Reprinted with permission from the Journal of Forensic Economics

Journal of Forensic Economics 3(3), 1990, pp. 91–94
© 1990 by the National Association of Forensic Economists

Reflections on Economic Loss in the Death of a Child

John Ward*

I. Introduction

The purpose of this paper is to extend the discussion raised by my recent article on this topic in the *Journal of Forensic Economics* (Ward, 1989). That article provided a framework for estimating the economic loss to parents resulting from the wrongful death of a child using an investment theory approach based, in part, on human capital theory. This rational expectations approach assumes that parents, at the time they decide to have a child, believe that the anticipated benefits they will receive from the child are greater than their anticipated costs of raising the child. In the unforeseen event that the child dies prior to emancipation the loss of the parents can be indirectly measured through a proxy—the cost of raising the child to the age of death. The cost of raising the child would consist of the parents' direct expenditures for clothing, food, shelter, education and health, as well as the value of the parents' time devoted to child care. Since these expenditures of money or time occurred in the past, they would be brought forward to present value with interest. A parallel was drawn to laws governing the recovery of damages in business torts where past investment in a physical property, along with interest lost on alternative investments, can be a basis for the recovery of the value of the value of that property when wrongfully destroyed.

The investment model was compared to the alternative ways of calculating economic loss in a death of a child—the product valuation method and the hedonic valuation method. The product method is the only method allowed in the majority of state courts and involves the valuation of the products of raising a child. Such products include discounted values of emotional support, counsel, home services and direct pecuniary support that the child, as an adult or child, could have provided to parents except for death. In most cases, courts require a reduction of loss for the costs of raising the child from death to the age of emancipation. Besides yielding minimal loss results, this method is unsound. While more appropriate to an age when twelve year old children entered into the labor force the product method makes little sense in a society where children are considered consumer goods and the benefits derived from a child by parents consists more of companionship and emotional support than captured labor. Besides, it is virtually impossible to estimate the level of emotional or pecuniary support parents might receive from a child through the aging time of the parents. The product method is defended on the basis that alternative methods of valuation, such as hedonic methods, provide inflammatory, and unreasonable loss estimates because "the real value" of a child to parents is immeasurably large.

* John Ward is Professor of Economics at the University of Missouri–Kansas City.

Hedonic methods of valuation, which would place a price on the parents' valuation of the life of their child though estimates based on kidnap ransoms or medical expenditures for a critically ill child, would, no doubt, dramatically increase loss estimates. However, it is not reasonable to severely limit damage awards in such cases by requiring that a product valuation method be used because the real loss to parents' is immeasurably large.

The investment method provides a valid basis for measuring loss because the proxy for loss, the investment in the child, can be more exactly measured and the method is consistent with human capital theory.

An acceptance of the investment method in estimating loss in the death of a child leads to a new set of problems—how is investment in a child measured, and what are the parameters of the model? Tom Ireland has addressed several of these issues in his response to my paper in the past issue of the *Journal of Forensic Economics* (Ireland, 1990). Ireland correctly points out that the process of estimation using the investment method is not as straightforward as shown in my case example of an 18-year-old child in the original publication. In the case of a death of an 18-year-old child the parents' investment in the child has been considerable and the loss estimate will be considerable. Ireland raises the question of whether this implies that the death of a 5-year-old child should carry a small economic loss to parents because their investment in the child is small? Ireland answers that question by pointing out that the investment of parents in the child is only a proxy for the benefits they expected to receive from the child. The correct valuation is based on anticipated expenditures and benefits at the time the parents decided to have the child. They did not anticipate that the child would die before those benefits could be received. The true investment value of the 5-year-old child is the anticipated value of expenditures in raising the child to emancipation. In other words, the value of the child was established at the time the decision was made to have the child and that value is the full future, discounted, anticipated expenditures in raising the child to emancipation. The fact that money is "saved" by the child's death is irrelevant. Ireland also raises the point that the actual costs of raising the child are understated in my original paper because only direct time in child care is considered. The time of the mother is more properly reflected by the opportunity costs of full or partial withdrawal from the labor force or reduced employment capacity.

Ireland is correct in both observations, but he does not go far enough in his criticisms and refinements of the method.

II. Reflections

The investment method of calculating economic loss, while superior to alternative methods, is far from exact. the purpose of these reflections is to enumerate the pitfalls in using the method and to suggest ways in which those pitfalls might be addressed. The issues addressed are:

1. the measurement of investment and the meaning of investment;
2. the measurement of benefits and the use of investment as a proxy;
3. parameters to the use of the model

Investment in raising a child can be measured using direct expenditures by parents and time, or the opportunity costs of time, parents give to child care.

Again, anticipated investment is the benchmark used as a proxy for anticipated benefits. However, should investment in the child be specific to the economic condition of the parents? The Department of Agriculture, "Cost of Raising a Child" series provide cost data by region, family size and family income. Obviously the anticipated costs of raising a child varies by family income. Therefore, should a lower value be placed on the life of a child in a poor family than the child of a wealthy family? This type of differentiation is done when estimating lost earnings capacity of an adult, but is it appropriate in the case of a child? What should be remembered is that parents' loss is being evaluated and it is based on anticipated expenditures and benefits. Moreover, the decision to have the child is frequently made when the parents are young and future income is uncertain. As measured through the proxy of investment, do anticipated benefits also correlate with family income? Certainly one could argue that poor parents will expect greater benefits from a child in the form of future financial support than wealthy parents. If true the investment approach understates loss when income is low. One solution to this problem might be to use a median income category in all loss estimates. To do so would raise other issues. Should the quality of child raising be considered when using investment as a proxy for loss of benefits?

Certainly the quality and quantity of child care relates to the real and anticipated benefits of children to parents. However, parents also realize that despite their efforts, their children may provide no benefits to them as adults. This poses no real problem in that a similar dilemma faces any investor. The effort that goes into the investment does not guarantee success. However, in the event that an unproductive investment is wrongfully destroyed, damages may be awarded on the basis of the anticipated loss of profits from the investment rather than the actual funds invested. Should the same standard apply to the death of a 18-year-old with failing grades and an anti-social behavior? While Ireland's use of anticipated benefits at conception resolves this problem, it may be difficult to explain to a jury.

Another question centers on the social components of anticipated investment in a child. The emancipated child is a product of the parents' investment in the child, the child's own efforts and abilities, and society's investment in the child in the forms of public education and social interaction (church, scouts, etc.). Since such investments help to shape anticipated benefits should they not also be measured as anticipated investment?

Anticipated benefits are difficult to define and measure. That is why investment is selected as a proxy measure of benefits. Benefits begin with the birth of a child in the forms of parental satisfaction and well-being. Parents derive pleasure from their interaction with the child. These benefits, unlike latter benefits, might be classified as consumer benefits. One might ask whether these benefits to the date of death of a child should be subtracted from loss. Like an art object which is enjoyed until it is destroyed, is the enjoyment accrued also destroyed with the object? Probably not, but the benefit is transformed and diminished.

The financial and physical efforts of parents to save a terminally ill child suggests that the benefits derived from children far exceed both anticipated and real expenditures for children. One can explain this parental behavior by saying that the investment method is inapplicable to a death of a child. An equally

valid position is that the benefits are so large that even in the absence of a long time horizon of benefits, investment value is still less than the limited benefits received. Certainly, this suggests that anticipated expenditures are a fair and conservative measure of loss to parents.

So, what are the benefits parents receive from their children? Many states only allow parents to recover their probable pecuniary loss from the death of their child (the financial support and services they might receive). But the award of lost earnings capacity to an injured worker really represents the awarding of the ability to purchase lost consumption such as attending movies, donating to charity or purchasing books. What is being awarded is, in reality, utility. Is the loss of parents in the death of their child anything less than the utility they could receive from that child? If so, then the pecuniary elements of loss are only a fraction of the benefits lost.

When two parents decide to have a child, invest in the child and then the child dies in an accident along with one of the parents, is the loss to the surviving parent one half of the loss of two parents? Each parent has both a joint and an individual anticipation of benefits, independent of joint investment.

All of the above discussion suggests that the investment method of loss valuation is an extremely conservative method of loss valuation in the death of a child.

III. Conclusion

If anticipated investment is the best measure of lost benefits to parents when a child wrongfully dies, why should loss be restricted to cases where the child is a minor? Does the death of a 30-year-old married child represent any less of a loss of benefits to parents? If not, such parents should be allowed to recover their investment in the child.

Another issue raised by the investment method centers on the wrongfully injured child. A child born with a wrongfully inflicted birth defect can recover the economic costs of future medical care, lost earnings capacity and services. Using the logic of the investment method, should not the parents of the child be allowed to recover their lost anticipated benefits from the child as measured by anticipated expenditures? If a 17-year-old child wrongfully receives a head injury that results in a total loss of the ability of that child to communicate or interact with its parents, shouldn't the parents also be allowed to recover their lost investment in the child?

Finally, many questions remain in developing an investment measure of damages in the death of a child that is fully consistent with human capital theory. Forensic economists, and the courts, must provide the answers to these questions.

References

John O. Ward, "Estimating Economic Loss in the Case of a Death of a Child," *Journal of Forensic Economics*, Vol. II, No. 3, August, 1989.

Tom Ireland, "Loss in the Death of a Child: An Extension of the Ward Analysis," *Journal of Forensic Economics*, Vol. III, No. 2, April, 1990.