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Introduction

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INTRODUCTION

The *New Mexico Law Review* is pleased to present the second issue of Volume 35. This issue of the *New Mexico Law Review* is a compilation of papers and ideas presented and discussed at a symposium, *Civil Numbers: Examining the Spectrum of Noneconomic Harm*, hosted by the *Law Review* on February 19, 2005, at the University of New Mexico School of Law. The membership of the *Law Review* convened the symposium to provide a forum for the discussion of various issues arising from the measurement, evaluation, and litigation of noneconomic harm, including the impact that potential limitations could have on the legal field both in theory and in practice.

Presentations by M.E. Occhialino and Brian McDonald cover general principles of tort law and noneconomic harm. M.E. Occhialino's presentation, *Examining the Spectrum of Noneconomic Harm: An Introduction*, discusses how noneconomic harm fits within the law of torts, focusing on distinguishing between harm, injury, and damages. A presentation by Brian McDonald, an economist and frequent expert witness, follows; *The Value of Life and Loss of Enjoyment of Life Damages from an Economist's Perspective* provides an interesting discussion of how economists go about measuring the value of life and assist juries in that determination.

Michael Rustad and Laura Spitz both criticize some of the inequities currently found in the application of the law surrounding torts and counsel against reform that would aggravate these inequities. Michael Rustad's article, *Heart of Stone: What Is Revealed About the Attitude of Compassionate Conservatives Toward Nursing Home Practices, Tort Reform, and Noneconomic Damages*, argues against placing caps and other limitations on noneconomic harm based on the impact such limitations would have on the area of elder law, specifically on cases involving nursing home negligence. Laura Spitz's presentation, *I Think, Therefore I Am; I Feel, Therefore I Am Taxed: Descartes, Tort Reform, and the Civil Rights Tax Relief Act*, discusses how current tax laws treat noneconomic awards, the manner in which the type of injury suffered often determines the rate of taxation, and the resulting gendered impact.

Ideas for reform are presented in an article by Jeffrey O'Connell, Jeremy Kidd, and Evan Stephenson, *An Economic Model Costing "Early Offers" Medical Malpractice Reform: Trading Noneconomic Damages for Prompt Payment of Economic Damages*, and a presentation by James Blumstein, *Making the System Work Better: Improving the Process for Determination of Noneconomic Loss*. The article by O'Connell, Kidd, and Stephenson proposes a neo no-fault system for medical malpractice claims, encouraging defendants to make early offers compensating for economic harm in return for plaintiff's agreement not to pursue noneconomic damages. James Blumstein's presentation recommends reforming the manner in which juries calculate damages, requiring jury accountability for atypical awards.

Heidi Li Feldman's article, *Loss*, challenges a central axiom of tort law and tort reform: economic and noneconomic harms are inherently different. Feldman argues against classifying some losses as economic and others as noneconomic, looking to classical and modern economic theory for support. JoEllen Lind's article, *Valuing*

Relationships: The Role of Damages for Loss of Society, distinguishes loss of society damages from other forms of noneconomic harm and encourages broader acceptance and reliance on loss of society damages as a means of compensating for injury to socially significant relationships.

Finally, the last piece included in this issue is a panel discussion from the day of the symposium. The panel consisted of local practitioners James Branch, Kathy Love, Andrew Schultz, Luis Stelzner, and Patrick Sullivan, with Professor M.E. Occhialino of the University of New Mexico School of Law serving as the moderator. The panel discussion, *Translating Theory into Practice: The Valuation of Noneconomic Damages in Real Life*, hits on a number of topics including how practitioners go about evaluating the amount of noneconomic harm in a given case and proving it at trial. There is also discussion about how caps can impact not only case selection but settlement negotiations and mediation as well.

We hope you enjoy the second issue of Volume 35!