

Expert Opinion |

The Last Chapter of Life: Part 1—Persuading the Jury in Cases Involving Serious Injury to the Elderly

In elderly injury cases, the focus should be on the human losses—independence, dignity, and relationships—rather than age or remaining years. The key is demonstrating what negligence has truly taken: the quality of life and final moments, not just medical conditions or statistics. Age doesn't reduce the value of what's been lost.

July 13, 2026 at 07:48 AM By **Ben B. Rubinowitz** and **Evan Torgan**



guardianship laws, elderly

Every trial lawyer has heard it, although few defense lawyers will ever say it quite so directly.

"She was already eighty-six."

"He wasn't in perfect health before the accident."

"He only had a few years left."

The implication is unmistakable. Because the plaintiff was elderly, the damages should somehow be less.

Jurors rarely voice this thought openly, but it often finds its way into the deliberation room. It is one of the greatest challenges facing lawyers representing older plaintiffs.

Unlike liability, which is usually determined by objective evidence, damages require jurors to place a value on what has been taken.

When the injured person is in the final years of life, there is a natural tendency to focus on chronological age rather than on the life that remained

that remained.

The defense understands this psychology well.

Rather than arguing that an elderly person's life has less value, defense counsel usually presents a carefully constructed picture of inevitable decline.

Medical records documenting arthritis, osteoporosis, degenerative spinal disease, heart disease, diabetes, prior falls, or cognitive impairment are introduced to suggest that the plaintiff's condition was already deteriorating before the event in question.

Mortality tables are displayed to remind jurors that statistically the plaintiff had fewer remaining years than a younger person. The underlying message is subtle but powerful: little has been lost because little time remained.

The plaintiff's lawyer should never ignore these arguments. Nor should counsel attempt to deny the obvious realities of aging. Jurors know that growing older brings physical limitations. Pretending otherwise only diminishes credibility.

Instead, the plaintiff's lawyer should acknowledge the truth—and then explain why the defense has asked the wrong question.

The issue is not how old the plaintiff was.

The issue is what was taken away.

Our civil justice system does not place a discount on safety because someone has reached an advanced age. Every person, regardless of age, possesses the same right to spend the remainder of life free from the consequences of another's negligence.

Whether those remaining years number fifty or five, they belong to the individual who earned them through a lifetime of work, sacrifice, and experience.

The defense counts years.

The plaintiff must demonstrate the value of the life contained within those years.

That distinction should become the central theme of the entire trial and, ultimately, the heart of closing argument.

The Final Chapter Is Often the Most Precious

There is a tendency to think of aging as a period of diminishing value. Nothing could be further from the truth.

For many people, the later years of life are the very years for which they have spent decades preparing. After years of building careers, raising children, paying mortgages, and meeting countless responsibilities, retirement offers something many people have never truly possessed—time.

Time to travel.

Time to enjoy grandchildren.

Time to reconnect with lifelong friends.

Time to volunteer.

Time to pursue hobbies long postponed.

Time to sit on the porch with a spouse and watch the sun set without worrying about tomorrow's obligations.

These ordinary moments become extraordinary precisely because they are no longer taken for granted.

As we grow older, we become increasingly aware that time is finite. Ironically, that awareness does not diminish life's value; it enhances it. Every family gathering carries greater meaning.

Every holiday becomes more precious. Every birthday is celebrated with a deeper appreciation because there is an understanding that none of these moments can be replaced.

This is why the phrase "the golden years" has endured.

Gold is valuable because it is scarce.

Time becomes valuable for exactly the same reason.

When negligence suddenly destroys the quality of those remaining years, the loss extends far beyond broken bones, surgical procedures, or medical expenses. What has been taken is the opportunity to enjoy the final chapter of life with dignity, independence, and peace.

That is the loss the jury must understand.

Growing Older Is Natural. Catastrophic Injury Is Not

Perhaps the most persuasive concept in an elderly injury case is the distinction between the natural process of aging and the sudden devastation caused by negligence.

Growing older is gradual.

The body changes little by little.

Perhaps the knees become stiff.

Reading glasses become necessary.

Walking slows.

Balance becomes less certain.

These changes occur over years, allowing people to adapt physically and emotionally. Human beings possess an extraordinary ability to accommodate gradual change. They learn new routines, discover new ways of accomplishing familiar tasks, and continue living meaningful lives despite increasing limitations.

Negligence is entirely different.

Negligence gives no warning.

It allows no opportunity to prepare.

It compresses years of anticipated change into a single terrifying moment.

Yesterday an elderly woman walked into the grocery store by herself.

Today she cannot walk across her living room without assistance.

Yesterday a grandfather drove himself to watch his grandson play baseball.

Today he wonders whether he will ever drive again.

Yesterday a retired couple planned their next vacation.

Today they schedule surgeries, rehabilitation appointments, and visits with specialists.

That is not the ordinary progression of aging.

That is trauma.

It is trauma imposed suddenly, unexpectedly, and through no fault of the injured person.

For a younger individual, there may be decades available to recover, adapt, and redefine life around new physical limitations. That does not minimize the suffering of younger plaintiffs. It simply recognizes a different reality for older adults.

When catastrophic injury occurs late in life, there is often little time remaining in which to recover physically or emotionally. Months spent recovering are months permanently taken from retirement. Holidays are missed.

Family traditions change. Vacations are cancelled. The years that should have been devoted to enjoyment instead become dominated by pain, uncertainty, and dependence.

That reality is not sentimental.

It is profoundly human.

Closing Argument: Demonstrating the True Value of What Was Taken

Closing argument is the plaintiff's opportunity to redirect the jury's attention from chronology to humanity. By this point in the trial, the defense has usually accomplished exactly what it intended to do.

Jurors have heard about advanced age, arthritis, osteoporosis, degenerative disease, heart disease, cognitive decline, prior falls, and mortality tables. They have been reminded repeatedly that the plaintiff was not in perfect health before the occurrence.

Those facts should not be feared.

They should be embraced.

The plaintiff's lawyer should readily acknowledge that the client was growing older. The issue, however, is not whether the plaintiff had preexisting medical conditions.

The issue is whether the defendant's negligence transformed an independent and meaningful life into one marked by pain, dependence, and uncertainty.

The defense wants the jury to count years.

The plaintiff's lawyer must demonstrate the value of the life contained within those years.

That distinction should become the central theme of summation.

Ask Better Questions

Jurors naturally begin deliberations by asking questions.

How old was she?

How healthy was he?

How much longer would she have lived?

Those are understandable questions, but they do not answer the issue the jury has been sworn to decide.

Instead, counsel should encourage jurors to ask different questions.

What has this person actually lost?

What everyday pleasures disappeared because of this injury?

What relationships changed forever?

What independence can never be restored?

What peace of mind has been replaced by fear?

What hopes for the future have vanished?

The answers to those questions reveal the true measure of damages.

Beyond the Medical Records

One of the greatest mistakes a plaintiff's lawyer can make is allowing the defense to define the client through medical records.

Medical records tell us about diagnoses.

They rarely tell us about living.

A chart may record hypertension, arthritis, or osteoporosis. It does not reveal that every Saturday morning was spent having breakfast with lifelong friends.

It does not mention that the plaintiff never missed a grandchild's school play or faithfully attended religious services every week. It says nothing about tending a garden, walking a favorite dog, cooking holiday dinners, or taking quiet evening walks with a spouse.

The plaintiff's lawyer must remind the jury that before the injury there was a full and meaningful life—not a collection of diagnoses.

Medical conditions do not define a person.

Life experiences do.

The Things That Cannot Be Seen

The most significant losses in an elderly injury case are often invisible.

Broken bones may heal.

Surgical wounds become scars.

Medical bills can be totaled.

But the greatest injuries cannot be displayed on an x-ray.

Ask the jury:

What has she truly lost?

The confidence to leave her home alone.

The freedom to drive.

The ability to care for herself without assistance.

The comfort of knowing she would not become a burden to her family.

The joy of playing with grandchildren instead of watching from a chair.

The dignity that comes from living independently.

The peace of mind that tomorrow would look much like today.

These losses cannot be measured by diagnostic studies, but they are no less real.

Indeed, they are often the injuries that the plaintiff experiences every waking day.

The Loss of Independence

For many elderly plaintiffs, the greatest injury is not physical pain.

It is the loss of independence.

Independence is one of life's greatest privileges because it is exercised through ordinary moments.

Choosing when to wake up.

Driving to visit a friend.

Preparing a favorite meal.

Walking to the mailbox.

Attending church.

Going to the pharmacy.

Taking an evening stroll.

These simple decisions reflect personal dignity and self-determination.

When negligence takes away those choices, it alters far more than physical ability.

It changes identity.

The husband who spent a lifetime caring for his wife now depends upon her to help him dress.

The mother who raised four children apologizes because her daughter must help her bathe.

The proud grandfather who once carried his grandchildren now worries that he cannot safely hold them.

Dependence changes relationships, even those built upon love.

The emotional consequences often exceed the physical injuries.

Time Itself Becomes the Loss

The defense will inevitably emphasize that the plaintiff had fewer years remaining than a younger individual.

Do not argue with that reality.

Instead, explain why it actually increases the importance of what was taken.

Every month spent recovering is a month forever removed from retirement.

Every family holiday spent in a rehabilitation center is one that will never be celebrated again.

Every anniversary marked by pain rather than joy is permanently lost.

The defense asks the jury to conclude that fewer remaining years justify lower damages.

Common sense suggests exactly the opposite.

As time becomes more limited, it becomes more precious.

When there are only a few summers left with grandchildren, each one matters more.

When there are only a few anniversaries remaining with a lifelong spouse, every one becomes priceless.

The defendant did not merely shorten the plaintiff's future.

The defendant forever changed the quality of the time that remained.

Bringing the Theme Home

Ultimately, the jury should leave the courtroom understanding one simple principle.

This case is not about age.

It is about loss.

The law does not place a discount on safety because someone has grown older. Nor does it permit a defendant to diminish responsibility simply because the injured person had fewer years remaining than someone younger.

The jury's task is not to count birthdays.

It is to determine the value of what negligence has taken.

That value cannot be found in mortality tables or medical diagnoses alone.

It is found in the dignity that has been compromised, the independence that has been lost, the relationships that have been altered, and the final chapter of life that has been forever changed.

When counsel presents the case through that lens, jurors are no longer evaluating the plaintiff's age. They are evaluating the profound human loss that negligence has imposed upon another person. That is precisely where the focus belongs.

Ben Rubinowitz *is the managing partner of Gair Gair Conason, Rubinowitz, Bloom, Hershenhorn, Steigman & Mackauf. Evan Torgan is the senior partner of Torgan Cooper & Aaron. Both are members of the Inner Circle of Advocates.*

Page
printed from: https://www.law.com/newyorklawjournal/2026/07/13/the-last-chapter-of-life-part-1persuading-the-jury-in-cases-involving-serious-injury-to-the-elderly/?utm_source=email&utm_medium=enl&utm_campaign=customalert_MyLawAlert&utm_content=20260713&utm_term=law&utm_campaigntype=VirtualCategory&utm_campaignentity=New+Yo

NOT FOR REPRINT

© 2026 ALM Global, LLC, All Rights Reserved. Request academic re-use from www.copyright.com. All other uses, submit a request to asset-and-logo-licensing@alm.com. For more information visit [Asset & Logo Licensing](#).