

## Negligent Infliction of Emotional Distress: The Most Oft Ignored Claim

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Course Description: An examination of the tort of Bystander Negligent Infliction of Emotional Distress. How it is the most forgotten and underused tort by civil tort litigators. A discussion of the necessary elements, particularly the element of having "observed the injury to a loved one" and how that element differs by state, including some states not even requiring a loved one to be at the accident scene when it occurs. A discussion of insurance issues, particularly how a different policy limit applies to NIED claims and how underinsured insurance applies to NIED claims. A discussion of case value of NIED claims. Finally, a discussion of why NIED victims are being compensated, the emotional trauma they have sustained, and how to begin the healing process.

1. Historical Development of Recovery for Emotional Distress in Tort
  - a. Largely disregarded
    - i. Life is hard. Get over it.
      1. "If everyone was allowed damages for injuries to his feelings caused by someone else, the chief business of mankind might be fighting each other in the courts. Damages for mental suffering open into a field without boundaries, and there is no principle by which the court can limit the amount of damages." *Ruth v. Fletcher*, 237 Va. 366, 372-73, 377 S.E.2d 412 (1989) (quoting *Bowles v. May*, 159 Va. 419, 433-34, 166 S.E. 550 (1932)).
    - ii. Today, nearly all states recognize the right to recover for emotional distress in one form or another
      1. Robert J. Rhee, *A Principled Solution for Negligent Infliction of Emotional Distress Claims*, 36 Ariz. St. L.J. 805, 806-807 (2004)
  - b. Rationale/Concerns with allowing recovery for emotional distress
    - i. "Nearly all of the States have recognized a right to recover for negligent infliction of emotional distress, as we have defined it. No jurisdiction, however, allows recovery for all emotional harms, no matter how intangible or trivial, that might be causally linked to the negligence of another. Indeed, significant limitations,

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taking the form of 'tests' or 'rules,' are placed by the common law on the right to recover for negligently inflicted emotional distress, and have been since the right was first recognized late in the last century.

"Behind these limitations lie a variety of policy considerations, many of them based on the fundamental differences between emotional and physical injuries."

*Conrail vs. Gottshall*, 512 U.S. 532, 544-545 (1994).

1. Policy concerns (see, *Conrail vs. Gottshall*, *supra*, 545; *Thing vs. La Chusa*, 771 P. 2d 814, 818-819 (Cal. Sup. Ct. 1989)
  - a. Efficient administration of justice
    - i. Fear of inundating courts with trivial, false and fraudulent claims
  - b. Liability may be imposed for highly remote consequences of a negligent act
    - i. Emotional injuries may occur far removed in time and space from the act that causes them
  - c. Unlike physical injuries, there is no finite limit on the number of persons who might suffer emotional injuries as a result of a given negligent act
    - i. Socioeconomic and moral factors mandate there be a limit to liability for negligence
  - d. Incidence and severity of emotional injuries more difficult to predict

c. Expansion

- i. ". . . as our society has come to better understand the nature of trauma and other forms of mental distress, a recognition has emerged that witnessing a horrific accident or injury can result in legitimate, serious emotional harm, harm that can be objectively diagnosed and that is deserving of compensation. As a result, courts have grappled with the best way to afford a remedy for a bystander's genuine emotional distress while placing reasonable limits on the scope of such liability." *Squeno vs. Norwalk Hosp. Assoc.*, SC 19283 (Conn. Sup. Ct. 2015)
- ii. Among the first, if not the first case to expand recovery for the negligent infliction of emotional distress independent of it being a "parasitic" element of damage was the California Supreme Court case of *Dillon vs. Legg*, 68 Cal. 2nd 728 (1968)
  1. The opinion was authored by Matthew Tobriner who did his undergraduate study at Stanford, from which he also received a Masters degree. He then graduated magna cum laude from Harvard Law School and then received a Doctor of Judicial Science from UC Berkeley in 1932.
    - a. He also wrote a number of other notable California decisions including *Tarasoff vs. Regents of the University of California*, 17 Ca. 3d 425 (establishing the principle that a health care professional has a duty to protect third parties when a patient



the conduct is “directed toward” the plaintiff) and physical injury (although some jurisdictions require only one or the other).

1. Rationale

a. Examples

i. Florida

1. *Willis vs. Gami Golden Glades, LLC*, 967 So. 2d 846 (Fl Sup. Ct. 2007)

ii. Georgia

1. *Strickland vs. Hodges*, 216 W.E 2d 706 (Ga. Ct. App. 1975)

iii. Oregon

1. *Saechao vs. Matsakoun*, 717 P. 2d 165 (1986)

iv. Kansas

1. “The physical injury requirement in Kansas is based on sound legal principle:  
“ ‘The purpose ... is to prevent plaintiffs from recovering for emotional distress that is feigned or counterfeit. [Citation omitted.] “... [E]motional distress is a common experience of life and is usually trivial. Therefore, the courts limit recovery to cases involving severe emotional distress which is evidenced and substantiated by actual physical injury.” [Citations omitted.]’ *Reynolds [v. Highland Manor, Inc.]*, 24 Kan.App.2d [859,] at 861, 954 P.2d 11 [(1998)].” *Ware vs. ANW Spec. Ed. Co-op No. 603*, 180 P. 3d 610, 617 (Kan. Ct. of App., 2008).

2. Rule abandoned in many jurisdictions

a. *Bass vs. Nooney Co.*, 646 S.W. 2d 765 (Mo. Sup. Ct., 1983)

i. Abrogated the impact rule

1. “The abandonment of the impact rule resulted from the appropriate recognition by courts of two related concepts: First that a negligent actor can induce mental trauma in another without physical impacts, and second, that advances in medical science permit the diagnosis of mental trauma with accuracy akin to that available for the diagnosis of physical trauma. *Tobin v. Grossman*, 24 N.Y.2d 609, 301 N.Y.S.2d 554, 555-56, 249 N.E.2d 419, 420-21 (1969). The extension of potential liability beyond impact announced in *Bass* thus followed a national trend which saw courts exercise their

common law prerogative to reevaluate rules of liability in light of advances in science and changing societal norms.”, 799 S.W. 2d 595, 598 (Mo. Sup. Ct., 1990)

c. Zone of danger

- i. Generally limits recovery for emotional injury to those plaintiffs who sustain a physical impact as a result of a defendant's negligent conduct, or who are placed in immediate risk of physical harm by that conduct. That is, those within the zone of danger of physical impact can recover for fright, and those outside of it cannot.

- a. Rationale

- b. Examples

- i. Alabama

1. *AALAR, Ltd., Inc. v. Francis*, 716 So. 2d 1141 (1998)

- ii. Colorado

1. *Colwell vs. Mentzer Invs. Inc.*, 973 P. 2d 631 (Colo. App. 1998)

- iii. Illinois

1. *Rickey v. Chicago Transit Authority*, 457 N.E. 2d 1 (1983)

d. Bystander

- i. Test

1. Rationale

- a. “. . . {t}he concept of the zone of danger cannot properly be restricted to the area of those exposed to *physical* injury; it must encompass the area of those exposed to *emotional* injury” *Dillon vs. Legg*, 441 P. 2d 912 (Cal. Sup. Ct. 1968)

- b. Examples

- i. Contemporaneous perception of event or its immediate aftermath

1. California requires “contemporaneous sensory perception

- a.

2. Alaska – Includes “immediate aftermath”

- a. *Doan vs. Banner Health, Inc.*, 442 P. 3d 706 (Alaska Sup. Ct., 2021)

- i. “sudden sensory observation of a loved one's serious injuries during an uninterrupted flow of events following “closely on the heels of the accident”

- ii. Mother called to scene, but not able to see daughter as kept

away. Thereafter sees daughter in hospital.

- e. Pure foreseeability Rule
  - i. Extends bystander liability beyond immediate family members
    - 1. Factors to be considered on the question of foreseeability in cases such as this include the plaintiff's proximity to the negligent act, the relationship between the plaintiff and the other person for whose welfare the plaintiff is concerned, and whether the plaintiff personally observed the negligent act. Questions of foreseeability and proximate cause must be determined under all the facts presented and should be resolved on a case-by-case basis by the trial court and, where appropriate, by a jury.
      - a. *Johnson vs. Ruark Obstetrics*, 395 SE 2d 85 (North Carolina Sup. Ct. 1990); *Newman v. Stepp*, 852 S.E. 2d 104 (North Carolina Sup. Ct. 2020)
- f. Objectively verifiable (*i.e.*, supported by expert scientific or medical testimony)
  - i. Kentucky
    - 1. Impact rule unworkable and unjust (e.g., X-rays as a sufficient "impact" to support claim) *Osborne vs. Keeney*, 399 S.W. 3d 1 (2012) (citing *Deutsch vs. Shein*, 597 S.W. 2d 141 ( requiring minimal contact (*i.e.*, "slight, trifling or trivial")
      - a. As "emotional tranquility is rarely attained and . . . some degree of emotional harm is an unfortunate reality of living in modern society", requires a showing of severe or serious emotional injury (*i.e.*, an "emotional injury occurs where a reasonable person, normally constituted, would not be expected to endure the mental stress engendered by the circumstances of the case") (*Ibid.*)
      - b. Must be supported by scientific or medical testimony (*Ibid.*; *Sergent vs. ICG Knott County, LLC*, 2013 U.S. Dist. LEXIS 173102 (E.D. Ky, 2013) (applying requirement of scientific/medical testimony to support recovery of emotional distress in all cases – including where plaintiff's leg was amputated)

#### 4. Practical application

- a. Recognizing the claim
  - i. First, recognize what law is applicable
    - 1. The law differs from jurisdiction to jurisdiction
      - a. See the attached chart
    - 2. The law can differ depending on whether it is a federal claim or a state law claim
  - ii. Second, conduct a thorough interview of the client(s)
    - 1. Clients are often reluctant to share the facts upon which such a claim depends

- a. This may be because they just don't know the law provides a remedy to such a claim
  - b. This may be because they know such claims are allowed, but don't know the facts of their case will permit recovery
    - i. *E.g.*, what is "contemporaneous sensory perception"
      - 1. *E.g.*, on the phone with the victim when hit by a car
  - c. This may be because it is so very painful to share the experience
- b. Proving the claim
- i. Is the plaintiff's testimony alone enough
    - 1. What are the symptoms of emotional trauma/distress
      - a. Physical symptoms
        - i. Sleeplessness
        - ii. Sleeping too much
        - iii. Weight loss/weight gain
        - iv. Reliance on drugs/medications/alcohol
        - v. Panic attacks
        - vi. Difficulty breathing
        - vii. Fatigue
        - viii. Chest pains
        - ix. High blood pressure
        - x. Indigestion/heartburn
        - xi. Sweating
        - xii. Trembling
      - b. Emotional symptoms
        - i. Trouble concentrating
        - ii. Guilt
        - iii. Worry/apprehension
        - iv. Hypervigilance
        - v. Memory loss
        - vi. Anti-social behavior
        - vii. Isolation
        - viii. Withdrawal from family/friends
        - ix. Restlessness
        - x. Sense of impending danger/panic/doom
    - 2. How does a plaintiff explain what they have endured
      - a. Need to spend time with the client – each client's experience is unique and each client has his/her own way of expressing their pain
        - i. Reenact the events
        - ii. Talk with family members
        - iii. Help the client to find ways to express/explain their distress
  - ii. Expert testimony

1. Some jurisdictions **require** a medical diagnosis of **severe** emotional distress
  - a. *E.g., Osborne vs. Keeney*, 399 S.W. 3d 1 (Ky, 2012); *Sergent vs. ICG Knott County, LLC*, 2013 U.S. Dist. LEXIS 173102 (E.D. Ky, 2013) [applying requirement of scientific/medical testimony to support recovery of emotional distress in all cases - including where plaintiff's leg was amputated]
  - b. Medical certainty required
    - i. *Leong vs. Takasaki*, 520 P. 2d 758, 766-767 (Haw. Sup. Ct. 1974) provides helpful explanation (see also, *Corgan v. Muehling*, 574 N.E. 2d 602 (Ill. Sup. Ct. 1991); and, *Johnson v. Ruark Obstetrics*, 395 S.E. 2d 85 (NC Sup. Ct. 1990) [citing *Diagnostic and Statistical Manual of Mental Disorders* at 235-53, 257-67 (3d rev. ed. 1987)]:
      1. "From a medical perspective, negligently-inflicted mental distress may be characterized as a reaction to a traumatic stimulus, which may be physical or purely psychic. Traumatic stimulus may cause two types of mental reaction, primary and secondary."
        - a. Only secondary response results in physical injury/manifestation
        - b. Primary response
          - i. Immediate, automatic and instinctive response designed to protect an individual from harm, unpleasantness and stress aroused by witnessing the painful death of a loved one
          - ii. Exemplified by emotional responses such as fear, anger, grief, and shock.
          - iii. Short in duration and subjective in nature, will vary in seriousness according to the individual and the particular traumatic stimulus.
        - c. Secondary responses - Termed traumatic neuroses, are longer-lasting reactions caused by an individual's continued inability to cope adequately with a traumatic event. Three frequently occurring forms of neuroses:



- i. Anxiety reaction, the trauma produces severe tension, which results in nervousness, weight loss, stomach pains, emotional fatigue, weakness, headaches, backaches, a sense of impending doom, irritability, or indecision as long as the tension remains.
        - ii. Conversion reaction is a reaction to trauma in which the individual converts consciously disowned impulses into paralysis, loss of hearing, or sight, pain, muscle spasms, or other physiological symptoms which cannot be explained by actual physical impairment.
        - iii. Hypochondriasis reaction is characterized by an over-concern with health, a fear of illness, or other unpleasant sensations.
- iii. Jury considerations
  - 1. The severity of mental distress may be approached in terms of the amount of pain and disability caused by defendant's act.
  - 2. Traumatic neuroses are more susceptible to medical proof than primary reactions
    - a. Neuroses are of longer duration and usually manifested by physical symptoms which may be objectively determined.
    - b. Psychiatrist often unable to establish a negligent act as the sole cause of plaintiff's neurosis
      - i. He/she can often provide an accurate explanation of the probable effects the negligent act will have upon the plaintiff and whether the trauma induced was a precipitating cause of neurosis, and whether the resulting neurosis is beyond a level of pain with which a reasonable man may be expected to cope.
    - c. Where there is only a primary response to trauma
      - i. The consequence is transient but very painful mental suffering and anguish.
      - ii. Reaction is subjective in nature and may not result in any apparent physical injury

- iii. Precise levels of suffering and disability cannot be objectively determined
  - 1. Physician or psychiatrist must rely on:
    - a. Plaintiff's testimony;
    - b. Context in which the trauma occurred;
    - c. Medical testing of any physical ramifications;
    - d. Expert's knowledge of pain and disability likely to result from such trauma; and,
    - e. Framework of human experience and common sense to determine the amount of pain resulting and whether it is more than that with which a reasonable person may be expected to cope.
- d. Psychiatric tests/diagnostic techniques
  - i. Use of symptom checklists/self-reported measures
    - 1. Has the expert considered whether the plaintiff has exaggerated his/her distress or distorted the chronology of his/her history of problems
      - a. Has the expert employed multiple independent methods and multiple independent sources
      - b. Has the expert considered the plaintiff's motivation for compensation and/or treatment
  - ii. What types of assessments has the expert used to diagnosis the condition?
    - 1. Review the tests and determine
      - a. Based on the plaintiff's self-reports
      - b. Is there an objective basis for the diagnosis
      - c. What forms of verification/confirmation has the expert employed
  - iii. Has the expert considered cultural context
    - 1. E.g., some evidence PTSD and related psychological injuries exhibit ethnic/cultural/gener differences
      - a. Some indication there may be a higher prevalence of PTSD among some cultures

- b. Some indication that women are at a disproportionate risk for psychological distress following exposure to trauma

(For a brief and somewhat helpful review see Koch, William J. and others, 'Current Status and Future Trends', *Psychological Injuries: Forensic Assessment, Treatment, and Law*, American Psychology-Law Society Series (New York, 2005; online edn, Oxford Academic, 1 May 2009), <https://doi.org/10.1093/acprof:oso/9780195188288.003.0011>, accessed 1 May 2023.)

- iv. What diagnosis does the expert provide, such as:
  - 1. Prolonged Grief Disorder
    - a. Is it even compensable?
  - 2. Posttraumatic stress disorder
  - 3. Depression
  - 4. Can a neurologist link a physical change in the brain to emotional harm?
    - a. Advances in the science suggest we may someday be able to provide objective proof – i.e., physical changes to verify and measure the claim
- v. Recognize the controversies surrounding DSM-5 and be prepared to deal with them
- vi. World Health Organization's ICD-10-CM
- vii. Recognize National Institute of Mental Health has itself reoriented research away from DSM categories and is focusing on empirical studies

(For an explanation of the relationship between science and emotional distress claims see Betsy J. Grey, *The Future of Emotional Harm*, 83 *Fordham L. Rev.* 2605 (2015). Available at: <https://ir.lawnet.fordham.edu/flr/vol83/iss5/17>)

## 5. Conclusion

- a. Inasmuch as law reflects societal values, one can expect emotional trauma to become an ever more prevalent basis for tort claims
- b. One must understand the status of the law in the specific jurisdiction in which the claim arises
- c. One must make the investment in time and money to understand the client
- d. One must understand the science
- e. One must work at making the claim understandable for the jury

## Summary of NIED Approaches Employed by Various States

State	Recognize NIED beyond instances involving (1) direct physical injury, (2) defamation, or (3) special duties/circumstances (e.g., common	Perceptual Requirement	Permitted Claimants	Extent of Emotional Distress Required	Cases
Alabama	Yes. Employs zone of danger test.	Plaintiff must either be physically injured or at immediate risk of physical injury.	N/A	N/A	<i>AALAR, Ltd., Inc. v. Francis</i> , 716 So. 2d 1141 (1998)
Alaska	Yes. Relative bystander.	Requires sudden sensory perception of the injury causing event or its immediate aftermath.	Family bystander	Serious emotional distress—a reaction beyond that which would be anticipated in a disinterested witness and which is not an abnormal response to the circumstances.	<i>Doan v. Banner Health</i> , 442 P. 3d 706 (Alaska Sup. Ct., 2019)
Arizona	Yes, but requires family member, manifestation by physical injuries and zone of danger.	Witness the event.	Family bystander and perhaps "family-like" relationships.	Severe emotional distress manifested by physical injuries.	<i>Hislop vs. Salt River Project</i> , 5 P. 3d 267 (Az. Ct. of Appeals, 2000); <i>Guerra v. State</i> , 348 P. 3d 423 (2015)
Arkansas	No	N/A	N/A	N/A	<i>FMC Corp. v. Helton</i> , 202 S.W.3d 490 (Ark. 2005)
California	Yes. Relative bystander.	Contemporaneous sensory perception	Close Family Relation	Severe emotional distress	<i>Dillon vs. Legg</i> , 68 Cal. 2nd 728 (1968); <i>Thing vs. La Chusa</i> , 48 Cal. 3rd 644 (1989)

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<b>Colorado</b>	<b>Yes. Employs zone of danger test.</b>	<b>Plaintiff must either be physically injured or at immediate risk of physical injury.</b>	<b>N/A</b>	<b>N/A</b>	<b><i>Colwell vs. Mentzer Invs. Inc.</i> 973 P. 2d 631 (Colo. App. 1998)</b>
<b>Connecticut</b>	<b>Yes. Relative bystander.</b>	<b>Contemporaneous sensory perception</b>	<b>Close Family Relation</b>	<b>Severe emotional distress</b>	<b><i>Clohessy v. Bachelor</i> , 675 A. 2d 852 (1996)</b>
<b>Delaware</b>	<b>Yes. Relative bystander.</b>	<b>Witness the event.</b>	<b>Close Family Relation</b>	<b>High degree of foreseeability of shock to plaintiff and the shock flows from abnormal</b>	<b><i>Armstrong vs. AI Dupont Hosp. for Children</i> , 60 A. 3d 414 (Del Sup. Ct. 2012)</b>
<b>Florida</b>	<b>No - Employs physical impact test requiring a physical impact to the plaintiff in the absence of (1) demonstrable physical injuries resulting from psychological trauma or (2) "special relationship" (e.g.,</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b><i>Willis vs. Gami Goden Glades, LLC</i> , 967 So. 2d 846 (Fl. Sup. Ct., 2007) (touching by gun placed against one's head against their will is a sufficient "impact")</b>
<b>Georgia</b>	<b>No - Employs physical impact test requiring a physical impact to the plaintiff in the absence of (1) demonstrable physical injuries resulting from psychological trauma or (2) "special relationship" (e.g.,</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b><i>Strickland vs. Hodges</i> , 216 W.E 2d 706 (Ga. Ct. App. 1975)</b>

## Summary of NIED Approaches Employed by Various States

<b>Hawaii</b>	Yes, applying a "pure foreseeability" test.	No.	Any foreseeable plaintiff.	Serious emotional distress.	<i>Rodrigues vs. State</i> , 52 Haw. 156, 472 P. 2d 509 (1970); <i>Roes vs. FHP, Inc.</i> , 91 Haw. 470, 985 P. 2d 661 (1999); <i>Campbell vs. Animal Quarantine Station</i> , 632 P. 2d 1066 (Haw. Sup. Ct., 1981)
<b>Idaho</b>	Yes, if accompanied by physical manifestations of emotional injury.	N/A	N/A	Sufficient to produce physical manifestations of emotional injury.	<i>Berian v. Berberian</i> , 483 P. 3d 937 (Idaho Sup. Ct., 2020)
<b>Illinois</b>	Yes. Employs zone of danger test.	Plaintiff must either be physically injured or at immediate risk of physical injury.	N/A	N/A	<i>Rickey v. Chicago Transit Authority</i> , 457 N.E. 2d 1 (1983)
<b>Indiana</b>	Yes	Requires plaintiff to have learned of the incident by having witnessed the injury or the immediate gruesome	Family bystander ( <i>i.e.</i> , pouse, parent, child, grandparent, grandchild, or sibling)	Severe or serious emotional injury	<i>Smith vs. Toney</i> , 862 N.E. 2d 656 (Ind. Sup. Ct. 2007)
<b>Iowa</b>	Yes. Relative bystander.	Located at the scene of the accident and the emotional distress resulted from the sensory and contemporaneous observance of the accident.	Family bystander w/n the second degree of consanguinity or affinity.	Serious emotional distress.	<i>Moore vs. Echman</i> , 762 N.W. 2d 459 (Iowa Sup. Ct., 2009)

## Summary of NIED Approaches Employed by Various States

<b>Kansas</b>	<b>No. Physical impact or or resulting physical injury required.</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b><i>Grube vs. Union Pac. R.R.</i>, 886 P. 2d 845 (Kan. Sup. Ct., 1994); <i>Lovitt vs. Board of County Com'rs</i>, 221 P. 3d 107 (Kan. Ct. of Appeals, 2009)</b>
<b>Kentucky</b>	<b>Yes</b>	<b>Existence of severe or serious emotional distress established by medical or scientific testimony.</b>	<b>Apparently to any individual so suffering severe emotional distress.</b>	<b>Severe or serious emotional injury would be caused to a reasonable person, normally constituted, would not be expected to endure it.</b>	<b><i>Osborne vs. Keeney</i>, 399 S.W. 3d 1 (Ky, 2012); <i>Sergent vs. ICG Knott County, LLC</i>, 2013 U.S. Dist. LEXIS 173102 (E.D. Ky, 2013) [applying requirement of scientific/medical testimony to support recovery of emotional distress in all cases - including where plaintiff's leg was amputated]</b>
<b>Louisiana</b>	<b>Yes. Relative bystander.</b>	<b>View an event causing injury to another person, or who come upon the scene of the event soon thereafter.</b>	<b>Specified close family members.</b>	<b>Severe, debilitating, and foreseeable</b>	<b>La. Civ.Code art. 2315.6 A</b>
<b>Maine</b>	<b>Yes. Relative bystander.</b>	<b>Present at the scene and contemporaneous sensory perception of the accident (although not necessarily of the injury).</b>	<b>Close Family Relation</b>	<b>So severe that no reasonable [person] could be expected to endure it.</b>	<b><i>Coward v. Gagne &amp; Son</i>, 238 A. 3d 254 (ME Sup. Ct. 2020)</b>

## Summary of NIED Approaches Employed by Various States

<b>Maryland</b>	<b>No. (Emotional distress is an element of damage - not an independent tort.)</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b><i>Hamilton vs. Ford Motor Credit Co.</i>, 502 A. 2d 1057 (1986)</b>
<b>Massachusetts</b>	<b>Yes. Relative bystander.</b>	<b>Witness the event or its immediate aftermath.</b>	<b>Close family relationship.</b>	<b>Objective corroboration of the emotional distress required.</b>	<b><i>Migliori v. Airborne Freight Corp.</i>, 690 N.E. 2d 413 (Mass. Sup. Ct., 1998); <i>Sullivan vs. Boston Gas Co.</i>, 605 N.E. 2d 805 (Mass. Sup. Ct., 1993). <i>Gustafson vs. Faris</i>, 67 Mich. App. 363 (1976); <i>Wargelin vs. Sisters of Mercy Hospital</i>, 149 Mich. App. 75 (1986)</b>
<b>Michigan</b>	<b>Yes</b>	<b>Actually witness the accident or witness events fairly contemporaneous with the negligent act or event - i.e., arrive at scene shortly thereafter.</b>	<b>Member of the direct victim's immediate family</b>	<b>Severe mental disturbance</b>	<b><i>Gustafson vs. Faris</i>, 67 Mich. App. 363 (1976); <i>Wargelin vs. Sisters of Mercy Hospital</i>, 149 Mich. App. 75 (1986)</b>
<b>Minnesota</b>	<b>Yes. Applies zone of danger test.</b>	<b>Within zone of danger of physical impact and reasonably feared for own safety.</b>	<b>Close relationship.</b>	<b>Severe emotional distress with physical manifestations.</b>	<b><i>Engler vs. Illinois Farmer Ins. Co.</i>, 706 N.W. 2d 764 (Minn. Sup. Ct., 2005)</b>



## Summary of NIED Approaches Employed by Various States

Mississippi	Yes	Direct emotional impact upon plaintiff from the sensory and contemporaneous observance of the accident,	Close family relationship.	Substantial proof of demonstrable harm.	<p><i>Illinois Cent. R.R. Co. v. Hawkins</i> , 830 So.2d 1162, 1174 (Miss.2002) [testimony of sleeplessness and nightmares in addition to 3 visits to unnamed doctor insufficient to constitute "substantial proof of demonstrable harm"]; <i>Summers v. St. Andrew's Episcopal Sch., Inc.</i> , 759 So.2d 1203, 1210 (Miss.2000)</p> <p><i>Bass vs. Nooney Co.</i>, 646 S.W. 2d 765 (Mo. Banc 1983); <i>Asaro vs. Cardinal Glennon Memorial Hosp.</i> , 799 S.W. 2d 595 (Mo. Sup. Ct., 1990); <i>Jarrett v. Jones</i> , 258 S.W. 3d 442 (Mo. Sup. Ct. 2008)</p>
Missouri	<p>Yes, but requires defendant to realize/or should realize conduct presents unreasonable risk of causing distress and that the distress/mental injury be medically diagnosable and sufficiently severe to be medically significant. As to witnessing 3rd party injuries, employs zone of danger requirement.</p>	<p>Plaintiff must be present at the scene and within the zone of danger (i.e., placed in reasonable fear of physical injury to self).</p>	<p>No requirement for familial relationship.</p>	<p>Serious harm.</p>	<p><i>Bass vs. Nooney Co.</i>, 646 S.W. 2d 765 (Mo. Banc 1983); <i>Asaro vs. Cardinal Glennon Memorial Hosp.</i> , 799 S.W. 2d 595 (Mo. Sup. Ct., 1990); <i>Jarrett v. Jones</i> , 258 S.W. 3d 442 (Mo. Sup. Ct. 2008)</p>

## Summary of NIED Approaches Employed by Various States

<b>Montana</b>	<b>Yes, applying a "pure foreseeability" test.</b>	<b>No.</b>	<b>Any foreseeable plaintiff.</b>	<b>Serious or severe emotional distress (i.e., so severe that no reasonable [person] could be expected to endure it and that a reasonable person would endure such distress).</b>	<b><i>Sacco v. High Country Independent Press</i>, 896 P. 2d 411 (Mont. Sup. Ct. 1995)</b>
<b>Nebraska</b>	<b>Yes - Either "foreseeable bystander" or within the zone of danger.</b>	<b>No need for bystander to have experienced actual sensory perception of the injury, but the emotional trauma must result from either death or serious injury to the victim.</b>	<b>Marital or intimate familial relationship for bystander plaintiffs.</b>	<b>In absence physical injury, the emotional anguish or mental harm must be medically diagnosable and must be of sufficient severity that it is medically significant.</b>	<b><i>Hamilton v. Nestor</i>, 659 NW 2d 321 (Neb. Sup. Ct. 2003)</b>
<b>Nevada</b>	<b>Yes. Relative bystander.</b>	<b>At or near the scene and experience contemporaneous sensory perception</b>	<b>Close family relationship (i.e., related by blood or marriage)</b>	<b>Emotionally injured by the contemporaneous sensory observance of the accident</b>	<b><i>Grotts v. Zahner</i>, 989 P. 2d 415 (Nev. Sup. Ct. 1999)</b>

## Summary of NIED Approaches Employed by Various States

New Hampshire	Yes. Relative bystander.	Contemporaneous sensory perception	Closely related - not limited to relations by blood or marriage ("a relationship that is of significant duration and which is deep, lasting and genuinely intimate, i.e., a relationship that is stable, enduring, substantial, and mutually supportive, cemented by strong emotional bonds and providing a deep and pervasive emotional security").	Severe emotional distress	<i>St. Onge v. MacDonald</i> , 917 A. 2d 233 (N.H. Sup. Ct. 2007)
New Jersey	Yes. Relative bystander.	Contemporaneous sensory perception	Close Family-Like Relation (extends to co-habitants who are engaged)	Severe emotional distress	<i>Portee vs. Jaffee</i> , 417 A. 2d 521 (NJ Sup. Ct. 1980); <i>McDougall v. Lamm</i> , 48 A. 3d 312 (NJ Sup. Ct. 2012)
New York	Yes. Employs zone of danger requirement and limits recovery to close family members.	Plaintiff must be present at the scene and within the zone of danger (i.e., placed in reasonable fear of physical injury to	Close family relationship - i.e., immediate family member (includes grandparents, but not aunts/uncles).	Severe emotional distress	<i>Greene vs. Esplanade Venture</i> , 168 N.E. 3d 827 (N.Y. Ct. of Appeals, 2021)

## Summary of NIED Approaches Employed by Various States

North Carolina	Yes - Extended to "foreseeable bystander".	Not necessarily.	Factors to be considered on the question of foreseeability in cases such as this include the plaintiff's proximity to the negligent act, the relationship between the plaintiff and the other person for whose welfare the plaintiff is concerned, and whether the plaintiff personally observed the negligent act. Questions of foreseeability and proximate cause must be determined under all the facts presented, and should be resolved on a case-by-case basis by the trial court and, where appropriate, by a jury.	"Severe emotional distress", meaning any emotional or mental disorder, such as, for example, neurosis, psychosis, chronic depression, phobia, or any other type of severe and disabling emotional or mental condition which may be generally recognized and diagnosed by professionals trained to do so.	<i>Johnson vs. Ruark Obstetrics</i> , 395 SE 2d 85 (North Carolina Sup. Ct. 1990); <i>Newman v. Stepp</i> , 852 S.E. 2d 104 (North Carolina Sup. Ct. 2020)
North Dakota	Yes. Employs zone of danger requirement.	Plaintiff must be present at the scene and within the zone of danger (i.e., placed in reasonable fear of physical injury to	Close family member.	Severe emotional distress resulting in physical harm.	<i>Muchow vs. Lindblad</i> , 435 N.W. 2d 918 (N.D. Sup. Ct., 1989)
Oklahoma	No	N/A	N/A	N/A	<i>Slaton v. Vansickle</i> , 879 P.2d 929 (Okla. 1994).

## Summary of NIED Approaches Employed by Various States

<b>Oregon</b>	<b>No. Employs physical impact test.</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b><i>Saechao vs. Matsakoun</i>, 717 P. 2d 165 (Or. Ct. of App. 1986)</b>
<b>Virginia</b>	<b>Yes, but requires physical impact or resulting physical injury.</b>	<b>N/A</b>	<b>Those who suffer emotional distress as result of a breach of duty owed to him/her by the defendant.</b>	<b>Recovery permitted, notwithstanding the lack of physical impact, if proves by clear and convincing evidence that physical injury was the natural result of fright or shock proximately caused by the defendant's negligence.</b>	<b><i>Delk vs. Columbia Healthcare Corp.</i>, 523 S.E. 2d 826 (Va. Sup. Ct., 2000)</b>
<b>Washington</b>	<b>Yes</b>	<b>Emotional distress must be within the scope of foreseeable harm of the negligent conduct.</b>	<b>Those who suffer fear, fright or distress for the peril of another. A jury question.</b>	<b>Mental/emotional suffering must be manifested by objective symptomatology and must be the reaction of a reasonable person (unless the defendant knows of some peculiar characteristic or condition of the plaintiff).</b>	<b><i>Hunsley v. Giard</i>, 553 P. 2d 1096 (Wash. Sup. Ct. 1976); <i>Bylsma v. Burger King Corp.</i>, 176 Wn 555 (Wash. Sup. Ct. 2013)</b>