

Introduction: Assessing Economic Damages in Personal Injury and Wrongful Death Litigation in the States *

by

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Over a period extending back a decade or more, discussions among forensic economists at professional meetings and on internet list services have often considered differences in the way economic damages are computed in particular state jurisdictions. These discussions revealed that answers vary by state to such questions as: “Are future losses discounted to present worth, and, if so, is there a mandated interest rate”? “Is a deduction made for the decedent’s personal consumption in death cases, and, if so, is it permissible to take into account the income of the decedent’s spouse when computing this deduction?” “Are income taxes deducted from gross earnings in computing the loss of earnings?” Answers to these and myriad other questions have exposed many differences in the rules governing the computation of economic damages in personal injury (PI) and wrongful death (WD) cases among the various state courts of the United States. The discussions also revealed that there is considerable curiosity and interest among forensic economists about the variations in damage rules and the corresponding practice considerations. This interest no doubt arises in part because the forensic economist wonders what he or she would do upon receiving a phone call from an attorney seeking a damage appraisal for a PI or WD case in a state where the economist had never prepared an appraisal.

In response to this curiosity and long-standing interest, a series of articles has been planned for the *Journal of Forensic Economics (JFE)* describing how economic damages are assessed for PI and WD cases in the courts of the various states, the District of Columbia and Puerto Rico. Plans for the series were announced at the NAFE membership meeting at the January 2003 Allied Social Science Association Conference, and again during the Western Economics Association International (WEAI) sessions where draft articles were presented. In the August and November 2003 issues of the *NAFE Member News*, information for prospective authors was provided, and NAFE members with an interest in authoring a state series article were invited to contact us.

This issue of the *JFE* contains the first three articles of the series to have successfully completed the journal’s peer review process. These articles cover the states of Florida, Oregon and Pennsylvania. The articles have been written primarily for forensic economists who are familiar with the general issues and methods encountered when computing economic damages in PI and WD cases, but who do not have

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familiarity with the key statutes, court cases, and jury instructions that influence and control the specific procedures for computing such damages in the particular state. In addition to providing a description of how the statutes, case law and jury instructions structure the assessment of economic damages, the articles also provide information about practice issues in the state, such as whether it is customary for attorneys to require written reports and whether the depositions of experts are routinely taken. The *JFE* hopes that readers will find these first three articles, and eventually the whole series, to be informative and useful.

There are currently a number of articles that have been submitted and that are at various stages of the review process. In addition, a number of individual forensic economists have indicated an interest in preparing articles for some twenty additional states. It is hoped that articles will eventually be written for all of the states, and that after a few years articles will have been published in the *JFE* for virtually every state. At that point, it is envisioned these articles will be compiled into a comprehensive body of information (with any necessary updating for important changes since the articles were first published in the *JFE*) and published in a single authoritative volume. Such a volume could prove valuable not only to forensic economists, but also to attorneys, judges, and other litigation experts.

We have agreed to coordinate this series for the *JFE*. We will be happy to receive questions and comments, and we can provide additional information about the series to those that may be interested in writing an article about a particular state. Bob Male can be contacted at: bobmale@hawaii.rr.com and 808/887-0862. Jim Rodgers can be contacted at jdr@psu.edu and 814/237-9322.