

A Note on "Household Services: Toward a More Comprehensive Measurement"

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In the past few years there have been both erroneous applications and misplaced challenges to the ideas first presented in the "Household Services" article (Tinari, 1998) published in this journal. As a result, it is necessary to supplement that article in order to clarify what it relied upon and delineate what it did not say. As explained below, the erroneous applications have occurred in reports written by damages expert Stan Smith wherein analysis of losses to injured parties cite the article. Second, the misplaced challenges are contained primarily in a paper that was presented by Tom Ireland (2005) at the annual conference of the Western Economic Association International. Ireland's paper argues, in part, that the seminal *Green v. Bittner* decision (1980) by the New Jersey Supreme Court is very restrictive in what it considered compensable "companionship services" and that Tinari's paper went too far by generalizing the concept beyond what was envisioned by Judge Wilentz in *Green*. This note is necessary, in part, because Tinari's paper cited only the *Green v. Bittner* ruling and thereby may have misled readers into thinking that it alone serves as the basis upon which the value of companionship services is allowed to be calculated in New Jersey cases.¹

The Tinari article is regularly cited in damages reports authored by Stan Smith, but in a manner not supported by the Tinari article. The focus and methodology contained in the Tinari article deal with issues surrounding calculation of lost services to claimants in *death* cases. Yet this author has seen some Stan Smith reports that purport to value loss of companionship services in personal injury matters and which cite the Tinari article as part of the underlying justification for Smith's methodology. This is clearly a misapplication of the Tinari article inasmuch as the *Green v. Bittner* case, and many others that followed in New Jersey, all dealt with wrongful death claims. Moreover, to my knowledge, there are *no* New Jersey cases in which the court has allowed calculation of such damages in injury matters.

The major focus of this note is to explain how New Jersey court decisions since *Green* have elaborated upon the basic idea of permitting pecuniary claims for the loss of "companionship services" in a variety of circumstances, and have moved well beyond the focus of the loss of services that parents would have received from their child which was the basis for the *Green* decision. The *Green* decision was a necessary but not sufficient basis for the valuation of services

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¹In this Note, valuation of "advice and counsel services" is not addressed inasmuch as a number of states allow for the calculation of parental guidance, training and advice, and there is substantially less controversy over market measurement of their pecuniary value.

ship, evaluation of such benefits must be limited strictly to their pecuniary element, and their estimation may not include any consideration of emotional loss relating to either decedent's death or plaintiff's pleasure in having next of kin, rather than stranger, perform the activities. (N.J.S.A. 2A:31-4)

In supporting the damages claim made by the decedent's sister, it then went on to say that "the statute clearly anticipates recovery for any qualifying family member, but excludes cohabiting fiancés, friends, or neighbors who never could have standing under intestacy laws." Referring to *Carey v. Lovett* (1993), the court reiterated that parents can be considered "dependent" on a newborn baby, "and can suffer economic losses of future care and companionship as a result of the baby's death." Citing prior cases that refer specifically to the compensable assistance siblings might receive from one another, the justices opined: "The trial court's belief that the holding in *Green v. Bittner* limited recovery for companionship losses solely to the parent/child relationship is incorrect." As a result, the matter was remanded for a re-trial.

The reader is free to review the more extensive arguments presented in these cases. We emphasize that all cited rulings deal with wrongful death claims, not personal injury. Second, our main conclusion is that New Jersey court decisions since *Green* have reiterated the validity of claims by persons recognized as having standing in wrongful death actions to include pecuniary damages for the loss of "companionship services" in a wide variety of circumstances.

References

- Ireland, Thomas R., "Valuing Advice, Counsel and Companionship Services within Families: A Reconsideration of Frank Tinari's 'More Comprehensive Measure,' paper presented at a session of the National Association of Forensic Economics, at Western Economic Association International 80th Annual Conference, San Francisco, July 7, 2005.
- Tinari, Frank D., "Household Services: Toward A More Comprehensive Measure," *Journal of Forensic Economics*, 1998, 11(3), 253-265.

Case References:

- Carey v. Lovett*, 132 N.J.; A.2d 1279 (1993)
Gangemi v. National Health, 291 N.J. Super. 569 (1996)
Goss v. American Cyanamid, Co., 278 N.J. Super. 227 (1994)
Green v. Bittner, 81 N.J. 1; 424 A.2d 210 (N.J. 1980)
Hudgins v. Serrano, 186 N.J. Super.; A.2d 210 (1982)
Schiavo v. Owens-Corning Fiberglas, 282 N.J. Super. 362 (1995)

allowed by New Jersey courts in a variety of death cases *not* involving the death of a child. Other fact patterns in subsequent death cases led to rulings that built upon and expanded the acceptance of measurement of companionship services by economic experts.

Referring to Judge Wilentz's words contained in the *Green* decision, the Ireland paper argues that a general definition of "companionship" services as "persons spending time together" adopted by Tinari goes beyond the nature of the more narrowly defined nature of such services as envisioned in that opinion. In fact, however, the Justice gave no strict definition. Rather, companionship services are described *by example*, referring to "companions' often hired today by the aged and infirm" as the leading descriptor. The footnote to the passage elaborates: "Hired companions today perform a variety of services, primarily, however, simply keeping the employer company and administering basic needs." Judge Wilentz was attempting to distinguish between intimacy, consortium and emotional feelings, on the one hand, and companionship services that a hired companion might provide to relieve loneliness, on the other. The former types of losses are noneconomic in nature and are best left to the trier of fact to consider. The latter services were viewed as compensable pecuniary losses amenable to measurement by reference to market wages.

As noted above, court rulings on the valuation of companionship services did not end with *Green v. Bittner*. Cases that have involved claims by persons other than parents have built upon and expanded the scope of claimed losses of companionship services. A few of the critical rulings by the New Jersey Appeals Court are highlighted in the following paragraphs.

In a 1994 opinion in *Goss v. American Cyanamid* concerning the death of a 67-year-old husband, the court first reviewed prior case law in New Jersey. Quoting the *Green v. Bittner* case, the court stated: "pecuniary injuries' suffered by the surviving next of kin is the standard for *all* wrongful death cases." (emphasis in the original) Quoting from *Hudgins v. Serrano* (1982), the court went on to say: "An award of damages in a wrongful death action is not intended to punish the tortfeasor, but only to replace that which the decedent likely would have provided." In addition to assessing an award for the wife's loss of consortium, the jury awarded a substantial wrongful death award. In describing the latter, the court agreed that decedent's wife lost all of his "services, companionship, guidance, advice and counsel, all of which had significant pecuniary value." In effect, this ruling provided for the loss of companionship services, among other services, that would have been provided by a spouse. Similarly in *Schiavo v. Owens-Corning Fiberglas* (1995), a surviving wife was awarded damages for the loss of her husband's services. Again, the *Green* case was cited when the court said: "The pecuniary loss suffered by the surviving next-of-kin is the standard for damages in all wrongful death cases."

In *Gangemi v. National Health*, a 1996 ruling, the appellate court reversed a lower court order that did not allow a sister to obtain compensation for lost services that would have been provided by her deceased sibling. It first cited the New Jersey statute:

While pecuniary damages which are recoverable in wrongful death action include loss of guidance, advice and counsel, and companion-