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What Is a Life Worth in North Carolina? A Look at Wrongful-Death Awards

RALPH PEEPLES*
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ABSTRACT

This Article examines the amounts recovered in 123 wrongful-death cases filed in North Carolina over a five-year period. The dataset is unique in that it includes both jury verdicts and settlements. Although the injury—death—was the same in each of these cases, the amounts recovered varied greatly. Several patterns emerge from the data. First, there is a strong negative correlation between age and the amount recovered. Second, the manner in which the decedent died seems to make a difference. Violent deaths, for example, led to larger recoveries than did nonviolent deaths. Third, jury verdicts produced much larger recoveries than did settlements. Finally, the results underscore the critical role of insurance in wrongful-death cases.

INTRODUCTION

What is a life worth, expressed in dollars? To most people, this question might seem odd, for several reasons. One might ask why one life is worth more than another, or why and how the value of a life is to be expressed in dollars. Placing a dollar value on a human life might seem distasteful to some, if not repugnant. Even if this objection can be overcome, the second question remains: How can the value of a life be measured? What method is appropriate? For lawyers, however, these are routine and unsurprising questions. When lawyers deal with these questions, they add an indirect phrase to come up with answers: following the guidance of wrongful-death statutes, they ask, “What is a life worth, expressed in dollars, to the deceased’s survivors?” The effect on the survivors is the focus of most wrongful-death statutes and litigation.

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The focus of this Article is empirical. The Article reports on the results from 123 wrongful-death claims asserted in North Carolina over a five-year period. The dataset is unique, in that it combines information from both settlements and trials. The dataset also includes results from wrongful-death claims regardless of the tort involved. Disparate torts, such as motor-vehicle accidents, medical malpractice, intentional torts, and products liability, all contribute cases to the dataset. This approach allows us to consider whether the way in which death occurs affects the amount recovered in wrongful-death actions.

I. BACKGROUND

A number of highly publicized attempts have been made in recent years to value a wrongfully taken human life. The most obvious example is the September 11th Victim Compensation Fund.¹ Shortly after the September 2001 terrorist attacks, Congress established a compensation fund for those injured in the attacks and for the families of those killed.² In the enabling act, Congress required consideration of the victims' economic loss, thus making disparate awards inevitable.³

More recently, General Motors proposed a schedule for compensating the families of individuals who died as a result of ignition-switch defects in vehicles manufactured by GM.⁴ Under the program, GM has proposed to pay a minimum of one million dollars for the death of each decedent, plus \$300,000 for the surviving spouse and \$300,000 for each surviving dependent of the decedent.⁵ These amounts establish a floor for the award;

1. September 11th Victim Compensation Fund, 28 C.F.R. §§ 104.1 to .81 (2014).

2. Air Transportation Safety and Stabilization Act, Pub. L. No. 107-42, §§ 401-409, 115 Stat. 230, 237-41 (2001), *amended by* James Zadroga 9/11 Health and Compensation Act of 2010, Pub. L. No. 111-347, 124 Stat. 3623. The 2011 amendments reactivated the fund to compensate first responders and individuals who later experienced health problems related to 9/11.

3. Air Transportation Safety and Stabilization Act § 405(b)(1)(B), 115 Stat. at 238; *see also* 28 C.F.R. § 104.43. The highest amount awarded from the fund was \$7.1 million and the lowest was \$250,000, with a mean award of over \$2 million and a median award of almost \$1.7 million. *See* KENNETH R. FEINBERG, *WHAT IS LIFE WORTH?* 156-57, app. at 202 (2005); *see also* William Glaberson, *Lawyer Math in Sept. 11 Deaths Shows Varying Values for a Life*, N.Y. TIMES (Nov. 11, 2001), <http://www.nytimes.com/2001/11/11/national/11DAMA.html?pagewanted=all> (illustrating the perspectives of several personal-injury lawyers on the legal consequences of the 9/11 attacks).

4. *See* GM IGNITION COMPENSATION CLAIMS RESOL. FACILITY, www.gmignitioncompensation.com (last visited Sept. 6, 2015).

5. GM IGNITION COMPENSATION CLAIMS RESOLUTION FACILITY, FINAL PROTOCOL FOR COMPENSATION OF CERTAIN DEATH AND PERSONAL INJURY CLAIMS PERTAINING TO THE GM

eligible claimants are also entitled to additional economic damages.⁶

The subject has attracted occasional academic attention, but much depends on the discipline that is making the inquiry and the purpose for calculating the value of a life.⁷ For example, the approach taken by federal regulatory agencies varies from the approach that most lawyers take. A regulatory analysis is usually based on a calculation of the risk involved and market data (how much one would require for accepting a more hazardous job, for example).⁸ In contrast, the approach used by most attorneys (and usually mandated by statute) is to determine what has been lost by the survivors, and then to place a value on that loss. Attempts to collect and analyze results from actual cases are much less common, however.⁹

Lawyers and juries grapple with the question of valuing a life in the context of wrongful-death actions. In North Carolina, the starting point is section 28A-18-2 of the North Carolina General Statutes.¹⁰ This statute is only a starting point, however. Much depends on the negotiations that take place prior to trial. This Article reports on the differing values that various parties—insurers, attorneys, and occasionally, judges and jurors—have placed on a life wrongfully taken over the five-year period from January 1, 2009, to December 31, 2013, in North Carolina.

In law school, the subject of wrongful death usually comes up in first-year torts class. Most torts professors (one of the authors included), focus virtually all of the available class time on a simple binary question: Is the defendant liable to the plaintiff, or not? The next question—assuming the defendant is liable to the plaintiff—asks, “What is the appropriate amount

IGNITION SWITCH RECALL 6 (June 30, 2014), <http://www.gmignitioncompensation.com/docs/FINAL%20PROTOCOL%20June%2030%20%202014.pdf>.

6. *Id.* at 5–6.

7. See James Ciecka & Seth Epstein, *A Comment on the Use of Value of Life Estimates in Wrongful Death Litigation*, 5 J. LEGAL ECON. 75, 79 (1995) (concluding that economics could provide only limited usefulness in applying value-of-life calculations for wrongful-death actions).

8. Eric A. Posner & Cass R. Sunstein, *Dollars and Death*, 72 U. CHI. L. REV. 537, 549–51 & tbl.2 (2005) (explaining how the United States Government assigns a dollar value to determine the value of a person’s life).

9. See, e.g., Randall R. Bovbjerg et al., *Valuing Life and Limb in Tort: Scheduling “Pain and Suffering,”* 83 NW. U. L. REV. 908, 919–20 (1989) (data based on jury verdicts collected over a fifteen-year period in Florida and Kansas City); Frank Cross & Charles Silver, *In Texas, Life Is Cheap*, 59 VAND. L. REV. 1875 (2006); David W. Leebron, *Final Moments: Damages For Pain and Suffering Prior to Death*, 64 N.Y.U. L. REV. 256 (1989); Posner & Sunstein, *supra* note 8.

10. N.C. GEN. STAT. § 28A-18-2 (2013).

of damages?” This question receives relatively little attention.¹¹ This is unfortunate. The question of “how much” will concern both parties greatly. In practice, the question of “how much” may serve as a way to avoid answering the first question.

The reasons for this approach are obvious. The question of damages is a question for the jury. Counsel for the plaintiff and the defendant may propose various amounts, but the jury makes the ultimate decision. Substantive standards for determining damages, when they exist, tend to be qualitative rather than quantitative in nature.¹² In other words, nobody knows. But most cases never advance to trial. They are dropped, settled, or otherwise dismissed. What about those cases? For the cases that settle, the amounts are determined by negotiation, against the backdrop of the relevant statutes and case law—and the available amount of insurance. Negotiation need not be the equivalent of a black hole. This Article examines the results of the negotiations that attorneys engage in when the cause of action is for wrongful death. By examining the results and comparing them to the results from trial, perhaps a better understanding of what drives these negotiations will follow.

II. THE RELEVANT LAW

The starting point is the relevant statute, section 28A-18-2.¹³ That statute permits the personal representative¹⁴ of the decedent to bring an action for damages against the person or persons deemed responsible for the decedent’s death.¹⁵ The statute thus abrogates the common-law rule that an action for damages terminates with the death of the would-be plaintiff.¹⁶ The significance of the statute is that it specifies the damages available.¹⁷ The liability of the defendant remains a function of tort law.¹⁸

11. See MARTHA CHAMALLAS & JENNIFER B. WRIGGINS, *THE MEASURE OF INJURY: RACE, GENDER, AND TORT LAW* 155 (2010).

12. Bovbjerg et al., *supra* note 9, at 910.

13. N.C. GEN. STAT. § 28A-18-2.

14. A personal representative includes both an executor and an administrator of an estate. *Id.* § 28A-1-1(5). The personal representative is empowered to maintain an action for the wrongful death of the decedent by sections 28A-13-3(a)(23) and 28A-18-2(a). *Id.* §§ 28A-13-3(a)(23), -18-2(a).

15. *Id.* § 28A-18-2.

16. *DiDonato v. Wortman*, 358 S.E.2d 489, 492 (N.C. 1987) (stating the common-law rule that the death of a human being could not be pleaded as an injury and that damages calculations must stop at the time of a person’s death); *Christenbury v. Hedrick*, 234 S.E.2d 3, 5 (N.C. Ct. App. 1977).

17. N.C. GEN. STAT. § 28A-18-2(b).

18. *Nelson v. United States*, 541 F. Supp. 816, 818 (M.D.N.C. 1982).

Section 28A-18-2 was enacted in 1969¹⁹ to replace former section 28-174.²⁰ The statute expanded the grounds for recovery. No longer limited to “such damages as are a fair and just compensation for the pecuniary injury,” the personal representative was permitted to recover compensation for medical and funeral expenses, the decedent’s pain and suffering, and the net income of the decedent, as well as compensation for the loss of the decedent’s services and companionship.²¹ These last two items include, but are not limited to, compensation for the loss of the decedent’s net income, service, protection, care, and assistance that the decedent would otherwise have provided, and the “society, companionship, comfort, guidance, kindly offices and advice” that the decedent would otherwise have provided.²² A claim for loss of consortium may also be asserted under this provision.²³ In addition, the statute permits the recovery of any punitive damages to which the decedent would have been entitled, as well as nominal damages “when the jury so finds.”²⁴

The focus of the wrongful-death statute also shifted with the 1969 revision. In contrast to former section 28-174, which permitted recovery of “such damages as are a fair and just compensation for the pecuniary injury resulting from such death,”²⁵ section 28A-18-2 requires consideration of the impact on the survivors in calculating recoverable damages.²⁶ As the North Carolina Court of Appeals noted in *Scallon v. Hooper*,²⁷ compensation is intended to restore the survivors of the decedent to the same position that they would have occupied had there been no death.²⁸

The wrongful-death statute is exclusive. It is the only way in which a beneficiary may recover for the wrongful death of the decedent.²⁹ Other claims that are unrelated to the wrongful death of the decedent are to be

19. Act of Apr. 14, 1969, ch. 215, 1969 N.C. Sess. Laws 194 (relating to damages recoverable for death by wrongful act).

20. *DiDonato*, 358 S.E.2d at 492–93.

21. N.C. GEN. STAT. § 28A-18-2(b); *DiDonato*, 358 S.E.2d at 492–93; see also Robert G. Byrd, *Recent Developments in North Carolina Tort Law*, 48 N.C. L. REV. 791, 804 (1970).

22. N.C. GEN. STAT. § 28A-18-2(b)(4).

23. See *Keys v. Duke Univ.*, 435 S.E.2d 820, 821 (N.C. Ct. App. 1993).

24. N.C. GEN. STAT. §§ 28A-18-2(b)(5), (6).

25. *Id.* § 28-174 (repealed 1973).

26. *Id.* § 28A-18-2 (2013); *Livingston v. United States*, 817 F. Supp. 601, 606 (E.D.N.C. 1993); *Bowen v. Constructors Equip. Rental Co.*, 196 S.E.2d 789, 804 (N.C. 1973).

27. *Scallon v. Hooper*, 293 S.E.2d 843 (N.C. Ct. App. 1982).

28. *Id.* at 845.

29. *Christenbury v. Hedrick*, 234 S.E.2d 3, 5 (N.C. Ct. App. 1977).

brought under the “survivorship” statute.³⁰ An action may be brought under the wrongful-death statute only by the personal representative.³¹ Distribution of any recovery is governed by North Carolina’s Intestate Succession Act.³² Debts of the decedent, other than those for burial and for “reasonable hospital and medical expenses . . . incident to the injury resulting in death,” may not be paid from the amount recovered in a wrongful-death action.³³ The case law is consistent on the point that recovery for wrongful death is not automatic: damages sought have to be proved.³⁴ The statute provides that “[a]ll evidence which reasonably tends to establish any of the elements of damages [enumerated in the statute] is admissible.”³⁵ Dying declarations of the deceased are also admissible.³⁶

In effect, section 28A-18-2(b) permits two types of recovery for wrongful death. The first type includes medical and hospital expenses resulting from the injury that led to death, reasonable funeral expenses, and “[c]ompensation for pain and suffering.”³⁷ Determination of these three items does not require any inquiry about the impact on the decedent’s survivors; it is no different from the calculations that would be needed in any personal injury claim. The second category does, however, require consideration of the impact on the survivors. The “present monetary value of the decedent *to the persons entitled to receive the damages recovered*” is what must be determined.³⁸ Because of this directive, two calculations are necessary: first, a calculation of “present monetary value,” converting an imagined stream of income into current dollars,³⁹ and second, a determination of the life expectancy of the decedent’s heirs. The North Carolina courts have consistently done this by consulting actuarial tables to determine the longest life expectancy of the decedent’s heirs, and comparing it to the life expectancy of the decedent, if he or she were still

30. N.C. GEN. STAT. § 28A-18-1; *see also* State Auto Ins. Co. v. Blind, 650 S.E.2d 25, 29 (N.C. Ct. App. 2007).

31. N.C. GEN. STAT. § 28A-18-2(a); *Bowen*, 196 S.E.2d at 803.

32. N.C. GEN. STAT. § 28A-18-2(a). The Intestate Succession Act is codified at N.C. GEN. STAT. § 29.

33. *Id.* § 28A-18-2(a); *see also Bowen*, 196 S.E.2d at 802–05 (discussing the effect of the 1969 amendments on the provision of funeral expenses); Byrd, *supra* note 21, at 803.

34. *See, e.g.,* DiDonato v. Wortman, 358 S.E.2d 489, 493 (N.C. 1987); Bahl v. Talford, 530 S.E.2d 347, 352 (N.C. Ct. App. 2000).

35. N.C. GEN. STAT. § 28A-18-2(c).

36. *Id.* § 28A-18-2(d).

37. *Id.* §§ 28A-18-2(b)(1)–(3).

38. *Id.* § 28A-18-2(b)(4) (emphasis added).

39. This first calculation is often quite difficult. While the concept of expressing future losses in terms of present dollars seems straightforward, opinions differ on the proper way to make this calculation. *See* Bovbjerg et al., *supra* note 9, at 911.

alive.⁴⁰ If the life expectancy of the decedent is greater than the life expectancy of the heirs, the longest life expectancy of the heirs is used.⁴¹ For example, imagine a case in which a forty-year-old woman dies, leaving as her sole survivor a nine-year-old son. Because the life expectancy of the son is greater than the life expectancy of the mother, the mother's remaining (theoretical) life expectancy would be used; in terms of "present monetary value," the son could expect no more than that. Likewise, if the nine-year-old son died, present monetary value would be measured in terms of his mother's remaining life expectancy rather than his own.

The statute permits the recovery of both economic (medical and hospital expenses, funeral expenses, and future net loss income) and noneconomic damages (the deceased's pain and suffering between injury and death, loss of services and loss of society and companionship). In this sense, it follows general principles of tort law. This means, however, that an element of uncertainty exists in any wrongful-death action. Calculations of the "present monetary value" of the deceased's pain and suffering, the loss of services, and the loss of society and companionship defy quantification.⁴²

If not resolved by negotiation, the question of present monetary value will ultimately be decided by a jury. Set out below are the North Carolina Pattern Jury Instructions⁴³ for this question. The instructions suggest that the task will not be an easy one:

Damages for (*named deceased*)'s death also include fair compensation for the present monetary value of (*name deceased*) to *his* next-of-kin. . . .

There is no fixed formula for determining the present monetary value of (*name deceased*) to *his* next of kin. You must determine what is fair compensation by applying logic and common sense to the evidence. You may consider:

[The net income (*name deceased*) would have earned during the remainder of *his* life. You must subtract from (*name deceased*)'s

40. See, e.g., *Livingston v. United States*, 817 F. Supp. 601, 605 (E.D.N.C. 1993) (holding that "[e]conomic loss is calculated by the income of the decedent over the greatest of the life expectancies of his survivors"); *Bowen v. Constructors Equip. Rental Co.*, 196 S.E.2d 789, 806 (N.C. 1973) ("[T]here can be no recovery . . . beyond the life expectancy of the last surviving parent.").

41. *Bowen*, 196 S.E.2d at 805.

42. The task of converting pain and suffering into a monetary amount is a problem in tort law generally. See, e.g., Mark Geistfeld, *Placing a Price on Pain and Suffering: A Method for Helping Juries Determine Tort Damages for Nonmonetary Injuries*, 83 CALIF. L. REV. 773, 781 (1995) (acknowledging that "pain and suffering" is required to be calculated as a form of compensable damages in personal injury actions).

43. N.C. PATTERN JURY INSTRUCTIONS FOR CIVIL CASES 810.50 (2015), <http://www.sog.unc.edu/sites/www.sog.unc.edu/files/pji-master/civil/c810.50.pdf>.

reasonably expected income the amount *he* would have spent on *himself* or for other purposes which would not have benefited *his* next of kin. The amount *he* would have earned depends upon *his* prospects in life, health, character, ability, industry and [the means *he* had for making money] [the business in which *he* was employed]. It also depends upon *his* life expectancy—that is, the length of time *he* could reasonably have been expected to live but for the [negligence] [wrongful conduct] of the defendant.]

[The services, protection, care and assistance of (*name deceased*), whether voluntary or obligatory, to *his* next-of-kin. These words are to be given their ordinary meanings. You may consider the family and personal relations between (*name deceased*) and *his* next-of-kin, and what you find to be the reasonable value of the loss to them of these things over the life expectancy of (*name deceased*). . . .]

[The society, companionship, comfort, guidance, kindly offices and advice of (*name deceased*) to *his* next-of-kin. These words are to be given their ordinary meaning. You may consider the family and personal relations between (*name deceased*) and *his* next-of-kin and what you find to be the reasonable value of the loss to them of these things over the life expectancy of (*name deceased*). . . .]

. . . .

Any amount you allow as damages for the future monetary value of (*name deceased*) to *his* next-of-kin must be reduced to its present value⁴⁴

The instructions certainly are faithful to the statute and the case law, but they do not provide much guidance.⁴⁵ One might argue that these, or any, jury instructions are incapable of providing guidance, since the jury is being asked to convert items for which there is no market (such as pain and suffering, loss of society, and loss of services) into money.⁴⁶

*Livingston v. United States*⁴⁷ illustrates how the statute works in practice. David Livingston was killed in a motor-vehicle accident when the

44. *Id.* (footnotes omitted) (brackets in original).

45. This lack of guidance seems to be the case across all jurisdictions. See Leebron, *supra* note 9, at 265 (“The law provides no guidance, in terms of any benchmark, standard figure, or method of analysis, to aid the jury in the process of determining an appropriate award.”); Joseph Sanders, *Why Do Proposals Designed to Control Variability in General Damages (Generally) Fall on Deaf Ears? (And Why This Is Too Bad)*, 55 DEPAUL L. REV. 489, 501 (2006) (“The primary impediment to achieving greater consistency is the vague guidance jurors receive on what is to be compensated and a complete absence of guidelines for how to translate this into dollar awards.”).

46. Oscar G. Chase, *Helping Jurors Determine Pain and Suffering Awards*, 23 HOFSTRA L. REV. 763, 765 (1995).

47. *Livingston v. United States*, 817 F. Supp. 601 (E.D.N.C. 1993).

car that he was driving was struck by a truck driven by an Air Force serviceman.⁴⁸ Livingston was thirty-one years old, unmarried, and survived by only his parents.⁴⁹ He worked as the manager of a used-car business that was owned by his father.⁵⁰ Livingston's earnings history was erratic; his annual income varied between less than \$1,000 to as much as \$22,620 over the years.⁵¹ Although the United States did not contest liability, the parties were unable to agree on the appropriate damages award.⁵² As a result, the case was tried in federal court without a jury.⁵³ The opinion by Judge Howard nicely shows how section 28A-18-2 operates. The "net income" damages of \$20,000 awarded by the court were quite modest, based on Livingston's income and on his father's life expectancy of thirteen years.⁵⁴ Likewise, medical and funeral expenses totaled only \$11,200.⁵⁵ Livingston's pain and suffering from the time of the accident to the time of his death was set by the court at \$10,000.⁵⁶

On the question of loss of services, protection, care, and assistance, the court awarded \$75,000, and for the loss of society, companionship, comfort, and guidance, the court awarded \$150,000.⁵⁷ Both of these items, like net income, were calculated according to "the present monetary value of the decedent to the persons entitled to receive the damages recovered."⁵⁸

The point is a simple one: the statute contains categories that can be calculated with relative precision (such as net income, medical expenses, and funeral expenses), as well as categories that defy measurement (such as pain and suffering, loss of services, and loss of companionship). Since the statute permits both economic and noneconomic damages, this is no surprise. This combination of factors—some capable of calculation, others not—suggests that much depends on the negotiating skill of the attorneys.

III. METHODS

To construct a useful set of North Carolina wrongful-death cases in which the decedent's life is explicitly valued, we conducted searches of

48. *Id.* at 602.

49. *Id.* at 603.

50. *Id.*

51. *Id.*

52. *Id.* at 602.

53. *Id.*

54. *Id.* at 607.

55. *Id.*

56. *Id.*

57. *Id.* at 608.

58. N.C. GEN. STAT. § 28A-18-2(b)(4) (2013); *Livingston*, 817 F. Supp. at 604.

multiple online databases, cross-checking the results to avoid duplication. We also researched the North Carolina appellate reports for the relevant time period. In addition, we reviewed the closed files of a major medical-malpractice insurer.⁵⁹ Over the five-year period from January 1, 2009, to December 31, 2013, we identified 123 wrongful-death cases, resolved either by trial or by settlement. The fact that our data are drawn from both trials and settlements makes this study different from most other empirical studies on this subject.⁶⁰

Several of these cases involved multiple deaths. To avoid overweighting a single case, we chose a single plaintiff in each of those cases. From the online reports and the closed claim files, we gathered all the information available about the deceased plaintiff, his or her survivors, the manner of death, and the amount recovered. In the course of the research, it became clear that many wrongful-death cases result in no recovery at all. Because our analysis is concerned with determinations of the value of a life wrongfully taken, however, we confine our discussion to those cases in which some amount of money was in fact recovered.

Our analysis is aided by the fact that North Carolina is a contributory-fault jurisdiction.⁶¹ In a tort based on negligence, any “fault” attributed to the plaintiff will bar his or her recovery.⁶² This means that the verdicts and settlements discussed in this Article require no adjustment for comparative fault, since comparative fault does not exist in North Carolina. The amounts agreed to, or as found by the jury, thus represent the monetary value of a particular decedent’s life.⁶³

We cannot be certain that we have identified all of the wrongful-death resolutions in North Carolina between 2009 and 2013 that resulted in a monetary recovery. Regarding settlements, we identified the cases in

59. We were given unrestricted access to the closed claim files of a major North Carolina medical liability insurer. The closed claim files contained information about the injury alleged, the medical specialty involved, the insurer’s assessment of the liability of its insured, and basic demographic information about the claimants, along with information about the final disposition of the claim.

60. See, e.g., Bovbjerg et al., *supra* note 9; Leebron, *supra* note 9 (looking only at trial outcomes); see also Cross & Silver, *supra* note 9 (making use of the Texas Closed Claim Database—a very large collection of closed insurance files—but not trials, in their study).

61. See *Holderfield v. Rummage Bros. Trucking Co.*, 61 S.E.2d 904, 906 (N.C. 1950); *Moore v. Chi. Bridge & Iron Works*, 111 S.E. 776, 777 (N.C. 1922). See generally CHARLES E. DAYE & MARK W. MORRIS, NORTH CAROLINA LAW OF TORTS ¶ 19.20[1][a], at 384–86 (3d ed. 2012).

62. See RESTATEMENT (FIRST) OF TORTS § 463 (AM. LAW INST. 1934).

63. But this statement has one qualification: in 2011, the General Assembly imposed a \$500,000 cap on noneconomic damages in medical-malpractice cases. See N.C. GEN. STAT. § 90-21.19.

which a report was published by the various verdict and settlement reporting services. These services rely on counsel (usually plaintiff's counsel) to report the outcome. As a result, case selection certainly occurred. Because of this bias, we do not claim that the data represent either all of the relevant cases, or a valid random sampling of the cases. We believe, however, that we have identified a large-enough group of cases to be representative of all the wrongful-death cases resolved during the five-year period from 2009 to 2013.

Our data also requires a further qualification: otherwise-useful information is often omitted in the verdict and settlement reports in compliance with a confidentiality agreement. Names of the parties, names of the decedent's survivors, and the names of defense counsel are occasionally omitted. The race of the deceased is almost never included in settlement reports.⁶⁴ We have attempted to supplement missing information whenever possible.

IV. RESULTS

We report on 123 cases from forty-six of North Carolina's one hundred counties. Wake County had the highest number of wrongful-death cases and settlements, followed by Mecklenburg County. Almost all of the cases (n=108) were filed in the North Carolina Superior Court. The three federal district court divisions in North Carolina accounted for five cases,⁶⁵ and six cases were resolved prior to commencement of a lawsuit.⁶⁶ In two cases, we were unable to identify the court, and one case came from the North Carolina Industrial Commission.⁶⁷

64. The race of the deceased, like the age and gender of the deceased, would certainly be a relevant factor in any analysis of wrongful-death awards. This information, however, is rarely included in jury verdict and settlement reports. The use of race-based tables to calculate damages for wrongful death is controversial. *See, e.g.,* *McMillan v. City of New York*, 253 F.R.D. 247, 247 (E.D.N.Y. 2008) (stating that using race to determine damages in a wrongful-death action violates the Equal Protection and Due Process Clauses of the United States Constitution).

65. *Great W. Cas. Co. v. Fredrics*, No. 1:10-cv-00267 (W.D.N.C. Nov. 1, 2012); *Fontenot ex rel. Turner v. Taser Int'l, Inc.*, No. 3:11-cv-00125 (W.D.N.C. July 19, 2011); *Lumsden v. United States*, No. 7:06-cv-00060-F (E.D.N.C. Nov. 1, 2010); *Parker v. Bladen County*, No. 7:08-cv-00069 (E.D.N.C. Mar. 23, 2010); *Hines v. United States*, No. 1:07-cv-00288 (M.D.N.C. Aug. 24, 2009).

66. *E.g.,* *Estate of Murphy v. Bellamy* (settlement reached Sept. 27, 2013) (LEXIS, American Lawyer Media (ALM) VerdictSearch).

67. *Estate of Harbin v. N.C. Dep't of Health & Human Servs.*, I.C. No. TA-22283 (N.C. Indus. Comm'n Nov. 5, 2013); *see* Amber Nimocks, *Verdicts & Settlements November 15, 2013: State-Administered Overdose Results in \$528K Award*, N.C. LAW.

A. *Type of Death*

There are many ways to die, and our data reflect that fact. Not surprisingly, the most common cause of death was motor-vehicle collisions. Of the thirty-two cases involving motor-vehicle collisions, at least three involved driving while impaired, which added another potential defendant in those cases—the establishment that served alcohol to the driver.⁶⁸ One case involved a motorboat collision in which at least one of the operators was allegedly under the influence of alcohol.⁶⁹ The second most common cause of death was perhaps more of a surprise: eight deaths were caused by radiologists' misreadings of X-rays or CT films.⁷⁰ Other medical-diagnostic errors across various specialties accounted for eleven deaths.⁷¹ Four decedents died from gunshot wounds,⁷² two died from burns and smoke inhalation,⁷³ one from strangulation,⁷⁴ and another from a stabbing.⁷⁵ There were two instances of cardiac arrest induced by a Taser gun.⁷⁶

WKLY. (Nov. 15, 2013). The authors did not conduct a separate search of the awards made in workers'-compensation cases.

68. *See, e.g.*, Estate of Anonymous 23-Year-Old Female v. Anonymous Driver (N.C. Super. Ct. Oct. 26, 2009); Davis v. Brown, No. 04-CVS-1183 (N.C. Super. Ct. Feb. 2009).

69. Anonymous Decedent's Estate v. Anonymous Boater (N.C. Super. Ct. May 6, 2010).

70. Results on file with author (settlements involve confidential data from major medical-malpractice insurer in North Carolina).

71. *See, e.g.*, Smalls v. W. Carolina Univ. (N.C. Super. Ct. Dec. 1, 2012) (LEXIS, American Lawyer Media (ALM) VerdictSearch); Anonymous 62-Year-Old Male v. Anonymous Dermatopathologist (N.C. Super. Ct. Nov. 8, 2012) (LEXIS, American Lawyer Media (ALM) VerdictSearch) (failure to diagnose rare cancer); Plaintiff v. Defendant Surgeon, 2010 WL 9446841 (N.C. Super. Ct. May 1, 2010) (negligent follow-up surgery following bariatric surgery).

72. *See* Kluttz v. Town of Spencer (N.C. Super. Ct. May 1, 2012) (LEXIS, American Lawyer Media (ALM) VerdictSearch); Arrington v. Martinez, No. 06 CVS 17916 (N.C. Super. Ct. Jan. 9, 2012); Blevins v. Hammer, No. 09CVS398 (N.C. Super. Ct. Mar. 11, 2011); Estate of Caskey v. Estate of Campbell, No. 09-CVS-4836 (N.C. Super. Ct. Sept. 20, 2010) (LEXIS, American Lawyer Media (ALM) VerdictSearch).

73. *See, e.g.*, Decedent v. Apartment Complex (N.C. Super. Ct. Sept. 1, 2010) (LEXIS, American Lawyer Media (ALM) VerdictSearch).

74. Estate of Doe v. XYZ Med. Ctr. (N.C. Super. Ct. Apr. 15, 2013) (LEXIS, American Lawyer Media (ALM) VerdictSearch).

75. Estate of Williams v. ACC/Merritt, LLC, No. 08-CVS-12969 (N.C. Super. Ct. Jan. 11, 2010) (LEXIS, American Lawyer Media (ALM) VerdictSearch).

76. Fontenot *ex rel.* Turner v. Taser Int'l, Inc., No. 3:11-cv-00125 (W.D.N.C. July 19, 2011); Parker v. Bladen County, No. 7:08-cv-00069 (E.D.N.C. Mar. 23, 2010).

B. *Type of Resolution*

Settlements greatly outnumbered every other category of resolution. There were one hundred settlements, fifteen jury trials, and three bench trials.⁷⁷ One case was settled after a jury trial.⁷⁸ The remaining four cases were either agency awards or a combination of settlement and default judgments.⁷⁹

C. *Age, Gender, and Marital Status of the Deceased*

The deceased ranged in age from stillborn infants⁸⁰ to age ninety-three. The average age was 45.6 years (median forty-four years). There were fifty-nine males and sixty-two females.⁸¹ Fifty-four of the decedents were married; twenty-one were single; eight were divorced; three were widowed; and thirteen were minors.⁸²

D. *Amount Recovered*

We were able to ascertain the amount recovered by the plaintiff in all but one case.⁸³ In obtaining the amount recovered, we encountered twelve cases in which the amount recovered was not clearly “global,” meaning that other sources of compensation may have existed. As a result, we report on “global” and “non-global” results separately.⁸⁴ There were also several cases that involved more than one decedent. When individual allocations of the wrongful-death awards were not available, we divided the total amount recovered by the number of decedents to arrive at the amount recovered.

77. Complete list of results on file with author.

78. Results on file with author.

79. Results on file with author.

80. Under North Carolina law, wrongful-death damages are available for the death of a viable but unborn child. See *DiDonato v. Wortman*, 358 S.E.2d 489, 493–94 (N.C. 1987).

81. In two cases, we were unable to determine the gender of the deceased. In twenty-four cases, we were unable to determine the marital status of the deceased.

82. Because jury verdict and settlement reports and court records do not routinely report the race of plaintiffs or defendants, we were unable to collect sufficient data to report on these demographic variables.

83. *Estate of Majlaton v. Lutz*, No. 10-CVS-021416 (N.C. Super. Ct. Dec. 20, 2012) (LEXIS, Dolan Media Verdicts & Settlements).

84. We labeled a case “global” if we were confident that all potential defendants had participated in the settlement, or in the case of a trial, were named and made subject to the court’s jurisdiction. “Non-global” resolutions are cases with only partial settlements, as well as cases in which there was reason to believe that other potential defendants might be involved.

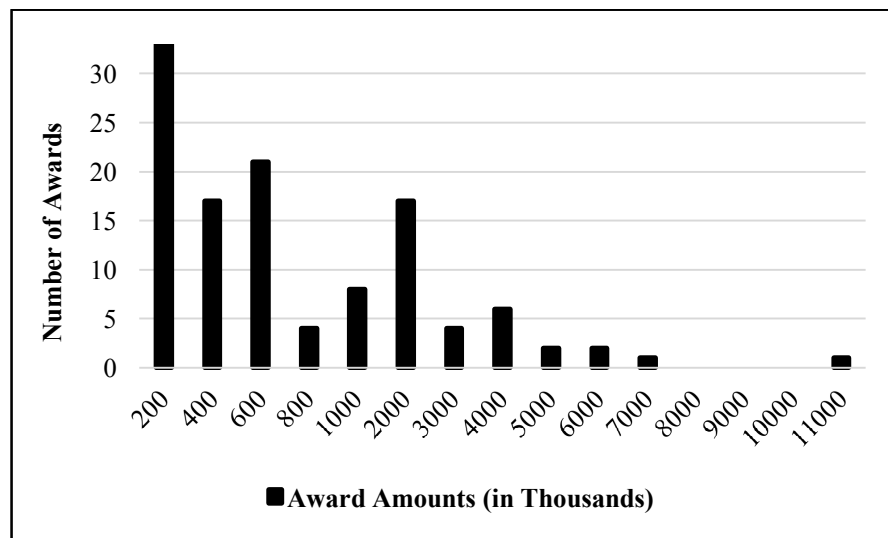
We included only one decedent in multiple-decedent cases in our dataset to avoid overstating the amounts recovered. In most multiple-death cases, the amount recovered per decedent was relatively high; including all decedents in these cases would have produced a higher number of cases, but it would also have distorted the average and median amounts recovered.

E. Insurance

Most defendants were insured, but some were not.⁸⁵ The absence of insurance makes actual payment less likely and may explain why most of the defendants had insurance. An attorney would likely hesitate to bring a wrongful-death action against an uninsured defendant because the attorney would wonder about the chances of collecting any amount recovered.

The existence of insurance raises an additional question: To what extent does the amount of coverage determine the amount recovered?⁸⁶ The amount recovered varied greatly, ranging from a low of \$4,000 to a high of \$10,665,000. Figure 1 below illustrates the dispersion in the results.

Figure 1: Award Amounts



85. Defendants were uninsured in eleven of the cases used in our results. We included in the “uninsured” category cases in which it appeared that the defendant was substantially underinsured.

86. See *infra* notes 105–07 and accompanying text.

As Figure 1 shows, the amounts recovered are highly skewed. Put another way, the results from the cases raise questions of horizontal equity⁸⁷: if the severity of the injury (in this study, death) is the same, what explains the variation?

When only global cases are considered, the range remains impressive, from a low of \$9,000 to a high of \$10,665,000. For the 110 cases in our study, the mean award was \$1,300,740, and the median was \$590,000. Jury verdicts produced numbers much higher than did settlements, as Table 1 shows. When only “global” cases with insurance available were examined, the difference between trial and settlement outcomes remained substantial.

Table 1: Jury Verdicts and Settlements

Type of Resolution	Mean and Median Recovery Amounts for All Cases	Recovery Amounts for Global Cases	Recovery Amounts for Global Cases with Insurance
Jury verdict	Total Cases: 15 Mean: \$3,128,872 Median: \$2,224,080	Total Cases: 15 Mean: \$3,128,872 Median: \$2,224,080	Total Cases: 11 Mean: \$3,004,454 Median: \$2,000,000
Settlement	Total Cases: 99 Mean: \$779,757 Median: \$490,000	Total Cases: 88 Mean: \$853,533 Median: \$500,000	Total Cases: 86 Mean: \$850,022 Median: \$500,000

Ninety-two different attorneys represented the 123 estates. Only five attorneys represented three or more plaintiffs. There were fewer defense attorneys, for two reasons. First, the identity of defense counsel was often not disclosed. Second, defense attorneys were more likely to be repeat players. Dividing the number of cases in which the identity of plaintiff’s counsel was known (123) by the number of different plaintiff’s counsel (92) produces an average number of cases per attorney of 1.337. Dividing the number of cases in which the identity of defense counsel was known (77) by the number of different defense counsel (43) produces an average number of cases per attorney of 1.791.⁸⁸

We identified eight cases in which the defendant was a nursing home.⁸⁹ The amounts awarded varied greatly, from a low of \$85,000 to a

87. See Bovbjerg et al., *supra* note 9, at 924.

88. In three cases, the defendant was not represented by counsel.

89. See, e.g., Rice v. Britthaven, Inc., No. 2010-CVS-000099 (N.C. Super. Ct. Apr. 24, 2012); Estate of Baker v. Britthaven, Inc., No. 10-CVS-690 (N.C. Super. Ct. Mar. 21, 2012)

high of \$1,635,000 (a mean of \$650,000 and a median of \$440,000). This range seems curious, since residents of nursing homes tend to be elderly and unemployed.

Men fared better than women. The average “global” award for men was \$1,408,596 (a median of \$600,000), while the average “global” award for women was \$1,203,841 (a median of \$590,000). The average award for minors was \$1,304,667 (a median of \$700,000).

The marital status of the deceased made a difference as well, as shown in Table 2.

Table 2: Marital Status and Amount Recovered

Marital Status	Number of Cases	Mean and Median “Global” Recovery Amounts
Single	19	Mean: \$2,082,245 Median: \$860,000
Married	50	Mean: \$1,306,824 Median: \$600,000
Divorced	5	Mean: \$259,400 Median: \$185,000
Widowed	3	Mean: \$108,333 Median: \$75,000
Minor	10	Mean: \$1,374,200 Median: \$753,750
	Total = 88	

The results for decedents with no income—i.e., infants, children, unemployed and disabled adults—illustrates how open-ended the inquiry often is.⁹⁰ The dataset contains twenty-seven cases of decedents with no income in which the amount recovered represented a “global” resolution (meaning that there are no other defendants in cases still pending).⁹¹ The

(LEXIS, American Lawyer Media (ALM) VerdictSearch); *Alzheimer’s Patient v. Nursing Home* (N.C. Super. Ct. Oct. 1, 2010) (LEXIS, American Lawyer Media (ALM) VerdictSearch); *Estate of Odom v. Aston Park Health Care Ctr., Inc.*, No. 08 CVS 2268 (N.C. Super. Ct. Aug. 21, 2009) (LEXIS, American Lawyer Media (ALM) VerdictSearch); *Anonymous 81 Year Old Female v. Anonymous Nursing Home* (N.C. Super. Ct. May 1, 2009) (LEXIS, American Lawyer Media (ALM) VerdictSearch).

90. Results on file with author.

91. *See supra* Table 2.

awards ranged from a low of \$70,000 to a high of \$4,160,000, with a mean of \$988,963 and a median of \$700,000.⁹² In these cases, “net present income” would presumably be at or near zero. Having an income produced a higher average amount recovered (\$1,402,162), but the median amount was lower than the median amount for decedents with no income (\$575,000).⁹³

There is some evidence that the perceived character of the deceased affects the amount recovered. In six cases, we found indications from the reports that the deceased was of doubtful character or was engaged in unsavory conduct.⁹⁴ The mean and median awards in those six cases were \$387,097 and \$397,319, respectively—far below the corresponding awards for the cases in which there was no indication of unsavory conduct or character (a mean of \$1,353,450 and a median of \$600,000). On the other hand, when the deceased could be characterized as a crime victim, the amounts recovered were higher (a mean of \$1,815,155 and a median of \$1,786,000 in twenty cases) than for those who could not be so characterized (a mean of \$1,186,426 and a median of \$533,973 in ninety cases).

Slightly less than half of the cases (sixty-one cases) arose as medical-malpractice claims. Motor-vehicle accidents accounted for thirty-two cases. Three of those cases involved a combination of motor-vehicle accidents and dram-shop liability.⁹⁵ There were sixteen cases of death by negligence other than medical malpractice and motor-vehicle accidents. Twelve cases arose as intentional torts—specifically, assault and battery.⁹⁶

92. *See supra* Table 2.

93. *See supra* Table 2.

94. *See, e.g.*, *Parker v. Bladen County*, No. 7:08-cv-00069 (E.D.N.C. Mar. 23, 2010); *Kluttz v. Town of Spencer* (N.C. Super. Ct. May 1, 2012) (LEXIS, American Lawyer Media (ALM) VerdictSearch); *Anonymous 29-Year Old Female v. Anonymous Dump Truck Driver* (N.C. Super. Ct. Jan. 5, 2012) (LEXIS, American Lawyer Media (ALM) VerdictSearch); *Jones v. Underwood*, No. 10CVS1966 (N.C. Super. Ct. Nov. 2, 2011) (LEXIS, American Lawyer Media (ALM) VerdictSearch); *Estate of Harbin v. N.C. Dep’t of Health & Human Servs.*, I.C. No. TA-22283 (N.C. Indus. Comm’n Nov. 5, 2013).

95. *See supra* note 68 and accompanying text.

96. *See, e.g.*, *Estate of Doe v. XYZ Med. Ctr.* (N.C. Super. Ct. Apr. 15, 2013) (LEXIS, American Lawyer Media (ALM) VerdictSearch); *Arrington v. Martinez*, No. 06 CVS 17916 (N.C. Super. Ct. Jan. 9, 2012); *Blevins v. Hammer*, No. 09CVS398 (N.C. Super. Ct. Mar. 11, 2011); *Estate of Caskey v. Estate of Campbell*, No. 09-CVS-4836 (N.C. Super. Ct. Sept. 20, 2010) (LEXIS, American Lawyer Media (ALM) VerdictSearch); *Estate of Williams v. ACC/Merritt, LLC*, No. 08-CVS-12969 (N.C. Super. Ct. Jan. 11, 2010) (LEXIS, American Lawyer Media (ALM) VerdictSearch).

Finally, there were two cases involving products liability.⁹⁷

The data suggest that how the deceased died makes a difference in terms of the amount recovered in a subsequent lawsuit. Sorted by cause of action, and restricting the analysis to “global” cases, Table 3 sets out the mean and median awards in each category.

Table 3: Cause of Action and Amount Recovered

Cause of Action	Mean and Median Recovery Amounts for All Cases⁹⁸	“Global” Cases	“Global” Cases with Insurance
Motor-Vehicle Accidents	Total Cases: 32 Mean: \$1,390,522 Median: \$1,292,500	Total Cases: 29 Mean: \$1,524,507 Median: \$1,400,000	Total Cases: 25 Mean: \$1,284,449 Median: \$1,250,000
Medical Malpractice	Total Cases: 60 Mean: \$841,650 Median: \$400,000	Total Cases: 52 Mean: \$934,692 Median: \$400,000	Total Cases: 52 Mean: \$934,692 Median: \$400,000
Other Negligence	Total Cases: 16 Mean: \$1,060,665 Median: \$484,819	Total Cases: 15 Mean: \$1,131,109 Median: \$500,000	Total Cases: 13 Mean: \$689,741 Median: \$469,638
Intentional Torts	Total Cases: 12 Mean: \$1,750,007 Median: \$1,300,000	Total Cases: 12 Mean: \$1,750,007 Median: \$1,300,000	Total Cases: 7 Mean: \$1,313,857 Median: \$580,000

Within each category, we found widely dispersed results. The mean and median recovery amounts within the four causes of action indicate, however, that lives are valued differently, and that one factor in explaining the difference is how the deceased died. Consistent with these findings, a violent death⁹⁹ resulted in an average award of \$1,742,967 (a median of

97. Fontenot *ex rel.* Turner v. Taser Int’l, Inc., No. 3:11-cv-00125 (W.D.N.C. July 19, 2011).

98. Because there were only two products-liability cases, these results were excluded from Table 3. Likewise, because the amount recovered in one medical-malpractice case could not be obtained, that case was excluded from Table 3.

99. All of the motor-vehicle accident cases in our dataset were “violent.” The intentional-tort cases were also labeled as violent, since they each involved the tort of battery. In contrast, very few of the medical-malpractice cases were labeled as violent. Some, but not all, of the “other negligence” cases qualified as violent.

\$1,367,500), while a nonviolent death resulted in a lower average award of \$958,371 (a median of \$400,000).

The data also suggest that conceding liability saved money. In the forty-three cases in which liability was conceded (or thought to be likely), the average award was \$1,087,389 (a median of \$490,000). In cases where liability was contested, the average award was \$1,540,904 (a median of \$600,000). Of course, this sort of analysis does not take into account the cases in which no award was made at all. It does suggest, however, that choosing to contest liability comes with a price.

In spite of the great range of the verdicts and settlements, it would be misleading to think that the results are completely random. For example, the age of the deceased correlates with the amount of the “global” awards. The relationship is negative and statistically significant ($p < .01$). This suggests, in other words, that the value of a young person’s life is worth more than the value of an older person’s life.

V. DISCUSSION

Although the injury in each of the cases was the same, the results obtained varied greatly. Every empirical study of wrongful-death cases has noted great variation in results.¹⁰⁰ Is this a problem? If one’s perspective is horizontal equity—the view that compensation for the same injury should be roughly the same, regardless of who the deceased was, or how the deceased died—then the variation in the results is troublesome.¹⁰¹ One can, however, take a different view, suggested by the preceding description of the many different ways that the deceased in this study died. The many ways that one can die suggests that every case is different.¹⁰² The circumstances will be different, and, of course, the identity of the deceased will be different. The imagined levels of pre-death pain and suffering will also vary, depending, among other things, on the length of the interval between injury and death and the intensity of the accident that led to the death.¹⁰³

The disparity in results between jury verdicts and settlements is substantial and hard to ignore. However, because the number of jury verdicts (fifteen) was quite low compared to the number of settlements

100. See, e.g., Bovbjerg et al., *supra* note 9, at 919–24; Cross & Silver, *supra* note 9, at 1890–91; Leebron, *supra* note 9, at 309–11; Posner & Sunstein, *supra* note 8, at 544–45.

101. See JENNIFER K. ROBBENOLT & VALERIE P. HANS, *THE PSYCHOLOGY OF TORT LAW* 125 (forthcoming 2016) (describing issues surrounding “horizontal equity” in tort law).

102. See Leebron, *supra* note 9, at 258.

103. See generally Posner & Sunstein, *supra* note 8, at 542 (noting that “agencies opt for uniformity, whereas courts call for a high degree of individuation”).

(eighty-nine), the disparity may be due to the much smaller number of cases decided by jury. In any event, the disparity cannot be explained by the cause of action involved. The types of cases tried to a jury were not markedly different from the types of cases resolved by settlement. The disparity also cannot be explained by arguing that cases without insurance were more likely to go to trial. When only cases with insurance are considered, the results between trial and settlement remain very different. It is possible, however, that the existence of insurance still provides an answer. Perhaps in the ten cases with insurance that went to trial, the insurer and the plaintiff were simply unable to agree on liability at all. As a result, when the plaintiff wins, higher recoveries can be expected; plaintiff's counsel has not had to "discount" her demand in order to obtain a settlement. Our data support this hypothesis; in only one of the ten cases tried to a jury in which insurance was available was liability thought by the defense to be likely. In eight of the ten cases, liability was contested, and in the remaining case, we were unable to determine the liability assessment.¹⁰⁴

The absence of insurance increases the chances that the defendant will be unrepresented. It also seems likely that the existence, and especially the amount, of insurance in a given case affect these results. For example, if a decedent is killed in a collision with a motorist who carries only \$100,000 in liability coverage and the motorist lacks substantial personal assets, the decedent's life may be "valued" at or near \$100,000.¹⁰⁵ It is difficult to escape the conclusion that insurance has a strong influence in determining the value of a life. In this sense, the minimum motor-vehicle liability-insurance requirement of \$30,000 for the death of one person imposed by the General Statutes seems inadequate.¹⁰⁶

Recoveries varied by cause of action.¹⁰⁷ Looking only at "global" cases, the ordering makes some sense. Intentional torts in the context of wrongful death are likely to be violent and repugnant. Motor-vehicle accidents are likely to be violent, but, like accidents, not necessarily repugnant. "Other negligence" can be either violent or nonviolent; in contrast, medical malpractice is seldom violent. Perhaps violent deaths evoke more sympathy, or are thought to evoke more sympathy, from jurors. The finding that a violent death resulted in average and median awards much greater than those for a nonviolent death supports this view.

104. Results on file with author.

105. See Cross & Silver, *supra* note 9, at 1908 (detailing the effect of insurance on a victim's recovery).

106. See N.C. GEN. STAT. § 20-279.21(b)(2) (2013).

107. *Supra* Table 3.

Less money was paid when the defendant privately viewed liability as certain or likely. However, our data do not take into account the cases in which no award was made at all. In those cases, liability was likely contested. Perhaps this means that there is a price for choosing to contest liability. It also suggests the influence of insurance and the adjusting process.

We found a negative correlation between age and the amount recovered, meaning that in general, as age increased, the amount of the award declined. Using economic analysis only, this result might seem surprising. The projected earnings of a middle-aged man with an expectation of working another twenty or thirty years should easily exceed the projected earnings of a teenager who has never worked full-time. As discussed above, however, because the statute permits consideration of factors other than projected earning, room remains for noneconomic adjustments. A number of the decedents in our study had either little or no income, yet their estates recovered substantial amounts.¹⁰⁸ In any event, this finding is consistent with other studies.¹⁰⁹

Males did better than females. When children survived the decedent—regardless of their age—the award tended to increase. The average and median awards varied greatly by marital status. Single adults fared best, followed by minors, married individuals, divorced individuals, and widowed individuals. This otherwise-surprising result may be largely due to age rather than marital status. The average age for a single individual was just over thirty-three years (a median of just over thirty years), but for a married individual, the average age was fifty-two years (a median of forty-nine years). The average age of divorced individuals was just over fifty-nine years (a median of fifty-nine years), while the average age of widowed individuals was eighty-one years (a median of eighty-eight years). These results make some sense, since age is negatively correlated with the amount of recovery.

One other factor may help to explain the variation, and it merits further investigation. Every estate in this study was represented by an attorney, as were most of the defendants. Perhaps the relative skill of the attorneys in a given case explains much of the variation. The fact that most of the cases were resolved by negotiated settlement makes that suspicion more plausible.

108. See, e.g., *supra* note 89 and accompanying text (discussing awards to the estates of decedents who were in nursing homes, presumably not making any income).

109. See Cross & Silver, *supra* note 9, at 1914–15.

CONCLUSION

On first impression, the results from the data seem random. If the injury (death) is the same, why are the recoveries so different in amount? On further inspection of the data, some revealing patterns emerge. First, age is negatively correlated with the amount recovered. In general, the estates of younger decedents receive more than the estates of older decedents. Second, how the amount was recovered seems to matter. Jury verdicts produced much-higher recoveries than settlements did. Third, how the decedent died makes a difference. Violent deaths, such as those from motor-vehicle accidents, yielded larger amounts than did nonviolent deaths. Left unexplored for now is the link between the skill of the plaintiff's attorney and the eventual recovery for the estate.

Perhaps the most important pattern is also the most obvious one: the importance of insurance. Most of the defendants in the cases were insured. As noted above, this is probably not a coincidence. More troublesome is the next question: To what extent do insurance limits determine the value of a life wrongfully taken? The answer, at least for most causes of action, seems to be that the liability-insurance limits that a defendant carries define the upper limit on the value of a life wrongfully taken.