Case No. A-18-773248-C, Dept. No. XXII, District Court of Clark County, Nevada) dated December 4, 2019 had allowed Smith to testify about Banks' past loss of earnings, but not to speculate about future wage loss or the value of housekeeping and home management services with having a factual basis. Smith was also precluded from testifying about Banks' alleged loss of value of life without having a basis other than an interview from Smith's staff and speculation that Banks had lost 20 to 40 percent of his ability to lead a normal life.

(87) *Doe v. Colgate Univ.*, 2020 U.S. Dist. LEXIS 75989 (N.D. N.Y. 2020). In this case, a Colgate male student was accused of raping a female student and sued for damages based on the violation of his right to defend himself. Stan Smith calculated hedonic damages for the accused male. Federal Judge Frederick J. Scullin, Jr., cited a number of other decisions excluding hedonic damages calculations and excluded Smith's proposed hedonic damages testimony.

(88) *Synder v. Bank of Am., N.A.*, 2020 U.S. Dist. LEXIS 206437 (N.D. CA 2020). This case involved a plaintiff not obtaining a National Mortgage Settlement (NMS)-Compliant loan modification order. Dr. Stan V. Smith was excluded from testifying based on incorrect assumptions and lack of specialized knowledge about the NMS. Smith projected that the plaintiff

incurred \$373,235 in lost time, and between \$582,563 and \$1,165,124 in loss of enjoyment of life (hedonic damages). The court also cited multiple cases in which Smith's testimony has been rejected.

(89) *Wood v. Paccar, Inc.*, 2020 U.S. Dist. LEXIS 136846 (N.D. IA 2020). The defense moved to exclude Dr. Stan V. Smith's testimony regarding loss of enjoyment of life (hedonic damages), household services, and loss of wages and benefits. U.S. Magistrate Judge Mark A. Roberts excluded Smith regarding hedonic damages but denied excluding Smith's testimony regarding household services and loss of wages and benefits.

(90) **Santiago v. Fischer*, 2020 U.S. Dist. LEXIS 255479 (E.D. NY 2020). Federal District Judge Margo K. Brodie excluded the hedonic damages testimony of Dr. Stan V. Smith, saying:

Dr. Smith arrives at his initial value of life figure [\$4.6 million in 2016] through an analysis of studies from the 1980s of "consumer behavior and purchases of safety devices," "wage risk premiums to workers," and "cost-benefit analyses of regulations." (Smith Report 4.) While the Court understands that such studies are well-accepted and appropriate for use in a number of contexts, such as by government agencies or other entities conducting cost-benefit analyses, the Court finds, as other courts have, that they are not helpful in assisting a factfinder in evaluating the value of a unique human life.

Judge Brodie also cited many prior decisions excluding the hedonic damages testimony of Smith.

(91) **Lessert v. BNSF Ry. Co.*, 476 F. Supp. 3d 926; 2020 U.S. Dist. LEXIS 139672; 2020 WL 4500218. This was a wrongful death action under the FELA. The defendant challenged the admissibility of Dr. Stan V. Smith's testimony based on hedonic damages testimony in other cases. Judge Jeffrey Liken said

The court begins by addressing defendant's reliance on a number of other federal cases excluding Dr. Smith as an expert. Dr. Smith often opines on "hedonic damages" in litigation, which are damages that "attempt to compensate a victim for the loss of the pleasure of being alive[.]" *Families Advocate, LLC v. Sanford Clinic N., No. 16-CV-114*, 2019 U.S. Dist. LEXIS 56845, 2019 WL 1442162, at *1 (D.N.D. March 31, 2019). Quite a few federal courts have refused to permit Dr. Smith to testify concerning his method for calculating hedonic damages. *Smith v. Jenkins*, 732 F. 3d 51, 66 (1st Cir. 2013) (collecting cases). Here, however, plaintiff expressly disclaims any claim for hedonic damages. (Docket 194 at p. 23 n.15) ("[T]here is no claim for hedonic damages and no economic evaluation of hedonic damages is proffered by Plaintiff or Dr. Smith."). The court therefore does not view the authority defendant cites as indicative of a uniform condemnation of Dr. Smith's testimony in the federal courts, as its objections insinuate.

(92) *Lemperle v. Avis Rent-a-Car Sys.* 2020 U.S. Dist. LEXIS 265288 (D. NV 2020). U.S. District Judge James C. Mahan denied a defense motion to exclude the testimony of economic expert Stan V. Smith regarding loss of earnings, loss of household services, cost of future life care and hedonic damages. Defendants were free to challenge Dr. Smith's calculations in any of these areas. Regarding hedonic damages, Judge Mahan said:

[W]ithout Dr. Smith's testimony—and the aggregated economic data that underlies it—the jury's award of hedonic damages would likely be arbitrary. While economists have come to different conclusions regarding the value to ascribe to a human life using "risk reduction" or "willingness to pay" methodology, this paradigm is widely used by economists to determine monetary values associated with everyday risks. Thus, Dr. Smith's specialized and technical expertise is helpful to the jury when determining the monetary value of plaintiff's hedonic damages.

2021

(93) *Balan v. Vestcor Fund Xxii*, 2021 U.S. Dist. LEXIS 99532 (M.D. FL 5-26-2021), Judge Maria Morales Howard excluded the hedonic damage testimony of Dr. Stan V. Smith, saying:

Upon review of a sampling of the federal court cases on Dr. Smith's List, the Court found none in which he provided testimony at trial before a United States District Court. Further, the Court's independent research revealed that Dr. Smith's testimony regarding hedonic damages has been found inadmissible by the vast majority of federal courts including some of the cases on his List. These findings and the reasoning of the courts excluding Dr. Smith's testimony on the value of hedonic damages further support the Court's conclusion that Dr. Smith's testimony would not be helpful to a jury. Moreover, the Court continues to be convinced that to the extent Dr. Smith's testimony has any probative value, it is outweighed by the risk that purported expert testimony putting a specific value on the Plaintiff's noneconomic damages will confuse and/or mislead the jury.

(94) *Moe v. Grinnell College*, 2021 U.S. Dist. LEXIS 239863 (D. IA 2021). Federal District Judge Rebecca Goodgame Ebinger granted a defense motion to exclude the hedonic damages testimony of Dr. Stan V. Smith, saying:

Smith's hedonic damages calculation is not sufficiently reliable for admission at trial because the method is not testable, has not been peer reviewed, lacks governing standards, and is not generally accepted by economists. Additionally, Smith's method to determine the percent reduction in the value of life is not based on objective indicia because it relies on self-reported percentages. Furthermore, hedonic damages are not relevant because Moe has not experienced physical injury or death. As a result, the portion of Smith's expert report and related testimony concerning hedonic damages is inadmissible under Rule 702. The probative value of Smith's expert report is also outweighed by the threat it

poses of misleading the jury. The Court excludes the portion of Smith's expert report concerning hedonic damages and related testimony under Rule 403.

(95) **Hauck v. Wabash Nat'l Corp.*, 2021 U.S. Dist LEXIS 108943 (D. NM 2021). Federal District Judge Kenneth J. Gonzales excluded all testimony of Dr. Stan V. Smith regarding noneconomic damages on the basis of inappropriate behavior. Judge Gonzales said:

Ms. Hauck is prohibited from eliciting testimony from Dr. Smith regarding her entitlement to non-economic damages, including *hedonic*, loss of guidance, counselling, society, relationship, support, and accompaniment damages. In pertinent part, Dr. Smith's opinion assigning a dollar-amount to Ms. Chambers' *hedonic*-damage award is unreliable pursuant to *Daubert* and its progeny. Moreover, the Court concludes that Dr. Smith's failure to disclose his proposed testimony regarding the "general scope of *hedonic* damages" is incurable and prejudicial. Therefore, Dr. Smith's opinions quantifying a *hedonic*-damage award and generally explaining the concept are both properly excluded. For these reasons, the Court grants Wabash's Motion to Exclude (Doc. 157).

(96) *Crouch v. Master Woodcraft Cabinetry, LLC*, 2021 U.S. Dist. LEXIS 172785 (E.D. AR 2021). Federal District Judge Kristine G. Baker excluded the value of life testimony of Dr. Ralph Scott, citing the decision in *Hannibal v. TRW Vehicle Safety Sys., Inc.*, WL 377500 (E.D. AR 2018) by Federal Judge J. Leon Holmes excluding the proposed value of life testimony of Dr. Rebecca Summary. The *Hannibal* decision included discussion of the exclusion of Dr. Stan V. Smith in *Smith v. Jenkins*, 732 F.3d 51 (D. MA 2013). Judge Baker said:

This Court adopts the same reasoning and, therefore, excludes Dr. Scott's proposed testimony that would present for the jury's "consideration the value that government agencies place on the statistical value of life," including the documents published by the United States Department of Transportation and the Environmental Protective Agency suggesting values of life (Dkt. No. 16-1, at 3).

(97) *Shipley v. Hunter Warfield, Inc.*, 2021 U.S. Dist. LEXIS 208718 (M.D. FL 2021). Dr. Stan V. Smith calculated five types of damages suffered by the plaintiff that resulted from an inadequate investigation for the plaintiff: (1) the loss of credit expectancy; (2) additional auto-loan interest; (3) the loss of mortgage expectancy; (4) the value of time spent; and (5) the reduction in value of life ("RVL"), also known as loss of enjoyment of life or "hedonic" damages." The defendant moved to exclude Smith's opinion in its entirety, but focused on hedonic damages. The plaintiff did not oppose exclusion of Smith's hedonic damages testimony and that testimony was excluded. Smith was also not permitted to testify about the value of the plaintiff's time trying to remedy the alleged inadequate investigation, but was permitted to testify about mortgage expectancy and interest rates available without the impact of the inadequate investigation.

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(98) *In re Am. River Transp. Co.*, 2022 U.S. Dist. LEXIS 1733 (E.D. LA 2022). The Court denied a defense motion under *Daubert v. Merrdell-Dow Pharmaceuticals*, 509 U.S. 79 (1993), to excluder the hedonic damages testimony of Dr. Stan V. Smith in boat accidents resulting in the deaths of three crewmen. Plaintiffs proffered the hedonic damages testimony of Smith, which defendants argued were not relevant to damages in a death case. The Court denied the motion because this was a bench trial and the purpose of *Daubert* to prevent unreliable scientific evidence from reaching a jury. The decision contained no discussion of the nature of or problems with the reliability of hedonic damages testimony.

(99) *Warner v. Talos E R T L L C*, 2022 U.S. Dist. LEXIS 31316 (E.D. LA 2022). This case involved the wrongful death of Walter Jackson, who had a son in a previous marriage, and was now living with a different wife. Smith had been retained on behalf of the son, but had treated Jackson, his previous wife, and their son as a family unit for purposes of calculating the following damages son: (1) wages and employee benefits, (2) household and family services, (3) value of life, and (4) society and relationship. In response to Talos's motion, the plaintiff withdrew the third and fourth categories, but maintained (1) and (2). It appears that Smith was retained only on behalf of the son from the previous marriage and not the decedent's current wife, but only damages for the son were being considered. Judge James D. Cain, Jr, pointed out that the decedent's only relationship with the son was long distance telephone calls, and that decedent's only financial contributions in support of the son were payments "somewhere" between \$200 per month and \$1,000 per month, and limited the loss period to age 18 for the son. Smith was otherwise allowed to testify about lost wages and lost family services.

(100) *McGee v. Target Corp.*, 2022 U.S. Dist. LEXIS 109296 (D. NV 6-17-2022). Federal District Judge Kent J. Dawson denied a defense motion to exclude the hedonic damages testimony of Stan V. Smith, saying.

The Nevada Supreme Court has permitted economists to use various methods to arrive at their conclusions on hedonic loss, including a "willingness-to-pay method" similar to the one utilized by Smith in this case. *Id.* at 62-63. Smith uses his "willingness-to-pay method" but uses different data and sources to arrive at his conclusions than the expert in *Banks* [*Banks v. Sunrise Hospital*, 2004]. This difference is properly addressed on cross-examination. The Court is confident that Smith's testimony is not substantially more prejudicial than probative and that it will not confuse the issues or mislead the jury. As stated previously, Smith's report merely gives the jury a framework with which to determine a damages amount. Target will have the opportunity to attack Smith's data and calculations on cross-examination, but it will be up to the jury to determine the credibility of the witness and the weight to give his report.

(101) *Miller v. Juarez Cartel*, 2022 U.S. Dist. LEXIS 112463 (D. N.D. 6-24-2022). This was a judicial ruling by Federal Magistrate Judge Clare R. Hochhalter in an ATA (Anti-Terrorism Act) case involving deaths and injuries to two American families by the Juarez Cartel. The defendant was not represented and there was no expectation that the defendant would pay awarded damages. The case was bench-tried and expert reports were submitted in writing. Damage opinions of economic expert Stan V. Smith for one group of plaintiffs and by J. Matthew Sims for another group of plaintiffs were reported in the decision. Smith's opinions included loss of wages and benefits, loss of household services, loss of guidance and counsel, loss of accompaniment services, life care services of one decedent for a family member, value of life of decedents, or loss of society and relationship. Sims's damage opinions included loss of wages and benefits, household services and care for fellow family members, and cost of vocational rehabilitation for injured minor children. Sims did not include guidance and counsel, loss of accompaniment services, value of life, or loss of relationship, but Judge Hochhalter included amounts based on Smith's calculations for the first group of plaintiffs.

(102) *United States v. Boam*, 2022 U.S. Dist. LEXIS 158842 (D. ID 8-31-2022). This case involved restitution for injury to a child through being used for child pornography. Economic expert Stan V. Smith offered testimony about (1) loss of wages and employee benefits; (2) the cost of future life care; (3) reduction in the value of life. Based on Smith's report, the Court ordered \$320,548 in cost of life care and \$2,006,113 in lost earnings. However, the government did not ask for reduction in the value of life as part of its claim for restitution.

(103) *Rappuhn v. Primal Vantage Co.*, 2022 U.S. Dist. LEXIS 220341 (S.D. AL 12-07-2022). The defendant moved to exclude testimony of Stan V. Smith regarding calculations for "reduction in value to Plaintiff's life." The Court noted that:

Plaintiff states that he will not offer Dr. Smith's opinions and testimony relating to calculations of economic loss for the reduction in value of Plaintiff's life. . . Accordingly, Primal Vantage's motion regarding Dr. Smith . . . is MOOT.

(104) *Lee v. Dennison*, 2023 U.S. Dist. LEXIS 7509 (D. NV 1-17-2023). Defendants challenged the admissibility of the testimony of Dr. Stan V. Smith regarding hedonic damages and loss of household./family housekeeping management services. Federal District Judge Kent J. Dawson denied the defense motion in limine, saying:

It is true that some speculation is inherent in awarding damages. And although the Court does have some concerns about the generic nature of some of the opinions Dr. Smith will offer during trial, this does not mean his opinion should be altogether excluded. The Ninth Circuit has made clear that "[a]n expert witness-unlike other witnesses-is permitted wide latitude to offer opinions, including those that are not based on firsthand knowledge or observation, so long as the expert's opinion [has] a reliable basis in the knowledge and experience of his discipline." . . . Defendants have not fully convinced the Court that Dr. Smith's methods are flawed, unreliable, or unaccepted in his field. The jury is tasked with

weighing the evidence after any vigorous cross-examinations that may occur, whereas the Court is tasked only with prohibiting "nonsense" opinions. . . . Dr. Smith's conclusions and calculations may be incorrect-however, they are still admissible.

(105) *Villanueva v. Wal-Mart Stores Texas, LLC*, 2023 U.S. Dist. LEXIS 17681 (S.D. TX 1-06-2023). In this slip and fall personal injury, Dr. Stan V. Smith offered opinions that the Plaintiff lost between \$1,467,717 and \$2,446,202 in life enjoyment because of her injury, using a willingness-to-pay methodology. Federal District Judge Marina Garcia Marmolejo excluded Dr. Smith's testimony, saying:

Federal courts have long questioned the willingness-to-pay method's soundness and underlying premises. . . Courts and the academic community have also observed that value-of-life studies do not produce reliably consistent results. . . In fact, the "overwhelming majority" of federal courts have excluded testimony estimating hedonic damages. . . Moreover, numerous courts have specifically excluded Dr. Smith's proposed testimony. . . This Court joins them [case citations omitted].

(106) *Zarling v. Abbott Labs.*, 2023 U.S. Dist. LEXIS 51191 (D. MN 3-27-2023). The hedonic damage testimony of Dr. Stan V. Smith was excluded in a case that involved alleged defamation and employment termination of the plaintiff. U.S. District Judge Michael A. Davis found four reasons for excluding Smith's testimony: (1) That it depended on Zarling's self-reported percentage reduction in his enjoyment of life and not on "objective indicia;" (2) No peer-reviewed evidence was provided regarding the application of Smith's methodology to nonphysical injuries; (3) Neither Zarling nor Smith have provided the Court with any indication of the error rate or standards governing the calculation of hedonic damages resulting from defamation; (4) There was no indication that Smith's methodology for determining loss of enjoyment resulting from defamatory reports is generally accepted; (5) The fact that the studies used by Smith contain wide ranges of values for a human life suggests that the average value that Smith used is not generally accepted.