



Transforming Legal Settlements

How Science is Changing Emotional Distress Compensation

By Gleb Tsipursky

Imagine a client whose life has been turned upside down by a traumatic event, leaving the client not only physically scarred but also emotionally shattered. How can we ensure that the client's suffering is fairly and accurately represented in the courtroom? In today's legal landscape, where cases of mental anguish and emotional distress are prevalent, finding a robust and objective method for evaluation is crucial. Traditional methods of assessing emotional distress are fraught with inconsistencies and subjectivity. The Quality-Adjusted Life Year (QALY) metric offers a scientifically validated, quantifiable measure that can significantly enhance the accuracy and credibility of legal claims. This article explores the impact of mental anguish on individuals, the limitations of conventional evaluation methods and the transformative potential of QALY in legal practice. By adopting this objective tool, lawyers can better advocate for their clients, ensuring fair compensation and fostering trust in the judicial system.

The Hidden Toll: Unpacking Mental Anguish and Emotional Distress

Mental anguish and emotional distress encompass a range of experiences that profoundly impact an individual's well-being. These experiences can be debilitating, often manifesting as intense sadness, grief, anger, anxiety and in panic attacks. Cognitive components include negative thoughts, rumination and difficulty concentrating, which can impair the ability to function in daily life.

Mental anguish also manifests physically, highlighting the connection between mind and body. Symptoms include headaches, muscle tension, sleep disturbances, fatigue, gastrointestinal issues and even hair loss. These physical manifestations further compound the suffering.

The effects of mental anguish extend beyond emotional and physical symptoms. Relationships may become strained, and individuals might withdraw socially, reducing their support network. Job performance often suffers due to decreased concentration and increased absenteeism, jeopardizing career prospects. Overall, the quality of life is markedly diminished, with reduced pleasure and satisfaction and an increased risk of developing additional mental health disorders or physical health issues.



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Why Evaluating Emotional Anguish Matters for All Lawyers

Emotional distress can impact an individual's quality of life, yet its intangible nature makes it challenging to quantify accurately. Effectively assessing and presenting evidence of emotional anguish is crucial in advocating for clients and achieving equitable outcomes.

Consider the wide range of cases where emotional anguish plays a pivotal role. In employment, housing and other discrimination cases, victims often suffer severe

emotional distress due to ongoing harassment and unfair treatment. These experiences can lead to anxiety, depression and social withdrawal, significantly affecting quality of life. In personal injury claims, plaintiffs frequently experience emotional trauma in addition to physical injuries. For example, a person injured in a car accident may suffer from chronic pain and develop anxiety or post-traumatic stress disorder (PTSD). In these cases, plaintiffs attorneys need to present a comprehensive evaluation that includes both the physical and emotional damages. This helps ensure that clients receive compensation that reflects the full extent of their suffering. Conversely, defense attorneys need to scrutinize these claims to ensure that any compensation awarded is proportionate to the actual emotional harm suffered, preventing inflated or unsupported claims from prevailing.

Wrongful death cases have an emotional impact on surviving family members, who endure profound grief and emotional distress. Accurately assessing and conveying the suffering of survivors is essential for claims related to emotional distress and loss of companionship. By thoroughly evaluating the emotional toll, plaintiffs attorneys can build a compelling case for appropriate compensation, helping families find some measure of justice and closure. In turn, defense attorneys must be able to critically assess these claims to ensure that the compensation sought aligns with established legal standards and is substantiated by the evidence.

In disputes involving public services, such as inadequate access to healthcare or substandard living conditions, people often suffer ongoing stress and anxiety. Individuals living in unsafe public housing conditions may experience persistent fear and distress. Plaintiffs attorneys need to demonstrate the emotional harm suffered by these residents, highlighting the need

for improved services and fair compensation. Defense attorneys must work to ensure that claims of emotional distress are legitimate and adequately supported, preventing unwarranted or exaggerated compensation demands.

In medical malpractice cases, victims often face not only physical injuries but also emotional distress. Misdiagnoses, surgical errors or negligent care can lead to long-term psychological impacts, including depression and anxiety. Evaluating these emotional consequences is critical to victims receiving comprehensive compensation that addresses all aspects of their suffering. The defense must challenge the extent of emotional distress claimed and present alternative interpretations where appropriate.

Family law cases, such as divorce or child custody disputes, can cause considerable emotional distress. Contentious legal battles and the breakdown of relationships can lead to anxiety, depression and emotional turmoil. Plaintiffs attorneys must be adept at evaluating and presenting the emotional impact on their clients to secure fair outcomes in these deeply personal matters. Defense attorneys in such cases need to evaluate emotional distress claims to ensure they are not overstated and that any compensatory measures are fair and justified.

The relevance of evaluating emotional anguish extends to various legal contexts, including product liability cases where individuals suffer emotional distress due to defective products, and civil rights cases where victims endure emotional harm from discrimination or wrongful actions.

Ultimately, the ability to evaluate emotional anguish is indispensable for attorneys for both plaintiffs and the defense. It empowers lawyers to deliver more accurate, just and equitable outcomes, ensuring that those who suffer from emotional distress receive the recognition and compensation they deserve while also safeguarding against unjust or exaggerated claims. By integrating thorough evaluations of emotional anguish into their practice, attorneys can enhance the standards of legal advocacy and contribute to a fairer legal system.

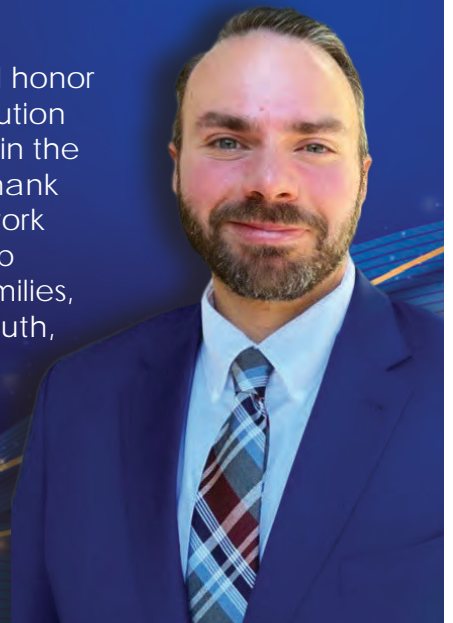
The Flaws of Traditional Subjective Evaluation Methods

Assessing mental anguish and emotional distress in legal cases poses challenges, primarily due to the lack of standardized methods. Traditional evaluation methods are inconsistent and vary widely among practitioners, leading to disparities in assessments. These evaluations often lack a robust scientific foundation, relying instead on the clinician's interpretation of the individual's self-reported symptoms, which can be influenced by various biases and factors.



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Effectively presenting evidence of emotional anguish is crucial in advocating for clients and achieving equitable outcomes.

The criteria used to assess distress can differ significantly between cases and practitioners, undermining the credibility of the evaluations and potentially resulting in unjust outcomes. Furthermore, the wide range of tools and scales employed in these assessments introduces variability that complicates the process.

Subjective evaluations often depend on the rhetorical skills of lawyers and clinicians to persuade judges and juries, which can result in decisions based more on persuasive arguments than on objective evidence. Individual responses to distressing events vary widely, influenced by personal history, context and cultural factors, further complicating subjective evaluations. People experience and express emotions differently, and past experiences and current circumstances shape an individual's response to distress.

Subjective evaluations of mental anguish and emotional distress are inherently prone to cognitive biases, which can impact the accuracy and fairness of assessments. Understanding these biases is crucial for lawyers who seek to present reliable and objective evidence in court.

Confirmation bias occurs when individuals seek information that confirms their preconceptions while ignoring conflicting evidence. This bias can lead to skewed evaluations based on initial impressions and the reinforcement of existing beliefs. For example, a clinician might focus on symptoms that fit a specific diagnosis, overlooking alternative explanations that could provide a more accurate assessment.

Anchoring bias involves an overreliance on initial information, using first impressions as a reference point for subsequent evaluations. This can result in distorted assessments due to the importance given to initial data and difficulty in adjusting evaluations with new information. An initial symptom report can unduly influence overall judgment, causing subsequent evidence to be inadequately considered.

The availability heuristic is another cognitive bias that affects subjective evaluations. It involves overestimating the importance of readily available information and relying on recent or memorable events. This bias can lead to a focus on dramatic or recent cases, neglecting less obvious but equally relevant information. Clinicians might be unduly influenced by recent similar cases or

overemphasize vivid patient stories, affecting the objectivity of their assessments.

Fundamental attribution error involves misattributing the causes of behavior or symptoms to internal factors rather than external situations. This can result in incorrectly blaming individuals for their distress and overlooking situational factors. For example, a clinician might attribute a patient's distress to personal weakness, ignoring external stressors such as workplace discrimination or harassment.

It is crucial to recognize these biases and train legal professionals to identify and counteract them. Continuous learning and staying updated with the latest research on cognitive biases can improve the accuracy and reliability of assessments. Utilizing standardized tools, such as the QALY metric, ensures consistency and reduces the influence of subjective biases.

Introducing QALY: A Game-Changer for Legal Cases

The QALY is a metric that combines both the quantity and quality of life into a single measure, offering a comprehensive evaluation of an individual's overall well-being. QALY consists of two components: the length of life, measured in years lived, and the quality of life, assessed using health-related quality of life measures that encompass physical, mental and social well-being. The formula for QALY is $QALY = \text{Length of life} \times \text{Quality of life}$.

One QALY equates to one year of life in perfect health or, for example, .5 QALY represents one year of life at 50% quality.

Developed in the 1960s by health economists to assess the value of medical interventions, QALY has since evolved and been adopted in public health and health economics. It plays a crucial role in policy-making and resource allocation, providing a

standardized approach to evaluating health outcomes.

In the United States, the standard QALY value is \$125,000 per QALY. This valuation is based on the typical life valued at \$10 million by the U.S. government and the average U.S. life expectancy of 80 years. The calculation is straightforward: $\$10 \text{ million} \div 80 \text{ years} = \$125,000 \text{ per QALY}$.

How does QALY apply to emotional anguish? As an example, consider a peer-reviewed study published in *Health and Quality of Life Outcomes* in January 2017 titled "Incremental decreases in quality-adjusted life years (QALY) associated with higher levels of depressive symptoms for U.S. Adults aged 65 years and older."

Analyzing data from the Centers for Disease Control and Prevention between 2005 and 2011, the researchers examined the association between QALY and depression among adults aged 65 and older. The severity of depression was measured using Patient Health Questionnaire-9 (PHQ-9) scores, categorizing depression as none/minimal (score 0-4), mild (5-9), moderate (10-14) or moderately severe/severe (15+).

The results showed significant QALY loss correlating with the severity of depression. Individuals with none/minimal depression had a QALY of 14 years, those with mild depression had 7.8 years, moderate depression resulted in 4.7 years and moderately severe/severe depression was associated with just 3.3 years of QALY. This quantification highlights the profound impact of emotional distress on overall quality of life. Specifically, major depressive disorders led to a loss of 8.3 QALY (a 65% reduction), while mild depression resulted in a loss of 6.2 QALY (a 44% reduction). These patterns were consistent across various demographics and comorbidities, underscoring the broad applicability of these findings.



What's the lawyer story you most love to tell when you gather with friends after hours?

Every lawyer has a favorite "war story" — a tale of a hard-won legal battle, a story with a hilarious twist, an account of an incredible escapade. Pick your best can't-top-this adventure with a judge, jury, client or colleague and write about it for us in 400 words or less.

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Every year of major depressive disorder results in a loss of 65% of QALY, which translates to \$81,250 per year of experiencing the disorder. Such objective measurements provide clear, quantifiable evidence that can be crucial in supporting claims for compensation due to emotional distress and mental anguish.

Other studies show similar findings. In a peer-reviewed study published in the journal *International Psychogeriatrics* in 2000, researchers found that “Individuals with clinically significant depressive symptoms at baseline had significantly lower QALYs over the four-year study period than nondepressed subjects, even after adjusting for differences in age, gender and eight other chronic medical conditions. In terms of the entire study population, only arthritis and heart disease were more strongly associated with QALYs than depression.”

QALY in Legal Cases

The use of QALY provides objective evidence for legal compensation, demonstrating both clinical importance and statistical significance. This metric helps lawyers support claims for physical injuries and emotional distress damages. Applying QALY

findings can enhance the credibility and defensibility of cases, providing a robust foundation for legal arguments.

The *Daubert* standard, a legal precedent for expert witness testimony, is used by judges to assess the reliability and relevance of such testimony. It sets criteria including testability (whether the theory can be tested), peer review (whether the theory has been peer-reviewed), error rates (known or potential error rates), standards (existing standards for the technique) and acceptance (general acceptance in the academic or expert community).

QALY meets these criteria effectively. It is a testable metric and has been extensively reviewed in scientific literature. Standardized methods used in QALY calculations minimize error rates, and there are established guidelines for its calculation. Furthermore, QALY is broadly accepted in health economics, underscoring its credibility.

In expert witness testimony, QALY can play a crucial role by providing quantifiable health outcomes and a clear framework for assessing emotional distress and physical damage. Its standardized approach ensures consistency, demonstrating



rigorous scientific methods and simplifying complex health evaluations for the court. This makes QALY a valuable tool in legal contexts, helping to present clear, objective and scientifically validated evidence.

Case Study: Use of QALY by Plaintiffs Attorneys

Jane Doe suffered medical malpractice, leading to a major depressive disorder. Her ensuing lawsuit lasted seven years, exacerbating her condition. During this period, Jane's legal team brought in an expert witness to assess the impact of her emotional distress separately from the physical damage caused by the malpractice.

The expert testified that her quality of life had been reduced by 65% per year due to her depression, or a .65 QALY reduction annually. Over the seven years, this loss amounted to 4.55 QALY. Additionally, the expert estimated that she would lose another 4.55 QALY during her recovery period, as it typically takes as much time to recover from such a disorder as it took to develop.

Since Jane could not begin to recover while the lawsuit was ongoing, the total QALY loss was calculated to be 9.1.

Using the standard value of \$125,000 per QALY, Jane's legal team requested \$1,137,500 in compensation for her emotional distress. Eventually, the court awarded her \$1.1 million in addition to the damages for the physical harm caused by the malpractice.

This case highlights how the use of QALY to quantify emotional distress can enhance credibility in legal cases. By providing a standardized, objective metric, QALY strengthened Jane's case for compensation and offered clear, defensible evidence in court.

Case Study: Use of QALY by Defense Attorneys

John Doe, a police department employee, sued the city for discrimination that he experienced over a two-year period since he transferred to a new unit in the department. The discrimination, which included

racial harassment and unfair treatment, led to John being diagnosed with major depressive disorder, as documented by medical records. Seeking justice and compensation for his suffering, he sued the city for \$8 million.

This lawsuit was part of a series of similar cases the city had recently faced, with previous losses per case ranging from \$1 to \$5 million. To strengthen their defense in this case, the city brought in an expert witness to quantify the impact of John's major depressive disorder using the QALY metric.

The expert testified that, in the most severe cases, a major depressive disorder results in a maximum loss of 65% of QALY per year. Over the two years of ongoing discrimination, this translated to 1.3 QALY. However, the expert pointed out that depression would take time to fully manifest, suggesting that the actual QALY loss during the period of discrimination would likely be less.

Additionally, once the cause of the disorder — the discrimination — was addressed, the time required for recovery would probably be no more, and likely less, than the time it took for the disorder to develop. Therefore, the maximum possible QALY loss, including the period for both development and recovery, would be 2.6 QALY. With the standard value of \$125,000 per QALY, the maximum possible compensation based on QALY would amount to \$325,000.

Using this objective analysis, the city argued for a much lower compensation than in previous cases. By providing a scientifically validated, quantifiable measure of the emotional distress John experienced, the city's defense highlighted the precise impact of the discrimination. This approach proved effective, and the city eventually paid \$250,000, having convinced the jury that John would not have experienced the full effect of his depression for all of the two years prior to the lawsuit, and would



QALY meets the rigorous criteria of the *Daubert* standard, demonstrating its broad acceptance and scientific validation in health economics.

take less than two years to recover. The outcome of both cases demonstrated the power of QALY as a tool in legal evaluations and set a precedent for more precise and objective assessments in future cases. Note that I am personally familiar with both cases as I served as an expert witness.

Presenting QALY in Court: Strategies for Success

Presenting QALY in court requires a methodical approach. Start by defining QALY and explaining its significance, emphasizing

how it combines both the quality and quantity of life into a single measure. Relate QALY calculations directly to the specific case, using real-life examples to illustrate key points. Use visual aids to depict QALY loss, providing visual comparisons of baseline and impacted QALY to make the data accessible and compelling.

Simplifying complex health evaluations is crucial for ensuring that the court understands the implications of QALY. Simplify medical jargon and use layperson's terms wherever possible. Present a clear, step-by-step explanation of how QALY is calculated, walking through the process to highlight the most important findings. Make sure the main takeaways are clear and memorable.

To enhance credibility and authority, present QALY as an objective, quantifiable measure, contrasting it with more subjective assessments. Emphasize the standardized nature of QALY, showcasing its consistency across different cases and contexts. Highlight that QALY meets the rigorous criteria of the *Daubert* standard, demonstrating its broad acceptance and scientific validation in health economics.

Demonstrating scientific rigor is also vital. Reference studies and literature that support the use of QALY and explain the methodologies used in its calculation. Highlight the reliability and reproducibility of QALY results to underscore their credibility. Expert witnesses can play a crucial role in this process, effectively articulating the scientific basis of QALY and reinforcing its validity as a robust tool for legal evaluations.

Conclusion: Leading the Way to Fairer Legal Settlements

The integration of the QALY metric in legal cases represents a significant advancement in the evaluation of mental anguish and emotional distress, providing a scientifically validated and objective measure.

Imagine a future where every legal professional has the tools to objectively quantify emotional distress, where justice is served with precision and where the impact of mental anguish is recognized and compensated fairly but not excessively. The adoption of QALY in evaluating emotional distress as well as physical damage can set a new standard in legal practice, one that reduces subjectivity, meets rigorous scientific criteria and provides robust, data-driven evidence that can withstand scrutiny as part of the *Daubert* standard.

The use of QALY can be a game-changer, enabling lawyers to advocate more effectively for their clients and contribute to a more just legal system. The journey toward integrating scientific methodologies in legal practice is just beginning and, by embracing tools like QALY, legal professionals can lead the way in creating a fairer, more objective approach to justice. ☞



Dr. Gleb Tshipursky leverages his expertise in behavioral science and decision-making to help lawyers persuade the trier of fact to adopt their case theory. He has written seven best-selling books,

including *Never Go With Your Gut: How Pioneering Leaders Make the Best Decisions and Avoid Business Disasters* (Career Press, 2019) and *The Blindspots Between Us: How to Overcome Unconscious Cognitive Bias and Build Better Relationships* (New Harbinger, 2020). His writing has been translated into more than eight languages. He has been mentioned in venues including *Harvard Business Review*, *Fortune*, *Inc. Magazine*, *Scientific American*, *Psychology Today*, *Fox News*, *USA Today*, *Forbes*, *The New York Times* and others. He spent over 15 years in academia as a behavioral scientist, with eight years as a lecturer at UNC-Chapel Hill and seven years as a professor at Ohio State. He earned degrees from the University of North Carolina at Chapel Hill, Harvard University and New York University.

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