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Current Forensic Economic Issues in the Projection of Household Services

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Introduction. This session will deal with four of my papers on household services, spanning a period of 15 years, each dealing with quite different issues with respect to the development of damages estimates for loss of household production. It will also discuss two other topics: (1) How to use an index approach for providing the trier of facts with a way to convert current knowledge into present values; and (2) dealing with end of life Issues.

Paper #1. 1991. "Replacement Cost Valuation of Production by Homemakers: Conceptual Questions and Measurement Problems," (with Jack Ward), *Journal of Forensic Economics*, 1991, 4(3):297-305.

Paper #2. 1991. "Valuing Homemaker Production By Implied Opportunity Cost: Using a Family Human Capital Methodology," *Journal of Legal Economics*, 1991, 1(2):1-11.

Paper #3. 2003. "The Standard for Valuing Lost Household Services: Necessary Life Care Cost, Faux Replacement Cost, or Utility Lost?" *The Earnings Analyst*, 2003, V:13-26.

Paper #4. 2006. Reply to Frank Tinari on a More Comprehensive Measurement of Household Services. Not published to date.

Topic #5. Using an Index Approach in Lieu of Direct Valuation of Household Services.

Topic #6. Dealing with End of Life Issues.

Table 1 – Pure Index Approach

Year	Age	Lost Service	Present Value	Cumulative
2006	50	\$1,000	\$1,000	\$1,000
2007	51	\$1,000	\$976	\$1,976
2008	52	\$1,000	\$952	\$2,927
2009	53	\$1,000	\$929	\$3,856
2010	54	\$1,000	\$906	\$4,762
2011	55	\$1,000	\$884	\$5,646
2012	56	\$1,000	\$862	\$6,508
2013	57	\$1,000	\$841	\$7,349
2014	58	\$1,000	\$821	\$8,170
2015	59	\$1,000	\$801	\$8,971
2016	60	\$1,000	\$781	\$9,752
2017	61	\$1,000	\$762	\$10,514
2018	62	\$1,000	\$744	\$11,258
2019	63	\$1,000	\$725	\$11,983
2020	64	\$1,000	\$708	\$12,691
2021	65	\$1,000	\$690	\$13,381
2022	66	\$1,000	\$674	\$14,055
2023	67	\$1,000	\$657	\$14,712
2024	68	\$1,000	\$641	\$15,353
2025	69	\$1,000	\$626	\$15,979
2026	70	\$1,000	\$610	\$16,589
2027	71	\$1,000	\$595	\$17,185
2028	72	\$1,000	\$581	\$17,765
2029	73	\$1,000	\$567	\$18,332
2030	74	\$1,000	\$553	\$18,885

Table 1 is based on the assumption that an individual who turned age 50 on 1/1/06 would have been able to provide household services for another 25 years if that person was not injured or killed as of 12/31/05. This approach can be used either with wrongful death or personal injury when there sources for establishing the base amount of loss are considered unreliable. With such an index, a jury could reach the opinion, for example, that the starting annual loss was \$4,000 per year. If the jury accepted the index approach, it could project the present value of the loss of household production to be equal to $\$18,885 \times 4 = \$75,540$.

Table 2 – Modified Index Approach

Year	Age	Lost Service	Present Value	Cumulative
2006	50	\$1,000	\$1,000	\$1,000
2007	51	\$1,000	\$976	\$1,976
2008	52	\$1,000	\$952	\$2,927
2009	53	\$1,000	\$929	\$3,856
2010	54	\$1,000	\$906	\$4,762
2011	55	\$1,000	\$884	\$5,646
2012	56	\$500	\$431	\$6,077
2013	57	\$500	\$421	\$6,498
2014	58	\$500	\$410	\$6,908
2015	59	\$500	\$400	\$7,308
2016	60	\$500	\$391	\$7,699
2017	61	\$500	\$381	\$8,080
2018	62	\$500	\$372	\$8,452
2019	63	\$500	\$363	\$8,815
2020	64	\$500	\$354	\$9,168
2021	65	\$500	\$345	\$9,514
2022	66	\$500	\$337	\$9,850
2023	67	\$500	\$329	\$10,179
2024	68	\$500	\$321	\$10,500
2025	69	\$500	\$313	\$10,812
2026	70	\$500	\$305	\$11,117
2027	71	\$500	\$298	\$11,415
2028	72	\$500	\$290	\$11,706
2029	73	\$500	\$283	\$11,989
2030	74	\$500	\$276	\$12,265

Table 2 is based on the assumption that an individual who turned age 50 on 1/1/06 would have been able to provide household services for another 25 years if that person was not injured or killed as of 12/31/05. However, in this case, there are minor children in the home such that the amount of services that would have been provided from 2006 through 2011, when the youngest child reached age 18, would have been larger than the amount of services provided after 2011. In this case, a pure index approach is modified by an assumption that the amount of services provided after 2011 would only be half as large as services before 2011. Some other ratio, such as two thirds or three fourths could also be used. This approach can be used either with wrongful death or personal injury when there sources for establishing the base amount of loss are considered unreliable. With such an index, a jury could reach the opinion, for example, that the starting annual loss was \$6,000 per year. If the jury accepted the index approach, it could project the present value of the loss of household production to be equal to $\$12,265 \times 6 = \$73,590$.

Replacement Cost Valuation of Production by Homemakers: Conceptual Questions and Measurement Problems

Thomas R. Ireland and John O. Ward*

I. Introduction

Household production of goods, services and assets represents an important component of the economic value produced by all individuals, but particularly so in the case of production by homemakers. However, because of measurement difficulties, estimates of the value of household production are not included in national income figures and individual income statistics provided by the Bureau of the Census and the Labor Department of the United States Government. Regardless of that omission, economists and other social scientists have attempted to measure the value of household production, with quite mixed results (see the "Bibliography of Literature Relevant to the Valuation of Household Services" elsewhere in this journal). This article reviews the basic methodologies that have been used, particularly the commonly used replacement cost methodology, and suggests both the need for and important improvements that could be made in future studies.

There are two reasons why it is important to have accurate measures of household production. First, the omission of measures of household production from measures of national and individual income causes those figures to be very misleading as measures of the welfare of families, both in terms of urban-rural distinctions and in terms of the welfare implications of different numbers of contributing adults in a household. Since such measures are frequently utilized in forming public policy to deal with the welfare of families, it is important that inaccuracies be corrected. Second, in wrongful death, personal injury and divorce litigation, household production is often the central economic contribution of an individual whose contributions or potential contributions weigh heavily in desired legal outcomes. Economists and home economists are being called as expert witnesses in these matters and should have reliable data to work with in projecting losses and contributions of individuals.

II. Basic Measurement Concepts

Since the values of contributions involving homemaker production are not determined in a direct market process, the valuation process must involve some kind of inductive designation of market equivalents. Four methodologies have been suggested for this purpose: 1) General Replacement Cost; 2) Specific Services Replacement Cost; 3) Current Opportunity Cost; and 4) Long Term Opportunity Cost.

The *General Replacement Cost* methodology refers to an imagined replacement cost for hiring one individual to perform all of the household services that

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were being performed by a given homemaker. However, since there is no commercial market for individuals who would provide such a composite set of services, this method provides no advantages and has not been used.

The *Specific Services Replacement Cost* methodology is the most common approach, both by forensic economists and in the popular press. This approach consists of dividing the services provided by a homemaker into specific functional categories and then projecting the replacement cost for the services in each category, based on equivalents for that category in the labor market. Estimates for the amount of homemaker time spent in each category can be based on either a diary (or diary estimates) from a specific family in question or averages based on time use surveys. There are three time use surveys that have been most relied upon: The Walker-Gauger study in Ithaca, New York during the period of 1967-68 (Walker, 1969 and 1973, Walker and Woods, 1976); the time use surveys conducted by the University of Michigan's Survey Research Center in 1965-66, 1975-76 and 1975-81 (Robinson, 1977, Juster and Stafford, 1985); and the study by Hunt and Kiker in South Carolina in 1978 (Hunt and Kiker, 1979).

The *Current Opportunity Cost* methodology focuses on either (a) the amount that a full time homemaker could currently earn if employed on a full time basis in the labor market or (b) the hourly earnings available to a homemaker if employed in the labor market for the same number of hours as provided in home production. The difference between these alternatives lies in the fact that full time homemakers provide larger numbers of work hours than the 37.5 hours per week for fully employed workers. Opportunity cost measures were developed in the 1960's by the Social Security Administration, but have not been widely used by either forensic economists or other social scientists.

The basic problem that arises with this approach is that a full time homemaker has typically been out of the labor market for some time and would command only entry level compensation if she returned to the labor market. Earnings estimates based on this approach tend to be very low and misleading estimates of the value provided by homemakers who have become specialized in the occupation of homemaking. Thus, this approach ignores the long-term difference in human capital accumulation in a homemaking career, which is grossly undervalued by entry level wages available to a long-term homemaker. Many homemakers have highly developed homemaking skills because of significant human capital investments in developing those skills. If the same human capital investment had been made in labor market skills, their current earnings could be much greater than entry level wages (Becker, 1964 and 1981, Becker and Tomes, 1986).

The *Long Term Opportunity Cost* approach addresses the issue of human capital investments by homemakers by using simulated alternative labor market careers for homemakers (Ireland, 1989). With this approach, a point of decision is identified between an emphasis on a labor market career and an emphasis on a career as a homemaker. This may have been the date of marriage or the date of the birth of a first child. From that decision point, an alternative career is hypothesized, utilizing all known information about the homemaker and her husband at the point of decision. For example, if a woman had been planning to earn a masters degree in psychology prior to the point at which she decided instead to get married, emphasize her husband's career and have children, that information is utilized to project her alternative career.

If she had one year left before achieving her masters degree, it is projected that she would have entered the labor market with a masters degree in psychology one year later than the point of decision. She is then hypothesized to have acquired a number of years of experience as a woman with a masters degree in psychology equal to the number of years between her hypothesized entry and the present. Earnings for an average woman with a masters degree and the appropriate number of years of experience are then determined and used as the basis for projecting the current value of her homemaker services. A detailed discussion of the specific methodology, advantages and disadvantages of this approach are discussed by Ireland (1989).

III. Problems with the Replacement Cost Approach

There are a number of problems inherent in the specific services replacement cost approach, which are the primary focus of this article:

1. In the non-market sector, it is very difficult to distinguish between household labor, household leisure activity and activity designed to develop or maintain household (and market) human capital.
2. There are significant differences in skill levels of homemakers that imply very important differences in the values of the services they provide. These differences are not captured by measures based on services provided by average wives in selected categories.
3. There are great difficulties in decoupling concurrently performed homemaker services. A homemaker may be providing child care, doing the laundry and preparing the evening meal all at the same time. If these services are separately valued, how is the allocation of her time handled?
4. There may be important differences in the intensity of a homemaker's performance of household tasks. In the market sector, there are employment controls on how rapidly tasks are performed. In the household, the worker and her supervisor are the same person, with the result that there may be great differences in the output per unit of time expended in household services.
5. There may be important differences in the value of household services that derive from the homemaker's stage in her work life cycle. An activity very necessary when she is younger may be performed later in life as a validation of her social role rather than in response to a true household demand for those services.
6. There are important differences in measuring the value of household activity that stem from the differences between wrongful death, personal injury and divorce litigation.

These issues will be discussed in turn:

IV. The Economic Meaning of Household Services

Many household activities have at least reasonably close analogs in the market sector. Preparing meals, cleaning homes, child care and most other household services are also provided in the commercial marketplace. However, there are a number of conceptual problems inherent in using such simple analogies. The

production of apparently similar goods in households may have quite different meanings from the production of those apparently similar goods in the commercial sector. Suppose, for example, that a given wife spends a good deal of time maintaining a beautiful garden. It may be that gardening of this quality is actually her hobby, toward which she allocates what is in fact leisure time. If so, there is a very important qualitative difference between her gardening activity, from which she derives significant positive benefit, and the same amount of time in gardening activity that was purchased in the commercial marketplace.

In this example, her own household gardening activity has important value to the wife, separate from the value of the beautiful garden that results from her efforts. Gardening activity purchased in the commercial marketplace contains only the benefit of the beautiful garden. Another issue derives from the fact that the values attached to this gardening activity by other members of the household may be quite different from the value attached to it by the homemaker. For children, it might simply mean that they have to go further to find play area in order to avoid disturbing the garden. For the husband, it may mean a drain on the family budget to pay for plants, fertilizer and tools required for gardening as well as time demanded from him to help with heavy yard work necessitated by the garden.

In the household sector, individuals may spend time in three functional categories: 1) work activity designed to produce a flow of goods and services for which there are equal or nearly equal market equivalents; 2) leisure activity designed to provide direct psychic benefits to the individual engaging in the activity; and 3) human capital investment and maintenance activity designed to maintain and increase skills and knowledge required for either work or leisure activity. To illustrate the latter, the activity in producing a beautiful garden in the example above takes on an entirely different meaning if its intended purpose is to develop skills for future intended commercial market activity at very high wages in a publicly maintained garden facility.

In the specific services replacement cost approach, it makes a good deal of difference whether a given activity is interpreted as a leisure activity, a current production activity or a human capital investment activity or some mix of the three different categories. The nature of the difference depends on the use being made of the derived value of household services, particularly in litigation, as will be discussed below.

V. The Problem of Decoupling Household Services

Replacement cost studies depend on the ability to assign a homemaker's time into simple categories whose replacement wage rate can be determined by finding appropriately similar market wages for the types of activity in each category. This division of a homemaker's time poses the problem of decoupling activities that are performed concurrently. A homemaker may concurrently be providing child care, doing laundry and preparing the family's evening meal during the same time period. If these three types of services are valued at different rates, the accuracy of this approach depends on the accuracy of the amounts of time assigned to each category.

However, the difficulty is not simply a matter of the division of time into

decoupled categories. Some parts of child care, for example, involves only the passive activity of being available for possible emergencies. Thus, child care is actually being provided during the actual minutes that a homemaker is folding the laundry. If the child suddenly wanted or needed her help, the homemaker could discontinue folding the laundry and attend to the child. In that sense, folding the laundry is the primary activity when valued on the basis of minutes directly involved in the activity, but is only the secondary activity in terms of the homemaker's priorities. Likewise, having a roast in the oven may require that someone is present in a supervisory capacity, but does not prevent the time spent being present from being also used for other purposes.

It is important to recognize that the labor market categories from which replacement cost proxies are derived are compensations for bundled activities. A maintenance machinist does not spend all of her time actually maintaining machines. She spends time supervising the operation of machines, doing routine maintenance, making crisis repairs, filling out reports and probably some cleaning up around the work place. Labor market compensation is often based on the skills required for the most difficult activities performed by a worker, but the worker actually spends a fair amount of time doing activities requiring less than the maximum required skills for the job. In that sense, it may not even be appropriate to try to unbundle activities performed in the household. Following this logic, it would be appropriate to use only a few categories into which time effort is assigned and to use valuation techniques based on the maximum skill requirements in each category.

VI. Skill Levels and the Value of Household Services

Differences in skill levels between market practitioners and homemakers pose significant problems for the specific services replacement cost methodology. Virtually all mothers provide some amount of counseling to their children. In some systems of replacement cost calculations, the value of this counseling activity is very high since the replacement cost per hour of counseling in the commercial market is much higher than for other types of homemaker activities. On the other hand, counseling services provided by an untrained mother *may* not be as valuable as services provided by a professional with graduate degrees and clinical experience. On the other hand, a mother, though untrained, may have a much more thorough understanding of the background leading to a child's problem for which she is supplying counseling support. Clearly, however, there is a real problem of non-correspondence.

A closely related problem lies in the differences between homemakers themselves. A mother with a masters degree in psychology *may* have superior counseling abilities to another mother with only a high school degree. It is important to stress the "may" because evidence may exist concerning the emotional stability of the mother involved. To some extent, individuals with emotional problems take courses in psychology to try to better understand themselves, with mixed results. Thus, it may be that the mother who has a masters degree in psychology has it because of personal problems. These personal problems, in turn, may prevent her from helping a child with his (her) problems. Indeed, her problems may be the source of the child's problems. What if we have a mother with a master's degree in psychology who has been accused of past child abuse? Econ-

omists, certainly, would have no expertise in assessing the meaning of evidence that would exist in such directions.

In replacement cost studies, provision is made for the number of hours provided when there are varying numbers of children in the home and when a wife works part or full time, but no real accounting is made for any type of prior skill development in the tasks being performed. Yet, using simple educational levels as standards for making such assessments may create other problems. Would a woman with a bachelor's degree in psychology with a number of courses in nutrition evaluation produce a lower value of household services than a woman with a master's degree in mathematics? On the surface, at least, it would appear that training in psychology and nutrition would be more useful than training in mathematics for the occupation of homemaker and mother.

This means that even a time allocation study with allowance for the number of years of education for homemakers would probably fail to capture important differences in homemaker skills. When is education relevant? In the labor market, there are people with excellent degrees who cannot maintain employment because of other personal deficiencies. Households provide no monitoring of performance skills, other than through marital breakups that, in some instances, may represent the "firing" of homemakers for incompetence. Most divorces are much more complicated.

VII. Intensity Levels and the Value of Household Services

Replacement cost studies implicitly depend on the assumption that the intensity level at which household services are performed are the same for all homemakers and for all activities being performed. The time use surveys or diary data employed in the replacement cost approach show the amounts of time being spent in various categories, but does not show the intensity with which these services are being performed. Here again, a problem arises that does not arise with market equivalents. Persons who perform tasks with high or low intensities in the labor market will tend to receive higher or lower compensation rates because of these differences in intensities. In the household, no monitoring of intensity and corresponding adjustment of compensation rates occurs, other than through altered likelihoods of divorce via spousal initiative.

The replacement cost approach shows different amounts of time spent on doing laundry by full time homemakers versus homemakers with part or full time labor market employment. But does an hour doing laundry have the same meaning to women in each of these categories? Depending on the intensity of time use, more or less laundry can be done within the same hour. Parkinson's Law that "work expands to fill the time available" is quite relevant here. Homemakers with full time jobs may be forced to work at much higher levels of intensity simply because they have less time available to perform such tasks.

However, this does not imply that a lack of intensity is a result of shirking by a homemaker who is not fully employed in the labor market. A full time homemaker may take a number of extra steps that slightly increase the quality of the laundry, such as ironing underwear and quick-pressing wash and wear garments. A homemaker with full time labor market employment is sacrificing such quality improvements in order to save time. How such marginal quality variations are to be treated is not addressed in the replacement cost approach.

VIII. Life Cycle Effects on the Value of Household Services

The value of homemaker services may vary significantly over the homemaker's life cycle, especially in the case of full time homemakers. Full time homemakers are a minority of all homemakers and, except for among the very rich, are almost certain to be mothers as well as homemakers. Most non-rich households without children are not willing to afford the luxury of full time homemakers, given the improved living standard that can be purchased with the earnings of a second adult wage earner. In addition to direct child care for the children themselves, children significantly increase the amount of time required for food preparation, laundry, home maintenance and house cleaning. Thus, it is often less expensive for families to provide themselves with the combined package of child care and additional household services implied by children, by sacrificing outside income in favor of the services of a full time homemaker.

From the family standpoint, however, there is a significant cost in terms of sacrificed human capital that extends beyond the child rearing years. During the years in which a full time mother and homemaker has minor children in the home, she is fully employed in all senses. There is a great deal of work that needs to be done to maximize the welfare of the family. As the last child leaves the home, however, the former full time mother and homemaker may enter a period in which her economic contribution is much diminished. This period is typically referred to as the "empty nest syndrome" when reference is made to its psychological implications. Its economic implication is that she is no longer fulfilling an economic function that requires a full time homemaker.

At this point in the lives, many full time homemakers seek market employment. For many other former full time homemakers, labor market employment is only available at low wages because they lack the skills and job experience required for higher compensation. If their market oriented skills are inadequate enough, expected labor market compensation may not even cover the additional costs of clothing and transportation, especially on an after-tax basis. As a result they do not take jobs and remain officially full time homemakers, but are actually significantly underemployed individuals at this stage of their life cycles. Such significantly underemployed individuals may compensate for underemployment by increasing the amount of attention to household tasks previously performed quickly.

For example, a 49-year-old woman whose last child has left home may become a compulsive cleaner and gardener. This activity may serve to provide her with a sense of performing a worthwhile economic function, but actually provide little additional benefit to she and her husband. The important point here is that the replacement cost of the time spent in such activities by an underemployed former full time homemaker is not a true measure of the value of the benefits produced by this activity, especially if the value being determined is the value of lost household services because of a wrongful death. Since that loss is the value of the loss to the husband, the actual benefits lost are small relative to the number of hours she had been spending producing them.

Closely related to this problem is the general problem of work life expectancies for homemakers. In the labor market, retirement is a formal process and work life expectancies can be discovered through aggregate data about participation and retirement from the labor market. But household services do not have a

simple ending point in the life cycle. Full time homemakers do not receive gold watches and retire. Like old soldiers, they fade away. A 70-year-old homemaker in good physical condition is likely to be still providing a significant flow of household services. However, that flow is not likely to be as valuable as the flow of services produced by a 45-year-old. She may put in as much time, but older people do not typically do things as rapidly as younger people. This is, of course, a variation of the intensity issue discussed earlier, but now with a life cycle slant. The hours may be the same, but a 70-year-old woman, on average, has a lower intensity of time use in producing household services than a 30-year-old.

And again, specific service replacement cost studies ignore the distinctions involved in life cycle differences.

IX. The Forensic Meaning of Household Services

Even if the distinction could be easily made between household leisure activity, household work-production activity and household human capital investment activity, there would be important differences in how these activities should be counted for different types of litigation. The valuation of household production is relevant to three types of litigation: personal injury, wrongful death and divorce actions. In each type of case, the basis for valuing household services is different.

In *personal injury litigation*, the injured party is suing for recovery of losses while still living. Assuming that she is not brain damaged to the point of a semi-vegetative state (a condition that makes personal injury similar to wrongful death), her losses should include the full value of activities she can no longer perform, regardless of whether they are leisure, production or human capital investment activities. Therefore, whether the gardening activity in the example discussed earlier is a leisure activity, a production activity or an investment activity is not a matter of legal consequence. The value of her time spent in this activity is what it was worth to her, regardless of the intended purpose.

In most *wrongful death litigation*, however, the purpose of the activity does matter. In most states, the right of survivors to recovery from wrongful death is limited to losses of the survivors, not losses of the decedent. Relying again on the gardening example, if the woman's gardening activity was her leisure rather than work-product or investment activity, its loss does not represent a loss to her survivors. It is an "hedonic" loss to her, but generates no right of recovery to survivors. Indeed, in the example as discussed, survivors are slightly better off because her gardening activity interfered with activities they enjoyed and used up family resources that are freed for other purposes by its absence. As such, if the gardening was for leisure, it is not appropriate for inclusion in a loss calculation.

If it was a work product valued by surviving family members, its loss represents a loss to survivors and should be counted, with reduction for her own enjoyment of the garden (an implicit form of personal consumption maintenance). If it was human capital investment activity, it may also represent a loss of derived future financial support to her husband, but not necessarily to the children who might have been grown and not supported by the time that the human capital investment activity began to pay dividends in the form of labor market wages to their mother.

In *divorce litigation*, the purpose of valuing homemaker services is part of an assessment of the homemaker's contributions to a marriage being dissolved. Here, if the gardening activity is adjudged to be leisure, it would represent a reduction in the value of the homemaker's contributions to the marriage. In the example, the wife used parts of the family budget to purchase fertilizer, tools and other goods in order to pursue her gardening leisure activities. This would be presented as benefits she had already received from the marriage and thus an offset to claims she would have for shares in family assets being divided. It would, in that sense, correspond to her husband's use of family resources to purchase hunting trips on which his wife was not included.

On the other hand, if it could be demonstrated that her beautiful flower garden was an important asset that her husband was able to exploit in making career contacts, it was an important contribution to family income. The third possibility that it was human capital investment activity could be presented by the husband as a form of separable human capital the wife would take with her at the end of the marriage. The husband could argue that the skills she had developed imply an increase in her future earnings potential, thus perhaps offsetting claims for alimony or maintenance.

X. Conclusion

In this paper, we have set forth a number of conceptual problems with the replacement cost approach for valuation of the services of homemakers and home production in general. We have posed questions rather than providing answers. For some of our questions and problems, there may be no solutions. For others, we have hopefully suggested ways of thinking about problems that may suggest new methodologies for answers. As a general conclusion, we are dubious that the replacement cost approach can be improved sufficiently to resolve all of the problems we have discussed. We are, however, convinced of the importance of trying to provide valuation for homemaker services and home production in general.

The questions involved may be difficult, but the justice system must provide answers in one way or another. Economists should be able to provide the best way. No other profession can give our objectivity to the valuation of homemaker services. The effort must continue and we invite more research.

References

All references in this paper are included in the "Bibliography of Literature Relevant to the Valuation of Household Services," published elsewhere in this journal.

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Valuing Homemaker Production By Implied Opportunity Cost: Using A Family Human Capital Methodology

Forensic economists have been at a loss to provide adequate measures for the economic value of homemakers for purposes of wrongful death, personal injury and divorce litigation. Typically, they have relied on replacement cost studies which generate large numbers, but have a number of important conceptual flaws that can be easily attacked on the witness stand. The alternative of attempting to gauge the potential current market earnings of a homemaker requires a vocational expert and results in values that are unreasonably low. The family human capital literature developed by Gary Becker and others provides a mechanism by which the value placed on a homemaker's production can be tied to the actual value placed by the family on her (and in very rare cases, his) production activity. This paper outlines the process by which that family valuation process can be validated and estimated.

The Meaning Of The "Human Capital" Approach

The term "human capital" as used in this paper is the term used in economics to refer to "income earning ability." It has, however, a somewhat more general meaning, as explained by Gary Becker (1964), its inventor:

"Some activities primarily affect future well-being; the main impact of others is in the present. Some affect money income and others psychic income, that is, consumption. Saving primarily affects consumption, on-the-job training affects primarily money income, and a college education affects both. These effects may operate either through physical resources or through human resources. [Becker's book, *Human Capital*] is concerned with activi-

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ties that influence future monetary and psychic income by increasing the resources in people. These activities are called investments in human capital."

The human capital approach is the approach normally taken by economists in assessing economic damages in wrongful death and personal injury cases. It involves projecting the income an individual would have produced if the wrongful death or personal injury had not taken place, and reducing this flow of benefits to present value. Typically, this involves projecting future incomes from wages (technically, labor market compensations), fringe benefits and production of household goods and services over some estimate or implied estimate of the individual's worklife expectancy. Deductions are made for taxes (in some states), probabilities of labor market participation and for unemployment and then also for personal consumption that would have been made by the decedent in wrongful death cases (but not personal injury cases).

The Special Role Of Homemakers

Homemakers provide a significant part, but by no means all of household production in a given household. The term "homemaker" refers to the person, usually (but not always) the wife, who has primary responsibility for nonmarket activities involved in household maintenance, including cleaning, preparing meals, child rearing, gardening, clothing repair and laundering, shopping, chauffeuring children, and so forth. In the traditional family, husbands have primary responsibility for some types of home repairs and yard work, but are definitely secondary producers of household goods and services. Children and other members of a household also provide some household goods and services.

In recent years, there has been an increasing willingness to recognize "homemaking" as a full-time or significant part-time profession. In this sense, there is an important distinction between production by homemakers and household production by other family members. This distinction focuses on the amount of human capital required for the performance of household functions (Leibowitz 1974; Becker 1981). Any family member can sweep a floor, but not every family member knows how to engage in clothing repair. Any family member can do the laundry under supervision from the homemaker, but not every family member is involved in developing an overview of the tasks that need to be accomplished for a smoothly functioning household.

Not all families have "homemakers" in this sense. In a two person household, both husband and wife might both help with simple cleaning chores, but rely on apartment managers, dry cleaners and other market institutions to provide most household services. In this circumstance, each marital partner is as free as a single person to advance his or her career (or even more so because of division of labor advantages in the limited household production involved). What makes a homemaker a "homemaker" is specialization in the acquisition of knowledge and skills involved in maintaining a household, usually including raising children. And since this household specialized acquisition of knowledge and skills uses up time and energy that could have been put into labor market career enhancement, homemakers suffer an opportunity cost loss of that potential career enhancement.

For that reason, the distinction between families with homemakers and families without them does not depend on whether the homemaker has part-time or full-time labor market employment. It depends on whether specialization in homemaker activities results in a lowered ability to pursue

career enhancement activities, relative to what would have been possible in a single person household by the person performing the role of homemaker.

That fact is recognized in the current literature on "dual careers" for women who are both homemaker/mothers and at the same time pursuing labor market professions. Even though these women are maintaining professional careers, their progress in these careers is limited by the time, energy, and responsibility that must be involved in their roles as homemaker/mothers.

Existing Valuation Methodologies

Forensic experts have used three basic methodologies to place values on household production by homemakers: (1) General Replacement Cost, (2) Specific Services Replacement Cost, and (3) Simple Opportunity Cost. This list of categories is somewhat different from that of Fischer (1987), but Fischer's conclusions are also that existing methodologies do not adequately address the problem of measuring household production. Each of these valuation methodologies is subject to major shortcomings that will be discussed in turn.

General Replacement Cost

General Replacement Cost valuation involves attempting to gauge the cost of hiring one person in the labor market who would "replace" all of the services that are provided by a homemaker. This has sometimes been done by looking at the wages of full-time "nannies," who also do basic household work. Typically, this type of work is done by relatively poor individuals with very few labor market skills and the compensations involved tend to be quite low, making this approach popular with defense attorneys seeking low damages in wrongful death or personal injury cases but not a very accurate proxy valuation comparison for home-

makers with significant household skills. A "nanny" is a supervised market worker while a homemaker is the household manager of her home. Few "nannies" are expected to act as household budget managers and most of them are not "on call" 24 hours a day, as are homemakers. There are many other functions that homemakers perform that are not expected of "nannies." There are no good market equivalents for the occupation of a homemaker in charge of the household production activities of her family.

Specific Services Replacement Cost

The Specific Services Replacement Cost approach is the approach most often utilized by forensic economists (Johnson 1985; Ireland and Ward 1991). This method involves determining the mix of services provided by homemakers and the amount of time spent doing each type of activity. The evaluator then determines market wage rates for the market activity closest to each service provided by the homemaker and determines a market replacement value by multiplying the relevant wage rates by the amount of time spent by the homemaker in each category. The sum of such values is treated as the value of the homemaker's contribution. Figures derived from this methodology occasionally appear in "Dear Abby" and "Ann Landers" and are popular with plaintiff's attorneys because they yield figures in the \$40,000 to \$50,000 per year range for any homemaker, regardless of education.

A brief summary of the problems with the Specific Services Replacement Cost method is as follows: (1) It is very difficult to distinguish between household labor, household leisure activity and activity designed to increase the homemaker's future human capital. For example, if a woman is spending a significant amount of time gardening, is she gardening as a homemaker pro-

duction activity or as a hobby or in preparation for a future career in landscaping? (2) There are significant differences in the skill levels with which household services are provided by different homemakers. Is a mother with an eighth grade education providing the same service as a mother with a masters degree in psychology when each counsels her child? (3) There are great difficulties in decoupling concurrently performed household services. A woman might be baby sitting, doing the laundry and preparing the evening meal at the same time. How is the time to be allocated between the three activities? (4) There may be important differences among homemakers in the intensity with which they perform household services. A woman who has more time might spend more time doing the same activity as another woman. (5) There may be important differences in the value of household services at different stages of the homemaker's life cycle. A young mother with several children to care for is very busy, but a mother with "an empty nest" may do things simply to fill time.

Simple Opportunity Cost

The third methodology that has sometimes been used by forensics experts is the Simple Opportunity Cost methodology. A version of this methodology underlay figures that were provided by the Social Security Administration in the 1960's and 1970's that were based on assuming that homemakers could only earn salaries at the minimum wage if they left households and entered the labor market as paid workers. Since a full-time homemaker who is a subject of litigation is likely to have been out of the labor market for an extended period, her potential earnings upon return to the labor market would be low, thus the use of minimum wage law figures as a proxy for her potential earnings in the Social Security figures. For obvious reasons,

this approach would be popular with defense attorneys.

A more sophisticated version of this methodology could be developed, showing figures higher than minimum wages. "Displaced homemaker" programs have shown that women who have been displaced as homemakers often can achieve better than minimum wages in the labor market, given the skills they have developed for homemaking. Further, a woman with a college degree has a significant prior investment in human capital, even if that degree is more than 20 years old. Taking these factors into account, vocational experts can be used by plaintiffs to establish higher earnings potentials than would be implied by minimum wage projections.

The opportunity cost concept underlying this method is that the value of a homemaker is the value of the job she could have had in the labor market if she had not been serving as a homemaker. Therefore, if she did not take a job in the labor market, it reveals that her family valued her household production as at least worth more than her potential earnings from that job, net of additional tax and job expenses. *How much more* cannot be determined, but economic experts regularly rely on the value of sacrificed alternatives to place minimum values on a flow of benefits, in this case household goods and services produced by a full-time homemaker.

The basic problem with this methodology is that it implicitly treats the occupation of homemaker as if it involves only unskilled labor with no educational requirements or significant skill development. If homemaking involves investment in homemaking skills specific to the occupation of homemaking, the true value of homemaker production must include a return to her investment in developing those homemaking skills. The Simple Opportunity Cost method provides no mechanism for valuation of this return

to the investment in human capital in the form of the homemaker's development of homemaking skills.

Using An Implied Family Human Capital Methodology

The Implied Family Human Capital methodology (IFHC) advanced in this paper has important elements in common with the Simple Opportunity Cost methodology in that it relies on the family's own implied valuation of the homemaker's production. What is different is that the Implied Family Human Capital methodology provides accounting for a homemaker's investment in the development of homemaking skills, albeit imperfectly. In doing so, it provides a practical implementation system for the household human capital investment theory developed by the inventor of human capital theory in general, Gary Becker (1964, 1981; Polak 1985). It provides values that will normally fall between the Specific Services Replacement Costs favored by the plaintiff's attorneys and the General Replacement Cost and Simple Opportunity Cost methodologies that would be favored by defense.

Becker imagines marriage as a process by which two individuals form a household "firm," pooling their resources to maximize their household production possibilities (subject to some reservations in possible anticipations of divorce). Under many circumstances, Becker suggests, this will involve having one marital partner "specialize" in developing labor market focused human capital and the other partner "specialize" in the development of household human capital. Typically, this takes the form of a husband being freed of many household chores and primary responsibility for child rearing so that he can specialize in advancing in his profession to earn a larger income to support the household. The wife (and Becker allows for these

roles to be reversed) typically specializes in household production and child rearing, as well as possibly helping her husband in his career development through developing social contacts and providing career advice. (Whether this latter role is important depends on the nature of the husband's career.)

According to Becker, what this accomplishes is to maximize the flow of money and psychic income to the family. The husband generates most of the money income. The wife generates most of the psychic income in the form of child quality and household production of goods and services that do not have to be purchased in the market. It is important to recognize that this is likely to be true even if the wife works in the labor market in a full-time job. In order to maximize family income, it is still likely to be her responsibility to take time off work when children are sick or if someone needs to be home to let repairmen into the home. It is also likely that she stayed home with the children when they were infants and has made other decisions that were likely to have prevented her from maximizing money income from her career.

The Implied Family Human Capital Valuation methodology relies on Becker's concept of household specialization. Using information specific to a family in question, the value the family placed in the wife's development of household-specific human capital is derived from simulating an alternative career track in which the wife is projected to have specialized in the development of labor market career based human capital instead of household-specific human capital. The logic behind this simulation is that the husband and wife together made a decision that the wife's production of family income would be greater with household specialization than with labor market specialization. On that basis, the value of the wife's household production is considered at least worth what she could have earned in a labor

market career because the family sacrificed the wife's career opportunity to obtain the household production.

The value that is obtained by this method is an estimation of the value to the family, regardless of the form that value takes. A husband might, for example, value having the wife stay home simply out of male chauvinism. Or the wife might choose to stay home simply because she enjoys loafing. In these cases, the value of enjoying a male dominant household or loafing exceeds the value of the foregone income stream of the wife. Typically, however, the value of the household specialization lies in the flow of goods and services being produced rather than more frivolous pursuits, at least at the outset. (In the last few years of a marriage that ends in divorce, marital partners may cheat on the production side of their marital arrangements as well as in other ways.)

This methodology has the advantage of avoiding direct quantification of the stream of investments in household human capital. In most instances, homemakers refine homemaking skills by practice, discussions with other homemakers and reading articles in magazines rather than by formal coursework or any other easily credentialed process. Attempting to value the amount of time involved in this investment process would be even more difficult than the valuation problems confronted in the Specific Services Replacement Cost method, as discussed above.

Instead, the implied family human capital methodology involves returning to the decision point at which a homemaker began investing in household human capital rather than fully pursuing a labor market career. One or several hypothetical career tracks are then simulated, based on the homemaker's skills and demonstrated interests prior to that point of decision. The homemaker's current services are then valued on the basis of what the home-

maker would be currently earning if she had followed the hypothetical alternative career track (or tracks). The availability of alternative career tracks can be used to establish ranges for the value of the homemaker's services.

In actual practice, the implied family human capital methodology involves identifying the appropriate point in the homemaker's career at which the homemaker began investing in household human capital rather than putting all work energy into pursuing some other career. This could be the point of marriage, the point of birth of a first child or some other point at which the homemaker and spouse decided to have the homemaker specialize in household human capital. One or several hypothetical career tracks are then simulated, based on the homemaker's skills and demonstrated interests prior to that point of decision.

These simulated alternative career tracks should be reasonable and based on the specific circumstances of the homemaker's prior education and experience. The homemaker's current services are then valued on the basis of what the homemaker would currently be earning if she had followed the hypothetical alternative career track (or tracks). The availability of alternative career tracks can then be used to establish ranges for the current value of the homemaker's services. Three case studies are provided to indicate how this approach can be used. The first two of these case studies are based on actual examples but with names and pertinent identifying details changed. The third deals with a hypothetical case of a homemaker who prepared all of her life to be a homemaker, precluding an identification of a decision point of the sort discussed above.

Case Study 1. Mrs. Smith had achieved a GSA rating working for the federal government in an auditing function. Prior to her marriage, on a part-time basis, she had taken several courses toward her bachelor's degree

in accounting but had not earned a college degree. She had also completed several special auditing courses offered by her agency employer. She did not immediately give up her career focus upon marriage, but did so after the birth of her first child. Thereafter, the record showed that she had devoted herself to the promotion of her husband's career, managing the social life of the family and acting as a career counselor for her husband as well as other activities typical of homemakers. Her attorney argued that, on this basis, she had functioned in such a way that her husband was able to realize his full potential in the labor market.

On that basis, her alternative career track was simulated from the time of her retirement prior to the birth of her first child rather than the point of her marriage. Her simulated alternative career track was based on the assumption that she would have continued in her auditing career, adding job experience and completing special agency auditing courses in the manner indicated by her performance before the birth of her first child. Based on those assumptions, it could be projected that she would be earning between \$36,000 and \$45,000 per year. Having spent 25 years in her marriage with no continuing labor market experience, however, she had taken employment just prior to her divorce at \$16,000 in low level clerical employment.

The differential between the actual \$16,000 per year and the simulated alternative career track was therefore a range between 20,000 and 29,000 current dollars per year. This range was offered as an estimate of her forbearance of earning power, a factor to be considered in both division of property and in awards for maintenance. This differential range was then also used to project a present value of loss of lifetime earnings due to forbearance, using normal wage increase and discount rate

assumptions. The range was between \$270,000 and \$300,000.

Case Study 2. Mrs. (Dr.) Jones had remained involved in her career throughout her marriage. However, in every instance in which a family decision about location or advancement had to be made, her husband's career was put first. Further, Mrs. Jones was expected to assume almost full responsibility for child care and homemaking in such a way as to significantly reduce the time, energy, and availability she had to advance within her profession.

Her career was that of a college professor, which requires great amounts of personal time outside teaching responsibilities to achieve publications in professional journals. It also requires attendance at professional meetings, from which Mrs. Jones was precluded because of her child rearing responsibilities. Early in her career, Mrs. Jones had a standing offer for several years of a position at one of the most prestigious universities in her discipline. She passed up that opportunity because of her husband's employment.

The relative rankings of her current university and of the university at which she had the standing offer were validated through questioning individuals at other universities. Based on her accounts of being unable to attend professional meetings and to have time to prepare publishable papers because of time spent in child care (unmatched by her husband), a simulated alternative income stream was projected on the basis of an assumption that she would have achieved full professor status at the prestigious university if she had not married and had children. As a result, a differential of \$22,000 per year, as of the current year, existed between her compensation in that simulated alternative and her current employment. The present value of this differential for her assumed worklife expectancy, using normal wage in-

creases and discount rates, was between \$215,000 and \$250,000.

Case Study 3. Mrs. Brown was killed in an automobile accident at the age of 36. She had married at the age of 19 and had never wanted to be in or prepared for any other career than that of full-time homemaker and mother. Her husband and surviving three children are suing for their economic losses caused by her death. Mrs. Brown had met her husband in high school, where she had a somewhat lackluster, but passing record that would have gotten her into a university. However, she had been in love with her husband at graduation and had shown no interest in going to a university. From her husband's account, she had taken a job after graduating from high school to add financial support to the amount he received in a college scholarship. As a result, they were able to maintain a household while he was a college student and then a law student. She also typed many of his reports and otherwise tried to assist him in every way in achieving his education. After graduation, he was hired by a prestigious law firm and began earning a large income. She quickly became pregnant and had three children in short succession. After becoming pregnant with her first child, she left employment and never worked again. However, in spite of her lack of interest in a labor market career of her own, she was a devoted mother and conscientious homemaker. She attended lectures, read magazines, and took noncredit courses in a number of areas that improved her mothering and homemaking skills. Witnesses were available to testify to the devotion she had to her children and to the quality of her homemaking.

The problem in this case lies in the fact that there is no clear alternative career track to simulate. She had not seriously considered any other career except that of mother and homemaker. While she was apparently excellent at that career, there is no obvious career

to compare it to, as in the first two cases. The solution is to value her household services based on mean earnings of an average high school graduate, an average college graduate and a college graduate with 1-3 years of postgraduate work. It is not possible to know which of these alternative career tracks is the correct one, but each can be used to calculate a family loss estimate. These figures can be derived from the *Money Income of Households, Families and Persons in the United States* annual publication of the Bureau of the Census. As in any wrongful death calculation for an individual with an earnings track record, personal consumption maintenance should be subtracted from earnings figures to determine family loss.

One final point in this case relates to the principle of "assortive mating." There is a literature in psychology and sociology that suggests that individuals marry persons with like backgrounds and characteristics. To that extent, it may be possible to argue from a husband's achievements what a wife's potential might have been. In the current example, the husband had become a lawyer with a substantial income. Given the assortive mating principle, it is unlikely that he would have married a woman who did not at least have the potential to become a college graduate (Blau/Duncan 1967; Blau/Schwartz 1984; Fischer 1987). It might also be desirable to bring in a psychologist or sociologist as an expert witness to make this point.

Measuring Forbearance In Divorce Litigation

Two of the three case studies above represent uses in divorce actions. While this methodology has not been specifically tested by judicial decisions through an appeals process, it goes directly to the issue of career forbearance, which is specifically mentioned as a factor to be considered in property

division and child support in many state divorce laws.

Effectively, these laws require the judge to consider how much less a spouse will earn because of forbearance of career development during the marriage and take that factor into account, along with other factors, in property division and child support allocations. Forbearance, in the language of the laws, is the difference between what a woman can earn today and what she could have earned if she had furthered her career instead of marrying. This is exactly what the Implied Family Human Capital Valuation methodology is designed to measure.

Admissibility And Conclusion

The relevance of career forbearance by homemakers has been tested in a number of Missouri cases. The methodology of this paper is designed to exactly address categories judges in many states are required to consider,

"the contribution of each spouse to the acquisition of marital property, including the contribution of a spouse as homemaker" and "forbearance of career opportunity." In wrongful death and personal injury matters, it is already established that forensics experts have a role to play. They are already playing that role through other methodologies, primarily the Specific Services Replacement Cost methodology, which is inadequate.

The (IFHC) methodology is identical to the methodology a forensics expert would use in the event of the wrongful death of a male college student who left a wife and child as survivors. The forensic economist would have to make assumptions about the possible career track that the deceased would have followed and project damages in the form of lost earnings and lost household services based on those assumptions. With a homemaker, that same system is used with an earlier starting point, but the human capital methodology is otherwise identical.

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Reply to: A Note on “Household Services: Toward a
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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*.

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

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. . . [O]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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