

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

HOLCOMBE, et. al,

Plaintiffs

vs.

UNITED STATES OF
AMERICA,

Defendant

NO. 5:18-CV-00555-XR

(consolidated cases)

**PLAINTIFFS' TRIAL BRIEF ON
NON-ECONOMIC DAMAGES**

Plaintiffs file this trial brief on non-economic damages and would respectfully show the Court the following.

First, upon review at the Fifth Circuit, that court will evaluate the non-economic damages under the maximum recovery rule. That rule allows trial courts to make non-economic damages awards that are 150% greater than previously reported analogous verdicts, adjusted for inflation. But analogous cases do not need to be identical to this case.

Second, Plaintiffs would provide this Court with analogous verdicts divided into wrongful death and personal injury cases. Using the Fifth Circuit's preferred inflation calculator, these cases are adjusted for inflation and the 150% recovery rule, as outlined below.

LEGAL STANDARD

Damages findings are reviewed on appeal under the clear error standard. *Lebron v. United States*, 279 F.3d 321, 326 (5th Cir. 2002). The Fifth Circuit does not “reverse a verdict for excessiveness except on the strongest of showings, but when a jury's award exceeds the bounds of reasonable recovery.” *Id.* District courts enjoy wide discretion in awarding damages; findings of damages are analyzed on appeal under the clear-error standard. *Douglass v. Delta Air Lines, Inc.*, 897 F.2d 1336, 1339 (5th Cir. 1990). The Fifth Circuit compares “damages awarded in factually similar cases and arising within the controlling jurisdiction” to determine whether awards are “entirely disproportionate to the injury sustained.” *Id.*

1. *Maximum Recovery Rule*

If a remitter is in order, the Fifth Circuit applies the “loosely defined ‘maximum recovery rule.’”¹ *Douglass v. Delta Air Lines, Inc.*, 897 F.2d 1336, 1344 (5th Cir. 1990). Here, the Fifth Circuit applies the maximum recovery rule if the damages exceed 150% of the highest previous reported analogous recovery. *Salinas v. O’Neill*, 286 F.3d 827, 831 & n.6 (5th Cir. 2002). While some cases in the Fifth Circuit use 133%, footnote 6 of *Salinas* describes the

¹ The Fifth Circuit established the maximum recovery rule by precedent. However, this rule has no basis in law, particularly as applied to the statutorily created wrongful death remedies. *See Douglass v. Delta Air Lines, Inc.*, 897 F.2d 1336, 1344 (5th Cir. 1990) (noting that the rule is judge-made). Particularly in an FTCA claim, where the United States is liable “in the same manner and to the same extent as a private individual under like circumstances.” 28 U.S.C. § 2674. A private defendant in Texas would not benefit from a cap on non-economic damages: “Texas does not use the maximum recovery rule. It instead conducts a more wholistic assessment.” *Longoria v. Hunter Express, Ltd.*, 932 F.3d 360, 365 (5th Cir. 2019). The plain text of the FTCA demands courts hold the Government liable to the “same extent” as a private individual. 28 U.S.C. § 2674.

split among the cases; under the circuit's rule of orderliness, the 150% rule controls. *Id.* at 831 n.6.

Before applying the rule, the Fifth Circuit adjusts prior verdicts for inflation. *E.g.*, *Puga v. RCX Sous., Inc.*, 922 F.3d 285, 298 & n.12 (5th Cir. 2019); *Longoria v. Hunter Express, Ltd.*, 932 F.3d 360, 367 n.6 (5th Cir. 2019). Specifically, the Fifth Circuit uses the inflation calculator available from the BLS. *Puga*, 922 F.3d at 298 n.12 (citing Bureau of Labor Statistics, CLI Inflation Calculator, <https://data.bls.gov/cgi-bin/cpicalc.pl> and *Ledet v. Smith Marine Towing Corp.*, 455 Fed. App'x 417, 423 n.1 (5th Cir. 2011)). So, the Fifth Circuit first applies the inflation calculator to a verdict, then the 150% multiplier to determine the maximum recovery for non-economic damages.

For the purposes of this rule, courts can rely on state and federal authority from a broad range of sources. For example, the Fifth Circuit recognizes awards by district courts, even if parties took no appeal, for the purposes of the maximum recovery rule. *Douglass v. Delta Air Lines, Inc.*, 897 F.2d 1336, 1344 (5th Cir. 1990).

But to be clear, courts do not limit the survey of cases to factually identical cases. *E.g.*, *Puga*, 922 F.3d at 292 (using a traumatic brain injury case as analogous to car wreck case resulting in burns and multiple surgeries for the purpose of the maximum recovery rule). For example, in affirming wrongful death damages for a shooting victim, a Texas court relied on a car wreck wrongful death case. *Plasencia v. Burton*, 440 S.W.3d 139, 149 (Tex. App.—Houston [14th Dist.] 2013, no pet.) (citing *Thomas v. Uzoka*, 290 S.W.3d 437, 455 (Tex. App.—Houston [14th Dist.] 2009, pet. denied)). Or in a wrongful-death suicide case, a Texas court examined comparable verdicts

involving a plane crash, train crash, and truck wreck. *West Oaks Hosp., Inc. v. Jones*, No. 01-98-00879-CV, 2001 WL 83528, at *6 (Tex. App.—Houston [1st Dist.] Feb. 1, 2001, pet. denied) (citing cases); *see also Cresthaven Nursing Residence v. Freeman*, 134 S.W.3d 214, 229 (Tex. App.—Amarillo Feb. 5, 2003, no pet.) (reviewing a mental anguish claim arising out of misrepresentation of an insurance policy to analyze damage in nursing home negligence wrongful death). And while the Court is not bound to use unreported cases for the purposes of the maximum recovery rule, but they may be relevant for comparison. *Frazier v. Honeywell Intern., Inc.*, 518 F. Supp. 2d 831, 842 (E.D. Tex. 2007).

2. Shooting Cases

Even when looking at shooting cases, the unique circumstances of a mass shooting present unique facts that are not reflected within controlling caselaw because mass shootings are rare. Trial Tr. 1578:16–20 (Gov’t Expert Fox). But when they occur, no shooting case involving a single injury can faithfully reflect the magnitude of injury here. Therefore, a departure from precedent is merited in this circumstance. *Lebron*, 279 F.3d at 326; *E.g.*, *Frazier v. Honeywell Intern., Inc.*, 518 F. Supp. at 842 (where no reported cases are “wholly similar to the facts of this case,” courts can and do depart from the maximum recovery rule).

But even single-injury shooting cases give the Court room under the maximum recovery rule to provide reasonable non-economic damage awards. For example, in *Mayhew v. Dealey*, the jury awarded \$14 million in compensatory damages where an individual was shot in the neck and found dead. 143 S.W.3d 356, 365 (Tex. App.—Dallas 2004, pet. denied). Accounting for the inflation rule and the 150% maximum recovery rule, that verdict

allocates over **\$10.8 million pain and suffering** of a decedent and over **\$19.4 million loss of consortium and pain and suffering** to a decedent's sister. *Id.* at 365; *infra* (calculating inflation & recovery rule).

Next, in *Pressey v. Patterson*, the plaintiff was shot in the head but survived. 898 F.2d 1018, 1024–26 & n.6 (5th Cir. 1990). The Fifth Circuit reviewed and affirmed the \$6.7 million damages award. *Id.* at 1024–26. Whereas the Fifth Circuit affirmed a combined \$2.5 million damages allocation for pain, mental anguish, and physical impairment in 1990, inflation and the 150% recovery rule increase that number to over **\$7.9 million**. *Id.*

Then, there's *West Oaks Hosp., Inc. v. Jones*. There, a jury awarded \$5,740,000 against a hospital where the victim committed suicide. No. 01-98-00879-CV, 2001 WL 83528, at *4–6 (Tex. App.—Houston [1st Dist.] Feb. 1, 2001, pet. denied). Of that, the court held that \$5 million for the decedent's pain and mental anguish did not warrant remitter. *Id.* at *5–6. Accounting for inflation and the recovery rule, that equates to over **\$11.6 million**.

Finally, in *Reeder v. Allport*, a victim was accidentally shot in the neck and “spent twenty days in the hospital, spent another forty-two days in a Houston rehabilitation facility, and spent two and a half weeks in a Beaumont rehabilitation facility. As a result of permanent paralysis, [he was] confined to a wheelchair.” 218 S.W.3d 817, 819–20 (Tex. App.—Beaumont 2007, no pet.). The non-economic damages to the victim, the wife, and children—accounting for inflation and the 150% rule—amount to over **\$5.6 million**.

WRONGFUL DEATH

At the outset, multiple Government agencies publish guidance on the value of life. *See* Fed. R. Evid. 801(d)(2) (admission by opponent); *id.* 902(5) (Self-authenticating official publications).

For example, the Department of Transportation issued guidance on the value of a human life as a part of its guidance on reducing fatalities. In 2020, the Government agency put the value of human life at \$11.6 million.² Adjusted for inflation using the BLS calculator, the DOT number is **\$12,275,933.35**. Similarly, the FAA puts out a similar analysis for airline safety.³ In 2015 dollars, they concluded the value of life was \$9.6 million, or **\$11,214,164.74** accounting for inflation since then. *Id.* at 1.

Finally, the EPA puts out guidance on the statistical value of life to identify the benefits of reducing fatalities.⁴ It did a survey of the literature in 2003 and found that the U.S. studies on the value of life has a mean of \$8.5 million. *Id.* at 13. Adjusted for inflation, that would put the current value of life at **\$12,771,191.52**. The studies cited by the EPA ranged from \$0.7 million to \$16.3 million in 1997 dollars. *Id.* at 27. Adjusted for inflation, that ranges from **\$1,201,144.56** to **\$27,969,509.12**.

² Dep't Transp., Departmental Guidance on Valuation of a Statistical Life in Economic Analysis, <https://www.transportation.gov/office-policy/transportation-policy/revised-departmental-guidance-on-valuation-of-a-statistical-life-in-economic-analysis>

³ FAA, Treatment of The Values of Life and Injury in Economic Analysis, https://www.faa.gov/regulations_policies/policy_guidance/benefit_cost/media/econ-value-section-2-tx-values.pdf

⁴ EPA, Value of Statistical Life Analysis and Environmental Policy, https://www.epa.gov/sites/default/files/2017-12/documents/ee-0483_all.pdf

Starting on the next page, Plaintiffs have broken down wrongful-death verdicts by elements of non-economic damages, adjusted for inflation,⁵ and the 150% maximum recovery rule.

(continued on next page)

⁵ Plaintiffs used the inflation calculator blessed by the Fifth Circuit, calculating from the date of the opinion to July 2021. *Puga*, 922 F.3d at 298 n.12 (*citing* Bureau of Labor Statistics, CLI Inflation Calculator, <https://data.bls.gov/cgi-bin/cpicalc.pl>); *Ledet v. Smith Marine Towing Corp.*, 455 Fed. Appx. 417, 423 n.1 (5th Cir. 2011)).

Wrongful Death Damages

REPORTED DAMAGES	INFLATION ADJUSTED	150% RECOVERY	CITATION
Pain and suffering to estate: \$5,000,000	\$7,203,245.38	\$10,804,868.07	<i>Mayhew v. Dealey</i> , 143 S.W.3d 356, 365 (Tex. App.—Dallas Aug. 5, 2004, pet. denied) (\$26 million judgment in shooting death case).
Loss of consortium and pain and suffering to decedent's sister: \$9,000,000	\$12,965,841.69	\$19,448,762.54	
Future mental anguish and loss of consortium to decedent's three minor daughters: \$12,000,000	\$15,363,140.12	\$23,044,710.18	<i>Wackenhut Corrections Corp. v. de la Rosa</i> , 305 S.W.3d 594, 600, 608, 636–42 & n.1 (5th Cir. Apr. 2009) (\$45 million in damages for victim beaten to death by inmates in prison).
Past & future mental anguish & loss of companionship to mother of adult decedent: \$10,000,000	\$12,802,616.77	\$19,203,925.16	

Wrongful Death Damages

REPORTED DAMAGES	INFLATION ADJUSTED	150% RECOVERY	CITATION
Pain and mental anguish of decedent: \$5,000,000	\$7,764,590.44	\$11,646,885.66	<i>West Oaks Hosp., Inc. v. Jones</i> , No. 01-98-00879-CV, 2001 WL 83528, at *4–6 (Tex. App.—Houston [1st Dist.] Feb. 1, 2001, pet. denied) (\$5,740,000 damages against hospital suicide-by-gun case).
Non-economic recovery to parents of 10-year-old victim: \$14,000,000	\$17,923,663.48	\$26,885,495.22	<i>Sanchez v. Brownsville Sports Ctr., Inc.</i> , 51 S.W.3d 643, 652–53, 671 (Tex. App.—Corpus Christi Feb. 2001, pet. granted but vacated under settlement agreement) (wrongful death products case)
Loss of companionship of wife: \$2,975,000	\$3,121,035.41	\$4,681,553.12	<i>Gregory v. Chohan</i> , 615 S.W.3d 277, 291, 303, 312–

Wrongful Death Damages

REPORTED DAMAGES	INFLATION ADJUSTED	150% RECOVERY	CITATION
Mental anguish of wife: \$4,462,500	\$4,681,553.12	\$7,022,329.68	13 (Tex. App.—Dallas Nov. 30, 2020, pet. filed) (\$17 million verdict where 45-year-old trucker died in wreck).
Mental anguish & loss of consortium of decedent's two children (age 8 and 10): \$2,445,000	\$2,565,019.02	\$3,847,528.53	
Mental anguish & loss of companionship of two parents: \$1,280,000	\$1,342,832.04	\$2,014,248.06	
Mental anguish & loss of consortium of two parents: \$9,750,000	\$12,739,687.03	\$19,109,530.55	<i>Frazier v. Honeywell Intern., Inc.</i> , 518 F. Supp. 2d 831, 884 (E.D. Tex. Oct. 2007) (\$24 million verdict from car wreck causing 18-year-old's death).
Mental anguish & loss of consortium as husband: \$1,900,000	\$2,811,413.01	\$4,217,119.52	<i>Vogler v. Blackmore</i> , 352 F.3d 150, 152–53 (5th Cir. Nov. 2003) (\$3.8 million

Wrongful Death Damages

REPORTED DAMAGES	INFLATION ADJUSTED	150% RECOVERY	CITATION
Mental anguish & loss of consortium as father: \$1,500,000	\$2,219,536.59	\$3,329,304.89	verdict from car wreck causing death of mother and 3-year-old child).
Pain and suffering of decedent: \$1,000,000	\$2,013,296.46	\$3,019,944.69	<i>C&H Nationwide, Inc. v. Thompson</i> , 810 S.W.2d 259, 266 (Tex. App.—Houston [1st Dist.] May 1991), <i>affirmed in part, reversed in part on other grounds</i> at 903 S.W.2d 315, 317 (Tex. 1994) (\$8.2 million in damages for car wreck causing 48-year-old's death).
Loss of companionship and pain & suffering of wife: \$4,000,000	\$8,053,185.84	\$12,079,778.76	
Mental anguish and consortium claims of the son: \$950,000	\$1,912,631.64	\$2,868,947.46	
Mental anguish and consortium claims of the daughter: \$550,000	\$1,107,313.05	\$1,660,969.58	

Wrongful Death Damages

REPORTED DAMAGES	INFLATION ADJUSTED	150% RECOVERY	CITATION
Mental anguish & loss of consortium to mother: \$6,000,000	\$8,092,334.60	\$12,138,501.90	<i>Souza v. Cooper</i> – 2006 (cited by <i>Frazier v. Honeywell Intern., Inc.</i> , 518 F. Supp. 2d 831, 843 (E.D. Tex. 2007)) (spouses killed in car wreck).
Mental anguish & consortium claim of 17-year-old child: \$3,400,000	\$5,568,147.57	\$8,352,221.36	<i>Atchison, Topeka and Santa Fe Ry. Co. v. Cruz</i> , 9 S.W.3d 173, 181, 185 (Tex. App.—El Paso July 14, 1999, pet. granted, but vacated and remanded by agreement) (\$16.5
Mental anguish & consortium claim of 12-year-old child: \$4,622,000	\$7,569,405.31	\$11,354,107.97	compensatory damages verdict where father, mother, and one son died in train wreck)
Mental anguish & consortium claim of 12-year-old child: \$6,125,000	\$10,030,854.08	\$15,046,281.12	
Pain and suffering of decedent: \$2,200,000	\$2,210,583.15	\$3,315,874.73	<i>City of Austin v. Lopez</i> , __ S.W.3d __, 2021 WL

Wrongful Death Damages

REPORTED DAMAGES	INFLATION ADJUSTED	150% RECOVERY	CITATION
Mental anguish & loss of consortium for child: \$7,000,000.00	\$7,033,673.66	\$10,550,510.49	2587718, *3 (Tex. App.—Austin June 24, 2021, no pet. h.); <i>see also</i> Exh. 1 (Jury charge) (\$9,360,000 in damages arising from workplace electrocution).
Mental anguish & loss of consortium of spouse: \$1,000,000	\$2,303,822.78	\$3,455,734.17	<i>Larsen v. Delta Air Lines, Inc.</i> , 692 F. Supp. 714, 721 (S.D. Tex. July 1988) (\$3,000,174 verdict for death of 32-year-old in plane crash).
Mental anguish & loss of consortium of both parents: \$800,000.00	\$1,843,058.23	\$2,764,587.35	
Mental anguish & loss of consortium of spouse: \$1,000,000	\$2,117,944.14	\$3,176,916.21	<i>Douglass v. Delta Air Lines, Inc.</i> , 897 F.2d 1336, 1343–45 (5th Cir. Apr. 1990) (\$6,901,822 in damages for death in plane crash).
Mental anguish & loss of consortium of three children (ages 11, 9, and 5): \$900,000	\$1,906,149.73	\$2,859,224.60	

Wrongful Death Damages

REPORTED DAMAGES	INFLATION ADJUSTED	150% RECOVERY	CITATION
Loss of consortium to widow of widow: \$500,000	\$1,311,253.60	\$1,966,880.40	<i>Monsanto Co. v. Johnson</i> , 675 S.W.2d 305 (Tex.App.—Houston July 1984, writ ref'd n.r.e.) (\$710,000 judgment for 63-year-old pedestrian car-wreck death).
Mental anguish & loss of consortium for widow: \$900,000	\$2,333,358.97	\$3,500,038.46	<i>Air Florida, Inc. v. Zondler</i> , 683 S.W.2d 769 (Tex.App.—Dallas Dec. 1984, no writ) (\$2,540,000 judgment in plane-crash death).
Mental anguish & loss of consortium for wosons: \$200,000	\$518,524.22	\$777,786.33	
Decedents physical pain & suffering: \$1,500,000	\$1,696,703.58	\$2,545,055.37	<i>Montano v. Orange Co.</i> , Tex., 842 F.3d 865, 879 (5th Cir. Nov. 2016) (\$2,417,000 in damages for 41-year-old who died suffering acute renal failure for 4.5 days).

Wrongful Death Damages

REPORTED DAMAGES	INFLATION ADJUSTED	150% RECOVERY	CITATION
Pain, suffering, and mental anguish of the decedent: \$3,500,000	\$5,218,517.20	\$7,827,775.80	<i>Cresthaven Nursing Residence v. Freeman</i> , 134 S.W.3d 214, 230, 231–32 (Tex. App.—Amarillo Feb. 2003, no pet.) (\$9 million jury verdict for medical malpractice wrongful death).
Loss of consortium and suffering of three adult daughters of decedent: \$3,000,000	\$4,473,014.75	\$6,709,522.13	<i>Gen. Chem. Corp. v. De La Lastra</i> , 852 S.W.2d 916, 918 & n.2 (Tex. Feb. 1993) (\$14.6 million compensatory damages jury verdict for death of two adult brothers).
Loss of companionship and mental anguish for both brother to parents: \$10,000,000	\$19,077,777.78	\$28,616,666.67	<i>Pittsburgh Corning Corp. v. Walters</i> , 1 S.W.3d 759, 780 (Tex. App.—Corpus
Pain & suffering survival damages to the estates for both brothers: \$2,000,000	\$3,815,555.56	\$5,723,333.34	
Pain, mental anguish & medical expenses of estate: \$5,722,199.22	\$9,348,758.55	\$14,023,137.83	

Wrongful Death Damages

REPORTED DAMAGES	INFLATION ADJUSTED	150% RECOVERY	CITATION
Loss of companionship & mental anguish of wife: \$2,145,825.70	\$3,505,786.08	\$5,258,679.12	Christi Aug. 1999, writ denied) (\$8.15 million verdict for death from mesothelioma).
Loss of companionship and mental anguish to parents: \$290,875.08	\$475,223.04	\$712,834.56	
Loss of companionship & mental anguish to the spouse of decedent: \$3,650,000	\$5,963,261.22	\$8,944,891.83	<i>Serv-Air, Inc. v. Profitt</i> , 18 S.W.3d 652, 662 (Tex. App.—San Antonio Aug. 1999, no writ) (\$4,868,000 compensatory damages verdict to family of air crash victim).

Personal Injury Damages

PERSONAL INJURY

REPORTED DAMAGES	INFLATION ADJUSTED	150% RECOVERY	CITATION
Pain, mental anguish, and physical impairment of victim: \$2,500,000	\$5,294,860.36	\$7,942,290.54	<i>Pressey v. Patterson</i> , 898 F.2d 1018, 1024–26 & n.6 (5th Cir. Apr. 1990) (\$6.7 million verdict for Plaintiff shot in head, but survived after multiple surgeries and rehab, but left with permanent deficits).
Non-economic damages to shooting victim: \$1,450,000.00	\$1,927,686.85	\$2,891,530.28	<i>Reeder v. Allport</i> , 218 S.W.3d 817, 819–20 (Tex. App.—Beaumont Mar. 2007) (Plaintiff survived shooting, and “spent twenty days in the hospital, spent another forty-two days in a Houston rehabilitation
Loss of consortium to wife: \$1,076,000	\$1,430,476.59	\$2,145,714.89	
Loss of consortium to seventeen-year-old daughter: \$125,000	\$166,179.90	\$249,269.85	

Personal Injury Damages

REPORTED DAMAGES	INFLATION ADJUSTED	150% RECOVERY	CITATION
Loss of consortium to minor son: \$175,000	\$232,651.86	\$348,977.79	facility, and spent two and a half weeks in a Beaumont rehabilitation facility. As a result of permanent paralysis, Gregory is confined to a wheelchair.”)
Physical pain and suffering, mental anguish, and the loss of enjoyment in life of victim: \$10,000,000	\$12,708,276.12	\$19,062,414.18	<i>Foradori v. Harris</i> , 523 F.3d 477, 484–85, 503 (5th Cir. Apr. 2008) (\$20,881,884.41 verdict for assault of 15-year-old, leading to spinal cord injuries and quadriplegia under Mississippi law).
Past & future disfigurement: \$2,500,000	\$2,535,364.70	\$3,803,047.05	<i>Four J's Community Living Ctr., Inc. v. Wagner</i> , __ S.W.3d __, 2021 WL

Personal Injury Damages

REPORTED DAMAGES	INFLATION ADJUSTED	150% RECOVERY	CITATION
Pain & mental anguish: \$5,500,000	\$5,577,802.34	\$8,366,703.51	2006311 (Tex. App.—Houston [1st Dist.] May 20, 2021, pet. filed) (to be published) (\$8,076,400 verdict for legally blind individual with cerebral palsy and disability who was subsequently burned in fire).
Non-economic damages for child: \$1,250,000	\$1,926,898.64	\$2,890,347.96	<i>Lebron v. United States</i> , 279 F.3d 321, 327–28 (5th Cir. Jan. 2002) (\$32 million in damages found by district court in birth-injury case).
Loss of consortium to both parents: \$2,000,000	\$3,083,037.83	\$4,624,556.75	
Loss of parental consortium for three daughters: \$3,030,000	\$4,076,880.68	\$6,115,321.02	<i>General Motors Corp. v. Burry</i> , 203 S.W.3d 514, 525, 550–52 (Tex. App.—Fort Worth Sept. 21, 2006, pet. denied) (\$38 million
Mental anguish for mother: \$15,000,000	\$20,182,577.62	\$30,273,866.43	

Personal Injury Damages

REPORTED DAMAGES	INFLATION ADJUSTED	150% RECOVERY	CITATION
Future physical impairment to victim: \$3,500,000	\$4,709,268.11	\$7,063,902.17	verdict arising out of car wreck causing coma and severe brain damage to mother of three).
Future loss of consortium: \$1,800,000	\$2,304,471.02	\$3,456,706.53	<i>Puga v. RCX Solutions, Inc.</i> , 922 F.3d 285, 289, 297 (5th Cir. Apr. 2019)
Past loss of consortium: \$1,600,000	\$2,048,418.68	\$3,072,628.02	(car wreck resulting in “a variety of injuries, including burns on large parts of his body and fractures in his spine, legs, pelvis, and fingers,” with Plaintiff still undergoing surgeries two years later. Court held that damages were not excessive.)

Personal Injury Damages

REPORTED DAMAGES	INFLATION ADJUSTED	150% RECOVERY	CITATION
Pain and suffering and mental anguish to 26-year-old who would suffer constant pain for remainder of life expectancy: \$5,000,000	\$5,240,503.85	\$7,860,755.78	<i>Peña v. Guerrero</i> , No. 04-19-00874-CV, 2020 WL 7232136, at *5, *6–7 (Tex. App.—San Antonio Dec. 2020, no pet.) (\$9,756,223.22
Future physical disfigurement where a current photo did not show “obvious disfigurement.”: \$250,000	\$262,025.19	\$393,037.79	compensatory damages verdict from car wreck resulting in injury and death).
Future physical impairment where plaintiff’s pain “decreases his motivation, hinders his ability to exercise, and makes it difficult for him to work”: \$1,500,000	\$1,572,151.16	\$2,358,226.74	

Personal Injury Damages

REPORTED DAMAGES	INFLATION ADJUSTED	150% RECOVERY	CITATION
Pain, mental anguish, disfigurement, and physical impairment: \$1,500,000	\$2,104,339.67	\$3,156,509.51	<i>Rosenthal v. United States</i> , No. 303-CV-0822, 2005 WL 926964, at *8 (N.D. Tex. Apr. 20, 2005) (\$3,712,031.00 premises liability damages under the FTCA from fall resulting in broken ankle, surgical repair of ankle, and blood clotting complications.)

CONCLUSION

The review of cases from Texas and the Fifth Circuit show that this Court has great discretion in awarding damages for 26 wrongful deaths, 22 personal injuries, and the derivative claims arising out of the Sutherland Springs shooting. Plaintiffs request the Court use that discretion to fully compensate these families.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

By our signatures above, we certify that a copy of Plaintiffs' Trial Brief on Non-Economic Damages has been sent to the following on September 29, 2021 via the Court's CM/ECF notice system.

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