

Valuing Economic Damages in Personal Injury and Wrongful Death Actions: A Reference Guide

Thomas R. Ireland
Stephen M. Horner
James D. Rodgers

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.

—From a *Declaration of Principles* jointly adopted by
a Committee of the American Bar Association
and a Committee of Publishers and Associations.

The publisher, editors and authors must disclaim any liability, in whole or in part, arising from the information in this volume. The reader is urged to verify the reference material prior to any detrimental reliance thereupon. Since this material deals with legal, medical and engineering information, the reader is urged to consult with an appropriate licensed professional prior to taking any action that might involve any interpretation or application of information within the realm of a licensed professional practice.

Copyright ©2002 by Lawyers & Judges Publishing Co., Inc. All rights reserved. All chapters are the product of the Authors and do not reflect the opinions of the Publisher, or of any other person, entity, or company. No part of this book may be reproduced in any form or by any means, including photocopying, without permission from the Publisher.

 **Lawyers & Judges
Publishing Company, Inc.**

P.O. Box 30040 • Tucson, AZ 85751-0040
(800) 209-7109 • FAX (800) 330-8795
e-mail: sales@lawyersandjudges.com

ISBN 1-930056-41-9
Printed in the United States of America
10 9 8 7 6 5 4 3 2 1


online
www.lawyersandjudges.com

Table of Contents

General Introduction

- I. Purpose of this *Reference Guide*
- II. The Role of Economic Experts in Personal Injury and Wrongful Death/Survival Actions
- III. Qualifications of Economic Experts

Part One: Loss Valuation for a Personal Injury

I. Elements of Economic Loss In Personal Injuries	2
A. Introduction to Part One	
B. Related experts who might be needed	
C. Types of loss elements in a personal injury analysis	
1. Earnings loss	
2. Fringe benefit loss	
3. Lost household (nonmarket) services	
4. Necessitated life care costs	
D. Special cases (children, homemakers, retired persons)	
II. Analysis of Lost Earnings	4
A. Identifying the standard for loss	
1. Expected earnings versus earnings capacity	
2. Consistency of standard	
B. Determination and analysis of past earnings and employment activity	
C. Projection of pre-injury and post-injury career tracks	
1. Working with a vocational expert report	
2. Working with other vocational assumptions	
3. Special cases: children, homemakers, and retired persons	
D. Determination of earnings bases for each career track	
1. Earnings path before the injury	
2. Earnings path after the injury	
E. Accounting for life cycle earnings effects	
F. Accounting for duration of working life and unemployment	
1. The statistical worklife expectancy (SWLE) method	
2. The LPE system	
G. Projecting earnings increases and discount rates	
1. Methods allowed in <i>Jones & Laughlin v. Pfeifer</i>	
2. The relevance of historical rates in projections	
3. General wage increases and life cycle effects	
4. Differences in risk standards for selecting discount rates	
5. Issues relating to the taxability of interest on awards	

III. Analysis of Job-Related Fringe Benefits	24
A. Assessing discretionary fringe benefits	
1. Avoiding double counting in discretionary fringe benefits	
2. Counting or not counting unused or activated fringe benefits	
3. Employer cost versus replacement cost	
4. Establishing values for special benefits	
5. Establishing a base and projecting lost discretionary benefits	
B. Assessing legally mandated fringe benefits	
1. Medicare payroll tax payments by an employer	
2. Social security payroll tax payments by an employer	
3. Seasonal unemployment benefits received by workers	
IV. Analysis of Income and Payroll Taxes and Work Expenses	29
A. Accounting for income and payroll taxes	
B. Accounting for work expenses	
V. Analysis of Loss of Household (Nonmarket) Production Capacity	30
A. Primary homemakers as household producers	
B. Methodologies for measuring household (nonmarket) production	
1. Replacement cost approaches	
2. Opportunity cost approaches	
3. An index method for estimating reduced household production	
4. The percentage reduction method	
5. “Worklife expectancy” for household production	
C. Projection problems with reduced household production activity	
VI. Necessitated Medical and “Life Care” Costs	35
VII. Report of Past and Future Loss	37
 Part Two: Loss Valuation in Wrongful Death and Survival Actions	
I. Elements of Economic Loss in Wrongful Death and Survival Actions	49
A. Introduction to Part Two	
B. Loss standards in wrongful death and survival actions	
C. Related experts who might be needed	
D. Loss elements in death cases	
E. Special cases (children, homemakers, retired persons)	
II. Analysis of Lost Earnings/Financial Support	51
III. Analysis of Job-Related Fringe Benefits/Financial Support.....	51
A. Four examples of non-fringe benefit loss by survivors	
B. Pension benefit loss in the case of a retired person	
IV. Analysis of Work Related Expenses and Income Taxes	53
V. Analysis of Lost Household (Nonmarket) Production	53
A. Loss of non in-home services	
B. Determining personal consumption for lost nonmarket production	
C. The investment approach for parental loss in the death of a child	

VI. Analysis of Personal Consumption and Maintenance	55
VII. Reporting Past and Future Loss	58

Part Three: Hedonic Damages

I. Introduction	63
II. The Nature of Losses from Death or Personal Injury	64
III. “Willingness-to-Pay” Studies and the Derivation of “Hedonic Damages”	67
IV. Technical Issues with Willingness-to-Pay Studies	68
A. Issue #1: Consumer purchases that affect the safety of more than one life	
B. Issue #2: Separation of fatality risk from injury and property risk	
C. Issue #3: Kahneman-Tversky problems	
D. Issue #4: Industry risk versus occupational risk in wage-risk studies	
E. Issue #5: Problems relating to econometric studies	
F. Issue #6: Wide range of estimates	
G. Issue #7: Qualities of surveys of the literature	
H. Issue #8: The tailoring issue	
V. Forms of Hedonic Damage Testimony in Litigation	71
A. The “whole value of life” method	
B. The “annualized value of enjoyment” method	
C. Deterrence value of life testimony	
VI. Personal Injury Uses of Hedonic Damage Testimony	73
VII. Conceptual Criticisms of Hedonic Damages	74
A. The inability to compensate a dead person	
B. Unsatisfactory nature of the linearity assumption	
VIII. Conclusion	75

Glossary

General References

Important Cases