

640 Companionship and Advice and Counsel Services

In previous sections of this chapter, the scope of household services was restricted primarily to more-or-less physical type activities such as those described by King and Smith, activities like “preparing meals, cleaning the house, laundry, shopping, home repairs, and childcare.” (King and Smith, p. 60) Household activities that had served to benefit the decedent only (e.g., entertainment, hobbies, sports) or benefit the broader society (e.g., political activities) are not considered as part of household services. This narrow definition of household services, while it may be the “norm in litigation practice”, excludes two important components of services that would have been provided by a deceased parent/spouse to *surviving family members*: companionship services, and advice, guidance and counsel services. Typically ignored in descriptions and listings of household services, these services *should* be included in order to obtain a more accurate and comprehensive measurement of the loss of nonmarket activities to surviving family members. But how can such services be measured?

641 Measuring the Amount of Services Lost

In his 1988 publication, *Recovery for Wrongful Death and Injury, Economic Handbook*, 3rd edition, Stuart Spieser argues that “economists cannot investigate values that lack a market equivalent.” He goes on to emphasize that only those services that can be measured and expressed in money terms can and should be included in the calculation of the value of services. Speiser specifically identifies conjugal bliss (where compensable), companionship, and custodianship of hearth and home as items that illustrate losses of valuable benefits but that are not readily amenable to economic analysis and measurement. Interestingly, Speiser includes among those values that lack a market equivalent the role of a counselor even though

a comparable market occupation, “teacher, psychotherapist”, exists.

As it turns out, the two components of household services being discussed, i.e., companionship services, and advice, guidance and counsel services, are amenable to economic analysis and *can* readily be assigned equivalent market occupations and corresponding wage rates. Moreover, they are sufficiently large in magnitude that their omission results in serious underestimation of the value of household services. [See Tinari, Household Services: Toward a More Comprehensive View, *Journal of Forensic Economics*, 11 (03), 1998, pp. 253-265.]

641.1 What are companionship services?

Companionship is defined here simply as the presence of another person during one’s daily activities. Such companionship provides a sense of security and reassurance that is decidedly absent when activities are undertaken alone. It is critical to the definition not to include consortium, intimate relations, love and affection. Rather, companionship services are more akin to those provided by a “pal” or acquaintance who provides a reassuring presence such as when one goes shopping with another person and seeks the opinion of the other in making purchasing decisions, or when acquaintances attend a movie, play cards, or take a stroll together. In an important sense, therefore, the primary purpose of companionship is to relieve loneliness. Companionship services require the presence of another person but not any particular physical work activity or intimacy.

In the case of family members, the task is to separate companionship services from other more personal and intimate services provided to one another. This may be accomplished

by ascertaining the hours that family members would have spent together in various activities that would have otherwise been done alone. So, if a couple went bowling together for two hours each week, or shared dinner one hour each evening, or went shopping together on the weekend, these would be the sort of companionship services that would be lost with the death of one of its members.

Household services studies and data sets generally do not include any sort of measure of companionship services. The Dollar Value of a Day (DVD) attempts to measure these services by estimating time spent with family while providing primary services such as inside housework, cooking and cleaning. Companionship services in this case, however, are considered secondary services. As such, measures of these services will be under-represented. Thus, an explicit measure of companionship is necessary to ensure that economic damages are not understated. A detailed discussion of DVD can be found in § 651.

641.2 What are advice, guidance and counsel services?

The services of advice, guidance and counsel may be defined as the provision of helpful opinion, advice and information to one's spouse, children and elderly parents, as the need arises, in the areas of family problems, medical concerns, schooling, careers, finances, and personal relationships.

The critical question to answer is whether or not these services are omitted in oft-cited studies and data sets. The Panel Study of Income Dynamics national time-use surveys include tabulation of services such as helping/teaching children learn, fix and make things, reading to children, conversing with children and outdoor playing with children, (Leonesio, p. 54) while the

Gauger and Walker study at Cornell University included “childcare” services. Thus, it is clear that various forms of advice to *children* have been included in some studies. The inclusion of any sort of guidance or advice to *adult* family members, however, is noticeably absent from nearly all studies. Only the DVD makes mention of the provision of any sort of guidance or advice to *adult* family members and, as stated above, it treats these services as secondary services resulting in measures that are understated.

641.3 Measurement Issues

Advice and companionship services are generally lumped together with those services that are believed to be immeasurable because they have no close market proxies. Hauserman and Pethke point out that:

If the homemaker is removed, then the continuity for the children created by her presence, the love and affection, the security, the companionship, etc., may also be removed. None of these services have purchasable market equivalents and are difficult to include in replacement-cost calculations. (p. 253)

The key consideration, therefore, is whether or not there exist markets that provide largely comparable services for a fee or wage. In at least one jurisdiction, the State of New Jersey, the court has recognized the measurability of such services. With respect to advice, guidance and counsel, Chief Justice Robert Wilentz explained:

... it is the loss of that kind of guidance, advice and counsel which

all of us need from time to time in particular situations, for specific purposes, perhaps as an aid in making a business decision, or a decision affecting our lives generally, or even advice and guidance needed to relieve us from unremitting depression. It must be the kind of advice, guidance or counsel that could be purchased from a business advisor, a therapist, or a trained counselor, for instance. That some of us obtain the same benefit without charge from spouses, friends or child does not strip it of pecuniary value. (Supreme Court of New Jersey, *Green v. Bittner*, 85 NJ 1, 1980, p. 14)

Similarly, companionship is distinguished from consortium in that people are able to hire paid “companions,” usually practical nurses or paid companions, from a nurses registry service for the purposes of having someone accompany them while shopping, help them obtain transportation, and generally be a companion to them. The basis for such a loss was described by Chief Justice Robert Wilentz as follows:

Companionship, lost by death, to be compensable must be that which would have provided services substantially equivalent to those provided by the companions often hired today by the aged or 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. (Supreme Court of New Jersey, *Green v. Bittner*, 85 NJ 1, 1980, p. 12)

It is obvious that Judge Wilentz explicitly specified the measurableness of these services by reference to the relevant markets for them. For advice, guidance and counsel services, then, the closest market proxies are business advisers, therapists, or trained counselors. To this listing may be added other related professions such as marriage and family counselors, teachers, and social workers. For companionship services, the closest market proxy is practical nurses.

641.4 Determining an Equivalent Market Wage

641.4.a Companionship services

For companionship services, New Jersey courts often accept use of the wages of paid companions. These workers may be hired from a nurses registry service for the purpose of having someone accompany them while shopping, help them obtain transportation, and generally be a companion to them. The Tinari Economics Group (TEG) regularly conducts telephone surveys of nursing care services in the geographic region of the plaintiff in order to estimate a local rate for the wages of paid companions.

Alternatively, your forensic economist may use data from national sources, in which case the wages of reasonably-related occupations could be used as market proxies. Table 23A provides examples of the median wages of four such occupations.

Given the range of earnings values in Table 23A, from \$8.54 for Personal and Home Care Aides to \$17.57 for Licensed Practical Nurses, your economist will want to obtain a useful hourly figure. Calculating the mean of these figures is one way of doing this. This yields, in this

case, an approximate hourly wage of \$11.53 in 2006 dollars, which can be considered a reasonable estimate of the national replacement hourly cost of companionship services lost to family members as a result of a family member's death.

Two important issues must be considered when determining the market value of companionship services. First, for purposes of litigation, your forensic economist will typically attempt to value the replacement labor costs of lost services. From that perspective, what is relevant is not the annual wage of a comparable worker but the hourly wage to provide specified services for several hours per week. Therefore, the hourly charges for paid companions from, for example, nurses registry service firms may be the most appropriate wage rate to use. Also, they quote rates for 'paid companions' whereas national data do not provide a comparable usage figure.

Second, the difference between the range of wages nationwide provided in Table 23A and that of paid companions from nursing registry services in New Jersey (cited above) is very wide, with the New Jersey rate being nearly twice as high. Your forensic economist using these data would very likely want to adjust the values to reflect the market or region in which the family resides. The data source cited for Table 23A includes wage information by state, so some degree of tailoring is possible.

641.4.b Advice, counsel and guidance services

For advice, guidance and counsel services, wages of the cited market proxies and reasonably-related occupations may be examined. Table 23B shows the results of a search

completed by TEG.

The range of hourly wages is from \$10.90 for residential advisors to \$42.64 for business teachers. Once again, your economist will want to develop a useful hourly figure. Averaging the figures in the table will, in this case, generate an approximate hourly wage of \$23.92 in 2006 dollars, which may be considered a reasonable estimate of the national replacement cost of advice and counsel services lost to family members as a result of a family member's death.

In his 1998 article, *Household Services: Toward a More Comprehensive View*, Tinari notes

"... that the occupations listed in the table do not include highly-compensated professionals such as psychiatrists, stock brokers or lawyers. The reasons are that these occupations a) require a very high level of education and training that would not typically be characteristic of average Americans, and b) provide highly specialized advice that would go beyond the type of advice and counsel that family members would typically provide one another."

One important question that typically arises is whether or not average market wages cited understate or overstate the hourly values of both companionship and advice, guidance and counsel services. The literature has noted that the market wage may overstate the value of similar home produced services because the market wage rate represents the value of specialized, "professional" labor services the quality of which is likely higher than that of a husband or wife who provides similar but non-specialized services. A countervailing argument is that market-substitute labor is generally an inadequate replacement and only a rough proxy for the services provided by a husband or wife in the home.

In their 1988 study titled “Market Value of Household Production”, Dulaney et al. concluded that:

... the perceived quality of household output exceeds the quality of alternative market purchases for all types of output. The preference for household production is strongest in the case of childcare, suggesting that babysitting and other childcare services are regarded as poor substitutes for parental care. (p. 123)

While not resolving the problem in a definitive way, these results weigh the evidence in favor of the position that the market wage estimates developed above for both companionship services, and advice, guidance and counsel services, very likely understate their value to households.

641.5 Determining the Quantity of Hours

Until a reputable study is undertaken and its results published, your forensic economist must rely on indications found in scattered studies as well as his/her intuitive and experiential knowledge to develop reasonable, conservative estimates in any given litigated matter. With respect to both advice and companionship services, Table 23C gives *suggested quantities* for various family profiles as provided in Tinari’s 1998 study, “Household Services: Toward a More Comprehensive Measure”.

As an example of how these values were estimated, consider the first row of the table

dealing with a husband and wife family unit. With respect to advice and counsel, it is assumed that discussions between the two about family matters, personal problems, business, house and work decisions, finances and other matters affecting the two that require advice, guidance or counsel, total approximately one (1) hour per week. It may be reasonably assumed that such advice by a now deceased spouse would have been proffered in small increments during the week, depending on the actual lifestyle and living pattern of the couple. Factors influencing the number of hours of advice, guidance and counsel services provided include gender, health, educational attainment, family living arrangements, age and labor force status of family members. Of course, detailed information about the family would serve to lend credence to the number of hours assumed by the forensic economist.

It should be emphasized that the hours assigned to advice, guidance and counsel services should be conservative, especially in cases of claims for losses to children upon the death of a parent because there may be partial overlap with “childcare” services often included in published household services data sets.

641.6 Valuing the Services

To begin, your economist must convert 2006 wages given in Tables 23A and 23B into 2008 dollars. For the purpose of this exposition, an annual growth rate of 3% is applied resulting in 2008 estimated hourly wages of \$12.23 for companionship services and \$25.38 for advice, guidance and counsel services. The next step is to combine these wage estimates with the suggested quantity of hours given in Table 23C to develop a series of annual estimates, expressed in 2008 dollars, of the value of companionship services and the value of advice, guidance and counsel services for various types of wrongful death claims. These are presented

in Table 23D.

Table 23A: Hourly Median Wages of Companionship-Related Occupations, 2006*

Occupation	Wage	Explanation/Comment
Personal and Home Care Aides	\$8.54	Keep house and advise families regarding nutrition, cleanliness, etc.
Home Health Aides	\$9.34	Provide routine care for elderly, convalescent, or disabled persons in homes of patients
Nursing Aides, Orderlies and Attendants	\$10.67	Provide basic patient care such as feeding, bathing, dressing and moving patients.
Licensed Practical Nurses	\$17.57	Care for ill, injured, convalescent, and disabled persons

* Taken from U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Employment Statistics*, 2006 State Occupation Employment and Wage Estimates
http://www.bls.gov/oes/current/oes_nat.htm.

Table 23B: Hourly Median Wages of Advice-Related Occupations, 2006*

Occupation Title	Wage	Explanation/Comment
Child, Family, and School Social Workers	\$18.02	Provide assistance to improve social and psychological functioning of children and their families
Social and Human Service Assistants	\$12.30	Run programs to resolve problems relevant to substance abuse, human relationships, rehabilitation or adult daycare
Marriage and Family Therapists	\$20.78	Counsel and aid individuals within the context of marriage and family systems
Residential Advisors	\$10.90	
Loan Officers	\$24.89	
Tax Preparers	\$13.15	Prepare tax returns but do not have background of an accredited accountant
Business Teachers, Postsecondary^	\$42.64	
Financial Managers	\$43.74	Includes managers in banks who advise on credit and investment policy
Self-Enrichment Education Teachers	\$16.08	Teach courses other than those that normally lead to an occupational objective or degree such as self-improvement courses
Elementary School Teacher^	\$29.57	
Secondary School Teacher^	\$31.06	

* Taken from U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Employment Statistics*, 2006 State Occupation Employment and Wage Estimates, http://www.bls.gov/oes/current/oes_nat.htm.

^ Hourly wages adjusted to reflect 9.5-month work year

Table 23C: Suggested Hourly Quantities of Services

From Deceased:	To Surviving:	Advice & Counsel		Companionship	
		Per Week	Per Year	Per Week	Per Year
Husband/Wife	Wife/Husband	1.00	52	20	1,040
Mother	Dependent Child	4.00	208	20	1,040
Father	Dependent Child	2.00	104	10	520
Mother/Father	Emancipated Child	0.25	13	1	52
Child	Elderly Parent	0.50	26	1	52

**Table 23D: Estimated, Suggested Annual Values of Advice & Counsel
and Companionship Services, 2008 dollars**

From Deceased:	To Surviving:	Advice &		
		Counsel	Companionship	Total
Husband/Wife	Wife/Husband	\$1,320	\$12,719	\$14,039
Mother	Dependent Child	5,279	12,719	17,998
Father	Dependent Child	2,640	6,360	9,000
Mother/Father	Emancipated Child	330	636	966
Child	Elderly Parent	660	636	1,296