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ARTICLES

Flawed Justice: Limitation of Parental Remedies for the Loss of Consortium of Adult Children

William S. Bailey

I have often thought that if one of my children were to die, I would collapse from the pain.¹

Media sage Marshall McLuhan observed in 1967 that our society is irrevocably mired in the past:

The past went that-a-way. When faced with a totally new situation, we tend always to attach ourselves to the objects, to the flavor of the most recent past. We look at the present through a rear-view mirror. We march backwards into the future.²

Both statutory and common law chronically lags behind contemporary social conditions. While this promotes a certain level of stability in that unrest may result if the law is too far ahead of a comfortable majority,³ this delay has the potential to unfairly disenfranchise others.

¹B.S., University of Oregon, 1970 (with high honors); J.D., Northwestern University School of Law, 1974. Instructor, Trial Advocacy Program, University of Washington School of Law. This article is dedicated to Yianni Philippides (1977-2000). A curious, intelligent mind, a compassionate heart, and a peaceful spirit, whose untimely death prevented him from fulfilling his dream of becoming the outstanding lawyer he surely would have been. The author gratefully acknowledges the input of David M. Beninger, Esq, Seattle, Washington, in the initial common law analysis.

²John Dieden, Chicago, Illinois, May 12, 1866.


³One of the best examples of unrest is the United States Supreme Court's decision in Roe v. Wade, 410 U.S. 113 (1973), which, viewed as ahead of its time by those who support it, has engendered great controversy and a continuing backlash by the considerable body of Americans who disagree with it.
Justice is an abstract concept that can be difficult to achieve in real life. As observed by the Arizona Supreme Court, human relationships cannot be neatly boxed.\(^4\) The ultimate goal of our legal system should be to study relationships with care, turning the knowledge gained into sound rules of law. Under the best of circumstances, "[t]he law does not fly in the face of nature, but rather acts in harmony with it."\(^5\)

Intelligently defining the common law is not only the right, but also the obligation of the Judiciary.\(^6\) The common law should be dynamic, undergoing a regular re-examination of the soundness of its precedents:

The nature of the common law requires that each time a rule of law is applied, it be carefully scrutinized to make sure that the conditions and needs of the times have not so changed as to make further application of it the instrument of injustice. . . . Although the Legislature may of course speak to the subject, in the common law system the primary instruments of the evolution are the courts, adjudicating on a regular basis the rich variety of individual cases brought before them.\(^7\)

A "rear-view mirror" approach does just the opposite, blindly following established precedent and wholly failing to question its application in light of societal changes or the unique facts of a particular case. Nowhere is the "rear-view mirror" orientation of the law more pronounced than in its approach to the right of parents to recover loss of consortium damages for serious injury to or the death of an adult child. Despite a substantial body of research and legal commentary over the last twenty-five years supporting an expansion of existing remedies to encompass the loss of an adult child,\(^8\) the majority rule in American jurisprudence remains that parents cannot bring such a

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5. Harper v. Tipple, 184 P. 1005, 1006 (Ariz. 1919) (quoting Lamar v. Harris, 44 S.E. 868 (Ga. 1903)).
The majority rule of placing age limitations on common law parental remedies is largely based on two factors: the centuries-old view of children as property interests, and Baker v. Bolton, an early 19th Century English case that has been criticized as fundamentally unsound for decades.

Despite the intervening 130 years since the advent of child labor laws and mandatory education in the late 19th Century, the majority rule still adheres to the view of children as it was in Charles Dickens' time. The changed character of the parent-child relationship in 21st Century America has been studiously ignored. With an improved standard of living and reduced infant mortality that became the norm in America in the mid-20th Century, the view of children under the age of majority has shifted to objects of adoration rather than objects of economic value. This is particularly true after the Second World War ended and the "baby boom" began, continuing on into the present.

Given this shift, it is not surprising that an impressive body of clinical research has developed over the last decade, demonstrating just how complex and multifaceted the emotional ties of the parent-child relationship are and how these ties continue to evolve and deepen over a life span. The loss of an adult's companionship and the emotional cost to parents, and social scien-

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10. See discussion infra pp. 945–948.

11. See discussion infra pp. 948–951.

12. See discussion infra pp. 953–954.

tists have learned precisely how profound this nightmare is.\textsuperscript{14} The rear-view mirror approach of the common law presumes a difference to these parents based on the age of the child that does not exist. It has now been conclusively shown that all such unfortunate parents go through a process of profound mental distress, grief, and depression for the rest of their lives.\textsuperscript{15}

A new twist in the traditional economic loss analysis has also emerged, based on recent studies of caregiving by adult children to their aging parents. Due to an increased standard of living and more sophisticated medical care, Americans are living longer than ever.\textsuperscript{16} When any child is killed, adult or minor, parents suffer a very real economic loss of a caretaker in their later years of physical infirmity.\textsuperscript{17} Contrary to popular belief, adult children, not the government, provide a substantial amount of the care required by their infirm parents.\textsuperscript{18} The loss of an adult child reduces the care options of such parents. As a result, the parents will likely have to purchase services that otherwise would have been provided by their wrongfully injured or killed adult child. Eliminating such caregivers for infirm parents who otherwise cannot afford to pay for them has the potential to shift a very real economic burden onto the taxpayers.

This article presents the inherent contradiction between a parent-child relationship that has steadily evolved from the early 20th Century to the present and the multitude of court decisions on damages that remain studiously ignorant of this shift. Part I of the article will set forth the common law origins of restrictions on recovery for wrongful death within the context of a shifting view of children from economic units to objects of adoration. Part II will examine the devastating impact that the loss of an adult child has on parents both from their perspectives and from now existing research. In the context of this body of evidence, and society's changed view of children, Part III will examine the inadequate development of wrongful death law since its common law origins. While a few forward thinking state supreme courts have taken a realistic look at this archaic and wrongful denial of

\begin{footnotesize}
\begin{enumerate}
\item See discussion infra pp. 960–963.
\item See discussion infra pp. 960–963.
\item See infra Table A.
\item See discussion infra pp. 965–967.
\end{enumerate}
\end{footnotesize}
loss of consortium damages to parents for their adult children, these cases are beacons of rationality in a *stare decisis* wasteland. Only these few courts have seen all too clearly that the emperor of *Baker v. Bolton* has no clothes. Ultimately, the denial of any common law remedy for the parental loss of consortium of adult children is based on neither a correct reading of the law, nor on sound social policy. The unthinking embrace of *Baker v. Bolton* must, at long last, yield to the realities of the modern parent-child relationship in fashioning fair and just remedies for loss of consortium.

I. HISTORICAL CONTEXT

The common law view of children only in terms of their economic contributions to the family has endured for centuries, based on a way of life radically different from the present. In *Leviathan*, Thomas Hobbes wrote that 17th Century life was "solitary, poor[], nasty, brutish, and short." This was especially true for children because most families made their living in agricultural pursuits, forcing them to put their children to work as soon as possible as a matter of economic necessity. Their only value was seen in what services they could perform for their parents and, consequently, the social values of that distant time only reflected concern for purely pecuniary losses. The common law protected property rights, but there was no recognition of any modern right to recovery for the loss of intangibles, such as love, companionship, or family ties. A master had a cause of action when his servant's services were lost due to the negligence of a third

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19. *Frank*, 722 P.2d 955, 961 (Ariz. 1986) (recognizing on a common law basis that the parents of an adult child could bring a loss of consortium action against a physician, alleging that negligent administration of anesthesia during surgery had caused severe brain damage); *Green v. Bittner*, 424 A.2d 210, 220 (N.J. 1980) (reversing a jury verdict awarding no damages to the parents for the death of a high school senior who was killed in an automobile accident. Though the court was constrained by legislative enactments in New Jersey from applying its reasoning for loss of consortium damages for the death of adult children, the opinion contains a penetrating analysis of the absurdity and inappropriateness of such limitations looking for the first time at the consequences of the loss of adult children to aging and infirm parents.). *But see, Tynan v. Curzi*, 753 A.2d 187, 191 (N.J. Super. Ct. App. 2000) (ruling that most of the *Bittner* opinion was dicta, and that New Jersey common law still does not permit a parental loss of consortium action for the wrongful death of an adult child.); *Masaki v. General Motors Corp.*, 780 P.2d 566, 577–78 (Haw. 1989) (relying on *Frank* to allow the parents of an adult child who was severely injured by an alleged automobile product defect to bring a loss of consortium claim. It should be noted that *Frank* and *Masaki* did not involve wrongful death, but rather severe injury to an adult child. In *Bittner*, the decedent was still living at home with her parents at the time of her death).


party. This cause of action later extended to husbands for the loss of services of a wife due to a tortfeasor's negligence.

The economic value of children shifted in the industrial revolution of the 18th Century, both in the United States and Europe, when many were removed from farms to an urban life as wage earners in mills and factories. Many of the first factory hands were women and children. When Samuel Slater opened his first mill in Pawtucket, Rhode Island in 1790, his work force consisted of seven boys and two girls, aged seven to eleven.

The miserable plight of such factory children in the 19th Century was most effectively publicized by Charles Dickens, not only one of the greatest authors of all time, but a relentless social reformer. When Dickens was given a report of the Children's Employment Commission by Dr. Southwood Smith, he learned of the hideous conditions to which even small children were subjected—e.g.,

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22. As Dean Prosser has set forth, the roots of this go back to early Roman law, where the head of the household could bring an action to redress violence by another against any family member, his slaves or employees. The close degree of relationship was thought to justify this entitlement. This principle was adopted into English common law in an altered form by the thirteenth century, becoming "an action for damages sustained by any master through actual loss of the services of a servant because of violence inflicted upon him, including the members of the master's family." This was later expanded upon by statute in 1349, when an action was given to an employer for enticing or harboring a servant. WILLIAM L. PROSSER & JOHN W. WADE, CASES AND MATERIALS ON TORTS 1008 (5th ed. 1971).


24. Pre-Civil War farm life in the Northern United States was demanding and relied on the labor of every family member, including children over the age of six. Typically, farm families were large because of the many tasks necessary to operate a farm. Children of both genders did a series of well-defined tasks such as feeding livestock, gathering eggs, milking, gardening and filling wood boxes. After puberty, boys joined their fathers in the fields and girls helped their mothers in the house. PAULINE MAIER ET AL., INVENTING AMERICA 375 (2003). The rapid urbanization in the last two decades of the nineteenth century was the beginning of an exodus from farming that would change the family dynamic in striking ways. Cities grew much faster than the nation as a whole, with a third of our population classified as urban by the end of the nineteenth century. JOHN M. BLUM ET AL., THE NATIONAL EXPERIENCE 442 (1963). The United States had become an industrial power by 1900, with manufacturing, construction and mining accounting for two-thirds of the economy. MAIER ET AL., supra, at 567. Children were needed to fill some of these newly created industrial jobs and precarious economics of many families required that they do so. A slogan of the time demonstrated the overall acceptance of this fact: "The factories need the children and the children need the factories." TIME-LIFE BOOKS, THIS FABULOUS CENTURY, PRELUDE, 1870–1900, 124 (1970). Even after child labor laws were passed in the early twentieth century in Massachusetts to prohibit the employment of children under fourteen, in 1912, half of the children of Lawrence, Massachusetts between the age of fourteen and eighteen worked in mills. THOMAS R. BROOKS, TOIL AND TROUBLE: A HISTORY OF AMERICAN LABOR 118 (2d ed. 1971).

25. BROOKS, supra note 24, at 17.

seven-year-olds chained to loaded carts in dark tunnels, girls in ragged trousers working in the dark, often up to their knees in water, carrying heavy loads of coal, and deformed boys working fourteen hours a day in steel mills, struck with bars and burned by showers of sparks.27 The fate of American children in the 19th Century was scarcely better than their English counterparts. The miseries of immigrant life in urban centers such as New York and Chicago have also been well documented.28

The predominant social philosophy in the upper classes through the 19th Century was laissez faire capitalism.29 The ruthless greed that caused children to be subjected to these oppressive conditions was justified by the notion that anything necessary to produce profitable trade was allowable. Under the prevailing economic theories of supply and demand, a businessman was entitled to buy in the cheapest mar-

27. Id. at 184–85; Professor Malone has one of the most succinct descriptions of how the industrialized 19th Century forever changed the nature of wrongful death actions for victims of all ages:

[T]he story of the Death Action . . . is a novel of the nineteenth century, a story of the new swarming into crowded cities, the travail of the factory and, above all, of the first hurtling of men and goods across the continent on steel rails. Up until this time unnatural death meant largely death by violence in the popular sense of the word. It was the work of the robber, the burglar, or the hot-blooded man. Usually the culprit was executed or confined behind bars. Even if he were left free in society he was usually without any means to compensate the bereaved family of the victim. In this setting, wrongful death was a matter of little concern to the civil law, and lawmen developed no tools for the handling of it. Then, suddenly at mid-century society faced up in panic to a virtually new phenomenon—accidental death through corporate enterprise. Tragedy as a result of indifference and neglect was suddenly upon us in the factory, on the city streets, and on the rails. Nor was the principal villain of the piece any longer the impecunious felon. In his place stood the prospering corporation with abundant assets to meet the needs of widows and orphans.

It is obvious that law was destined to respond to this violent shift in the human equation—but through which agency and by what means was the change to take place?


28. MAIER ET AL., supra note 24, at 611. Children of immigrants were put to work for long hours and low wages. Their parents were often both out of the house trying to earn enough money to pay for food and shelter.

29. In his widely influential book, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS: WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION (1868), Professor Thomas M. Cooley of the University of Michigan provided the foundation for turning the newly enacted Fourteenth Amendment to the United States Constitution into a sweeping legal mandate for the American business community to do exactly as it pleased, without governmental influence or regulation. Later on, laissez faire capitalism would have no more ardent spokesman than George F. Baer, president of the Reading Railroad. During the drawn-out, bitter anthracite coal mining strike of 1902, Baer attempted to elevate this philosophy to a divine mandate: "The rights and interests of the laboring man will be protected and cared for—not by labor agitators, but by the Christian men to whom God in his infinite wisdom has given the control of the property interests of the country." BLUM ET AL., supra note 24, at 525.
ket and sell in the best. In turn, the courts valued children only in terms of the meager wages they could earn in this predatory climate.\textsuperscript{30}

However, as America became more prosperous through the latter decades of the 19th Century, both social conditions and perspectives on the proper role of children began to change. The abuses of child labor were made manifest by reformers as the excesses of laissez faire capitalism came under increasing attack.\textsuperscript{31} After 1870, states began passing laws making school attendance mandatory.\textsuperscript{32} In the early 20th Century, child labor was finally regulated and steadily declined as a force in the marketplace.\textsuperscript{33} Family life and children steadily became more of a matter of quality than quantity. Particularly among Ameri-

\textsuperscript{30} Perhaps the most articulate discussion and passionate condemnation of the common law’s prior regard for children as mere economic units came in the Michigan Supreme Court decision of Wycko v. Gnodtke, 105 N.W.2d 118 (Mich. 1960). See discussion infra pp. 968–969. The court discussed several of the early English decisions limiting recovery of a child’s wrongful death to pecuniary losses. The court recognized that these past decisions reflected the diminished social conditions which produced them, where debtor’s prisons, public floggings and the virtual slavery of apprenticeships were standard practices: “Loss meant only money loss, and money loss from the death of a child meant only his lost wages. All else was imaginary. The only reality was the King’s shilling.” \textit{Id.} at 121. However, the court recoiled from any notion that this body of law, formulated during “one of the darkest chapters in the history of childhood,” should continue in force: “That this barbarous concept of the pecuniary loss to a parent from the death of his child should control our decisions today is a reproach to justice. . . . We are aware, of course, that there are those who say that the life of human being is impossible to value, that although we will grapple mightily with the value of the life of a horse, of a team of mules, we will stand aloof where a human is concerned and assign it no value whatever. This kind of delicacy would prevent the distribution of food to the starving because the sight of hunger is so sickness. . . .” \textit{Id.} at 122. The court concluded with the realization that it was dealing with a fiction “[that] . . . the minor child [in today’s society] is a breadwinner. He is not. He is an expense.” \textit{Id.} at 123.

\textsuperscript{31} There was a strong current of opinion in America that condemned the entire factory system, no matter what the age of its employees.

\textit{[M]}any considered the factory system both alien to and destruction of American ideals and standards. . . . This was a widely shared belief among independent artisans, Jeffersonian farmers and New England transcendentalists. Henry David Thoreau, mulling over his thoughts on the lonely shores of Walden Pond in 1845, wasn’t the only one to ask, “Where is this division of labor to end?”

\textit{Brooks, supra} note 24, at 29.

The progressive movement, which swept the country in the early twentieth century, was successful in limiting child labor, particularly with northern state legislatures. The evils of the economic exploitation of children was argued convincingly with statistics from 1900 that showed one out of every six children between the ages of ten and fifteen working full time (much higher than this average in some southern states). Congress joined the move to ban child labor with the Keating-Owen Act, ch. 432, 39 Stat. 675 (1916), which prohibited the interstate shipment of certain manufactured goods. This was later declared unconstitutional in 1918 by the United States Supreme Court in \textit{Hammer v. Dagenhart}, 247 U.S. 251 (1918) \textit{overruled} by U.S. v. Darby, 312 U.S. 100 (1941), on the grounds that it went beyond the federal government’s power to regulate interstate commerce. \textit{See Maier et al., supra} note 24, at 700.

\textsuperscript{32} \textit{Maier et al., supra} note 24, at 619.

\textsuperscript{33} \textit{Id.} at 700.
cans of Caucasian ancestry, a steady decline in the birth rate was noted from 1800 to 1900. This decline corresponded with a decrease in infant mortality. These changes were the first evidence of a fundamental shift—children valued more for their companionship than as contributors to the family finances.

A. History of the Denial of Recovery for Wrongful Death—Blind Imitation of Lord Ellenborough’s Wrong Turn

How did we go so far, for so long, down this road of denying damages to parents whose adult children were killed or seriously injured? The answer requires going back centuries to look at the ebb and flow of English common law. The unsupported, clearly erroneous early 19th Century decision of Baker v. Bolton wiped out all actions for wrongful death in one fell swoop. In a very real sense, the toll taken by Baker continues on to this day, largely unexamined by the American courts that adopted it simply because of blind obedience to precedent.

The early history of wrongful death actions in England did not discriminate based on the age of the victim. English courts recognized the accidental killing of a human being as compensable even before the time of the Norman Conquest in 1066. An assortment of legal theories were available to wrongful death claimants throughout the Middle Ages, including the “wer,” the “wite,” and the “appeal of murdrum.” Ancient English common law accepted the fundamental right of a decedent’s family to obtain compensation for this loss.

A significant early limitation of these existing remedies for wrongful death in the early English legal system occurred when the “felony-merger” doctrine was adopted. A civil tort against a private person was determined to be less important than a criminal offense against the Crown. Accordingly, a criminal action preempted a private suit for damages arising from an act that constituted a crime.

34. Id. at 618.
35. Dramatic improvements were seen in infant mortality in America by the 1920s, with a rate about half what it had been in 1900. Id. at 741.
37. Malone, supra note 27, at 1055 n.61 (noting that damages had been allowed to a spouse, parent or child).
38. 1 WILLIAM HOLDSWORTH, A HISTORY OF ENGLISH LAW 18–22 (5th ed. 1956).
40. Id.
43. Id.
Under the felony-merger doctrine in death cases, felons were not only executed, but also forfeited their property to the Crown. In such circumstances, civil wrongful death actions were not filed, not because there was no common right to do so, but because the Crown had confiscated all assets of the wrongdoer.\textsuperscript{44} While this analysis did not turn on the age of the victim, it established far-reaching precedent to limit actions for loss of consortium.

The limitations imposed by the felony merger rule paled in comparison to what was to follow in the now infamous early 19\textsuperscript{th} Century decision of \textit{Baker v. Bolton}.\textsuperscript{45} The severely limited present-day remedies available to parents in the United States for the loss of consortium of their adult children is at least partly attributable to this unfortunate but enduring precedent. In \textit{Baker}, a husband brought an action for wrongful death when his wife was killed after a stagecoach overturned. The trial judge, Lord Ellenborough, instructed the jury that the damages were limited to the plaintiff-husband's loss of society and the grief he suffered from the date of the accident to the time of the death, which was about one month.\textsuperscript{46} Though there was no claim before the court for the death itself, the jury was instructed that "in civil court, the death of a human being could not be complained of as an injury."\textsuperscript{47}

Though Lord Ellenborough offered no citation to support his position, his assertion erroneously became the basis for many later American cases holding that there could be no recovery for wrongful death in the absence of a statute.\textsuperscript{48} While the "felony-merger" doctrine was later added as further justification, this made no sense as the doctrine had never been adopted as a part of the common law tradition in the United States.\textsuperscript{49} Further, there were no colonial decisions or statutes that supported the idea that a wrongful death claim would have been denied by the colonial courts.\textsuperscript{50} In fact, numerous 19th century U.S. decisions explicitly permitted common law wrongful death actions.\textsuperscript{51}

\begin{footnotes}
\item 44. \textit{Id.}
\item 45. 1 Camp. 493, 170 Eng. Rep. 1033 (Nisi Prius 1808).
\item 46. Dean Prosser wryly describes Lord Ellenborough as "not the English judge most distinguished by a reputation for common sense." Prosser & Wade, \textit{supra} note 22, at 1088.
\item 47. Malone, \textit{supra} note 27, at 1058.
\item 50. Malone, \textit{supra} note 27, at 1065–66.
\item 51. Cross \textit{v. Guthrey}, 2 Root 90, 92 (Conn. 1794); Ford \textit{v. Monroe}, 20 Wend. 210 (N.Y. Sup. Ct. 1838); James \textit{v. Christy}, 18 Mo. 162, 163–64 (1853); Kake \textit{v. Horton}, 2 Haw. 209, 212–13 (1860); Sullivan \textit{v. Union Pac. R.R. Co.}, 23 F. Cas. 368, 371 (Cir. Ct. Neb. 1874); \textit{See also} 1 Records of the \textit{Court of Assistants} of the Massachusetts Bay 54–55 (1675) (finding a civil defen-}
\end{footnotes}
No decision better illustrates the propensity of the judiciary for blind adherence to precedent, no matter how unwise, than *Baker*. Dean Prosser observed that as a result of *Baker*, "it was cheaper for the defendant to kill the plaintiff than to injure him." 52 William Holdsworth described Lord Ellenborough's statement as not only "obviously unjust" but also inaccurate and "technically unsound . . . based upon a misreading of legal history." 53 But notwithstanding, *Baker* became the predominant rear-view mirror image of the common law for wrongful death cases, taking a meat axe approach to the entire cause of action.

Lord Ellenborough's dictum in *Baker* did not have the staying power in England that it did in the United States. It was overturned thirty-eight years later when Lord Campbell's Act was adopted in 1846, creating a statutory action for wrongful death. 54 The preamble contained a parliamentary declaration of what the English common law rule was at the time, creating a civil cause of action for deaths that had been caused under circumstances that would amount to a felony under the criminal laws. The same capacity for mimicry that led to the American adoption of *Baker* did not extend to this correction. The harsh result of *Baker* continued to be applied in the United States without question. The best proof of the force of McLuhan's rear-view mirror perspective in the common law is that it took 162 years in the United States before Lord Ellenborough's blunder in *Baker v. Bolton* was first exposed in *Moragne v. States Marine Lines, Inc.* 55

Writing for the majority of the United States Supreme Court in *Moragne*, Justice Harlan peeled away geologic layers of judicial ignorance, exposing the underlying unsoundness of *Baker*. His opinion overruled precedent that had prevented a widow from recovering damages for the death of her husband in a maritime setting. 56 After analyzing the long history of the common law right to a remedy for wrongful death in both England and pre-colony America, Justice Harlan found absolutely no justification for the denial of a remedy for wrongful death:

Where the existing law imposes a primary duty, violations of which are compensable if they cause injury, nothing in ordinary notions of justice suggest that a violation shall be non-actionable

dant liable for having "accidently discharg[ed] gun[s] at foules on ye neck thereby wounding Samuel [F]lack[']s son so as he di[j]ed";
52. W. PAGE KEETON ET AL., supra note 23, § 127.
53. 3 WILLIAM HOLDSWORTH, A HISTORY OF ENGLISH LAW 336 (5th ed. 1956).
54. Lord Campbell's Act (Fatal Accidents Act), 1846, 9 & 10 Vict., c. 93.
56. Id.
simply because it was serious enough to cause death. On the contrary, that rule has been criticized ever since its inception and described in such terms as "barbarous."57

Justice Harlan noted a fundamental difference between actions for injury and those for wrongful deaths. In the case of mere injury, the person physically harmed is made whole for his harm, while in the case of death, those closest to him—usually spouse and children—seek to recover for their total loss of one on whom they depended. If the law refused to allow actions for wrongful death, Justice Harlan expected "to find a persuasive, independent justification for this apparent legal anomaly."58 Yet, the only possible basis for this rule was the inapplicable felony-merger doctrine.

After surveying the misguided and unthinking past use of Baker v. Bolton, Justice Harlan concluded "[T]he courts failed to produce any satisfactory justification for applying the rule in this country."59 Justice Harlan added that "[t]he most likely reason that the English Rule was adopted in this country without much question is simply that it had the blessing of age . . . ."60 In so many words, the Moragne opinion concluded that Baker was a flagrant example of what McLuhan would call "marching backwards into the future," a decision perpetuated just because it had existed for so long. The Moragne court found the blind, long-lived adherence to Baker to be fundamentally inconsistent with the philosophy of American jurisprudence.

"[O]ur ancestors brought with them [the] general principles [of the common law] and claimed it as their birthright; . . . they brought with them and adopted only that portion which was applicable to their situation." The American courts never made the inquiry whether this particular English Rule, bitterly criticized in England "was applicable to their situation," and it is difficult to imagine on what basis they might have concluded that it was.61

Remarkably, most state courts have yet to follow the United States Supreme Court's lead in Moragne. Common law entitlement to wrongful death actions of all types has continued to languish. And the spirit of Baker still hovers in the background as a barrier to parental actions for the loss of consortium of their adult children.

57. Id. at 381. See also Osborn v. Gilliett, L.R. 8 Ex. 88, 94 (1873) (Lord Bramwell, dissenting). FREDRICK POLLOCK, A TREATISE ON THE LAW OF TORTS 74–75 (1894); 3 WILLIAM HOLDsworth, supra note 53, at 676–77.
58. Moragne, 398 U.S. at 382.
59. Id. at 385.
60. Id. at 386.
61. Id. (alteration in original) (citations omitted).
While Massachusetts promptly followed *Moragne* and eliminated obedience to *Baker* in its common law in 1972, other states have been slower to do so. New Jersey is one of the more recent states to recognize the same error of barring damages for wrongful death based on *Baker*. In *LaFage v. Jani*, the New Jersey Supreme Court conducted a thorough review of the history of such claims, concluding that its Wrongful Death Act was a codification of the common law, thus making the Act's statute of limitations procedural and subject to equitable principles. In so doing, the Court explained why it was necessary to overrule many of its prior decisions:

Because our earlier judicial conclusion that New Jersey did not have a wrongful death cause of action at common law found its way into our law through misconception, because that approach operates harshly when equitable principles are not applied to ameliorate its harshness to conform with modern concepts of justice and fairness and because the underpinning for the English rule that was followed in New Jersey for so long has been condemned, the time has come for its elimination. Simply stated, there was historical error of grave proportion. In overruling prior precedent, we are discharging our "vital responsibility of re-examining questioned decisions whether they be [our] own or those of [our] predecessors."... Respect for the process of adjudication should be enhanced, not diminished by such a ruling today... because we are clarifying rather than unsettling our common law.

Coming nearly thirty years after *Moragne*, decisions like *LaFage* show just how difficult it is to eliminate centuries of misguided, blind...
judicial adherence. Since the *stare decisis* perspective of the judicial system is not equipped to detect such mistakes of the past, the common law is often doomed to repeat them.

**B. The Shifting View of Children from Economic Units to Objects of Adoration**

The grave error of continuing to embrace *Baker v. Bolton* in present day America becomes even more manifest as the perceived benefit of children strongly has shifted to emotional and psychological support. This is particularly true with the improvements in family life and child welfare after World War II. During the Great Depression of the 1930s, marriages and births in America declined, reflecting the hard economic conditions of that time. However, after the Second World War, America's unprecedented prosperity led to the greatest, most sustained number of new children ever seen:

The [economic] boom of 1945 to 1973, occasionally interrupted by recessions only to roll on seemingly undiminished, was the longest in American history. . . . The flush of prosperity and the thrill of victory also translated into a baby boom. The number of births jumped by nineteen percent from 1945 to 1946, then another twelve percent the next year, and after settling down for three years boomed again and continued to boom into the early Sixties. More babies were born in 1948-53 than in the previous thirty years. . . . Couples were marrying earlier, starting their children earlier, and having more of them. The baby boom was widely touted as a tribute to the national glory.

The post-war affluence in America provided not only more consumer luxuries, but also more leisure time for the family to develop social relationships:

[T]he family was the raison d'etre of affluence, its point and its locale. . . . [T]he family unit: Mom, who would spend the bulk of her life supervising her conveniences, and the kids, who would grow up knowing how good the things of life could be. . . . [T]he nuclear family was bound together through the cementing idea of "togetherness".

There is no question that the relationship of children to their parents underwent a fundamental shift during the baby boom years, one that continues to this day. How can the centuries old common

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66. MAIER ET AL., supra note 24, at 782; BLUM ET AL., supra note 24, at 688.
68. *Id.* at 15.
law view of children as mere economic units be justified in this prevailing social climate?

Research on the modern parent-child relationship shows just how far we have moved since the time of Dickens. In any culture the love of their children is a lifelong emotional anchor point for parents.\(^69\) Perhaps because the closeness of the parent-child relationship had been deemed to be self-evident, the social sciences were slow to study it.\(^70\) While romantic attachments and social friendships may be transitory, the parent-child bond is remarkably durable, lasting a lifetime.\(^71\) Such ties now are understood to be critical to stability, good mental health and the enjoyment of life.\(^72\) In fact, for adult children, the evidence suggests that a healthy, strong parental bond is as critical in the sense of well being as a life’s partner or a best friend.\(^73\)

The relationship of parents and children is far from static. Research now demonstrates that this relationship undergoes a continual metamorphosis throughout the life of both parent and child.\(^74\) Like fine wine, there is an unmistakable and steady improvement in the parent-child relationship as offspring and their parents age.\(^75\) Even in relationships characterized by volatility in the teenage years, people generally report increasing closeness with their parents as they increase in age.\(^76\)

This growing body of research on how parents and children relate has yet to find its way into any reported cases involving the injuries or death of children, whether minor or adult. It seems that the common law has taken an almost purposeful stand to remain ignorant on this subject, which makes it easier to understand how the ghost of Baker has endured so long. It must be questioned how the common law can intelligently assess the value of the parent-child bond on the basis of mere assumptions and conventional wisdom when there is now such a rich and growing body of research on this central facet of human existence. It points at a general isolation of the law from other

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69. See, e.g., Frits van Wel et al., Changes in the Parental Bond and the Well-Being of Adolescents And Young Adults, 37 ADOLESCENCE 317, 317 (2002).
71. Id.
73. See van Wel, supra note 69.
74. See Golish, supra note 70.
76. Id.
fields of learning, which severely hampers the ability of any court to intelligently assess the value of the parent-child relationship.

II. THE DEVASTATING IMPACT OF THE LOSS OF A CHILD

A. How Parents and Family View Civil Actions for the Wrongful Death of Adult Children

What importance does a wrongful death action have for parents who have lost an adult child? There is a notable absence of any qualitative discussion in the legal literature of the emotional needs that bring surviving parents and family to file such civil actions in the first place. Any purely linear analysis of a legal process, ignoring the emotional needs of those who use it, falls far short. In the public arena, the insurance industry fills this void for tort actions by recounting a parade of economic horribles, suggesting that families seek to cash in on tragedy, increasing the cost of insurance in so doing. Is this profit-motivated commentary inaccurate? Is it the money or something more that these victims seek? If so, what?

Whether or not the legal literature recognizes and reports it, wrongful death and any subsequent civil action to remedy it puts families through a wrenching trauma nearly equivalent to the pain of the underlying loss. Far from an armchair spectator sport, litigation makes emotional demands on anyone who participates, creating a certain reluctance of victims to file a civil action. There is rarely any motivation of trying to "cash in" by victims, but rather a deeply felt need for accountability.77

Parents usually file civil actions for the death of their children, whether minor or adult, because it is "the right thing to do,"78 not for the money. They often believe that the decedent would want them to seek justice and are motivated to prevent the same type of negligence from harming others in the future.79 For reasons that will be discussed later, often the only possible way they are given to accomplish this accountability is through filing a civil action.

One of the national statistics that favors allowing parental actions for the loss of consortium of adult children for enhanced accountabil-

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77. This is based on the author's three decades of experience as a plaintiff's trial lawyer, handling many wrongful death and serious injury cases. Of necessity, representing clients under these circumstances leads to a relationship in some ways similar to a therapist – the most deeply held feelings of clients are routinely discussed.

78. E-mail from Shirley A. Murphy, Ph.D., University of Washington, to William Bailey (May 28, 2003) (on file with author). Dr. Murphy conferred with Charles R. Figley, Ph.D., of the University of Washington prior to transmitting her opinions.

79. Id.
ity is that the rate of violent death of young people is a serious social problem, now bordering on epidemic. Tens of thousands of young Americans between twelve and twenty-eight die each year because of accident, homicide or suicide,\textsuperscript{80} accounting for over eighty percent of the violent deaths of young people. Motor vehicle accidents amount to nearly fifty percent of the total.\textsuperscript{81} The criminal justice system, overwhelmed as it is, often does not take the strong action against the wrongdoers that victims' families need to heal and go on with their lives.

The deterrence function of such civil actions for loss of consortium is best illustrated by motor vehicle and motor vehicle/pedestrian collisions, which are a major source of wrongful deaths in America.\textsuperscript{82} Invariably, there is an investigation in the criminal justice system that often ends in no more than a traffic ticket to the defendant driver.\textsuperscript{83} Most prosecuting attorneys have a set of guidelines that require extreme speed, gross negligence or proof of substance abuse to justify bringing a felony charge against the defendant driver.\textsuperscript{84} As time goes on and the authorities do little, parents and family invariably lower their expectations about any possible accountability through a vehicular homicide criminal case.\textsuperscript{85}

The parents caught in this situation want and need accountability from the wrongdoer. They are able to do this by filing a civil action and having their "day in court." Undeniably, a sense of betrayal that the tortfeasor suffered no real consequences in the criminal justice system never really goes away, even after a successful outcome in a civil action. There is a deep and abiding sense among the decedent's family that the only true justice could have been obtained through a criminal prosecution:

\textsuperscript{81} Id.
\textsuperscript{82} Frederick P. Rivara, M.D., of the Injury Prevention Center at the University of Washington's Harborview Medical Center in Seattle, Washington reports that 5,870 pedestrians were killed in the United States in 2000. More than one-third of these were children and young adults. Email from Fredrick P. Rivara to William Bailey (May 27, 2003) (on file with author).
\textsuperscript{83} Email from Amy Freidheim, J.D., King County, Washington Deputy Prosecuting Attorney in charge of pedestrian/motor vehicle accidents, and Daniel T. Satterberg, J.D., Chief Deputy, King County, Washington, Prosecuting Attorneys Office to William Bailey (Aug. 22, 2003) (on file with author).
\textsuperscript{84} Id.
\textsuperscript{85} See supra note 78.
Why would a person who killed someone through gross negligence not be held accountable in the criminal system just because they were not under the influence? I have a lot of animosity for [the prosecuting attorney] . . . I hold [the prosecuting attorney] personally responsible . . . . It's a one-sided system, the victims don't matter . . . . The criminal justice system gave up on [our son] . . . . Society and the legal system have the responsibility to hold guilty parties accountable, especially for a death . . . .

Yet, the civil justice system clearly is seen as better than nothing by aggrieved parents and family members, even though the narrow focus of economic damages is not nearly as satisfying as the prospect of criminal sanctions:

Money is not the issue . . . . No amount of money will bring the person back, but that is the only justice available in the system . . . . How can pay stubs and tax returns tell anyone what kind of person they are evaluating? That is the most insulting, degrading and emotionally upsetting process to have to go through. There is no compassion, there is no humanity involved . . . . [We] did not "get" anything. All that the civil system can concretely offer is money and what is that compared to a life? Nothing. I do not feel as if we have won or gained anything. We simply prevented further injustice.

The most significant cost to parents in filing a civil action for the wrongful death of a child is that it forces them to relive the horror of what happened:

My nightmares turned from fuzzy images of what might have been to concrete ones, seared on my mind. Before, I did not know what the vehicle looked like, how [our son's] body must have flown through the air, what [the defendant] looked like and everything else that came out in the court proceeding . . . . Courts remind us of our loss, with delays and technical postponements. It keeps the tragic event fresh in our minds, instead of being able to put it to rest. Although you are seeking justice, you feel guilty and it aggravates your pain for the great loss . . . . Being in court every day so close to the man that killed [our son] was horrible. It was a constant battle to stay composed and to not yell obscenities or throw punches . . . .

87. Id.
88. Id.
An apology by a wrongdoer can have a healing effect on the victim’s family. Yet, even in the most extreme cases of negligence, admissions of wrongdoing and apologies are rare in modern day America. Parents and family feel as if their loved one was stolen from their midst by a defendant that seemingly goes on with life with few consequences. This lack of an apology is deeply troubling to the decedent’s family:

Would I have liked to faced [the defendant]? Yes, I would have. I would like to know what happened to him after the case was over, but I don’t. People ask if he is still driving, I don’t know. People ask if he felt remorse, I don’t know. People ask if he was fired, I don’t know. I was never able to face him and the only real punishment he got was a traffic fine. He got off easy. I cannot feel compassion for what he might be going through because he was never punished. To me, he got away with murder – he took a lethal weapon, a motor vehicle, and through his negligence, killed someone. . . . Society and the legal system have the responsibility to hold guilty parties accountable, especially for a death . . . I wish that [the defendant] would have been required to face the jury when they announced that he alone was responsible. But he didn’t even have to be in the courtroom, only his lawyer was there.89

In criminal matters, victims are able to address the perpetrator at sentencing, telling him on a one-to-one basis just how devastating his actions were. In a civil action, parents and family find healing in the prospect of being vindicated by a civil jury, with a public pronouncement that the defendant was responsible for the death. One very publicized example of this in the 1990s was the civil action against celebrity/athlete O.J. Simpson by the victims’ families after he was acquitted of double murder in the criminal trial.90

This accountability, though expressed in terms of money, has healing potential. The civil punishment of tortfeasors is wholly consistent with the policy of deterrence behind wrongful death actions:

It is manifest that one of the primary purposes . . . is to deter the kind of conduct . . . which wrongfully takes life. . . . It is also abundantly clear that a cause of action for wrongful death without any limitation as to the amount of recoverable damages strengthens the deterrent aspect of the civil sanction: ‘the sting of unlimited recovery . . . more effectively penalize[s] the culpa-

89. Id.
ble defendant and deter[s] it and others similarly situated from such future conduct.\(^91\)

But the families pay dearly for this, with attendant loss of privacy and enduring resentment over whatever the defense said in derogation of the injured or deceased adult child and his/her family. They are damned if they do and damned if they don’t. As one family member put it:

I did not find the process helpful. However, to not go through the process—would that mean I did not care about what happened? The reason I went through this was that the alternative to not do so was to give up.\(^92\)

B. Research on Parental Bereavement—Confirmation of Great Parental Suffering When a Child is Killed at any Age

What is it about the loss of a child that makes it so deserving of judicial resources? Although research has shown, in a general sense, that the sudden violent death of one family member has a devastating effect on the adjustment and function of other family members,\(^93\) relatively little research about the adjustment of parents bereaved by the death of a child had been conducted until recently.\(^94\) This inquiry presents the most compelling reasons in favor of allowing parents to pursue the loss of consortium for the wrongful deaths of adult children.

A longitudinal study of parents whose twelve- to twenty-eight-year-old children were killed by accident, homicide or suicide was begun in 1992 by Professor Shirley A. Murphy of the University of Washington.\(^95\) Dr. Murphy and her colleagues identified a community-based sample of 261 parents from a search of medical examiner files in Oregon and Washington.\(^96\) Participation in the study was in-

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92. Id.


95. Id.

96. Id. at 588.
vited from all parents who met the selection criteria. The final sample consisted of 171 mothers and 90 fathers. In the sample, fifty-one percent had lost children due to accidents, twenty-three percent from suicide and the remaining twenty-three percent from vehicular homicide, murder and undetermined causes. The researchers then followed this group of parents over time, with information collected about their level of function in everyday life, as well as scores on psychological tests measuring mental distress.

The results of the initial study showed that parents whose children had been killed suffered significant levels of mental distress and dysfunction, with a very slow reduction in this distress over time, regardless of treatment modalities used. The scores of the mothers in the group on depression, anxiety and hostility were up to five times higher than "typical American females" the same age two years post-death. Fathers' scores on the same measures of mental distress were up to four times higher than "typical American males" the same age two years after the death. Five years after the death, the mothers' mental distress scores were still at least twice as high as the normal population. The fathers' level of distress actually increased from what it had been two years post-loss.

Initially, about one-third of the parents met the criteria of post-traumatic stress disorder as defined by the American Psychiatric Association in DSM-III-R. Measured two years after the deaths, twenty-one percent of the mothers and fourteen percent of the fathers continued to meet the clinical requirements for PTSD.

In summarizing her initial findings from the longitudinal data, Dr. Murphy noted the overall severity of the symptoms suffered by the parents, as well as their persistence:

The deterioration of fathers' health is noteworthy as are the high rates of prescriptive medication taken by bereaved mothers. Cognitive deficits persist as noted in parents' perceptions of non-productivity at work. The number of parents who reported being terminated from their jobs is alarming and demonstrates the need for public education regarding violent death bereavement. The very slow reductions in mental distress and trauma

97. Id.
98. Id.
99. Id.
100. Id. at 599.
101. Id. at 593.
102. Id.
103. Id.
104. Id.
symptoms are of importance to clinicians in both family and specialty medical practice.\textsuperscript{105}

Subsequent study of this same group by Dr. Murphy and her colleagues provided further detail as to the specific forms that parents' mental distress takes after the death of an adolescent or young adult child.\textsuperscript{106} Four months, on average, after the deaths of their children, seventy-seven percent of the parents participating in the study were asked, "Tell us about the most pressing problem you have encountered since the death of your child."\textsuperscript{107} Seventy-six percent of all comments four months post-death and fifty-two percent of all comments one year after the deaths centered on an overwhelming, profound sense of loss, e.g., "A parent's worst nightmare. The senselessness of it all is eating me alive." .. "Nothing matters anymore."\textsuperscript{108}

A large number of the parents expressed anger and frustration towards the authorities—school officials and the legal system in particular. Birthdays, holidays and the anniversaries of their children's deaths caused dread and apprehension among fifty-four percent of the parents. Considerable disruption of existing social networks was reported, both at four months (thirty-eight percent) and one year (fourteen percent) after death.\textsuperscript{109}

In summing up their findings, Dr. Murphy and her colleagues expressed great concern for the future of these parents:

The findings have profound implications for day-to-day functioning... It is difficult to imagine experiencing trouble remembering things, one's mind going blank, no interest in things, feeling hopeless about the future, and wanting to smash things, for an extended period of time as reported in the current study.\textsuperscript{110}

In a later study, Dr. Murphy and her colleagues were able to assess how the parents functioned five years after their children's deaths.\textsuperscript{111} A key element identified in a parent's ability to adjust after the death of a child was to find meaning in the event, explaining the

\textsuperscript{105} Id. at 596.
\textsuperscript{106} Shirley A. Murphy et al., Changes in Parents' Mental Distress After the Violent Death of an Adolescent or Young Adult Child: A Longitudinal Prospective Analysis, 23 DEATH STUDIES 129 (1999).
\textsuperscript{107} Id. at 148.
\textsuperscript{108} Id. at 150.
\textsuperscript{109} Id. at 151.
\textsuperscript{110} Id. at 154.
seeming randomness or senselessness of it. The findings of this later study demonstrate that it is a monumental struggle for parents to find such meaning in the death of their children.

None of the parents in this later study reported finding meaning in their child's death in the early bereavement period, four months post-death. This had only risen to twelve percent of parents who, by the end of the first year, were able to view the death as anything other than a capricious random event. At the end of two years, there was no improvement on this. Five years post-death, a little more than half of the study parents (fifty-seven percent) found at least some meaning in the death of their child, but the remaining forty-three percent had not.

Though future studies will add more fine detail to the emotional picture of parents who have suffered the death of a child, enough of a body of information now exists to confirm beyond any reasonable doubt that the conventional wisdom is indeed correct, the death of a child at any age is one of the worst things that can happen to a human being. It fundamentally alters the parents' view of the world, social network, employment and emotional balance. While some are able to cope with this better than others, and women generally better than men, the emotional pain and suffering of parents is incalculable, even under the best of circumstances.

Yet, despite all this greater knowledge in the American family and the parent-child relationship, the law of damages in America continues to view this relationship in terms of the long-outmoded 19th Century analysis of children as economic units. Though part of this is attributable to equally outmoded wrongful death legislation, judicial rear-view mirror vision has been the driving force in perpetuating Baker v. Bolton, piling up an enduring mountain of precedent as it ignores modern social realities. Paradoxically, this rear-view mirror has barred access to the court system for a group who is one of the most deserving—parents whose adult children have been killed.

C. The Economic Value of Children to Aging Parents

While the value of children is no longer focused on economic value, there is an economic aspect to the wrongful death of an adult children.
child that has yet to reach center stage—namely that which comes for the loss of future caregiving potential to infirm aging parents.

In Green v. Bittner\textsuperscript{117} the New Jersey Supreme Court was one of the first to raise this question, though no research then existed then to provide the answers, unlike now. The Court was confronted with a jury verdict of no damages for the family of a high school senior who was killed in an automobile accident. In the trial court's charge to the jury, the scope of pecuniary loss was tightly drawn, limited to household chores.\textsuperscript{118} The court further instructed the jury to deduct the cost of feeding, clothing and educating the decedent child, until she reached the age of majority, including the anticipated cost of her college education.\textsuperscript{119} The applicable New Jersey wrongful death statute\textsuperscript{120} did not allow for any compensation for emotional loss accompanying the death of a child.\textsuperscript{121}

Faced with a result in the trial court that did not conform to the Court's view of basic justice, the Green opinion openly challenged the idea that the loss of a child could adequately be defined by any narrow analysis of the value of household chores.\textsuperscript{122} Such a concept, along with the award of no damages it produced in the trial, "would result in

\begin{itemize}
\item \textsuperscript{117} Green v. Bittner, 424 A.2d 210, 218-20 (N.J. 1980).
\item \textsuperscript{118} Green, 424 A.2d at 211-13.
\item You should consider the services that [decedent] had performed about the household in the past, such as babysitting, cleaning and other types of home chores. In evaluating this claim, you may also consider the likelihood of any chores which . . . [decedent] would have undertaken had she grown older about the house.
\item Id. at 212.
\item Id.
\item Id.
\item Green, 424 A.2d 215-16. "Companionship and advice in this context must be limited strictly to their pecuniary element. The command of the statute is too clear to allow compensation, directly or indirectly, for emotional loss. Our cases uniformly so hold." Id. at 215. The Court mentioned that Arizona, Idaho, Louisiana, Puerto Rico, South Carolina, Texas, Utah, Vermont, Virginia and Washington passed statutes allowing for recovery of traditionally non-pecuniary losses where no such legislative restrictions existed. Id. at 216 n.4. The Green opinion foreshadowed the ultimate outcome of the case broadening the scope of pecuniary loss by noting that even jurisdictions bound by strict pecuniary loss rules had expanded the concept of pecuniary value to include "such items as comfort and companionship, or advice and counsel." Id.
\item Id. at 214-15.
\item Continuing family relationships- uninterrupted by the death of a family member-encompass more than the exchange of physical chores around the house at various times during the family's history, and even more than direct financial contributions. . . . Just as the law recognizes that a child may continue performing services after age 18, and that monetary contributions may also be received by the parents thereafter when the child becomes productive, it should similarly recognize that the child may, as many do, provide valuable companionship and care as the parents get older.
\item Id. at 215.
\end{itemize}
a return to the outmoded doctrine that a child is a liability—not an asset.123

The New Jersey Supreme Court expanded the breadth of the pecuniary loss in those circumstances, looking at the social realities of the parent—child relationship in the latter part of the Twentieth Century rather than blind adherence to centuries-old precedent. The Court raised the question of the economic loss a parent suffers when a potential caregiver is taken from them. Noting that parents now live much longer, with a consistent, dramatic increase in the longevity of the general population,124 the Court cited Bureau of Census Data, showing that while the combined life expectancy for males and females in 1920 was only 54.1 years, it had increased almost 20 years to 73.2 years in 1977.125 The percentage of Americans 65 years old or greater had gone from 9.2 percent in 1960 to a projected 12.2 percent in 1990.126 It was an understandable concern for the Court to behold the absurd contradiction between a decreasing death rate for older Americans and an increasing one for young people.127

With notable prescience, the Green court concluded that a growing population of aging parents would inevitably create a need for care and support from their adult children.

We suspect that there are many more children aged 45 to 55 who are faced with their parents' need for care and guidance than there were in the past.... Nursing homes are not the only vehicle for this assistance. The parents' need is real, and when a middle-aged son or daughter is not there because of a wrongful death, a prospective pecuniary advantage of the aged or infirm parent has been lost.128

Since the time of Green, a large body of research has accumulated on who provides the care to aging family members. Contrary to popular belief, only an estimated ten to twenty percent of family caregivers use formal services through public or private agencies.129 Nearly one

124. Id. at 219.
125. Id. at 219 n.11.
126. Id.
127. Id. at 219 n.12.
128. Id. at 219.
out of four households (twenty-three percent or 22.4 million households) is involved now in caregiving to persons aged fifty or over.\textsuperscript{130} 25.8 million family caregivers assist adults with a disability or chronic illness.\textsuperscript{131} By the year 2007, it is projected that the number of caregiving households in the United States for persons aged fifty-five and over could reach 39 million.\textsuperscript{132}

As suggested in Green, adult children have become a primary source of care to aging parents. Among adults providing such services to a family member or friend of any age, thirty-eight percent provide care to aging parents.\textsuperscript{133} Further, in a national sample of caregivers who live with their care recipients, spouses account for about sixty-two percent of the primary caregivers while adult children comprise twenty-six percent. Secondary caregivers are more likely to be adult children (forty-six percent) than spouses (sixteen percent).\textsuperscript{134}

Studies have demonstrated consistently that there is a considerable time burden on family members providing care to the aged.\textsuperscript{135} Caregivers spend an average of 17.9 hours per week attending to recipients.\textsuperscript{136} This figure increases to twenty hours per week among those providing care for individuals aged sixty-five or over.\textsuperscript{137} 4.1 million of individuals.caring for family or friends spend over forty hours per week doing this, with some providing constant care.\textsuperscript{138} The majority of such caregivers provide unpaid assistance for one to four years.\textsuperscript{139} Twenty percent of this group provided care for five years or longer.\textsuperscript{140}

\textsuperscript{130} National Alliance For Caregiving and American Association of Retired Persons, Family Caregiving In the U.S., Findings From a National Survey, 7–8 (June 1997).

\textsuperscript{131} Peter S. Arno et al., The Economic Value of Informal Caregiving, 18 Health Affairs 182, 184 (1999).


\textsuperscript{133} U.S. Dep’t of Health and Human Services, Informal Caregiving: Compassion in Action 6 (June 1998).


\textsuperscript{136} National Alliance For Caregiving, supra note 130, at 16; Arno, supra note 131, at 183.


\textsuperscript{138} See National Alliance For Caregiving, supra note 130, at 16.

\textsuperscript{139} Stone et al., supra note 135, at 620, 623 tbl. 4.

\textsuperscript{140} Id.
Contemporary research, none of which was available at the time of the Green opinion in 1980, shows the New Jersey Supreme Court's future vision was 20/20. For example, if the services provided by informal caregivers in 1997 had to be replaced with paid services, it would cost an estimated $196 billion.141 In 1997, $83 billion was spent on nursing home care, along with an additional $32 billion for professionals providing home care to disabled adults.142 The estimated $196 billion value of informal caregiving exceeds the expenses for nursing home care and professional home care combined by $81 billion.143

There is a considerable cost to informal caregivers in lost wages and benefits. Research indicates that informal caregivers lose an average of $25,494 in social security benefits, $67,202 in pension benefits and $566,433 in wages.144 The combined average loss of money for informal caregivers is $659,129 per person over their lifetime.

The New Jersey Supreme Court envisioned the range of services that adult children were likely to perform for their aging parents in Green:

Hired companions today perform a variety of services . . . keeping the [infirm adult] company and administering to basic needs. They may prepare and serve meals, do grocery shopping, perform other errands, keep the home tidy, give medicines, make telephone calls, and generally make themselves useful—including making it possible for the [infirm adult] to be outdoors. Care given by children to aging or infirm parents is often indistinguishable from those services. Children also provide many of the services ordinarily rendered by practical nurses, such as bathing the bedridden, changing bandages, moving an immobilized patient, administering medication, spoon-feeding invalids, preparing special meals, keeping a sick room tidy—even removing visitors if they tire the invalid.145

While the New Jersey Supreme Court frankly acknowledged some speculation was likely on the economic value of such support services, it concluded that their pecuniary value had a more solid basis in fact than the prior fiction of monetary contributions to the family by the child.146 In the end, the Court expressed its belief that juries

141. Arno, supra note 131, at 184–85.
142. Id.
143. See id.
145. Green, 424 A.2d at 216 n.2.
146. Id. at 217 n.7 (citing 2 F. HARPER & F. JAMES, THE LAW OF TORTS SUPP. 149 (1968)).
would use common sense and experience to fairly determine the value of these services.\textsuperscript{147} The Court did not believe there was any more conjecture in this calculation than any other a jury must make and discarded the prior standard, which only focused on the value of household chores and direct financial contributions.\textsuperscript{148}

The profound demographic shift of an aging population in America, with more people living longer than ever before, steadily ratchets the implications of Green to greater prominence. With the continuing advances in health care pushing life expectancy further out and growing questions about the ability of government programs to cover all the needs of the elderly, the assistance of adult children is the best, most reliable protection of our seniors. Though it was a long time in coming, the research shows the irrefutable economic value of adult children on this aspect. While modern children have lost any real economic utility in their growing up years, unlike centuries ago, the value has shifted to the other end of the spectrum, when their parents are infirm and need assistance. As Green recognized, if wrongful death actions are to be fair and just in making victims whole for their losses, courts must consider the future economic losses of vulnerable and aging adults.

III. THE INCOMPLETE DEVELOPMENT OF WRONGFUL DEATH LAW FOR LOSS OF ADULT CHILDREN

A. Expansion of the Common Law: Loss of Consortium for Minor Children

There has been some creeping incremental erosion of Baker \textit{v.} Bolton in the potential damages available to parents for the loss of consortium of minor children, either through injury or death.\textsuperscript{149} Initially, this was driven by the fundamental inconsistency between allowing damages to a child for a parent’s death but, when the situation was reversed, denying them for a child’s death. In the case of a parent’s death, the common law moved beyond the blanket prohibition of Baker to permit damages for the loss of a parent’s love and guidance,

\textsuperscript{147} Id. at 219 ("Our expectation is that verdicts will more nearly reflect the actual pecuniary losses suffered").

\textsuperscript{148} Id. at 217-18. ". . . [W]e are not about to deny this pecuniary element of prospective companionship and advice from a child because it may be somewhat more conjectural." Id. at 217.

\textsuperscript{149} See supra Section II, part C.
despite the difficulty in reducing this loss to a dollar figure.\textsuperscript{150} Yet, with regard to a child's death, severe limitations were placed on the loss of consortium, limited to household chores or the probability of future financial contributions by the child to his parent.\textsuperscript{151}

This discrepancy in remedies was impossible to justify on any rational basis. Accordingly, the strict limitation on damages for the loss of parental consortium for the death or injury of children finally began to give way. The unique nature of the parent-child relationship, with an emotional attachment of great value, was recognized as worthy of judicial protection.\textsuperscript{152}

In turn, the strict pecuniary approach to damages for a child's death was increasingly seen as unduly harsh. Over four decades ago, in Wycko v. Gnodtke\textsuperscript{153} the Michigan Supreme Court was one of the first to come right out and declare that the era of child labor, with its fixation on earnings and services, at an end. Though this case was later overruled,\textsuperscript{154} the Michigan legislature broadened the Wrongful Death Act to include recovery for loss of society and companionship, as set forth in Wycko.\textsuperscript{155}

Similarly, the supreme courts of a number of other states have rejected a strict interpretation of pecuniary loss in the death of a minor child.\textsuperscript{156} In the absence of legislation, many state courts moved to expand recovery for non-pecuniary losses. Even in jurisdictions where strict pecuniary loss rules existed, the pecuniary value of items such as comfort, companionship, and advice were permitted, expanding the remedy to the death of adult children.\textsuperscript{157}

\textbf{B. Frank v. Superior Court of Arizona: Expansion of the Parental Right for Loss of Consortium to Adult Children}

Decided in 1985, \textit{Frank v. Superior Court of Arizona} is the first case to conduct a damages analysis that fully realizes the modern parent-child relationship, expanding the loss of consortium to adult children.\textsuperscript{158} The Arizona State Supreme Court dramatically abandoned

\begin{itemize}
  \item \textsuperscript{151} See, e.g., Graf v. Taggart, 204 A.2d 140, 143–45 (N.J. 1964).
  \item \textsuperscript{152} See, e.g., Santosky v. Kramer, 455 U.S. 745 (1982).
  \item \textsuperscript{153} 105 N.W.2d 118 (Mich. 1960).
  \item \textsuperscript{155} MICH. COMP. LAWS ANN. § 600.2922 (2003).
  \item \textsuperscript{156} See Selders v. Armentrout, 207 N.W.2d 686 (Neb. 1983); Fussner v. Andert, 113 N.W.2d 355 (Minn. 1961).
  \item \textsuperscript{157} See Green, 424 A.2d at 216 n. 4; see also supra notes 121–22.
  \item \textsuperscript{158} \textit{Frank}, 722 P.2d 955.
\end{itemize}
the traditional rear-view mirror of the common law and boldly looked out the windshield, realistically describing what social conditions actually existed. The Court held that the parents of an adult child who was severely injured during the negligent administration of anesthesia during surgery were entitled to maintain a cause of action for loss of consortium against a third party. 159 By this point, Arizona already was one of thirty-five states that had effectively overruled Baker, allowing recovery for the loss of companionship and society for wrongful death. 160 Since 1965, such wrongful death actions in Arizona were no longer strictly limited to pecuniary damages, but also included loss of companionship, comfort and guidance. 161

Drawing upon the recent lower court decision in Reben v. Ely 162 that recognized for the first time that a cause of action existed for the loss of consortium of a minor child, the Court in Frank found that "[n]o meaningful distinction can be drawn between death and severe injury when the effect on consortium is concerned." 163

Frank soundly rejected the argument that emancipation frees parents and children from the reciprocal legal obligations of support and obedience, noting that the argument was premised upon "an archaic and outmoded pecuniary theory of parental rights and fundamentally misapprehends the modern elements of consortium." 164 The Court then traced the roots of the loss of consortium action through the common law, from principles of master and servant to the modern conception of the parent-child relationship:

At its earliest stage, then, the action for loss of consortium was in fact an action for loss of services to which the master was entitled. Gradually, however, services became only one element of the action as the intangible elements of love, comfort and society emerged as the predominant focus of consortium actions. 165

Frank directly attacked the pecuniary value origin of loss of consortium in the common law:

It is irrelevant that parents are not entitled to the services of their adult children; they continue to enjoy a legitimate and protectable expectation of consortium beyond majority arising from the very bonds of the family relationship. Surely nature recoils

159. Frank, 722 P.2d at 961.
160. Id. at 957 n.5 (citing Sanchez v. Schindler, 651 S.W.2d 249 (Tex. 1983)).
163. Frank, 722 P.2d at 957.
164. Id. at 958.
165. Id. at 958-59.
from the suggestion that the society, companionship and love which compose filial consortium automatically fade upon eman-
cipation . . . . The filial relationship, admittedly intangible, is
ill-defined by reference to the ages of parties and ill-served by
arbitrary age distinctions. 166

In the end, Frank rejected drawing any arbitrary line when a par-
ent should expect that the value of their adult child's companionship
should be at an end:

We can find no reason for limiting the class of plaintiffs to par-
ents of minor children when the parents of adult children may
suffer equal or greater harm. Why should the parents of an in-
jured seventeen-year-old be allowed to recover for the loss of
consortium, but not the parents of an injured eighteen-year-old?
We can divine no adequate answer based on law or logic. 167

Taking a new broom firmly in hand, Frank swept all the remain-
ing 177-year-old cobwebs of Baker away from Arizona common law.
Without the baggage of the weight of unsound precedent to carry,
Frank was able to achieve a clear thinking analysis of what parents and
children actually mean to one another, at any age. It is only under
these circumstances that the true remedial purposes of the law can be
realized:

... doing all the things that constitute modern living—there
must of necessity be losses, or injuries of many kinds sustained
as a result of the activities of others. The purpose of the law of
torts is to adjust these losses and to afford compensation for in-
juries sustained by one person as the result of the conduct of an-
other. 168

C. Lack of Response to Frank

Despite the well-reasoned analysis of Frank, the continuing force
of the rear-view mirror perspective of the judiciary is not to be under-
estimated. The response to the Arizona State Supreme Court's deci-
sion in Frank has been underwhelming. In Tynan v. Curzi, the Supe-
rior Court of New Jersey, Appellate Division outright rejected the
Frank analysis finding continued vitality in limiting recovery to the
parents for loss of the consortium of minor children, categorizing it as
"a rational response":

166. Id. at 960.
167. Id. at 961.
168. Cecil A. Wright, Introduction to the Law of Torts, 8 CAMBRIDGE L.J. 238, 238 (1944)
As compared to adult children, minors are significantly less likely to have spouses or children of their own. In addition, the period of minority itself is limited. Today, with increasing life expectancy, it is not uncommon that persons sixty or even seventy years of age may still have surviving parents. Extending the parents' cause of action to their adult children, therefore, will in many cases extend the parents' potential period of recovery by as much as forty or fifty years.169

While aware of the poignant circumstances in the facts of Tynan, in which plaintiff's nineteen-year-old daughter was severely injured in an automobile accident, the New Jersey Appellate Court deferred, stating that "[t]o do otherwise would establish a new cause of action beyond that which has been the common law of this state."170

The Washington State Supreme Court's recent opinion in Philippides v. Bernard171 was virtually identical to Tynan. Based on a comparatively recent amendment to the Washington wrongful death statute,172 the trial court had allowed the parents of a twenty-two-year-old bike messenger who was run down and killed by a speeding motorist in a Seattle crosswalk to sue for loss of consortium. The statutory phrase "dependent for support" was held by the trial judge to include the emotional and psychological support of adult children to their parents.173 The defendants appealed a jury award of $900,000 to each of the decedent's parents for loss of consortium.

The Philippides majority rejected both the statutory and common law arguments presented in support of allowing the loss of consortium for the death of adult children, finding the following:

The legislature has identified the statutory beneficiaries. While we may agree that the value parents place on children in our society is no longer associated with the child's ability to provide income to the parents, the legislature has defined who can sue for the wrongful death and injury of a child and we cannot alter the legislative directive.174

While fully cognizant of the Frank decision, which was discussed at length, the majority in Philippides refused to recognize that there had ever been an independent common law right to recover the

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170. Id. at 192.
174. Id. at *6.
wrongful death, in effect perpetuating the unfortunate legacy of *Baker v. Bolton.*

However, in an unmistakable step of forward progress, the Supreme Court of Hawaii directly adopted *Frank* in *Masaki v. General Motors Corp.* a case in which a twenty-eight-year-old auto mechanic was rendered quadriplegic as the result of an alleged product defect. The Hawaii court rejected the narrow economic analysis that valued children only by their services and earnings, finding such reasoning outmoded and illogical:

In the modern family, however, children have become less of an economic asset and more of a financial burden to their parents. Today children are valued for their society and companionship.

The ease with which *Masaki* embraced this concept has not yet been shared by other courts. *Frank* stands out as a lonely beacon of truth in an otherwise bleak legal landscape.

**IV. CONCLUSION**

Courts confronted with fashioning civil remedies for aggrieved parents in future tort cases must make better use of the available clinical and behavioral research. Clearly, the modern conception of the parent-child relationship has moved far beyond the 17th Century notion of a child as a property right. As stated by the Supreme Court of Ohio in *Gallimore v. Children’s Hospital Medical Center,* "[t]he parent-child relationship is unique, and it is particularly deserving of special recognition in the law."

After centuries of adhering to the outmoded view of children as economic units, only a few courts have invoked strongly the modern day view of children’s value in love and companionship. If our civil

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175. *Philippides* relied on the Washington Court of Appeals decision of *Tait v. Wahl,* 97 Wash. App. 765, 771, 987 P.2d 127 (1999), quoting, "Courts of this state have long and repeatedly held, causes of action for wrongful death are strictly a matter of legislative grace and are not recognized in the common law." Though not mentioned by name, *Tait v. Wahl* was heavily influenced by the spirit of *Baker v. Bolton* as the opinion stated, without analysis, "[i]t is settled beyond controversy that, at common law, no civil action could be maintained for damages resulting from the death of a human being." 97 Wash. App. at 771.

177. *Id.* at 569.
178. *Id.* at 577.
179. 617 N.E.2d 1052, 1058 (Ohio 1993).
justice system is to have integrity, it should provide a remedy for those
classes of persons who have suffered the most grievous kind of inju-
ries, physical or emotional, because of the carelessness of others.
Clinical research now conclusively establishes that it makes no differ-
ence to the parents of a child who has been badly injured or killed
whether or not that child was below or above the age of majority. The
severe injury or death of a child at any age causes unimaginable, per-
sistent suffering to the surviving parents. Even from a purely eco-
nomic analysis, research now also shows that the serious injury to or
loss of adult children causes substantial pecuniary loss, given the criti-
cal role they often play in providing care to aging, infirm parents.

Beyond the lingering pernicious effects of Baker v. Bolton, an
economic argument has been made that permitting the parents of
adult children to bring a claim for loss of consortium for the serious
injury to or death of their adult child will “open the floodgates” for
claims. This was raised in Frank v. Superior Court of Arizona, where
the Arizona State Supreme Court dismissed it out of hand; comment-
ing that “such fears have been likened to ‘the fabled cry of wolf’, and
have often proven groundless.”

A search of reported Arizona jury verdicts and settlements over
the ten-year period following the Arizona Supreme Court’s decision in
Frank reveals very few reported cases for the loss of parental consor-
tium involving adult children. Of these relative few, all involved se-

Our critics may wish to perpetuate and anachronistic and sterile view of the relation-
ship between parents and children, but we seek to distance ourselves from that view-
point. Either the common law must be modernized to conform with present-day
norms, or it will engender a lack of respect as being out of touch with the realities of
our time.

Id. See also, similar language used by the Arizona State Supreme Court in extending the parental
right to a loss of consortium action to adult children in Frank, 722 P.2d at 958 (stating “[W]e
believe that this argument against extension of a filial consortium action to adults is premised
upon an archaic and outmoded pecuniary theory of parental rights and fundamentally misappre-
hends the modern elements of consortium.”)

181. Frank, 722 P.2d at 960 (citing Stanley Ingber, Rethinking Intangible Injuries: A Focus
on Remedy, 73 CAL. L. REV. 772, 817 (1985)).

182. The Trial Reporter of Arizona found only 11 total verdicts and settlements for parent-
al loss of consortium of their adult children who had been seriously injured, but not killed.
Eight out of the eleven cases involved adult children who were 21 years of age or younger and
needed continuing parental assistance as a consequence of their injuries. See infra Table B. Letter
from James Leonard, Jr., plaintiff’s attorney in Frank v. Super. Ct. of Aria., 722 P.2d 955
(Ariz. 1986) to Author (Mar. 19 2003) (stating that “My personal belief is that the change in
Arizona personal injury practice has not been tremendous [following Frank] . . . . I would be
tremendously surprised if there have been more than 20 such verdicts or substantial portions of
vere injuries. However, given the concurrent demographic trends of an aging population and an epidemic of violent deaths of young people in America, if the parents of adult children are allowed to pursue actions for loss of consortium for wrongful death or serious injury, it is likely that this remedy will be put to greater use. And the facts of the reported Arizona cases show that these actions are far from frivolous. If a claim is just, it ought to be heard, regardless of how many others like it exist.

The Equal Protection Clause of the United States Constitution provides that no state shall deprive any person of the equal protection of its laws. 183 Unless it employs a suspect classification or burdens a fundamental right, wrongful death statutes are subject to the minimal scrutiny or "rational basis" test. 184 Statutes involving the beneficiaries of wrongful death actions do not involve a suspect classification or fundamental right. 185 Under the rational basis test, a legislative classification will be upheld unless it:

Rests on grounds wholly relevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it. 186

In light of the now proven lifelong bonds of affection and society that exist between parent and child, 187 is there any rational basis for distinguishing between a parent's loss of a minor as compared to an adult child? How can the parents of a minor child recover for loss of consortium and other economic damages, but not the parents of an adult child? If children are no longer viewed as merely chattel, under the now outmoded view of the parent-child relationship, there is no difference. There may have been a rational basis in the 19th and early 20th centuries, when children were expected to contribute to the family income while still in their minority. By modern standards, however, that is no longer true.

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187. See supra Section II, parts A, B.
In *Masunaga v. Gapasin*\(^{188}\) the Washington Court of Appeals considered an equal protection challenge made by the parents of an adult child who was struck and killed by a motorist. The Court rejected the equal protection analysis, holding that the state law restricting the cause of action to those financially dependent on the decedent was sufficient to pass scrutiny under the rational basis test.\(^{189}\) In the end, the Washington court found a "consistent judicial reluctance to tamper with the legislative choice of beneficiaries for wrongful death actions."\(^{190}\) The Washington Court of Appeals decision in *Masunaga* is strikingly similar to the older and increasingly outmoded approach of looking only at the legal technicalities, not at the flesh and blood relationship that exists between parent and child. The question remains how long this kind of analysis will remain viable in the face of increasing research in the social sciences on just how important the parent-child relationship is.

The acknowledged mandate of the common law to incorporate the evolving enlightened views of our society is at fundamental odds with the rear-view mirror approach it has taken. Parents have never received proper consideration in seeking redress for the serious injury to or the wrongful death of their adult children, and basic notions of justice require that these parents be allowed to seek redress for one of the most painful losses that a human being can ever suffer. We have marched backwards into the future far too long.

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\(^{189}\) *Masunaga*, 57 Wash. App. at 634; 790 P.2d at 176 (stating "The mere fact that a statutory classification does not provide a remedy for every conceivable type of injury does not render the statute irrational or unconstitutional."). The court also concluded that "numerous courts have rejected a variety of equal protection arguments similar to those raised here." *Id.* at 177.

\(^{190}\) *Id.*
TABLE A

LIFE EXPECTANCY AT BIRTH, AT AGE 65 YEARS OF AGE, AND AT 75 YEARS OF AGE, ACCORDING TO RACE AND SEX: UNITED STATES, SELECTED YEARS 1900-2001.\(^\text{191}\)  
(Data is based on death certificates)

ALL RACES

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TABLE B
REPORTED ARIZONA VERDICTS & SETTLEMENTS SINCE FRANK DECISION—PARENTAL LOSS OF CONSORTIUM OF ADULT CHILD

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<th>DATE</th>
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<th>CASE NAME</th>
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<th>INJURY</th>
<th>AMOUNT OF AWARD</th>
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<td>Settlement</td>
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<td>UIM</td>
<td>Brown v. State Farm</td>
<td>20</td>
<td>Arbitration</td>
<td>Head Injury</td>
<td>Total of $100,000 for both parents</td>
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<td>Settlement</td>
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<td>$5,000 for each parent</td>
</tr>
<tr>
<td>11/13/90</td>
<td>87-252</td>
<td>Medlock v. United States</td>
<td>Over 18</td>
<td>Settlement</td>
<td>Head Injury</td>
<td>Total of $600,000 for both parents</td>
</tr>
<tr>
<td>12/4/90</td>
<td>88-17396</td>
<td>Barzano v. State of Arizona</td>
<td>18</td>
<td>Verdict</td>
<td>Amputation of Toes</td>
<td>$25,000 for mother, reduced to $14,500</td>
</tr>
<tr>
<td>2/21/92</td>
<td>272492</td>
<td>Murphy v. Sears, Roebuck &amp; Co.</td>
<td>18</td>
<td>Settlement</td>
<td>Head injury, orthopedic injuries</td>
<td>$300,000 to mother</td>
</tr>
<tr>
<td>5/16/97</td>
<td>300722</td>
<td>Greismer v. Nissan Motor Corp.</td>
<td>21</td>
<td>Verdict</td>
<td>Massive brain damage</td>
<td>$250,000 to mother, reduced to $20,000</td>
</tr>
<tr>
<td>5/18/99</td>
<td>98-09505</td>
<td>Mains v. State of Arizona</td>
<td>46</td>
<td>Settlement</td>
<td>Multiple orthopedic</td>
<td>Total of $20,000 to parents</td>
</tr>
<tr>
<td>10/22/99</td>
<td>96-02751</td>
<td>Candello v. Fuji Heavy Industries, Ltd.</td>
<td>19</td>
<td>Verdict</td>
<td>Quadriplegic</td>
<td>$510,000 for each parent</td>
</tr>
<tr>
<td>12/3/99</td>
<td>97-07499</td>
<td>Escalante v. Mechelke, D.O.</td>
<td>18</td>
<td>Verdict</td>
<td>Massive brain damage</td>
<td>Total of $1,000,000 for both parents</td>
</tr>
</tbody>
</table>

192. Data gathered by the Trial Reporter of Arizona, P.O. Box 8187, Phoenix, AZ 85066-8187 at the request of the author (on file with Author). No verdicts or settlements have been reported in Arizona for the loss of parental consortium due to the death of an adult child. While anecdotal evidence suggests that such cases have been brought and settled, for unknown reasons, they have not been reported formally.