

Reply to: A Note on “Household Services: Toward a  
More Comprehensive Measurement.”

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Thomas R. Ireland  
Department of Economics, 408 SSB  
University of Missouri at St. Louis  
8001 Natural Bridge Road  
St. Louis, MO 63121  
Tel: 314/516-5558  
Fax: 314/516-5352  
E-mail: [ireland@umsl.edu](mailto:ireland@umsl.edu)  
Web: [www.umsl.edu/~ireland](http://www.umsl.edu/~ireland)

**Abstract**

Frank Tinari’s “Note on ‘Household Services: Toward a More Comprehensive Measure’” responds in part to a paper I presented at the meetings of the Western Economics Association in July 2005. His note suggests that my paper did not take into account other legal decisions that have expanded upon *Green v. Bittner* (1980) and that my WEA paper was therefore incorrect in its interpretation of the meaning of “companionship” that was based on *Green v. Bittner*. The cases cited in Tinari’s Note do not support Tinari’s broader interpretation of meaning of companionship. This reply reviews the cases cited by Tinari’s Note to show that they have been consistent with the narrow definition used by the New Jersey Supreme Court in *Green v. Bittner*.

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**Introduction**

In 1998, Frank Tinari published a paper that provided arguments for a “more comprehensive measurement” of household services in New Jersey based on the New Jersey Supreme Court decision in *Green v. Bittner* (1980). Based on that decision, Tinari’s 1998 paper explained how he calculates dollar values for “loss of advice and counsel” and “loss of companionship” in New Jersey wrongful death actions. In a paper presented at the July, 2005 meetings of the Western Economic Association, I argued that Tinari’s interpretation of “loss of companionship” was inconsistent with the *Green v. Bittner* decision. Tinari responded to that paper as part of his 2004 (but published in 2005) “Note” in this journal. Tinari argued that subsequent New Jersey legal decisions interpreting *Green v. Bittner* have supported his broader interpretation of the meaning of “loss of companionship.” This reply has been written in response to the narrow issue of the meaning of “loss of companionship” in *Green v. Bittner*. I am in general agreement with other aspects of Tinari’s “Note.” This note will explain the difference between Tinari’s and my interpretations of “loss of companionship” in *Green v. Bittner* and will review interpretations of that decision in the five other New Jersey legal decisions cited in Tinari’s Note to show that they do not modify the language in *Green v. Bittner* on companionship.

**Interpretations of “Loss of Companionship.”**

Tinari’s 1998 paper interprets “loss of companionship” broadly as time a decedent would have spent in the company of survivors bringing a claim for damages in a wrongful death action. Ireland (2005) argued that “loss of companionship” was more narrowly focused on the type of companionship a person might need if ill, injured or elderly and the services of an attendant care

provider would be needed in lieu of such services that might have been provided by a decedent. To provide a simple example of the difference, suppose that John Smith regularly went fishing with his son Frank Smith for both the enjoyment of fishing as a recreational activity and for enjoyment of companionship with each other. Tinari's 1998 paper would treat this type of companionship as compensable damages under the standards of *Green v. Bittner*. Ireland's 2005 paper argued that this type of companionship would not be compensable under the standards of *Green v. Bittner* unless there was evidence that either John or Frank Smith would have been unable to go fishing with someone else without attendant care. I argue that if both John and Frank Smith were able bodied persons who could have gone fishing by themselves or with other friends or relatives, this type of companionship is a part of consortium and not compensable under *Green v. Bittner* or under the stream of subsequent decisions that Tinari cited in his Note.

### ***Green v. Bittner* on Companionship**

*Green v. Bittner* involved the death of a student in her senior year in high school. The jury had found that Donna Bittner's parents and brothers and sisters had suffered no pecuniary loss and the New Jersey Supreme Court reversed that decision, saying:

We hold that when parents sue for the wrongful death of their child, damages should not be limited to the well-known elements of pecuniary loss such as the loss of the child's anticipated help with household chores, or the loss of anticipated direct financial contributions by the child after he or she becomes a wage earner. We hold that in addition, the jury should be allowed, under appropriate circumstances, to award damages for the parents' loss of their child's companionship as they grow older, when it may be most needed and valuable, as well as the advice and guidance that often accompanies it. As noted later, these other losses will be confined to their pecuniary value, excluding emotional loss.

The *Green v. Bittner* decision went on to emphasize the distinction between emotional loss based on the loss of a loved one and services of the sort that adult children might provide to aging parents:

What services, what activities, could a daughter or son reasonably have been expected to engage in but for their death and to what extent could any of them have monetary value? Just as the law recognizes that a child might continue performing services after age 18, and that monetary contributions may also be received by the parents thereafter when the child becomes productive, it should similarly recognize that the child may, as many do, provide valuable companionship and care as the parents get older. . . [0]ur courts have not hesitated to recognize the need of children for physical help and care. Parents facing age or deteriorating health have the same need, and it is usually their children who satisfy that need. Indeed the loss of companionship and advice which a parent suffers when a child is killed will sometimes be as great as the loss of counsel and guidance which a child suffers when a parent is the victim.

Companionship and advice in this context must be limited strictly to their pecuniary element. The command of the statute is too clear to allow compensation, directly or indirectly, for emotional loss. . .

Companionship, lost by death, to be compensable must be that which would have provided services substantially equivalent to those provided by “companions” often hired today by the aged or the infirm, or substantially equivalent to services provided by nurses or practical nurses. And its value must be confined to what the marketplace would pay a stranger with similar qualifications for performing such services. No pecuniary value may be attributed to the emotional pleasure that a parent gets when it is his or her child doing the caretaking rather than a stranger, although such pleasure will often be the primary value of the child’s service, indeed, in reality, it’s most beneficial aspect. The loss of added emotional satisfaction that would have been derived from the child’s companionship is fundamentally similar to the emotional suffering occasioned by the death. Both are emotional rather than “pecuniary injuries,” one expressed in terms of actual emotional loss, the other in terms of prospective emotional satisfaction.

The critical element in this discussion, which is repeated in cases citing *Green v. Bittner* is that the services involved must be replaceable by a stranger hired in the commercial marketplace. This precludes the kind of special companionship that John Smith and Frank Smith can provide to each other as father and son. *The mere fact that people who care about each other are spending time together mutually enjoying activities is not sufficient for a pecuniary value to be assigned to time spent in that type of companionship under Green v. Bittner.* It must also be shown that the companionship involved could be replaced by a stranger from the commercial

marketplace.

If John and Frank Smith are both able bodied, they do not depend upon each other for companionship services. If John Smith did not go fishing with his son, he would not consider hiring an attendant care provider from the commercial labor market. He would go fishing with one of his friends or another relative. It is the same with Frank Smith unless, of course, there really is a dependant relationship such that Frank Smith would need a paid companion to go fishing if not for the companionship services of his father. People who want to spend time together are enjoying each other's company in consortium, not providing needed services that could be replaced by strangers.

### **Subsequent Legal Decisions Cited by Tinari**

Tinari's "Note" cited five legal decisions subsequent to *Green v. Bittner* (1980) as allegedly defining companionship in a broader fashion. The oldest was *Hudgins v. Serrano* (1982). Citing *Green v. Bittner*, the *Hudgins* Court said:

The intent of the [wrongful death] statute is to provide those entitled with that which they could have reasonably expected had the decedent survived. Where those expectations anticipated something to be provided by the person of the decedent other than that which could be furnished with the coin of the realm, the entitlement is to money sufficient to provide a substitute to the extent it can be provided. Its value must be confined to what the market place would pay a stranger with qualifications as similar to those of decedent as possible under the circumstances for performing such services. Significantly, no pecuniary value may be attributed to emotional pleasures or satisfaction now lost.

The next oldest was *Cary v. Lovett* (1992). Citing *Green v. Bittner*, the Cary Court said:

Damages for the wrongful death of an infant, like wrongful-death damages generally, are limited to economic matters. When parents sue for the wrongful death of a child, their damages may include the pecuniary value of the child's help with household services, the pecuniary value of the child's anticipated financial contributions, and the pecuniary value of the child's companionship, including his or her advice and guidance, *as the parents grow older* (italics added for emphasis).

Next oldest was *Goss v. American Cyanamid, Co.* (1994). That Court said:

Loss of companionship, guidance and counsel must be confined to their pecuniary element and their value “must be confined to what the marketplace would pay a stranger with similar qualifications performing such services.” *Green, supra*, 85 N.J. at 12; *Hudgins, supra*, 186 N. J. Super. at 476.

*Schiavo v. Owens-Corning Fiberglas* (1995) came next. That court said: “The jury determined that \$150,000 would reasonably compensate [Dona Schiavo, defendant’s widow] for her pecuniary losses, including those permitted by *Green v. Bittner*.” This decision provided no discussion of how the \$150,000 figure was arrived at.

The final decision cited in Tinari’s note was *Gangemi v. National Health* (1996). In this decision a sister brought the action for her own losses. The decision places significant emphasis on the advice and counsel provided by the decedent sister to the younger surviving sister who had brought the wrongful death action. The decedent sister’s advice was deemed “invaluable” by the surviving sister. The *Gangemi* decision held that a sister was permitted under the wrongful death act to recover for loss of advice and guidance. The court then cited *Green v. Bittner*, saying:

The damages encompass “the loss of guidance, advice and counsel,” and companionship. . . The Court warned, however, that the evaluation of such benefits “in this context must be limited strictly to their pecuniary element.” . . . The estimation may not include any consideration of emotional loss relating to either decedent’s death or plaintiff’s pleasure in having her next of kin, rather than a stranger, perform the services.

The type of advice and companionship compensable under the [Wrongful Death] Act is the kind which may be purchased. . . In the context of the parent/child relationship, the Court gave the example of hired companions who may provide assistance to aged parents with shopping, nursing care and household management. . . The recovered “value must be confined to what the marketplace would pay a stranger with similar qualifications for performing such services.”

## **Conclusion**

Based on the five cases cited in Tinari’s “Note” and the *Green v. Bittner* decision that was

the basis for Tinari's 1998 paper, I find no basis for Tinari's broad interpretation of companionship as simply time spent together for mutual enjoyment. The language in those cases all point to companionship of the sort that would be provided to a person needing attendant care to function more effectively, but not to companionship based on emotional pleasure.

### References

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### Case References

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- Gangemi v. National Health Laboratories*, 291 N. J. Super. 559; 677 A.2d. 1163 (N.J. Super 1996).
- Goss v. American Cyanamid*, 278 N.J. Super. 227; 650 A.2d 1001 (N.J. Super. 1994).
- Green v. Bittner*, 81 N.J. 1; 424 A.2d 210 (N.J. 1980).
- Hudgins v. Serrano*, 186 N.J. Super. 465; 453 A.2d 218 (N.J. Super. 1982).
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