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## *Legal Aspects of Injury to Appearance*

A DISCUSSION OF THE LEGAL ASPECTS of disfigurement requires an introduction which clearly defines and limits the field of inquiry. The purpose of this Note is not to set before the reader a thorough study of all types of disfigurement, but to concentrate on the legal effects of injury to one's appearance. Obviously, it is difficult to separate the scar from the pain, loss, and expense of the preceding injury, but through an examination of the cases it will become apparent that there are distinct factors relevant to recovery for the scar as an injury in and of itself.<sup>1</sup> Injuries to the appearance will be analyzed, as will secondary complications resulting from the scar injury itself. A basic question will be addressed throughout the discussion: what are the legal implications of injuries to the plaintiff's appearance and of the psychic injuries, malfunction of a body part, and muscle spasms which may also be directly connected to scar tissue formation?

Before examining the legal aspects of this subject, a brief survey of the medical classifications and definitions is advisable. Medical classifications for scars are being utilized by the courts with increasing frequency,<sup>2</sup> for the medical experience with respect to prognosis, recovery, and cosmetic repairs is relevant to a determination of damages.

### I. MEDICAL DEFINITIONS AND CLASSIFICATIONS

The scientific name for a scar is "cicatrix."<sup>3</sup> It has been defined as the mark left on the skin after the healing of a wound or sore; an indentation or mark made by use, motion, or contact;<sup>4</sup> and, perhaps best, as a "break in the continuity of tissue."<sup>5</sup> Skin is the tissue most frequently involved but bones, cartilage, tendons, muscles, fat, and nerves can also be subject to "scarring." Focusing on the skin tis-

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<sup>1</sup> *Morley's Case*, 328 Mass. 148, 102 N.E.2d 493 (1951); *Baxter v. W. H. Arthur Co.*, 216 N.C. 276, 4 S.E.2d 621 (1939); *Shillinglaw v. Springs Cotton Mills*, 209 S.C. 379, 40 S.E.2d 502 (1946).

In the area of workmen's compensation, the distinction between the preceding injury and the resulting scar is markedly clear since many states provide for an award based specifically on the disabling effect of the scar itself. See text accompanying note 105, *infra*.

<sup>2</sup> *Palmer v. Brooks*, 350 Mo. 1055, 169 S.W.2d 906 (1943) (keloid scar tissue); *Schoen v. Wolfson*, 263 Ill. App. 414 (1931) (hypertrophic scar tissue).

<sup>3</sup> 14 C.J.S. *Cicatrix* § 118 (1939).

<sup>4</sup> WEBSTER'S NEW WORLD DICTIONARY 1301 (College Ed. 1958).

<sup>5</sup> *Dick, Lacerations and Scarring*, 3 TRAUMA No. 5, at 3 (1962).

sue, it can be noted that "when the tissue loss extends below the level of available cells [epidermal], with none left to reproduce, a scar is inevitable."<sup>6</sup> Instead of a normal composition of epidermis, dermis, and various skin appendages, a scar has a "single" layer of surface cells, no hair, sweat or sebaceous glands, few elastic fibers, and markedly reduced vascularity."<sup>7</sup>

Scars are caused by a variety of injuries, but typically result from lacerations, burns, or abrasions. A laceration, the most common cause of scars, is typically a wound which is much deeper than an abrasion. It results from a direct blow or force and is manifested by a cut, a rent, or tear of all layers of the skin with some gaping or separation of the wound edges.<sup>8</sup> There are four basic types of lacerations. First, there are "contused wounds" which generally occur over fatty areas,<sup>9</sup> *i.e.*, eyelid, breast, or abdomen. The administering objects are typically blunt. Such injuries are frequent in auto-accident cases and very often result in a hematoma<sup>10</sup> or abscess.<sup>11</sup> Second, there are "puncture wounds" which are caused by small, sharp objects. Because of the relatively small surface area involved, the seriousness of such wounds is often underestimated. In addition, such wounds are often contaminated with debris or bacteria which, if not removed, generally result in a tinted or spotted scar. (This is the process used in tattooing.) Third, there are the "incised wounds," which usually result from sharp objects such as glass or a knife.<sup>12</sup> The edges are distinct and immediately repairable, frequently with good cosmetic results.<sup>13</sup> The bevelled laceration is a nuisance-type incised wound. It is a slicing-type wound which leaves a portion of tissue too thin to survive. Attempts to repair such lacerations may result in a contraction of the skin and excessive scarring. The fourth type of laceration is termed "avulsion." The tissue here is completely torn away, requiring extensive reconstruction of the injured tissue.

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<sup>6</sup> *Id.* at 5.

<sup>7</sup> *Ibid.*

<sup>8</sup> See generally 7 AM. JUR. PROOF OF FACTS 1 (1960).

<sup>9</sup> Dick, *supra* note 5, at 6.

<sup>10</sup> A rupture of underlying vessels forming a pool of blood combined with ruptured fat cells. Usually these "bruises" are absorbed, occasionally special treatment is required. *Ibid.*

<sup>11</sup> Caused by the entrance of bacteria into the damaged area requiring drainage. *Ibid.*

<sup>12</sup> Dick, *supra* note 5, at 10.

<sup>13</sup> "Healing is generally faster when lacerations occur in or parallel to existing 'lines' of the body and scarring is usually less prominent. These 'lines' are called 'Langers' lines and most frequently run at right angles to the direction of the muscles." *Id.* at 16.

In addition to classification by the mode of injury, scars are usually classified as hypertrophic,<sup>14</sup> vicious,<sup>15</sup> or keloid.<sup>16</sup> Leaving an exploration of the methods of repair to the reader,<sup>17</sup> the legal analysis may now be approached.

## II. EVIDENCE

The courts have generally been very liberal in allowing display of scars, deformities, and disfigurement to the jury. The jury has the right to consider the appearance of the accused and to draw inferences therefrom.<sup>18</sup> However, if it appears that a more particular examination of parts of the body of the accused will not aid the jury in determining a disputed fact, such examination has been refused.<sup>19</sup>

In *Citizens' Street R. R. v. Willoby*,<sup>20</sup> the court found that the exhibition of plaintiff's injuries was unnecessary since they could have been adequately described to the jury. Nevertheless, the court added that it was evident that by such exhibition the jury obtained a clearer idea of the plaintiff's condition than a mere description would have provided.<sup>21</sup> In *Calumet Paving Co. v. Butkus*,<sup>22</sup> the court noted that there is "no class of evidence more satisfactory or convincing to fact finders than the production and inspection of the very object or person whose condition is being investigated."<sup>23</sup>

The limitations upon the right to display scars to the jury are relatively clear. The purpose of the exhibition must be to aid in the determination of some controverted or controvertible fact in is-

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<sup>14</sup> *Schoen v. Wolfson*, 263 Ill. App. 414 (1931). "It is composed of dense fibrous tissue usually elevated above the level of the skin, frequently tender, and when situated at or near a joint can cripple it." *Dick*, *supra* note 5, at 16.

<sup>15</sup> *Dick*, *supra* note 5, at 16.

<sup>16</sup> It is more prominent (elevated), extends beyond the dimensions of the original wound, and itches to the point of serious annoyance, leading the patient to scratch vigorously, and consequently to bleed. *Id.* at 16-19.

<sup>17</sup> *Robinson, Abrasive Repairs of Traumatic Scars*, 7 MARYLAND ST. MEDICAL J. 571 (1958); *Reid, Experience in Burying Live Scars*, 4 BRITISH J. PLASTIC SURGERY 235 (1952); *FOMAN, COSMETIC SURGERY: PRINCIPLES AND PRACTICE* (1960); *MCGREGOR, FUNDAMENTAL TECHNIQUES OF PLASTIC SURGERY AND THEIR SURGICAL APPLICATIONS* (1960).

<sup>18</sup> 22A C.J.S. *Criminal Law* § 716 n. 8 (1961).

<sup>19</sup> *Mobley v. State*, 135 Ark. 475, 205 S.W. 827 (1918).

<sup>20</sup> 134 Ind. 563, 33 N.E. 627 (1893).

<sup>21</sup> See generally *Annot.*, 46 A.L.R. 1230 (1927); *Annot.*, 102 A.L.R. 1125 (1936); *Annot.*, 66 A.L.R.2d 1334 (1959).

<sup>22</sup> 113 Ind. App. 232, 47 N.E.2d 829 (1943).

<sup>23</sup> *Id.* at 237, 47 N.E.2d at 831.

sue.<sup>24</sup> Since the amount of damages is nearly always in question, it would appear that display would always be justified to clarify the extent of injury. The courts, however, appear to take a narrower view of the type of facts which must be in controversy, *i.e.*, amount of discoloration, size, or texture. If these facts are adequately established by other evidence, display may be prohibited. But the mere fact that available witnesses are able to testify as to the nature and character of the wounds is not sufficient ground, in and of itself, for excluding their exhibition.<sup>25</sup> The trial court may be upheld in basing its decision to admit such evidence on its tendency to show pain and suffering,<sup>26</sup> but more often such evidence is upheld as demonstrating the extent of injury or disability produced by a negligent or wrongful act.<sup>27</sup>

A further impediment to the free display of all scars is the trial court's discretion<sup>28</sup> in limiting the exhibition of scars which may have a tendency to inflame or arouse the sympathy of the jury.<sup>29</sup> However, such exhibits have been held competent, even though they show the gruesome consequences of assault,<sup>30</sup> when they have not been shown to be inflammatory or prejudicial.<sup>31</sup> *Kieffer v. Blue Seal Chem. Co.*<sup>32</sup> involved injuries so grotesque that numerous skin grafts would have been required to restore even a human appearance. However, a jury verdict of 250,000 dollars was held not so excessive as to give rise to an inference of passion, sympathy, or mistake on the part of the jury.<sup>33</sup>

Finally, there is the factor of indecency which may preclude exhibition; however, this depends on the circumstances of the in-

<sup>24</sup> *Huggins v. State*, 129 Fla. 329, 176 So. 154 (1937); *State v. Cockrell*, 131 Mont. 254, 309 P.2d 316 (1957); *Kazee v. State*, 134 Tex. Crim. 485, 116 S.W.2d 731 (1938).

<sup>25</sup> *Harris v. State*, 106 Tex. Crim. 539, 293 S.W. 822 (1927).

<sup>26</sup> *Potts v. Kaplan*, 264 N.Y. 110, 190 N.E. 201 (1934). "A scar at some time may be external evidence of some inward disability and may be visible long after the disability has ceased, but in itself it does not . . . constitute a disability." *Id.* at 118, 190 N.E. at 204.

<sup>27</sup> *Faivre v. Mandercheid*, 117 Iowa 724, 90 N.W. 76 (1902).

<sup>28</sup> *Buffalow v. State*, 34 Ala. App. 418, 41 So. 2d 417, *cert. denied*, 252 Ala. 536, 41 So. 2d 420 (1949).

<sup>29</sup> *Stegall v. Carlson*, 6 Ill. App. 2d 388, 128 N.E.2d 352 (1955).

<sup>30</sup> *Wagoner v. State*, 52 Ga. App. 379, 183 S.E. 209 (1936).

<sup>31</sup> *Stegall v. Carlson*, 6 Ill. App. 2d 388, 128 N.E.2d 352 (1955); *McMurrey v. State*, 145 Tex. Crim. 439, 168 S.W.2d 858 (1943); *Smith v. State*, 129 Tex. Crim. 273, 86 S.W.2d 750 (1935); *Runnels v. State*, 113 Tex. Crim. 207, 19 S.W.2d 322 (1929).

<sup>32</sup> 107 F. Supp. 228 (E.D.N.J.) *aff'd*, 196 F.2d 614 (3d Cir. 1952).

<sup>33</sup> *Id.* at 289.

dividual case. In *Sullivan v. Minneapolis, St. P. & S. Ste. M. Ry.*,<sup>34</sup> the court permitted the plaintiff to exhibit his person to the jury in a separate room for the purpose of viewing a scar. The court remarked:

Of course, the scar itself affords the best evidence of its own appearance. It is real evidence. However much of indecency may be involved in the exhibition in the instant case, we are not prepared to say that it went beyond the legitimate bounds for placing before the jury the actual facts in the case. No person of the opposite sex was directly involved or interested in this case. The principal defense made with regard to the plaintiff's injuries naturally opened up an unsavory line of investigation. We are not prepared to say that the discretion to stop it short of an exploration into needless indecency was abused.<sup>35</sup>

That this philosophy is by no means universal is illustrated by the court's statements in *Brown v. Swineford*:<sup>36</sup>

[D]uring his examination as a witness the plaintiff was permitted, without apparent objection, to uncover and exhibit to the jury his organs of generation. No such indecency is ever necessary. . . . [I]t should be examined by experts out of court, and expert testimony be given of it. Such an exposure . . . might well be punished as a contempt. . . . [I]t is . . . well calculated to disgrace the administration of justice. . . .<sup>37</sup>

If any conclusion can be gleaned from the few available cases, it is that when a proper foundation has been laid, the circumstances will probably justify a dignified exhibit of any relevant injuries to aid the jury in determining a disputed fact.<sup>38</sup>

### III. DAMAGES

Any analysis of factors inherent in awarding damages for residual scarring must take cognizance of the particular difficulty in attributing these damage factors to the scar injury alone. An automobile accident may result in claims along the entire spectrum of personal injury damages — loss of earning power, medical expenses, pain and suffering, humiliation, loss of consortium, and so forth. In considering the extent of damage due to scarring, the courts occasionally make statements, usually of a descriptive or factual nature, which make the lawyer aware of factors which are important and re-

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<sup>34</sup> 55 N.D. 353, 213 N.W. 841 (1927).

<sup>35</sup> *Id.* at 367-68, 213 N.W. at 846.

<sup>36</sup> 44 Wis. 282 (1878).

<sup>37</sup> *Id.* at 285.

<sup>38</sup> For further discussion, see the annotations, *supra* note 21.

quire emphasis if maximum recovery is to be had. Rarely, however, will the courts make statements about the damage value of scars in themselves. Nevertheless, in *Bryden v. Priem*<sup>39</sup> it was remarked that "the permanent disfiguration of one's face is not a light or trifling matter. It constitutes substantial damage."<sup>40</sup>

Most of the case law pertains to scarring of surface tissue.<sup>41</sup> Although the central concern of this Note is the cosmetic injury resulting from scars, it is interesting to note one case<sup>42</sup> in which a three year old child recovered for scarring of sub-surface tissue. The injury was the result of an electric shock she received while taking a bath in a washhouse in a migratory camp maintained by a city. The 12,000 dollar award was held not excessive in view of the extensive and permanent surface scar on the head and the possibility of residual brain damage<sup>43</sup> which would not become apparent for as long as two years.

The cases dealing with the cosmetic-damage aspects of scarring reveal a two-sided approach by the courts. On the one hand, they note the plaintiff in terms of age, sex, social status, and the effects of the scars on plaintiff's working ability and mental well-being. On the other hand, the courts speak of the scars themselves, their appearance, location, permanency, and secondary complications.

### A. *The Person*

(1) *Age*.—As might be expected, youth is an important factor. One young boy who had burn scars covering approximately eighty square inches of surface on the neck, scalp, and face recovered 65,000 dollars.<sup>44</sup> In *Taylor v. Shreveport Ry.*,<sup>45</sup> the court also stressed age, 1000 dollars being awarded to a young married girl.

(2) *Sex*.—In *Grab v. Davis Constr. Co.*,<sup>46</sup> the court noted that scars on the face of a female are ordinarily regarded as more objectionable than scars on the face of a male. The injuries there were inflicted on a ten year old girl. More often, however, the courts merely note the "comparative youth" of the plaintiff without in-

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<sup>39</sup> 190 Wis. 483, 209 N.W. 703 (1926).

<sup>40</sup> *Id.* at 485, 209 N.W. at 704.

<sup>41</sup> For further discussion, see the annotations, *supra* note 21.

<sup>42</sup> *City of Yuma v. Evans*, 85 Ariz. 229, 336 P.2d 135 (1959).

<sup>43</sup> *Id.* at 238, 336 P.2d at 141.

<sup>44</sup> *Lindroth v. Walgreen Co.*, 338 Ill. App. 364, 87 N.E.2d 307 (1949), *aff'd*, 407 Ill. 121, 94 N.E.2d 847 (1950).

<sup>45</sup> 41 So. 2d 241 (La. Ct. App. 1949).

<sup>46</sup> 233 Mo. App. 819, 109 S.W.2d 882 (1937).

dicating further the importance of plaintiff's sex in the decision to uphold or deny the amount of the trial court's judgment. In *Kirkpatrick v. Neal*,<sup>47</sup> the court held the evidence sufficient to support the verdict, stating, "She was a healthy, energetic, intelligent and popular girl of seventeen years of age when she was injured."<sup>48</sup>

(3) *Appearance*.—Some cases have made special mention of the pleasant appearance or unusual beauty of the now scarred plaintiff.<sup>49</sup>

(4) *Status*.—The presence of disfiguring scars is more likely to support a high verdict for a dress designer<sup>50</sup> than for a laborer.<sup>51</sup> In upholding these verdicts, courts have taken note of the fact that the plaintiffs were married,<sup>52</sup> a college girl,<sup>53</sup> a trained nurse,<sup>54</sup> an actor,<sup>55</sup> and a model.<sup>56</sup> What weight the court placed on these factors could not be determined.

(5) *Interference with Work*.—The status factor is, in most cases, tied to a discussion of damages as a result of lost earning capacity. In *Lincoln v. Stone*,<sup>57</sup> the trained-nurse plaintiff had a disfigured physical appearance which, it was felt, would impair her future earning capacity. In another case,<sup>58</sup> the plaintiff's appearance caused her to be rejected from her chosen profession as an airline stewardess. Finally, the courts have even noted that scars may seriously affect the capacity to obtain any employment whatsoever.<sup>59</sup> Thus, three aspects of this damage factor are revealed: the inability to find any job, the inability to enter a chosen profession, and rejection from a profession one has pursued until the injury.

(6) *Mental Well-Being*.—While the foregoing factors seem obvious and expected, there is an element of unique interest in the upholding of an award of damages for clearly psychic injuries result-

<sup>47</sup> 153 S.W.2d 519 (Tex. Civ. App. 1941).

<sup>48</sup> *Id.* at 527.

<sup>49</sup> See *Byrd v. Gallman*, 174 La. 267, 140 So. 44 (1932); *Ferguson v. G.H.A. Thomas Lumber Co.*, 9 La. App. 352, 120 So. 396 (1928).

<sup>50</sup> *Gluckstein v. Lipsett*, 93 Cal. App. 2d 391, 209 P.2d 98 (1949).

<sup>51</sup> See *Union Traction Co. v. McCullough*, 87 Ind. App. 27, 154 N.E. 41 (1926).

<sup>52</sup> *Donough v. Vile*, 61 Pa. D. & C. 460 (1947).

<sup>53</sup> *Hardy v. National Mut. Cas. Co.*, 9 So. 2d 346 (La. Ct. App. 1942).

<sup>54</sup> *Lincoln v. Stone*, 42 S.W.2d 128 (Tex. Civ. App. 1931), *rev'd on other grounds*, 59 S.W.2d 100 (Tex. Comm'n App. 1933).

<sup>55</sup> *Goodwin v. Giovenelli*, 117 Conn. 103, 167 Atl. 87 (1933).

<sup>56</sup> *Dwyer v. Devine*, 277 App. Div. 807, 96 N.Y.S.2d 728 (1950).

<sup>57</sup> 42 S.W.2d 128 (Tex. Civ. App. 1931), *rev'd on other grounds*, 59 S.W.2d 100 (Tex. Comm'n App. 1933).

<sup>58</sup> *Nikkari v. Jackson*, 226 Minn. 88, 32 N.W.2d 149 (1948).

<sup>59</sup> *Black & White Cab Co. v. Clark*, 67 Ga. App. 170, 19 S.E.2d 570 (1942).

ing from scars. Traditionally, tort law has shied away from recognizing shock, nervousness, or emotional disturbance as a compensable injury if not accompanied by an "actual physical injury."<sup>60</sup> With scar injuries, the physical element is a permanent one caused by a contact force of some kind. Such an analysis has been held to provide sufficient support for damage awards made for accompanying emotional injuries.<sup>61</sup>

### B. *The Scar*

(1) *Appearance*.—Typically, the appellate courts do not have the injured plaintiff before them when determining the excessiveness of the damage award of the trial court. It is, therefore, essential to work into the record all possible detail about the scar. If pictures are available in the record, this is an aid to the decision. When pictures are missing, some courts adopt the language of the lower court or the testimony of a witness and characterize the scars as "ugly," "grotesque," and so forth. In a large majority of the opinions, however, there is a great deal of specific detail about the scar injury. For example, the number of stitches,<sup>62</sup> length and width,<sup>63</sup> color,<sup>64</sup> depth,<sup>65</sup> shape,<sup>66</sup> texture,<sup>67</sup> and type of scar<sup>68</sup> are often detailed in

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<sup>60</sup> PROSSER, TORTS § 55, at 348-50 (3d ed. 1964).

<sup>61</sup> *Hanlon v. Pomeroy*, 102 N.H. 407, 157 A.2d 646 (1960). Representing this thinking are the following cases: *Hanlon v. Pomeroy*, *supra*, where facial scars were deemed likely to cause plaintiff humiliation and emotional disturbance in the future; *Pittman v. B & L Concessions*, 90 F. Supp. 666 (W.D. Mo. 1950), where a married woman suffered scars which embarrassed her in her social life and club and church work; *Belle Vernon Co. v. Krenz*, 34 Ohio App. 499, 171 N.E. 357 (1928), where facial injuries such as cuts and scars distorted plaintiff's countenance to such an extent as seriously to affect her nervous system and her general well-being; *Holmes v. Lee*, 208 Ark. 114, 184 S.W.2d 957 (1945), where excessive nervousness occurred after plaintiff's injury; *Weadock v. Eagle Indem. Co.*, 15 So. 2d 132 (La. Ct. App. 1943), where gross injuries resulted in disfiguring which caused plaintiff to change from her normal benign, congenial disposition to being morose, quiet, and despondent; *McColum v. Shubert*, 17 Negl. & Comp. Cas. Ann. (n.s.) 358, 185 S.W.2d 48 (Mo. Ct. App. 1944), where a scar on a seven year-old boy produced a depressive expression; *Remmenga v. Selk*, 152 Neb. 625, 42 N.W.2d 186 (1950), where plaintiff's entire personality, appearance, and health completely changed; *Fjellman v. Weller*, 213 Minn. 457, 7 N.W.2d 521 (1942); *Royal Indem. Co. v. Magee*, 331 F.2d 595 (5th Cir. 1964), where plaintiff's psychoneurotic reaction required a psychiatrist's care.

<sup>62</sup> *Brooks v. Mock*, 330 S.W.2d 759 (Mo. 1959) (13 stitches); *Atlantic Coast Line R.R. v. Lamphear*, 114 Fla. 217, 153 So. 916 (1934) (26 stitches).

<sup>63</sup> *Mayer v. Slaughter*, 39 So. 2d 166 (La. Ct. App. 1949); *Irizarry v. Cardona*, 207 Misc. 536, 138 N.Y.S.2d 923 (N.Y. City Ct. 1954) (two to three inches wide).

<sup>64</sup> *Clark v. Rowatt*, 349 Ill. App. 396, 110 N.E.2d 663 (1953); *Rosenkoetter v. Fleer*, 155 S.W.2d 157 (Mo. 1941).

<sup>65</sup> *Osgood v. D. W. Winkelman*, 274 App. Div. 694, 87 N.Y.S.2d 110 (1949).

<sup>66</sup> *Clark v. Rowatt*, 349 Ill. App. 396, 110 N.E.2d 663 (1953) (jagged).

<sup>67</sup> *Teas v. Curtiss Wright Corp.*, 2 N.J. Super. 548, 65 A.2d 130, *aff'd* 5 N.J. Super.

the opinions. The introductory discussion of the medical definitions and classifications of scarring becomes relevant here as courts have referred to the scars as keloid<sup>69</sup> or emphasized the fact that plaintiff was a colored woman, thus implying that the discoloration of her scar would be highlighted.<sup>70</sup> It must also be noted that the mode of injury plays a significant role in describing the scar injury to the reader, *i.e.*, electric shock,<sup>71</sup> burns,<sup>72</sup> lacerations from a sharp instrument,<sup>73</sup> punctures,<sup>74</sup> and concussions.<sup>75</sup>

(2) *Location*.—Scars located on a region of the body normally exposed to view, such as the face, neck, arms, and legs, are more significant from the point of view of damages than are scars on a more intimate portion of the body. However, there is support for awards given for scar injuries found on the more remote portions of the body. An English case<sup>76</sup> noted that a twenty-three year old hospital nurse was so injured by an explosion in the operating theatre that the resulting scars on her body would prevent her from ever wearing an evening dress or swimming suit. In another case, 115,000 dollars was awarded to a fifty-year old dress designer who, as a result of defendants' negligent plastic surgery, was left with distortions, disfigurement, and scars about the breasts and abdomen.<sup>77</sup> However, the majority of cases involve facial scars and are relatively clear as to the location of the scar on the face, *i.e.*, whether it is near the hair line,<sup>78</sup> forehead,<sup>79</sup> cheek,<sup>80</sup> eyelid,<sup>81</sup> nose,<sup>82</sup> and so forth.

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274, 68 A.2d 845 (App. Div. 1949) (burn scars); *Union Traction Co. v. McCullough*, 87 Ind. App. 27, 154 N.E. 41 (1926) (skin rots off burn scars).

<sup>68</sup> *Irizarry v. Cardona*, 207 Misc. 536, 138 N.Y.S.2d 923 (N.Y. City Ct. 1954).

<sup>69</sup> *Palmer v. Brooks*, 350 Mo. 1055, 169 S.W.2d 906 (1943).

<sup>70</sup> *Gray v. Kansas City Pub. Ser. Co.*, 77 S.W.2d 133 (Mo. Ct. App. 1934).

<sup>71</sup> *City of Yuma v. Evans*, 85 Ariz. 229, 336 P.2d 135 (1959).

<sup>72</sup> *Union Traction Co. v. McCullough*, 87 Ind. App. 27, 154 N.E. 41 (1926).

<sup>73</sup> *Krensky v. Metropolitan Trust Co.*, 4 Ill. App. 2d 14, 123 N.E.2d 345 (1954), *appeal dismissed*, 5 Ill. App. 2d vi (1955).

<sup>74</sup> *Briley v. Mitchell*, 119 So. 2d 668 (La. Ct. App. 1960).

<sup>75</sup> *Rodriguez v. LeBlanc*, 120 So. 2d 103 (La. App. 1960).

<sup>76</sup> KBMP & KEMP, *THE QUANTUM OF DAMAGES IN PERSONAL INJURY CLAIMS* 409 (1954).

<sup>77</sup> *Gluckstein v. Lipsett*, 93 Cal. App. 2d 391, 209 P.2d 98 (Cal. Dist. Ct. App. 1949).

<sup>78</sup> *Lankford v. Thompson*, 354 Mo. 220, 189 S.W.2d 217 (1945).

<sup>79</sup> *Mayer v. Slaughter*, 39 So. 2d 166, *rehearing denied*, 40 So. 2d 47 (La. Ct. App. 1949).

<sup>80</sup> *O'Neal v. Kelly Pipe Co.*, 76 Cal. App. 2d 577, 173 P.2d 685 (1946).

<sup>81</sup> *Grab v. Davis Constr. Co.*, 233 Mo. App. 819, 109 S.W.2d 882 (1937).

<sup>82</sup> *Banner v. Winton*, 28 Tenn. 69, 186 So. 2d 222 (1944).

(3) *Permanency and Prognosis.*—Effective presentation of a personal injury case involving scars necessarily involves a basic understanding of methods of repair, including both the natural processes of healing and the artificial process — plastic surgery.<sup>83</sup> In the case of a printer who acted as an avocation,<sup>84</sup> the court noted the possibility of plastic surgery, its cost, and the reasonable prospect that the scar could be reduced to a very fine linear one.<sup>85</sup> Even partial correction of permanent scars by plastic surgery has appeared to be significant.<sup>86</sup> Essentially, the courts are interested in the temporary nature or correctibility of the visible scar.

(4) *Scar Complications.*—Finally, many courts have noted the damages caused by scar complications. One case involved burns over twenty per cent of a man's body resulting in scars that limited the functions of his hands.<sup>87</sup> Plaintiffs have experienced difficulty in shaving with facial scars,<sup>88</sup> abnormal conditions of the mouth due to scar tissue,<sup>89</sup> a marked overreaching of the upper jaw which interfered with mastication,<sup>90</sup> drooping of the mouth,<sup>91</sup> nose scars which exposed the throat and nasal passages to disease,<sup>92</sup> twitching and malfunction of the eyelid,<sup>93</sup> facial distortion in an attempt to smile,<sup>94</sup> numbness,<sup>95</sup> and impairment of the use of a leg.<sup>96</sup> A comparison of cases which involve damages awarded for scars is virtually impossible since the injuries are often multiple and the amount given for the scars, themselves, is rarely specified. The value of a scar has been seen to be a function of numerous factors both objective and subjective, pecuniary and non-pecuniary. An awareness of all that is involved will certainly aid in the representation of the injured client.

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<sup>83</sup> *Felo v. Kroger Grocery & Baking Co.*, 347 Pa. 142, 31 A.2d 552 (1943).

<sup>84</sup> *Goodwin v. Giovenelli*, 117 Conn. 103, 167 Atl. 87 (1933).

<sup>85</sup> *Id.* at 109, 167 Atl. at 89.

<sup>86</sup> *Felo v. Kroger Grocery & Baking Co.*, *supra* note 83.

<sup>87</sup> *Oborski v. New Haven Gas Co.*, 151 Conn. 274, 197 A.2d 73 (1964).

<sup>88</sup> *Floen v. Sund*, 255 Minn. 211, 96 N.W.2d 563 (1959).

<sup>89</sup> *Van Horn v. Union Fuel & Ice Co.*, 31 S.W.2d 265 (Mo. Ct. App. 1930).

<sup>90</sup> *Beilke v. Knaack*, 207 Wis. 490, 242 N.W. 176 (1932).

<sup>91</sup> *Druska v. Western Wis. Tel. Co.*, 177 Wis. 621, 189 N.W. 152 (1922).

<sup>92</sup> *Stressman v. Vitiello*, 114 Conn. 370, 158 Atl. 879 (1932).

<sup>93</sup> *Greer v. Palmer*, 33 Del. County Ct. 384, 55 Pa. D. & C. 109 (1945).

<sup>94</sup> *American Prods. Co. v. Villwock*, 7 Wash. 2d 246, 109 P.2d 570 (1941).

<sup>95</sup> *Easterly v. American Institute of Steel Constr.*, 162 S.W.2d 825 (Mo. Ct. App. 1942).

<sup>96</sup> *Chavez v. United States*, 192 F. Supp. 263 (D. Mont. 1961).

## IV. WORKMEN'S COMPENSATION

In the area of workmen's compensation, there is less difficulty in the evaluation of the monetary significance of scars, since compensation may be awarded for the disfigurement of an employee occurring in the performance of the duties of his employment. This appears to be true either under general compensation act provisions authorizing compensation for disability resulting from injury or under special provisions of the compensation act specifically authorizing compensation for disfigurement.<sup>97</sup>

Thirty states now expressly provide for damage awards for disfigurement.<sup>98</sup> There are limitations on the amount of the award, usually stated in specific terms, but impaired capacity to obtain and hold a job is the justification usually given for the award.<sup>99</sup> This test of "interference with earning capacity" is abandoned by some statutes which make the definable loss very broad.<sup>100</sup>

The South Carolina statute is detailed and complete, thus providing a good basis for this study. It states specifically that the employee need *not* prove that the disfigurement has any connection with earning capacity.<sup>101</sup> Disfigurement has been defined by the courts of South Carolina as that which impairs or injures the beauty, symmetry or appearance of a person or thing; that which renders unsightly, misshapen or imperfect, or deforms in some manner.<sup>102</sup> Compensability depends upon the unsightliness and permanency, but the test is not one which requires an injury of a grotesque, obnoxious, or repulsive character.<sup>103</sup> The disfigurement need not even be normally visible to the public.<sup>104</sup> Contrary to many states with similar statutory provisions, South Carolina provides for the disfigure-

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<sup>97</sup> *Morley's Case*, 328 Mass. 148, 102 N.E.2d 493 (1951); *Baxter v. W. H. Arthur Co.*, 216 N.C. 276, 4 S.E.2d 621 (1939); *Shillinglaw v. Springs Cotton Mills*, 209 S.C. 379, 40 S.E.2d 502 (1946).

<sup>98</sup> Alabama, Arkansas, Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Maryland, Minnesota, Missouri, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Vermont, Wisconsin, Virginia, and Wyoming. See 2 LARSON, WORKMEN'S COMPENSATION LAW § 65:30 (1961).

<sup>99</sup> *Wilson v. Brown-McDonald Co.*, 134 Neb. 211, 278 N.W. 254 (1938).

<sup>100</sup> *Ousley v. Employers Mut. Liab. Ins. Co.*, 121 So. 2d 378 (La. Ct. App. 1960); LA. REV. STAT. ch. 23, § 1221 (4) (p) (1964); *Walk v. State Compensation Comm'n*, 134 W. Va. 223, 58 S.E.2d 791 (1950).

<sup>101</sup> S.C. CODE ANN. § 72-153 (1962).

<sup>102</sup> *Bowen v. Chiquola Mfg. Co.*, 238 S.C. 322, 120 S.E.2d 99 (1961).

<sup>103</sup> *Parrott v. Barfield Used Parts*, 206 S.C. 381, 34 S.E.2d 802 (1945).

<sup>104</sup> *Bowen v. Chiquola Mfg. Co.*, 238 S.C. 322, 120 S.E.2d 99 (1961); *Cagle v. Clinton Cotton Mills*, 216 S.C. 93, 56 S.E.2d 747 (1949).

ment award *in addition to* claims for disability;<sup>105</sup> but if an award is made on the basis of permanent and total disability, an award for disfigurement is precluded.<sup>106</sup>

The same statute also provides for a discretionary award of up to 2,500 dollars for *serious* facial, head, or body disfigurement.<sup>107</sup> "Serious" extends to the grotesque, obnoxious, and repulsive injuries. In one scar case,<sup>108</sup> a one and one-half inch scar along the lines and creases of the forehead was held not to be within the "serious" classification.<sup>109</sup> South Carolina appears to be leading the trend in workmen's compensation toward awards not based on the fundamental workmen's compensation theory of impaired earnings.

A study of the cases decided under the various statutes should give the attorney a better understanding of the "value" of scars and an appreciation of the elements considered by the courts in determining that value.

## V. CONCLUSION

When preparing a case involving scar injuries, it is unwise to let the "attractiveness" of the other injuries detract from a careful consideration and preparation of the scar injuries. They are not only good evidence of the preceding injuries but are injuries in themselves. It is important to carefully outline the evidentiary basis for their display to the jury and to give an orderly presentation of the factors relevant to recovery. With the miracles of plastic surgery, significant repair is often possible. However, when repair is not possible, the damage should be compensated.

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<sup>105</sup> *Gold v. Moragne*, 202 S.C. 281, 24 S.E.2d 491 (1943).

<sup>106</sup> *Montgomery v. York Mills, Inc.*, 204 S.C. 469, 30 S.E.2d 68 (1944).

<sup>107</sup> S.C. CODE ANN. §§ 72-153 (1962).

<sup>108</sup> *Mitchum v. Inman Mills*, 209 S.C. 307, 40 S.E.2d 38 (1946).

<sup>109</sup> *Ibid.*