

THE HONORABLE XXXX
Hearing date: December 6, 2016
Without Oral Argument

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE ESTATE OF (“TODDLER”) P BY THE
PERSONAL REPRESENTATIVE DAD P;
MOM and JOHN P, SURVIVING
PARENTS; AND SISTER P, SURVIVING
MINOR SISTER THROUGH HER
GUARDIAN AD LITEM DAD P,

Plaintiffs,

v.

VARIOUS CORPORATIONS,

Defendants.

No. XXXX Sea

**PLAINTIFFS’ MOTION TO
EXCLUDE DEFENSE EXPERT
OPINION RE: CHARGING THE
ESTATE WITH THE PARENTS’
“SAVED COSTS OF RAISING” AND
EDUCATING THE DECEDENT**

Come now the Plaintiffs through their counsel and move the Court to strike and exclude the opinion evidence of defense expert William Partin, CPA that a toddler’s loss of life has an economic value of zero. This opinion is based upon his unsupported analysis that the parents’ “saved costs of raising” and educating their child should be deducted from the net loss to the Estate.

I. Issue

Should an expert be prohibited from testifying that the death of a two and a half year old child has an economic value of zero where it involves deducting from the net loss to the estate - the parents’ “saved costs of raising ” and educating the child.

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2 **II. Procedural History**

- 3 1. The court is aware of the facts and circumstances of this wrongful death case involving a two
4 and a half year old child (due to recent summary judgment proceedings) and they will not be
5 repeated.
- 6 2. On November 18, 2016, defense expert Mr. William Partin, CPA, finalized his economic loss
7 report for the Estate of Toddler P that was provided to the plaintiffs on November 22.¹
- 8 3. Both of Toddler's parents are highly educated and were strong income earners. Mom P has a
9 Bachelor's from XXXX University and a Master's in Business Administration from XXXX.
10 Dad P has a Bachelor's from XXXX; and a Master's in Engineering from XXXX.
- 11 4. Mr. Partin assumed that Toddler would either obtain a four year degree or go on to obtain a
12 Masters just as her parents did. He then deducted the following from the Estate's future
13 earnings:
- 14 a. the cost of Toddler's education
 - 15 b. Toddler's personal consumption expenses
 - 16 c. the amount of her parents' "total saved costs of raising Toddler through age 18."
- 17 5. As a result of the substantial deductions over and above the extraordinarily high consumption
18 rate applied, Mr. Partin calculated Toddler's net economic loss as being zero.
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24 ¹ Report of Bill Partin November 18, 2016. Exhibit 1.
PLS.' MO. TO EXCLUDE DEFENSE EXPERT
OPINION RE: CHARGING THE ESTATE FOR THE
PARENTS' SAVED COSTS OF RAISING AND
EDUCATING DECEDENT - 2

1 If the saved cost of raising [REDACTED] to adulthood are considered in the calculation of
2 economic loss, we concluded the Estate incurred no economic loss as a result of [REDACTED]
3 death under Scenario 1 utilizing either a blended portfolio discount rate or a 20-year
4 Treasury discount rate, as shown on Attachment 1.

5 We conclude the net economic loss incurred by the Estate before the saved cost of raising
6 the child under Scenario 2 (Master's Degree) utilizing a blended portfolio or 20-year
7 Treasury discount rate is as follows (Attachment 20):

	Blended Portfolio Discount Rate	20-Year Treasury Discount Rate
Net Loss	\$102,492	\$292,642

8 The net economic loss to the Estate after the saved cost of raising [REDACTED] under Scenario
9 2 utilizing a blended portfolio discount rate or a 20-year Treasury discount rate is shown
10 on Attachment 20 and displayed in the table below:

	Scenario 1	Scenario 2
Net Loss	\$ -	\$73,063

13 III. Legal Authority

14 3.1 The general survival statute provides the Estate of Toddler P (not her parents) with 15 a claim for net accumulations.

16 Plaintiffs' complaint sets forth the following statutory basis: RCW 4.20.060 (general
17 survival statute); RCW 4.20.046 (special survival statute); and RCW 4.24.010 (death of a child
18 statute).

19 It is undisputed that Toddler died at the scene. Her estate's cause of action survives
20 under the general survival statute. *See Criscuola v. Andrews*, 82 Wn.2d 68, 507 P.2d 149
21 (1973)(cause of action survives under general survival statute even though death is
22 instantaneous).

1 In *Criscuola* the Supreme Court explained that where actions are brought under both
2 survival and wrongful death actions “the survival action is limited to the prospective net
3 accumulations of the deceased.” *Id.* at 70. This means that the Estate “owns” the economic loss
4 claim. *See Tait v. Wahl*, 97 Wn.App. 675, 987 P.2d 127 (Div. 1 1999)(the decedent’s personal
5 representative recovers damages on behalf of the decedent’s estate).

6 By contrast, Toddler’s parents are entitled to recover under RCW 4.24.010 for loss of
7 love and companionship of their child, destruction of the parent-child relationship, parental grief,
8 mental anguish and suffering. *See Hinzman v. Palmanteer*, 81 Wn.2d 327, 329, 501 P.2d 1228
9 (1972). This means the Beneficiaries “own” the non-economic loss claim.

10 A survival action, though often brought together with an action for wrongful
11 death, is conceptually distinct. The wrongful death statutes, RCW 4.20.010 and
12 4.24.010, create new causes of action for the benefit of specific surviving relatives
13 to compensate for losses caused to them by the decedent's death. *See Gray v.*
14 *Goodson*, 61 Wash.2d 319, 325, 378 P.2d 413 (1963). The Survival of Actions
15 statute allows the decedent's existing causes of action to survive and continue ‘as
16 an asset of his estate.’ *Warner v. McCaughan*, 77 Wash.2d at 179, 460 P.2d 272.
17 10 The conceptual distinction leads to distinctions in the type of damages
18 allowed. For example, amounts the decedent would have spent on family support
19 are recoverable in a wrongful death action, but not in a survival action. *Wagner v.*
20 *Flightcraft, Inc.*, 31 Wash.App. 558, 568, 643 P.2d 906 (1982). In a survival
21 action, the only allowable recovery is ‘the net accumulations which the estate
22 would have acquired if the decedent had survived to the expected life time.’
23 *Wagner*, 31 Wash.App. at 568, n. 2, 643 P.2d 906.

24 Typically, net accumulations are the decedent's net earnings over a normal life
span, calculated by determining the decedent's probable gross earnings,
subtracting personal and family support expenditures, and then reducing the
figure to present value. *Bingaman v. Grays Harbor Comm'ty Hosp.*, 37
Wash.App. 825, 685 P.2d 1090 (1984), *rev'd in part on other grounds*, 103
Wash.2d 831, 699 P.2d 1230 (1985).

21 *Federated Services Ins. Co. v. Estate of Norberg*, 101 W.App. 119, 126, 4 P.3d 844 (Div. 1
22 2000).

23 Mr. Partin’s analysis ignores these well settled damages rules.

1 **3.2 The defense expert accountant analysis and opinion should be stricken.**

2 Mr. Partin is a prolific expert who knows better than to conflate the wrongful
3 death/survival economic damage items specifically delineated by the Courts of this State.

4 Here, he subtracts from The Estate of Toddler P’s net accumulations – not just her own
5 personal and family support expenditures – but those paid or to be paid by her own parents.
6 There is no authority for such deductions.

7 Children in our state and country are not legally required to pay their parents back for
8 raising them (including providing educational funding). The impact of Mr. Partin’s opinion
9 offends both rule of law and the underlying morality of our community. He is literally arguing
10 that as a result of her premature death, Toddler’s parents have been “saved” the cost of raising
11 her.

12 Mr. Partin’s opinion is based upon facts that are irrelevant and inadmissible as it has no
13 tendency to prove a fact material to this action and is contrary to law. ER 402. As gatekeeper of
14 the evidence, the trial court must look behind an expert’s ultimate conclusion and analyze the
15 adequacy of its foundation under the rules of evidence. *Safeco Ins. Co. v. McGrath*, 63 Wn.App.
16 170, 177 fn. 18, 817 P.2d 861 (1991), *rev denied* 118 Wn.2d 1010 (1992); *City of Fircrest v.*
17 *Jensen*, 158 Wn.2d 348, 397, 143, P.3d 776 (2006) (after determining if expert is qualified, “the
18 trial court resumes its role as gatekeeper and may exclude otherwise admissible evidence by
19 applying the rules of evidence”); *Reese v. Stroh*, 128 Wn.2d 300, 315 (1995) (“Under ER 104
20 and 702, the trial court acts as gatekeeper, assessing the reliability and relevance of all scientific
21 evidence.”) It is an abuse of discretion to admit testimony that lacks an adequate foundation in
22 fact. *Queen City Farms Inc. v. Cent. Nat’l. Ins. Co. of Omaha*, 126 Wn.2d 50, 104, 882 P.2d 703
23 (1994).

1 The admissibility of expert testimony is governed by ER 702 and 703. First and
2 foremost, an expert opinion must be based upon an adequate foundation of specific facts. *Reese*
3 *v. Stroh*, 128 Wn.2d at 315. If it is not, the opinions are not helpful to the trier of fact and must
4 be excluded. *Id.*; *Theonnes v. Hazen*, 37 Wn.App. 644, 681 P.wd 1284 (1984)(expert opinion
5 based on speculation and conjecture may not go to jury); 5A K. Tegland, Wash. Pract Sec. 304
6 (1982). Likewise, there is no value to an expert’s inference unless it is “a logical conclusion or
7 deduction from established facts.” *Davidson*, 43 Wn.App. at 575.

8 Mr. Partin’s opinion cannot meet these standards because it is contrary to the law
9 governing recovery of net accumulations to the Estate in a survival action.

10 **IV. Conclusion**

11 Mr. Partin’s claim that the parents have been “saved” money by the death of their
12 beloved toddler is nothing short of reprehensible. It is certainly not supported by the law.

13 Our state has a long legal history of promoting the full compensation of tort victims
14 through monetary assessment against liable defendants. We do not take an eye for an eye. We
15 cannot replace death with life. It is commonly acknowledged that the death of one’s own child
16 is perhaps the greatest of all human losses.

17 In order to compensate the irreplaceable, our state utilizes a simple mathematical
18 equation known as the net accumulation calculation. This is premised upon what a person
19 would earn less what they would consume. It is not enough. Yet it is what we have settled upon
20 as a means of placing a value on loss of a human life.

21 Here the defendants seek to claim that Toddler P’s life was worth zero. This conclusion
22 has no foundation in reality or our law. The Plaintiffs request that the Court strike all opinion,
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evidence, and testimony of Mr. Partin that seeks to charge the estate for the cost of raising and educating Toddler P.

Respectfully submitted this 28th day of November, 2016.

STRITMATTER KESSLER WHELAN
KOEHLER MOORE KAHLER

I certify that this memorandum contains 1,503
Words in compliance with the Local Civil Rules

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