Sleeping Double in a Single Bed - Personal Consumption in Wrongful Death

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I. Introduction

In *A Civil Action,* John Travolta, a.k.a. Jan Schlichtmann, wheels an injured plaintiff down the hallway of a courthouse. The narrator says,

> It's like this. A dead plaintiff is rarely worth as much as a living, severely maimed plaintiff. However, if it's a long, agonizing death as opposed to a quick drowning or car wreck, the value can rise considerably. A dead adult in his twenties is generally worth less than one who is middle-aged. A dead woman less than a dead man. A single adult less than one who's married. Black less than white. Poor less than rich. The perfect victim is a white male professional, forty years old, at the height of his earning power, struck down in his prime. And the most imperfect; well, in the calculus of personal injury law—a dead child is worth the least of all.[2]

While these presumptions may be true in many jurisdictions, in Mississippi, not all apply. A child may not be "worth the least of all." In fact, in a wrongful-death action, a child could be worth more than a forty-year-old with proven earning capacity. A single adult may be worth the same as one who is married.

This article explores Mississippi law regarding damages for wrongful death. Specifically, it examines the methods currently used to advise the finder of fact on calculations of wrongful-death damages. The article first outlines the components of wrongful-death damages. Then it analyzes the personal-consumption component used to calculate awards of wrongful-death damages, addressing the problems with the current methods. It then suggests a more equitable method of calculating the personal-consumption component in cases where the decedent had no dependents. Finally, the article illustrates the impact of the various methods of calculating personal consumption in wrongful-death cases.

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2. A Civil Action (Touchtone Pictures & Paramount Pictures 1998).

II. CURRENT MISSISSIPPI LAW REQUIREMENTS

A. *The Wrongful-Death Statute*

Recovery in wrongful-death actions in Mississippi is governed by the wrongful-death statute.[3] Unfortunately, this statute is quite broad and somewhat vague about the types of damages recoverable in wrongful-death cases. The statute provides recovery for

> such damages allowable by law as the jury may determine to
> be just, taking into consideration all the damages of every
> kind to the decedent and all damages of every kind to any
> and all parties interested in the suit.[4]

Because the statute gives little specific information on the types of damages allowable, the Mississippi Supreme Court has interpreted the statute to include such items as:

- the present net cash value of the life expectancy of the decedent
- the loss of the companionship and society of the decedent
- the pain and suffering of the decedent between the time of injury and death
- punitive damages[5]

This paper will primarily examine the issues surrounding "the present net cash value of the life expectancy of the deceased," including a specific focus on "personal-consumption" rates.

While the wrongful-death statute may be vague in the types of damages allowable, it is quite specific as to *who* may recover:

> Damages for the injury and death of a married man shall be
> equally distributed to his wife and children, and if he has no
> children all shall go to his wife; damages for the injury and
> death of a married woman shall be equally distributed to the
> husband and children, and if she has no children all shall go
> to the husband; and if the deceased has no husband or wife,
> the damages shall be equally distributed to the children; if
> the deceased has no husband, nor wife, nor children, the
> damages shall be distributed equally to the father, mother,
> brothers and sisters, or such of them as the deceased may
> have living at his or her death. If the deceased have neither

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3. MISS. CODE ANN. § 11-7-13.
4. *Id.*
5. McGowan v. Estate of Wright, 524 So. 2d 308 (Miss. 1988) (citing Jesco, Inc. v. Whitehead, 451 So. 2d 706, 710 (Miss. 1984); Sheffield v. Sheffield, 405 So. 2d 1314, 1318 (Miss. 1981); Dickey v. Parham, 331 So. 2d 917, 918–19 (Miss. 1976); Thornton v. Ins. Co. of N. Am., 287 So. 2d 262, 265 (Miss. 1973); Scott v. K-B Photo Serv., Inc., 260 So. 2d 842, 844 (Miss. 1972); Boyd Constr. Co. v. Bilbro, 210 So. 2d 637, 643 (Miss. 1968)).

husband, nor wife, nor children, nor father, nor mother, nor sister, nor brother, then the damages shall go to the legal representative, subject to debts and general distribution, and the fact that the deceased was instantly killed shall not affect the right of the legal representative to recover.[6]

Of significant note in the wrongful-death statute is the fact that in the case of the wrongful death of an individual without a spouse or child, the beneficiaries are the decedent's mother, father, and/or siblings. As this paper illustrates, current practice allows wrongful-death damages to be inflated by presenting evidence at trial that the single individual would get married and/or have children, thereby reducing the consumption rate component of the deceased's damages. In many cases, these proceeds are then distributed not to the hypothetical family (as they obviously do not exist), but to the mother, father, and/or siblings who would have never recovered these inflated damages if a family had actually existed. The effect is to give the mother, father, and/or siblings of the deceased a much larger recovery.

B. *Present Net Cash Value of the Life Expectancy of the Deceased*

Determining the present net cash value of the life expectancy of the deceased is, at best, an inexact science under current Mississippi law. While the Model Jury Instructions of Mississippi suggest this calculation should be concrete, the current practice allows an economist testifying at trial to vary these numbers dramatically to suit the needs of his client.

The *Mississippi Model Jury Instructions* provide that the

> "present net cash value" of the decedent's work life expectancy is a present sum of money which, when invested at what you find from a preponderance of the evidence to be a fair and reasonable rate of interest, would provide a flow of income equal to the amount that the decedent would have reasonably been expected to earn from the time of trial for the balance of his/her work life expectancy. From that sum, you must subtract the present cash value of the amount which the decedent would reasonably have spent on his/her own personal living expenses.[7]

The instructions further provide:

> In considering the amount of your verdict, if any, to be awarded for the present net cash value of the work life expectancy of the decedent, you may take into consideration

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6. MISS. CODE ANN § 11-7-13.

7. Miss. Model Jury Instructions, Civil, § 11:22 (citing MISS. CODE ANN. § 11-7-13; Smith v. Indus. Contractors, Inc., 783 F. 2d 1249 (5th Cir. 1986); *Sheffield*, 405 So. 2d 1314).

future changes in the cost of living and the purchasing
power of money.[8]

Several steps are necessary to determine the value of a decedent's life.
First, a base level of annual earnings must be established, typically predi-
cated on the actual earnings history of the decedent.[9] To this base, any
fringe benefits that may apply must be added. Then this annual compensa-
tion must be adjusted downward to account for taxes. Any personal con-
sumption that is directly attributable to the decedent must be subtracted,
resulting in the annual amount that would be available for the decedent's
beneficiaries or estate had the decedent lived.[10] Finally, this estimated an-
nual amount should be reduced to its present value by application of the
appropriate growth and discount rates over the decedents expected work-
life.[11] The resulting present value should be a lump sum of money to be
paid immediately that, if invested prudently, would result in annual pay-
ments equal to the estimated annual loss.

Current Mississippi law requires that this "personal consumption" be
considered in the lost-earnings calculation.[12] However, there is no set
formula or rule on calculating this "consumption rate"; therefore, signifi-
cant disparities in the amounts calculated for the net loss exist.

For example, in *Jones v. Shaffer*,[13] economist Dr. Paul Oliver testified
that Jones, a *single* male decedent, would have sustained a personal-con-
sumption rate of 26%, the highest consumption rate in the tables of the
Department of Labor for a *two-person family*.[14] With the 26% consump-
tion rate, Jones had net lost earnings of $171,000 at the time of his death.
During trial, Dr. Oliver was asked to calculate the consumption rate at
40% and again at 67%. The decedent's net lost income under these subse-
quent scenarios was $101,142 and $70,495 respectively. The Mississippi Su-
preme Court, while not endorsing any one of these rates, noted that the
overall award (funeral expenses only) was inadequate as measured against
the weight of the evidence and remanded the case for a new trial. In re-
viewing the testimony of Dr. Oliver and his methods for calculating the net
value of Jones's life, the court found no error, despite the widely varying
figures used.[15]

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8. *Id.* (citing Holmes County Bank & Trust Co. v. Staple Cotton Coop. Ass'n, 495 So. 2d 447,
451 (Miss. 1986); *Jesco,* 451 So. 2d at 704; Kinnard v. Martin, 223 So. 2d 300, 302 (Miss. 1969)).

9. *Smith,* 783 F.2d 1249. *See also* Greyhound Lines, Inc. v. Sutton, 765 So. 2d 1269 (Miss. 2000);
Sheffield, 405 So. 2d 1314.

10. *Id.*

11. *Id.*

12. Jones v. Shaffer, 573 So. 2d 740, 742 (Miss. 1990) ("In computing a person's lost net cash
value, a personal consumption factor must be taken into account.").

13. *Jones,* 573 So. 2d 740.

14. *Id.* at 742.

15. *Id.*

C. Issues Concerning the Calculation of Personal Consumption

Some jurisdictions limit the deduction for personal consumption to "maintenance" expenses, allowing only the consideration of those expenses "necessary for a person to keep himself or herself in such a condition of health and wellbeing that earning power could be maintained."[16] As noted earlier, Mississippi's model jury instruction adopts a more expansive concept of personal consumption, calling for the deduction of the amount that the "decedent would reasonably have spent on his/her personal living expenses."[17]

Economists typically define personal consumption in terms of a percentage of income. This percentage can vary considerably, depending on the actual circumstances of the decedent. Ruble et al.[18] provide tables for personal-consumption percentages that vary according to the gender, income, and family size of the decedent. The variation attributable to gender is small, with slightly higher values for females. The consumption percentage of a male in a two-person family with an income of $40,000 is 29.7%; the comparable value for a female is 30.5%.[19]

As might be expected, consumption percentages decline with income, recognizing that people who earn more tend to consume a smaller portion of income and devote a greater portion to taxes and savings. For example, the consumption percentage for a male in a two-person family with an income of $60,000 is only 23.2% in the Patton-Nelson tables, compared to the 29.7% for a similar person with a family income of $40,000.[20]

Family size also affects the personal-consumption percentage; as family size increases, the percentage of family income attributed to any one family member decreases. The percentage for a male in a four-person family with an income of $40,000 is only 21.4% in the Patton-Nelson tables, compared to that same 29.7% for the two-person family.[21] The personal-consumption percentage varies by family size for several reasons. If family size increases and family income remains constant, there is less money to spend on each individual. In addition, there are various common, indivisible expenditures (housing and transportation are important examples) that are not directly attributable to any specific individual; thus the consumption percentage is significantly higher for the individual in a single-person family. For example, the Patton-Nelson tables report an average consumption percentage of 70.3% for a single male with an income of $40,000.[22]

There are several common sources for information on personal-consumption percentages. The Consumer Expenditure Survey of the Bureau

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16. James D. Rogers & Robert Thornton, *Assessing Economic Damages in Personal Injury and Wrongful Death Litigation: The State of Pennsylvania*, 15 J. OF FORENSIC ECON. 349 (2002).

17. Miss. Model Jury Instruc., *supra* note 7.

18. Michael R. Ruble et al., *Patton-Nelson Personal Consumption Tables 2000–2001: Updated and Revised*, 15 J. OF FORENSIC ECON. 295 (2002).

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

of Labor Statistics in the U.S. Department of Labor offers significant information for the expenditure patterns of households.[23] The Patton-Nelson tables cited above are based on this survey. Another common source is the somewhat dated study of Earl F. Cheit.[24] Cheit presents personal-consumption percentages for the family head, categorized by several family sizes; this study gives no estimate for a one-person family. The estimates are based on a sample of personal interviews.

D.   Net Present Value: The Inequities in Artificial Consumption Rates

1.   Single Adults

Given the wide range of variables in calculating personal-consumption rates, courts are faced with a resulting wide range of damages awards. For example, *Jones v. Shaffer* raises the question: How should the finder of fact treat a single adult? Is it safe to assume that the adult would get married and have children? The finder of fact must make a decision as to what consumption rate would apply to each particular plaintiff. In *Jones,* the court was faced with reviewing a damages award in the wrongful death of an adult with a proven work history.[25] Dr. Oliver calculated a 26% consumption rate, the highest rate for a two-person family in the Department of Labor tables.[26] Jones was an unmarried twenty-two-year-old male with no children or dependents.[27] While not specifically addressing the issue, the Mississippi Supreme Court apparently found no error in the assumption by the finder of fact that a person would marry and have a family, thereby reducing his consumption rate and resulting in a higher damages award.

2.   Children: The Court of Appeals Attempts to Address the Inequity

While the Mississippi Supreme Court appears to have no difficulty allowing the introduction of evidence at trial of a hypothetical spouse and family, the Mississippi Court of Appeals seems to question this practice. In *Greyhound Lines, Inc. v. Sutton,* the Mississippi Supreme Court reviewed a decision of the court of appeals in a wrongful-death case involving three children: Marcus, age eight, Sumone, three, and Nicholas, one.[28] The court of appeals found that the trial court erred in using a consumption rate that included hypothetical spouses and children for Marcus, Sumone, and Nicholas.[29] The court of appeals stated that:

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23. *See, e.g., 2004 Consumer Expenditure Survey, Public Use Microdata,* U.S. Dep't of Labor, U.S. Bureau of Labor Stats. (Jan. 31, 2006).

24.   EARL F. CHEIT, INJURY AND RECOVERY IN THE COURSE OF EMPLOYMENT 78 (1961).

25.   Jones v. Shaffer, 573 So. 2d 740 (Miss. 1990) (Dr. Oliver used Jones's earnings from the last full year as a basis for his calculation of lost earnings—$9900 per year.).

26.   *Id.*

27.   *Id.* at 741–42.

28.   Greyhound Lines, Inc. v. Sutton, 765 So. 2d 1269, 1271 (Miss. 2000).

29.   *Id.* at 1278.

> Channell's[30] testimony was that the children would be
> spending money on hypothetical future spouses and chil-
> dren, [sic] therefore their consumption rate is lowered to ac-
> count for the money that would have been spent on support
> of the hypothetical future spouses and children. It is an at-
> tempt to allow beneficiaries to recover money that the de-
> ceased would have spent on them during the deceased's
> lifetime by lowering the deceased's personal consumption
> rate. In essence, to allow beneficiaries to recover every-
> thing they would have received if the deceased had lived.
> We hold that it was manifest error for the chancellor to use
> a consumption rate which is based on a hypothetical pros-
> pect that the children would eventually have . . . spouse[s]
> and have children of their own, both of which require
> support.[31]

The Mississippi Supreme Court, however, disagreed with the court of
appeals. Relying on *Jones v. Shaffer* as precedent, the court first noted that
evidence at the trial level of various personal-consumption rates was appro-
priate. The court further endorsed allowing evidence of personal-con-
sumption rates for hypothetical marriages and children—even for children
ages eight, three, and one.[32] The court noted that "the consumption rate is
another factor which may be argued by the parties to the finder of fact in
support of increasing or decreasing the presumption that the deceased
child's income would have been equivalent to the national average."[33]

What the supreme court did not address in *Jones v. Shaffer*, but the
court of appeals briefly discussed, was the inequity of arguing for a lower
consumption rate by advocating for a hypothetical spouse and child in
cases of the death of a child (or a single adult with no dependents).[34] The
court of appeals stated that allowing the finder of fact to consider a hypo-
thetical spouse and dependents is "an attempt to allow beneficiaries to re-
cover money that the deceased would have spent on *them* during the
deceased's lifetime by lowering the deceased's personal-consumption rate.
In essence, to allow beneficiaries to recover everything *they* would have
received if the deceased had lived."[35] The fallacy of this argument is that
"they" and "them" should refer to the beneficiaries statutorily allowed to
recover; i.e., mothers, fathers, brothers, and sisters.[36] "They" and "them"
do not refer to the children and spouses that do not yet exist, but who are
intended to be the true beneficiaries of the lower consumption rate. Under

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30. Carrol David Channell was the plaintiffs' economic expert at the trial court level. *Id.* at 1276.
31. *Id.* at 1278 (quoting the unpublished court of appeals opinion).
32. *Id.* at 1279.
33. *Id.*
34. In the 2004 legislative session, the Mississippi Legislature added "unborn quick children" to
the list of persons on whose behalf one may bring a wrongful-death action. MISS. CODE ANN. 11-7-13.
35. *Greyhound Lines*, 765 So. 2d at 1278.
36. MISS. CODE ANN. § 11-7-13.

the wrongful-death statute, it is the mother and father and brother and sisters that would recover when there is no spouse or child.[37]

The court of appeals attempted to address the problem of allowing evidence of hypothetical spouses and children when neither exists; however, that court did not take the issue to its logical conclusion. The persons bringing the suit are the beneficiaries of the decedent. If there are neither children nor a spouse, as is the case in the death of a child, then the beneficiaries are the mother and father, brothers and sisters.[38] If the consumption rates are shifted to account for a spouse and child, the wrongful-death damages resulting from the lower consumption rate will be greater than if the deceased had lived a single life with no dependents. The presumption is that the spouse and children of the deceased would have consumed a percentage of the decedent's income and therefore should be entitled to recover that amount on death. However, what neither court discusses is the fact that the beneficiaries (likely parents and/or siblings) in a wrongful-death action where there is no spouse or dependent would receive 100% of the decedent's remaining assets upon his death, a relatively small amount since the consumption rate could exceed 60% for a single person. But if there is a living spouse or child, the parents and/or siblings would likely receive nothing of the decedent's estate since there would be a spouse and/or child who would first take the remaining assets.[39] The effect is to award the parents and/or siblings of the deceased far greater damages by creating a fictitious family for the deceased than the parents and/or siblings could ever receive if the hypothetical family was not introduced.

3. Roommates

Classic Coach, Inc. v. Johnson[40] raises another issue regarding consumption rates. In *Classic Coach,* the wrongful-death beneficiaries of Larry McBride and Matthew Johnson brought suit against Classic Coach, Inc. for the deaths of McBride and Johnson in a collision with a Classic Coach bus. During the trial, David Channell, the expert for the wrongful-death beneficiaries, testified that both Johnson and McBride would have each had a 30% personal-maintenance rate (i.e., personal-consumption rate). Channell presented this evidence even though McBride was married with a child and Johnson was neither married nor had a child. Channell justified the 30% rate for Johnson because "he used Earl Cheit's report which is based on families of two or more for [Johnson] as well as [McBride] because he believed [Johnson] had a *roommate.*"[41] The court ruled that "[t]here is substantial evidence on the record to support the damage

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37. *Id.*
38. *Id.*
39. *Id.*
40. Classic Coach, Inc. v. Johnson, 823 So. 2d 517 (Miss. 2002).
41. *Id.* at 529 (emphasis added).

awards rendered by the trial court. Therefore the issues of liability and damages should be affirmed."[42]

Obviously, huge questions remain: Why would consumption rates vary depending on whether one has a roommate? Should the finder of fact inquire about the nature of the relationship with the roommate? Should the finder of fact determine whether that roommate is a dependent of the decedent?

The same problem arises in the roommate scenario as in the hypothetical-child-and-spouse situation. The wrongful-death beneficiaries will gain from a lowered consumption rate in the scenario in which there is a roommate. The theory is that the roommate would be sharing common expenses with the decedent, reducing the personal-consumption rate of the decedent. Since the wrongful-death damages increase due to the consideration of the roommate who, in theory, would have shared a portion of the decedent's assets during the decedent's lifetime, it is logical that the amount of recovery attributable to the reduction in personal consumption should be granted to the roommate, not to the decedents' wrongful-death beneficiaries, who would never have benefited from that consumption. Otherwise, beneficiaries would recover from the estate amounts that they could never recover or benefit from had the individual lived.

III. APPLYING PERSONAL CONSUMPTION IN PRACTICE: A SUGGESTED EQUITABLE SOLUTION

To illustrate the size of the potential disparities in the treatment of personal consumption in Mississippi, consider the case of a single man with no children earning $35,000 per year who is killed in an automobile accident. The following table illustrates this man's earnings and personal-consumption percentages assuming that he remains single.[43] A single man earning $35,000 a year would spend roughly 75% of that income on personal consumption. The table also illustrates the personal-consumption percentages that would apply if this man married a woman who earned $24,500 per year, thus making family income equal to $59,500 annually. Under the family scenario, the man would spend only 23% of his income on personal consumption.

For simplicity, the ensuing discussion addresses only the annual value of the decedent's lost earnings. Lost earnings are not estimated over his lifetime and the present value is not calculated. Taxes, fringe benefits, and other adjustments are also ignored in this example.

A.   Method One: Single

Assume that the decedent is single and that it is known that he intended to remain single his entire life. As a result, the net value of his earnings would be reduced by a personal-consumption factor equal to 75%

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42. *Id.* at 530.
43. Ruble, *supra* note 18, at 296, 299.

TABLE 1: INCOME AND PERSONAL CONSUMPTION ASSUMPTIONS

	Income Level	Consumption if Single	Family Consumption if Married with 2 Children	Male's Consumption if Married with 2 Children
Single Income	$35,000	75.00%	n/a	23.00%
Family Income	$59,500	n/a	79.50%	17.00%

of his income. The decedent's estate (and ultimately the decedent's beneficiaries) would thus have a loss of 25% (exactly $8750) of this man's annual earnings.[44]

B.   Method Two: Married[45]

Assume that the decedent is single but is likely to marry. In this case, the hypothetical family's income is burdened by the entire hypothetical family. Thus the relevant personal-consumption deduction should be based on the consumption of the *entire* hypothetical family. The estate would not benefit from lost earnings that are consumed by the decedent's wife and children.[46] The loss to the decedent's estate is $12,198, or 35% of his annual earnings.

C.   Method Three: Blended

What if the decedent is single at the time of death and it was known that he might marry someday? In this case, the best method of calculating the loss to the beneficiaries is to incorporate the probability that the individual would marry. Using national statistics, this probability is roughly 68%. Thus, the probability of being single is 32%.[47] These probabilities can be applied to the scenarios above to create a weighted average or expected value of lost earnings. Continuing with the example of the single male earning $35,000 per year, there is a 32% chance that the estate will suffer a loss of $8750 and a 68% chance it will lose $12,198. Thus, the expected value of the loss is $11,105, or roughly 32% of the decedent's annual income. This value logically falls between the values of the loss under the single and married scenarios described above.[48]

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44. The net value of the loss is calculated according to the following formula: $NV = I_s * (100\% - C_s)$, where NV = net value, I_s = income of the single man, and C_s = consumption rate of the single man. For this specific example, $8750 = $35,000 * (100\% - 75\%)$.

45. The alternative to this scenario is to assume that the decedent is likely to marry, but the hypothetical spouse does not work. Any such assumption would obviously change the outcome of the calculations.

46. The net value of the loss is calculated according to the following formula: $NV = I_f - (I_f * C_f)$, where NV = net value, I_f = income of the family, and C_f = consumption rate of the family. For this specific example, $12,198 = $59,500 - ($59,500 * 79.5\%)$.

47. These probabilities are calculated from statistics in Table 52 in *Marital Status of the Population by Sex and Age: 2004*, U.S. STATISTICAL ABSTRACT: 2006 (U.S. Census Bureau 2006).

48. The net value of the loss is calculated according to the following formula: $NV = [(PROB_s)(I_s * (100\% - C_s))] + [(PROB_m)((I_t) - (I_f * C_t))]$, where NV = net value, $PROB_s$ = probability of remaining

An alternative to this blended scenario is for the expert to perform calculations for the single individual and the hypothetically married individual separately and present both scenarios to the finder of fact for judgment. This alternative is similar to the manner in which many experts handle various scenarios for education levels in the case of the death of a child.

D.   Other Methods

At least two other methodologies have been applied in Mississippi. These assume that any single decedent (even if a young child) will eventually marry and have children.[49] One methodology assumes that the estate will receive the portion of the decedent's income that remains after deducting *only* the decedent's personal-consumption expenditures under the assumption of a hypothetical marriage. Since the decedent is assumed to be married, however, his or her personal-consumption expenditures (as a percentage of income) are much lower than those expenditures would be for a single person. Applying this methodology to the current example, the hypothetically married man earning $35,000 with two hypothetical children would spend only 23% of his income on himself, compared to 75% for the single man. The result is a much higher net-loss figure, equal to 77% of the decedent's income, or $26,950 in this example.[50]

A variant of this methodology also assumes that any single decedent will eventually get married and have two children. The treatment of personal consumption is similar to the one described in the paragraph above, but with one variation: it is assumed that the hypothetical wife works. Based on family income of $59,500, the decedent would spend only 17% of income on his personal expenditures. This 17% is not applied to the income of the single man, however. It is applied to the family income, $59,500. The result is a net loss of $24,885, equal to roughly 71% of the decedent's income.[51]

These methodologies have at least one fundamental shortcoming. By assuming that the decedent marries and has children, the personal-consumption rate of the decedent is lower than it would be if he or she remained single. As a result, the net value of the decedent's lost earnings is higher, reflecting what would be available to a spouse and children. However, these monies do not accrue to the spouse and children because they

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single, I_s = income of the single man, C_s = consumption rate of the single man, $PROB_m$ = probability of getting married, I_f = income of the family, C_f = consumption of the family. For this specific example, $11,105 = [(.32) ($35,000 * (100\% - 75\%))] + [(.68) (($59,500) - ($59,500 * 79.5\%))]$.

49. *See, e.g.,* Greyhound Lines, Inc. v. Sutton, 765 So. 2d 1269 (Miss. 2000).

50. The net value of the loss is calculated according to the following formula: $NV = I_s * (100\% - C_{si})$, where NV = net value, I_s = income of the single man, and C_{si} = consumption rate of the married man under his single income. For this specific example, $26,950 = $35,000 * (100\% - 23\%)$.

51. The net value of the loss is calculated according to the following formula: $NV = I_s - (I_f * C_{fi})$, where NV = net value, I_s = income of the single man, I_f = income of the family, C_{fi} = consumption rate of the married man under his family income. For this specific example, $24,885 = $35,000 - ($59,500 * 17\%)$.

are hypothetical. Instead, the beneficiaries of the decedent's estate ultimately receive these monies. In fact, the estate's beneficiaries (mother, father, siblings) are in a better financial position upon the death of the decedent; essentially, the decedent's assumed support of a hypothetical wife and children has been transferred to other family members of the decedent.

The following graph displays the net value of the loss as a percentage of income under the various scenarios.

GRAPH 1: NET VALUE OF LOSS AS A PERCENTAGE OF INCOME
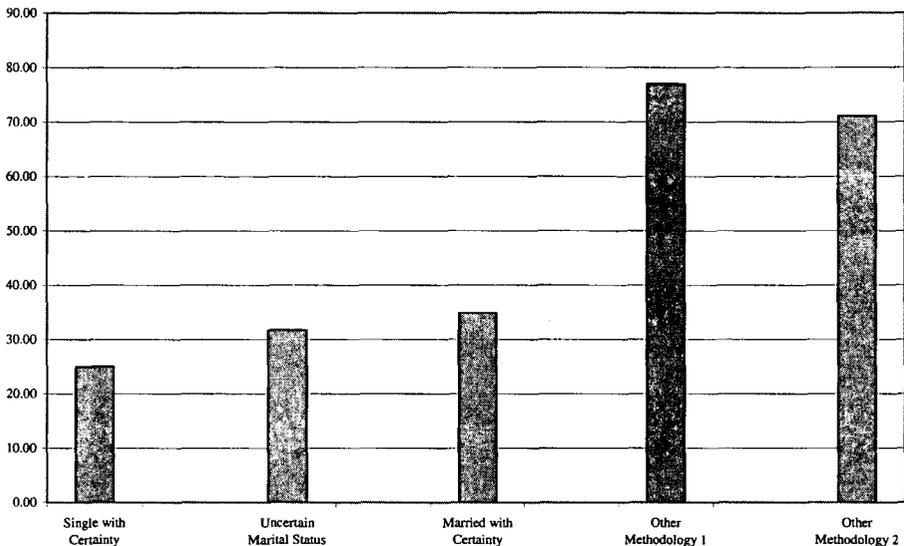
VIII. CONCLUSION

That one big personal injury case is what occupies Jan Schlichtmann's mind in *A Civil Action*. While Mr. Schlichtmann may be searching for his perfect plaintiff, a forty-year-old white male professional with a wife and two children struck down in his prime, if he practiced in Mississippi, he might not need to wait. By allowing expert witnesses to present evidence of hypothetical wives and children, thereby inflating wrongful-death damages, Mississippi courts have created a unique system. One no longer needs to find the perfect plaintiffs; one need only create them.