



THE CENTER FOR
FORENSIC ECONOMIC STUDIES

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PREPARING YOUR DAMAGES CASE

CHECKLIST OF ISSUES AND EVIDENCE IN PERSONAL-INJURY AND WRONGFUL DEATH MATTERS

Economic damages – actual monetary loss caused by a tort or breach – occur in many forms and can involve a variety of issues. Whether you are retained by the plaintiff or the defense, a good understanding of the basic elements of damages and the issues that might be involved is essential to effective representation. Here, we present a guide to the basic elements of damages in both personal injury and wrongful death matters, and some of the issues that often arise. We also include a list of documents useful in assessing the extent of loss. A forensic economist, retained early in the case preparation process, can identify all major elements of loss, assist with discovery and gather pertinent evidence.

THE CENTER FOR FORENSIC ECONOMIC STUDIES is a leading provider of expert economic analysis and testimony. Our economists and statisticians focus on the analysis of economic loss and expert-witness testimony on damages.

We assist with discovery, uncover key data, critique opposing claims and produce clear, credible reports and expert testimony. Attorneys and their clients have relied on our expertise in thousands of cases in jurisdictions across the country. To discuss how we can help you prepare your damages case, contact us at 215-546-5600 or www.cfes.com.

PERSONAL INJURY / WRONGFUL DEATH

BASIC ELEMENTS OF DAMAGES CAN INCLUDE:

- Lost Earnings
- Lost Household Services
- Lost Fringe Benefits
- Medical Costs

In wrongful-death matters in many jurisdictions, the decedent's likely personal-consumption expenditures (the decedent's personal living expenses, exclusive of what he or she would have saved or spent on family support) are deducted from damages.

Rules on deductions of collateral sources vary from jurisdiction to jurisdiction. For example, in New Jersey, Social Security payments are subtracted from damages, while in Pennsylvania, Social Security payments do not offset damages.

MAJOR ISSUES:

Damages are determined by how long the injury will limit earnings, to what degree the injury will limit earnings, and what, if anything, will offset the loss (e.g., subsequent earnings).

Issues may include:

- **Earning capacity.** Expected income taking into consideration age, education, personal attributes, health, labor-market conditions and the plaintiff's actual earnings.
- **Worklife.** How long plaintiff can expect to work, taking into consideration expected retirement age and absences from the work force for illness, child rearing, education or other reasons.
- **Employment patterns.** How plaintiff performs in the workplace, taking into consideration such issues as hours and overtime and other issues.
- **Earnings growth.** How will earnings grow over time due to inflation and increases in personal productivity?

PRE-INJURY EARNING-CAPACITY EVIDENCE:

- The plaintiff's actual earnings history
- Statistical earnings of the plaintiff's cohorts. Sources can include employment and union records, government and academic studies, trade associations and employment agencies.
- The plaintiff's physical, mental and medical status. Were there any preexisting medical conditions that would have limited earning capacity regardless of the tort? What was the plaintiff's aptitude? Were there any planned or actual career or educational advancements?

POST-INJURY EARNING-CAPACITY EVIDENCE:

- An assessment by a vocational specialist on the plaintiff's abilities and reduced expectations.

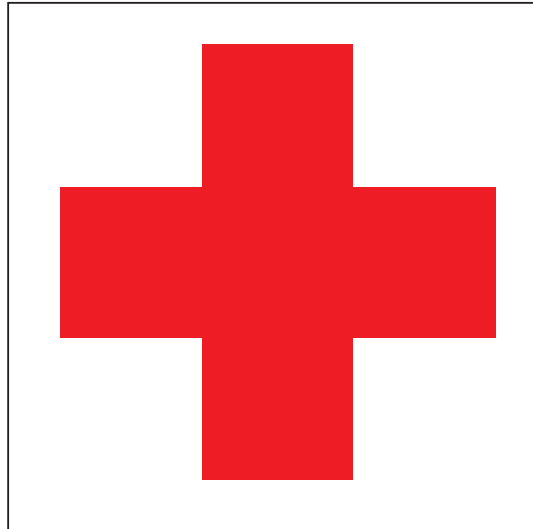
- The plaintiff's actual post-tort earnings.
- A medical specialist's opinion regarding total disability.

FRINGE BENEFITS:

Fringe-benefit items that generally count toward damages include company-paid health insurance, company-paid life insurance and pension benefit. Losses are not the cost to the employer but the loss to the claimant, measured by replacement cost.

HOUSEHOLD SERVICES:

Household services are the value of services provided by plaintiff or decedent for the benefit of other family members. Sources for the amount of household services rendered and their value include testimony of family members, government and academic studies and the cost of services from commercial providers.



PERSONAL CONSUMPTION (WRONGFUL DEATH):

Personal consumption is the amount decedent would have spent on personal living expenses and would not be available to wrongful-death claimants. Personal-consumption items are not deducted if the decedent's family incurs such costs (e.g., housing, utilities).

Personal-consumption items often include:

- Housing (single decedents)
- Clothing
- Transportation
- Health care

FUTURE MEDICAL EXPENSES:

Future medical expenses are calculated by medical-cost specialists who provide reports referred to as life-care plans, showing what the plaintiff will need for medical care. The cost of this element of damages is affected by life expectancy in instances where the injury is permanent.

USEFUL DOCUMENTS:

- Tax documents (e.g., 1099s, W-2s, 1040s, Schedule Cs)
- Lifetime earnings information from the Social Security Administration
- Fringe-benefit documents (pension plan, health plan, employer-paid insurance policies, employee handbook)
- Plaintiff or decedent's resume
- Past and present collective-bargaining documents
- Pay stubs
- Bank-account records (checking and savings)
- Employment records
- Medical records