Wrongful Death Litigation
Calculating Economic Damages Can be Tricky

In wrongful death cases, economic damages generally are equal to the current value of the expected future earnings of a decedent but for the defendant’s wrongful act. However, estimating such damages is easier said than done.

Even relatively straightforward cases require experts to extrapolate earnings over the decedent’s worklife expectancy and account for the value of employee benefits. Special circumstances – for example, when the decedent is a child or stay-at-home parent – can make estimating economic damages particularly tricky.

**Historical Earnings Matter**

Typically, valuation experts begin their calculation of economic damages by analyzing the decedent’s earnings history and extending those earnings out over the individual’s worklife expectancy. If an earnings history is not available, experts may consult studies that show average earnings for various occupations prepared by government agencies or private sources. Other factors may affect a specific decedent’s future earnings, such as age, education, experience, health history and inflation.

Some jurisdictions allow plaintiffs to recover damages for lost earning capacity. This may be appropriate if there is evidence that the decedent was qualified or would have become qualified for a higher-paying job in the future.

**Employee Benefits Must Be Considered**

In addition to “base earnings,” experts consider value of employer-provided benefits, such as retirement and health insurance. In estimating these benefits, qualified experts are careful to avoid “double-counting.” For example, a decedent’s anticipated contributions to a 401(k) or other defined contribution plan are already included in his or her gross wages. If the employer also contributes to the plan, however, those contributions must be counted.

For pension plans and other defined benefit plans, experts typically project the decedent’s anticipated post-retirement benefit stream, based on expected years of service, salary levels, retirement date and life expectancy.

Special care is required in dealing with paid vacations and sick leave. These types of compensation often are part of an employee’s gross wages, so including them in damages may constitute double-counting.

When decedents and their families were covered by employer-provided health insurance policies, experts determine whether the decedent was responsible for some of the cost of coverage. The employer’s contribution generally represents the economic loss, although a plaintiff may argue that the need to obtain a private policy to cover the decedent’s spouse and family will increase the cost of health insurance over the cost under the group plan.

The loss of Social Security benefits may also affect damage estimates. Determining the amount of the loss can be complicated because benefit payouts depend on such factors as decedents’ age, marital status, work status and whether they have dependents.
Special Circumstances

When the decedent is a minor, arriving at economic damages is particularly tough. To determine future earnings, experts take into account the minor’s age and estimate the level of education he or she would have attained but for the incident causing the death. Typically, this determination is based on statistics showing probable levels of educational attainment by sex, race, geography, family income and educational background.

Even in cases where the decedent participates in the workforce and has a solid earnings history, another factor can put a wrinkle in the works: Generally, courts will offset lost earnings awards by the decedent’s anticipated personal consumption. When experts anticipate this will be the case, they usually consult studies by the U.S. Bureau of Labor Statistics that identify average percentages and dollar amounts of household income consumed by individual family members. Then, they may adjust these figures to reflect special circumstances or unusual consumption patterns of the decedent.

Critical to the Outcome

Estimating economic damages in wrongful death cases demands an experienced, resourceful and detail-oriented financial expert. Hiring such an individual is critical to the outcome of your client’s case.