Introduction

The legal decision in Millo v. Delius in 2012 resulted from the wrongful death of Bret Millo, who was shot and killed by Dr. Ralph Delius in a hunting accident. Kristy Millo, the widow of Bret Millo brought an action for recovery of damages on behalf of herself and her three daughters. The case was brought in the U.S. District Court for the state of Alaska and was governed by Alaska law. The defense filed a motion for partial summary judgment regarding damages claimed by the plaintiffs. Federal District Court Judge Sharon L. Gleason granted partial summary judgment on several issues. Judge Gleason ruled that punitive damages did not apply in this case; that the adult daughters of Kristy and Bret Millo were not “dependents” within the meaning of Alaska law because they were not receiving financial support from their father; and that Bret Millo had been killed instantly so that pain and suffering damages were not available. Judge Gleason also reviewed existing Alaska law with respect to what constituted “economic” damages and what constituted “non-economic” damages. Dr. Pershing Hill, the economic expert for the plaintiff, had projected economic damages for “companion and advice-type services.” Amounts projected by Dr. Hill were not mentioned in the decision, but Judge Gleason ruled that those services were “non-economic” services, rather than “economic” services. The significance of that determination is that the value of those services fell within the $400,000 statutory limit on “non-economic” damages.

In arriving at her decision that “companion and advice-type services” are “non-economic” in nature, Judge Gleason reviewed prior decisions of the Alaska Supreme Court on similar issues

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and quoted Schreiner v. Fruit (1974) as follows:

A claim for relief for loss of consortium provides a means of recovery for an injury not otherwise compensable. It should be recognized as "compensating the injured party's spouse for interference with the continuance of a healthy and happy marital life." The interest to be protected is personal to the wife, for she suffers a loss of her own when the care, comfort, companionship, and solace of her spouse is denied her. (Italics added for emphasis.)

The primary focus of this paper is on the language “not otherwise compensable.” The ruling in Millo v. Delius was that “companion and advice-type services” are in the category of damages that are “non-economic” because services of that type are “not otherwise compensable.” The meaning is clearly not that compensation may not be awarded for the losses in question because the issue being resolved is under what category of damages compensation for loss of “advice and counsel” and “companionship should be made,” not whether such compensation should be made. The appeal was focused on whether the damages for which compensation for “advice and counsel” and “companionship” should be treated as “economic” or “non-economic” damages, given that “non-economic” damages are subject to a $400,000 statutory limit, whereas no such limit applied to "economic" damages.

What did it mean for the Alaska Supreme Court to refer to a claim for loss of consortium to be an “otherwise not compensable” type of loss in its Schreiner v. Fruit (1974) decision. To the best of this author's knowledge, no economic expert claims to be able to put reliable dollar values on “consortium” between a husband and wife or between a parent and child. In the quotation above, consortium includes the special care, comfort, companionship and solace of a marital spouse (and possibly parent or child). One might try to define “compensation” as a money award made to compensate for the purpose of compensating for a loss, but that clearly cannot have been the meaning intended in Schreiner when that decision used the terms “not otherwise compensable.” If the definition of “compensable” is “a category for which compensation may be made,” any loss for which a money award can be made is, by definition, “compensable.” It must mean something else and that something else must be central to the difference between “economic” and “non-economic” losses. Award can be made for both types of losses, but awards made for “non-economic” losses in Alaska are capped by the legislature at $400,000, while no such limit exists for “economic losses.” If cash awards can be made for both types of losses, how can one type of loss be “compensable” and the other type of loss “not otherwise compensable?”

The Compensatory Purpose of Awards

The distinction discussed in Millo v. Delius is a distinction that has been of concern to courts since long before economic experts were being hired in tort actions. It was discussed as early as 1862 in Tilley v. The Hudson River Railroad Company and elaborated by the U.S. Supreme Court in Michigan Central Railroad v. Vreeland in 1913. It has been variously phrased as “tangible” versus “intangible” damages, “pecuniary” versus “non-pecuniary” damages, and “economic” versus “non-economic” damages, but has often carried the meaning of "losses for which economic experts can provide damages calculations" versus "losses for which economic
experts cannot provide damages calculations." In the context of *Millo v. Delius* and *Screiner v. Fruit*, "compensable" versus "not otherwise compensable" appears refers to the same distinction, but in a somewhat different way. If compensable means something different from "a loss for which compensation may be made," what does "not otherwise compensable" mean? This paper will argue that "not otherwise compensable" means "not capable of being replaced by reasonable equivalents in the commercial market place." Essentially, this is the distinction described or implied by Ireland and Gibert (1996), Arrow (1997) and Rodgers (1989) between utility replacement values and market replacement values.

Ireland and Gilbert (1996) described several examples to draw a distinction between market replacement values and utility replacement values when items of property were destroyed. One example was the destruction of irreplaceable family photographs in a negligently caused home fire. The family might have been willing to spend thousands of dollars to prevent the loss of the irreplaceable family photographs, but the market value of those photographs may have been nominal. There would be no way to validate any private expression of the value of those lost photographs in terms of their utility value to family decision makers. As a result, recovery for the loss of the photographs would be limited to whatever nominal value that might be demonstrated in the commercial marketplace, not the utility value of thousands of dollars to family decision makers. Arrow (1997) explained why an individual's own life does not have a monetary equivalent even though that individual's life is not infinite to that individual. Arrow explained:

It is not surprising that up to a certain point, an increase in the probability of death will be accepted in exchange for suitable compensation but when the probability is sufficiently high, no price is sufficient for the risk to be undertaken. High risks do not have a monetary equivalent.

Ireland and Gilbert went on to describe the value an individual would place on his or her own life as "supramonetary," meaning that no sum of money is sufficiently large to compensate an individual for giving up all of his or her life (or bearing a very high risk of doing so). At the same time, an individual might give up his or her life (bear a very high risk of losing life) to save the life of a spouse, a child, or one's country. This was summed up by Rodgers (1989) in a different way: One cannot compensate a dead person for having died. Death, by its nature, precludes compensation because a dead person cannot do anything with an award. Nothing that can be purchased in the commercial marketplace is equivalent in value to being alive.

In general, what economic experts are permitted to calculate and testify to in most legal venues are losses that can be replaced in the commercial market place to a reasonable degree of similarity. When controversies exist in forensic economics, the fundamental focus of the difference is on whether or not what can be purchased in the commercial marketplace and thus used as a proxy value for a loss meets the standard of reasonable similarity. Compensable damages are damages for which alternatives with reasonable degrees of similarity exist. Damages that are "not otherwise compensable" are losses for which no reasonable equivalents exist in the commercial marketplace, but which are nevertheless easily recognized as significant losses to tort
victims. Dollar sums are the only means for compensation within the tort system, but reliable dollar equivalents can only be assigned to some losses, but not others. The underlying question is whether or not it is possible to find alternatives in the commercial market that would reasonably replace what has been lost by tort victims. What divides “tangible,” “pecuniary,” “economic” damages from “intangible,” “non-pecuniary,” “non-economic” damages is the availability of commercial market replacements what will allow (but not require) an award recipient to avoid at least part of the loss that will otherwise have been suffered as a result of the wrongful death act.

**Reasonable Substitution in the Commercial Marketplace**

There is general agreement among forensic economists that economic experts can provide reasonable valuations for lost earnings, lost job-related fringe benefits, future “ordinary” lost household services, and life care made necessary by an injury. Calculations by an economic expert for past lost earnings are simple and basic. An economist projects a sum of money equal to past money wages an individual would have received if not injured. Calculations by an economic expert for future lost money earnings are based on projecting a stream of lost future income payments based on probabilities that those payments would have been made, reduced to present value (other than in New York). Effectively, economic experts are pricing specific annuities for specified periods of time equal to the projected lost earnings period. If an award is made in an appropriate amount for lost earnings, there will be no loss of money income resulting from an injury or death. With job-related fringe benefits, the primary lost benefits are health insurance and contributions to an individual’s retirement benefits. The value of health insurance can be determined from costs to replace that insurance (with exceptions to be noted below). If purchased, the injured person or family of the decedent will not suffer that loss in the future. Similarly, contributions to a retirement plan can be estimated, projected, and reduced to present value based on the costs of similar benefits that can be purchased in the commercial marketplace. Ordinary household services can be replaced in the commercial market by persons hired to provide those services. A house can be just as clean if cleaned by a commercial provider as if cleaned by the injured person or decedent in a tort action. There are differences between self provision of household services and commercially provided household services in the need for advance scheduling and monitoring, but the services that can be purchased with an award are reasonably similar to the ordinary household services that were lost because of a personal injury or wrongful death. Life care plans project goods and services made necessary because of an injury and are direct projections of costs for providing those goods and services in the commercial marketplace.

What is common in each of those examples is that reasonable equivalents in the commercial marketplace exist and that those services have prices or price structures that allow an economist to project how much it would cost to prevent the loss from being experienced by the injured person or family of a decedent from experiencing the loss. With respect to those specific damage elements, the injured person or family of a decedent is being “made whole.” The overriding goal is to prevent the loss from being experienced. The meaning of “compensable” in *Millo v. Delius* when applied to a loss is “capable of being prevented.” The meaning of “not otherwise
compensable" is “compensation that cannot prevent a loss from occurring because there are no reasonable equivalents that could be purchased in the commercial marketplace.”

**Reasonable Substitution is Not Perfect Substitution**

Before proceeding, it is important to note that reasonable substitution in the commercial marketplace does not mean perfect substitution in the commercial marketplace. An injured person who has been forced to give up his occupation and the earnings he had in that occupation may not be “made whole” by being awarded an amount sufficient to avoid any financial loss based on the person's loss of earnings. Working in a job an individual enjoys provides job satisfactions that are not monetary in nature. Some workers may enjoy not having to go to work and therefore enjoy freedom from a workplace schedule that comes about because of an injury, but other workers would much rather have been able to continue working than to now be forced into a less interesting job or forced to fill time staying home watching daytime television. The psychic or “utility” aspects of being employed can be significant in both positive and negative directions. The same is true of household services. Some injured persons may appreciate not having to provide household services that are now being provided by commercial providers. Others may have enjoyed providing those household services. Further, commercial provision entails scheduling and monitoring problems that may not have existed with self provision.

Controversies can exist about how close a market substitution may need to be in order for the cost of the market substitute to provide a reasonable basis for an economic expert to project the value of a given loss. That was particularly the issue in Millo v. Delius with respect to loss of “advice and counsel” and “companion"services.

**Loss of Companion and Advice-type Services**

In the *Millo v. Delius* case, Kristy and Bret Millo had three adult daughters, none of whom was dependent upon their parents for financial support. Minor children raise special issues that will not be considered in this paper, but both the *Millo v. Delius* (2012) and *Schreiner v. Fruit* (1974) decisions indicated a special exception for such “companion and advice-type services” when provided by a parent for a minor child. As a part of general living, spouses provide both advice and counsel to each other and companionship for each other. However, such services have a unique value based on the family relationship itself. The three adult daughters of Bret Millo and his wife Kristy presumably enjoyed the companionship of their father and husband in ways that could not be reasonably replaced by commercial market providers of companionship. Judge Gleason explained the difference as follows:

Plaintiff’s expert Dr. Hill attempts to distinguish companionship from consortium by asserting that “people are able to hire paid 'companions' such as nurses and health aides. He uses wage rates for those professions to value the loss of Mr. Millo's services in that regard. However, the practical examples of companionship Dr. Hill describes in his report are activities such as bowling, sharing an evening meal, attending movies, and other social activities that do not resemble the duties
of a paid nurse or health aide. Non-economic damages are, as the Alaska Supreme Court stated in Schreiner, a means of recovering “for an injury not otherwise compensable.” The implications of Dr. Hill's argument—that a surviving spouse could pay a companion to provide the type of companionship the married couple formerly enjoyed—are not convincing. This court finds that the loss of companionship and advice that a surviving spouse experiences, while indisputably a loss, is not an economic loss under Alaska law (footnotes omitted).

While non-market services such as the performance of household chores and subsistence hunting and fishing can, under Alaska law, qualify as economic damages, the provision of companionship and advice from a loved one falls within the category of non-economic damages, and is therefore subject to the statutory cap on such damages. Accordingly, summary judgment is granted to Dr. Delius on this issue.

Based on the description provided in the Millo decision, Dr. Pershing Hill, the plaintiff’s economic expert, valued companionship services using wage rates for paid companions “such as nurses and health aides.” This is methodology suggested by Tinari (1998; 2004) in his seminal paper on this issue, but frequently criticized by this author for reasons including the reason cited by Judge Gleason. Kristy Gleason would not benefit from having paid companions spend time with her in lieu of the time her husband would have spent with her. A husband's companionship is special because he was her husband and not because he simply spent time in her presence. There are circumstances in which a paid companion could provide a service that a spouse previously provided, but the kind of companionship that a paid companion could provide is not a reasonable substitute for the kind of companionship a husband would provide. Companionship of a spouse cannot be replaced in the commercial marketplace for any dollar wage. It is irreplaceable and the kind of paid companionship that can be purchased in the commercial marketplace is not a reasonable substitute for the companionship of a spouse. One can assume that neither Kristy Millo nor the three Millo daughters would have even wanted to have the companionship of a paid companion of the health-aide variety being used by Dr. Hill to value hours of companionship to supposedly replace the companionship of Bret Millo. Paid companions of the health aide variety are hired to assist persons in need of life care assistance, which was not a problem confronting either Kristy Millo or the three Millo daughters.

While Dr. Hill's calculations for loss of advice are not discussed at the same length his wage rates would be considerably higher for advice than for companionship if he followed the Tinari methodology. This is because paid advice providers in the commercial marketplace are paid much higher wages than paid companions of the health-aide variety. However, the same problem applies. The advice of a spouse or a father has special value because it is coming from a spouse or father, who inherently cannot be replaced in the commercial marketplace because one has only one spouse or father with whom one has shared a lifetime of experiences. Under ordinary circumstances, no amount of education can make up for the personal knowledge that a spouse or father can provide. “Advice” is not a homogeneous service. Advice can be personal,
psychological, financial, spiritual, regarding exercise, dieting and so forth. Different types of advice cost different hourly prices in the commercial marketplace, depending on the amount of expertise required to provide that advice. There are circumstances in which the death of a close relative creates a need for psychological counseling. If so, there is no question that the cost of counseling, if the need is foundationally established, is a valid damage element for which an economist could add past values and project future values. However, the need being addressed was created by the death rather than a replacement for services the decedent was providing before the death. The advice of a spouse or a father falls into a special category for which replacement is not possible. The impossibility of any reasonable replacement precludes an economist from projecting a reliable value based on commercial market equivalents for the simple reason that there are no commercial market equivalents. Any supposed equivalents offered by Dr. Hill were not reasonable equivalents and the wages he may have used to value projected hours of lost advice have no close relationship to values for the advice that has been lost because of the death of Bret Millo. What Judge Gleason said in Millo v. Delius is closely consistent with what his author has said in response to Tinari in the past and in papers dealing with loss of companionship on the one hand and loss of advice and counsel on the other (Ireland 2006; 2007).

**Legitimate Losses of Advice and Counsel and Companionship**

In spite of what has just been said, it is not always true that advice and counsel and companionship cannot be replaced by commercial equivalents. While this was not the case in Millo v. Delius, it might be in another case in which a spouse was wrongfully killed that the spouse had been providing the kinds of services that paid companions of the health-aide variety regularly provide. If so, the death of the spouse creates a need that was being satisfied before the death and that can be satisfied by a person or persons hired in the commercial marketplace. In this circumstance, the surviving spouse would be assisted by the provision of such services. Similarly, the death of a spouse who regularly provided investment advice could make provision of replacement investment advice by a provider in the commercial marketplace a reasonable cost made necessary by the wrongful death. One could think of many other examples, but the key in such instances is a specific foundation for the replacement being made. A companion of the health-aide variety is not someone a widow would want to have dinner with or go to a movie with to replace her husband's companionship. A companion of the health-aide variety would make sense if the husband had been providing exactly that type of service before his death.

**Losses not Otherwise Compensable**

One may guess that Kristi Millo and the Millo daughters would have benefitted from an award for loss of the companionship and advice of Bret Millo. They would very probably not have spent the award purchasing the services of companions of the health-aide variety and all purpose advisors whose wages were used by Dr. Hill to project the values of their lost companionship with Bret Millo and his lost advice. The values projected would have no relationship to the values of what was actually lost, but a bigger award is presumably better than a smaller award. A bigger award means that more goods and services can be produced. More goods and services
presumably generate more utility (or in FE terms, hedonic value). Assuming that the relationships were positive, and there is no reason to doubt that in the Millo case, Kristy Millo and the three Millo daughters did suffer a significant loss in the form of their lost companionship with and lost personal advice from Bret Millo. The fact that the losses cannot be replaced by commercial market provision and therefore cannot be valued in any reliable way does not change the fact that a significant loss occurred and that an award of money is the only way that any type of compensation can occur in civil tort actions. Whatever the true value of the loss, however one defines what that loss is, a cash award would presumably move toward narrowing the amount of the loss. It is in that sense, in this author’s opinion, that Judge Gleason, following an earlier decision of the Alaska Supreme Court, referred to consortium losses as losses that were not otherwise compensable.

If a loss is “otherwise not compensable,” it probably means that an award cannot be spent trying to remediate the loss that is being addressed. An “intangible,” “non-pecuniary,” “non-economic” loss is a loss for which replacement is not possible by any reasonable equivalent that can be purchased in the commercial marketplace. Because there is not equivalent, no market wage rate can be used to measure the loss in a reliable way. What then, does it mean for Dr. Hill to have attempted to measure the loss of Bret Millo’s companionship with Kristy Millo as a loss to Kristy Millo? She would not have spent award for paid companions of the health-aide variety, but she presumably have benefitted from having more money to purchase more goods and services of other varieties such that her overall enjoyment of life might have increased. To that extent, she is being “compensated.” What has just been described, however, is Dr. Hill’s method for calculating hedonic damages. The damages he calculated for loss of health-aide companionship has no reasonable relationship to the loss of spousal companionship suffered by Kristi Millo, but she did suffer a loss and the size of the loss may be partially made up for by the added utility that can be purchased with a larger award. One could never know how much of the loss was made up for because there is no measure for the loss itself precisely because no replacement Bret Millo’s spousal companionship is possible. There is no way for any external observer to measure the dollar value of the loss. It depends, in large part, on how much Kristy Millo loved her husband. It depends on how much she now enjoys the companionship of her friends and perhaps greater companionship with her daughters. None of those factors fall remotely within the realm of economic science, which ultimately depends on valuation or reasonably equivalent alternatives in the commercial marketplace.

In Alaska, at least, it appears that economists are not permitted to calculate hedonic damages for loss of spousal companionship or loss of spousal advice. There is a loss, but it cannot be measured by economists, and, in this author’s opinion, should not be measured by methods of calculation that are based on assumptions and wage rates that have nothing to do with the magnitude of the loss.

Concluding Observations

Many of the controversies in forensic economics can be reduced to issues relating to whether or
not there are reasonable market equivalents for losses that have occurred or will occur in the future. There are no market equivalents for “pain and suffering,” “grief and bereavement,” “loss of love and affection,” or “loss of enjoyment of life.” Losses that cannot be replaced in the commercial marketplace cannot be reliably valued by economic experts. Valuation depends on reasonable market equivalents. When such reasonable equivalents are impossible, values that depend on whatever equivalents are used for valuation become formulas for calculating hedonic damages in those situations. The value of ordinary spousal companionship cannot be valued by economic science because there is no equivalent to spousal companionship in the commercial market, but the same is true in other situations in which some forensic economists provide valuations. What is the value of past lost medical insurance. The answer is $0. If there were past medical expenses that the past lost insurance would have paid for, the past medical expenses themselves can be measured and treated as a loss. However, such expenses do not include the anxiety that a family may have suffered because the insurance was not available if expenses arose that did not arise. Losses of that kind cannot be made up for. If an economist is projecting a value for past lost medical insurance based no what an employer would have paid for medical insurance, the economist is effectively projecting hedonic damages with the notion that more dinners in the future would make up for anxiety in the past.

Similarly, if an economic expert projects past lost household service, it is obvious that one cannot go back into the past and provide household service that were not provided in the past. If the family replaced past lost household services, the cost can claimed for remediation to restore the family finances to what they would have been without the death or injury that caused the past household services not to be provided. However, what is being calculated is simply a different formula for calculating the hedonic loss suffered in the past because the household services were not provided. The money must be spent on something entirely different in the future to somehow compensate for past loss of life enjoyment along the dimension of household services. Other applications suggest themselves.

When reasonable substitutes in the commercial market do not exist for what has been lost, no calculation by an economic expert can have more than a vague relationship with a loss that has actually occurred. Some losses, like past and future lost earnings, past and future lost contributions to retirement plans, loss of future household services, loss of future medical insurance, cost of life care made necessary by an injury, costs of psychological assistance made necessary by an injury or death, and other replacements for which reasonable equivalents exist in the commercial marketplace all fall within the potential realm of economic science. Measurement may be difficult to do accurately, but at least there is something upon which to base the measurement being attempted. Other losses exist for which no replacement is possible. Those are the losses that are “otherwise not compensable” in the terms of Millo v. Delius, and for which economists should not prepare calculations.
References

Articles:


Legal Decisions:

*Michigan Central Railroad Company v. Vreeland*, 227 U.S. 59 (1913)

*Flannery v. United States*, 718 F.2d 108 (4th Cir. 1983)


*Schreiner v. Fruit*, 519 P.2d 462 (AK 1974)

*Schultz v. Harrison Radiator Division General Motors Corp.*, 90 N.Y.2d 311 (1997)

Appendix: Descriptions of Relevant Legal Decisions

_Millo v. Delius_, 2012 U.S. Dist. LEXIS 65211 (D.AK 2012). This was an order granting partial summary judgment to the defendant based on Alaska law in a wrongful death action. The decedent was survived by three adult daughters and his wife. The adult daughters were not being financially supported. Judge Sharon Gleason held that the adult daughters did not qualify as dependents for statutory purposes under the Alaska Wrongful Death Act. Plaintiff claims for punitive damages, pain and suffering of the decedent were also denied. The surviving wife also made a claim for “companion and advice-type services” as a type of economic loss as compared with non-economic loss, as valued in a report of economist Dr. Pershing Hill." Non-economic loss was capped at $400,000 and the intent of the distinction was to avoid having “companion and advice-type services" included as an intangible element under the $400,000 cap.

_Flannery v. United States_, 718 F.2d 108 (4th Cir. 1983). This decision included several important holdings about the application of the Federal Tort Claims Act (FTCA). First, it held that taxes must be subtracted from lost earnings regardless of state law concerning subtraction of taxes. Second, it held that the discount rate used to reduce future values to present values must be a tax adjusted rate. Third, it held that lost enjoyment of life damages were not allowed in an FTCA action as punitive to the United States (this holding was later overturned in _Molzof v. United States_, 502 U.S. 301; 112 S. Ct. 711, 1992). Fourth, it held that the medical costs in a life care plan for a comatose person must be subtracted from lost earnings.

_Schreiner v. Fruit_, 519 P.2d 462 (AK 1974). From its own standpoint, the principle ruling in this case was that wives have the same right to sue for loss of consortium due to negligently inflicted injuries to their husbands that husbands had in Alaska with respect to wives. The court said about the right to sue for loss of consortium that:

A claim for relief for loss of consortium provides a means for an injury not otherwise compensable. It should be recognized as “compensating the injured party's spouse for interference with the continuance of a healthy and happy marital life.” The interest to be protected is personal to the wife, for she suffers a loss of her own when the care, comfort, companionship, and solace of her spouse is denied her. The basis for recovery is no longer the loss of services, but rather the injury to the conjugal relation.

Put into the context of forensic economics, “care, comfort, companionship, and solace” one spouse derives from another is not a “service” like household services that can be replaced in the commercial market, but something uniquely irreplaceable that is intangible because of its uniqueness.

_Schultz v. Harrison Radiator Division General Motors Corp._, 90 N.Y.2d 311 (1997). Damages for household services are to be awarded only for actual past expenditures and future services. An award had been made for past lost household services by the trial court. That award had been
affirmed by an intermediate court of appeals, but was reversed by New York's highest court in a decision that otherwise affirmed the trial court verdict and the appeals court decision, but remanded the decision to the trial court to implement its decision with respect past lost household services. The Schultz Court said:

Defendant contends that since plaintiff did not incur any actual expenditures on household services between the accident and the date of verdict, having relied on the gratuitous assistance of relatives and friends, the jury improperly awarded plaintiff $43,096 in that respect. We agree.

A damages award reflecting the value of such services did not serve a compensatory function and was improperly made (see, Coyne v Campbell, 11 NY2d 372). The jury should also have been instructed that future damages for loss of household services should be awarded only for those services which are reasonably certain to be incurred and necessitated by plaintiff's injuries. Contrary to plaintiff's contention, such an instruction does not require him to be dependent on the charity of others. Such a charge to the jury merely ensures that any compensatory damages awarded to plaintiff are truly compensatory.

Michigan Central Railroad Company v. Vreeland, 227 U.S. 59 (1913). This U.S. Supreme Court decision is a very early decision under the Federal Employers Liability Act (FELA), holding that a broad interpretation of household services is in order in FELA actions when calculating damages. The Vreeland Court held that:

A pecuniary loss or damage must be one which can be measured by some standard. It is a term employed judicially, "not only to express the character of the loss of the beneficial plaintiff which is the foundation of the recovery, but also to discriminate between a material loss which is susceptible of pecuniary valuation, and that inestimable loss of the society and companionship of the deceased relative upon which, in the nature of things, it is not possible to set a pecuniary valuation." Patterson, Railway Accident Law, § 401. . . .

Neither "care" nor "advice," as used by the court below, can be regarded as synonymous with "support" and "maintenance," for the court said it was a deprivation to be measured over and above support and maintenance. It is not beyond the bounds of supposition that by the death of the intestate his widow may have been deprived of some actual customary service from him, capable of measurement by some pecuniary standard, and that in some degree that service might include as elements "care and advice." But there was neither allegation nor evidence of such loss of service, care, or advice; and yet, by the instruction given, the jury were left to conjecture and speculation.

Tilley v. The Hudson River Railroad Company, 24 N.Y. 471 (NY 1862). This pre-FELA decision
addressed the meaning of “pecuniary,” as in “pecuniary damages,” under the then New York wrongful death act as follows:

The difficulty upon this point arises from the employment of the word *pecuniary* in the statute; but it was not used in a sense so limited as to confine it to the immediate loss of money or property; for if that were so, there is scarcely a case where any amount of damages could be recovered. It looks to prospective advantages of a pecuniary nature, which have been cut off by the premature death of the person from whom they would have proceeded; and the word *pecuniary* was used in distinction to those injuries to the affections and sentiments which arise from the death of relatives, and which, though most painful and grievous to be borne, cannot be measured or recompensed by money. It excludes, also, those losses which result from the deprivation of the society and companionship of relatives, which are equally incapable of being defined by any recognized measure of value.