

## **Wrongful Death and the Personal Representative**

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## Wrongful Death and the Personal Representative

### I. Key Points

#### A. Statutory:

*The Florida Bar, Litigation under Florida Probate Code §12.3 (11th ed. 2018):*

“Because wrongful death actions did not exist at common law, all claims for wrongful death are created and limited by Florida's Wrongful Death Act.” *Cinghina v. Racik*, 647 So.2d 289, 290 (Fla. 4th DCA 1994). A wrongful death action is brought by the decedent's personal representative. The personal representative is obligated to recover for the benefit of the decedent's survivors and estate all damages specified in the Act. *F.S. 768.20*. “The personal representative is merely a nominal party to the wrongful death action .... The estate and the survivors are the real parties in interest.” *DeVaughn v. DeVaughn*, 840 So.2d 1128, 1132 (Fla. 5th DCA 2003); see *Fla.R.Civ.P. 1.210(a)*.

#### B. Statute of Limitations:

Florida Statutes, Section 95.11 (*sc.* Limitations other than for the recovery of real property):

Actions other than for recovery of real property shall be commenced as follows: . . . .

(4) Within two years. . . . .

(d) An action for wrongful death.

*Nationwide Mutual Fire Insurance Co. v. MacDonald*, 645 So.2d 1057 (Fla. 4th DCA 1994) A cause of action for wrongful death begins to accrue on the date of the decedent's death.

*Hankey v. Yarian*, 755 So.2d 93 (Fla. 2000) Accordingly, we hold the two-year statute of limitations under section 95.11(4)(b) is suspended (“tolled”) for ninety days under section 766.106(4) [action for medical malpractice] and any extended time agreed to by the parties under that same section.

#### C. Therese A. Rando, *How to Go on Living When Someone You Love Dies* (1991)

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### II. Florida Wrongful Death Act

#### A. Florida Statutes, Section 768.16 (sc. Wrongful Death Act):

Sections 768.16-768.26 may be cited as the “Florida Wrongful Death Act.”

*Starling v. R.J. Reynolds Tobacco Co.*, 845 F. Supp. 2d 1215 (M.D. Fla. 2011) Under Florida law, when personal injury results in death, thereby triggering Wrongful Death Act and its abatement of any pending personal injury action, survival statute is still applicable to preserve other actions which deceased person may have brought or was bringing prior to his death, including personal injury actions, in which the personal injury is not also the cause of death.

#### B. Florida Statutes, Section 768.17 (sc. Legislative intent):

It is the public policy of the state to shift the losses resulting when wrongful death occurs from the survivors of the decedent to the wrongdoer. Sections 768.16-768.26 are remedial and shall be liberally construed.

*Nelson v. Freightliner, LLC*, 154 Fed. Appx. 98, 113 (11th Cir. 2005) Under Florida choice-of-law rules, Florida, rather than Kentucky, had most significant relationship to wrongful death action arising from truck driver's death allegedly due to carbon monoxide intoxication from truck's exhaust, and therefore Florida law governed action, even though accident occurred in Kentucky, given that place of injury was only link between Kentucky and action, whereas driver was at least part-time resident of Florida, which had significant interest in ensuring that survivors of its residents were compensated for resident's wrongful death, that driver's son was Florida resident and potentially could recover under Florida law for loss of support and services, parental companionship, instruction, and guidance, and mental pain and suffering, and that Florida law more fully compensated claimants.

#### C. Florida Statutes, Section 768.18 (sc. Definitions):

As used in ss. 768.16-768.26:

(1) “Survivors” means the decedent’s spouse, children, parents, and, when partly or wholly dependent on the decedent for support or services, any blood relatives and adoptive brothers and sisters. It includes the child born out of wedlock of a mother, but not the child born out of wedlock of the father unless the father has recognized a responsibility for the child’s support.

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- (2) “Minor children” means children under 25 years of age, notwithstanding the age of majority.
- (3) “Support” includes contributions in kind as well as money.
- (4) “Services” means tasks, usually of a household nature, regularly performed by the decedent that will be a necessary expense to the survivors of the decedent. These services may vary according to the identity of the decedent and survivor and shall be determined under the particular facts of each case.
- (5) “Net accumulations” means the part of the decedent’s expected net business or salary income, including pension benefits, that the decedent probably would have retained as savings and left as part of her or his estate if the decedent had lived her or his normal life expectancy. “Net business or salary income” is the part of the decedent’s probable gross income after taxes, excluding income from investments continuing beyond death, that remains after deducting the decedent’s personal expenses and support of survivors, excluding contributions in kind.

*Kelly v. Georgia-Pacific, LLC*, 211 So.3d 340 (Fla. 4th DCA 2017) Additionally, we note that the plain language of the Wrongful Death Act indicates that the legislature did not intend for a surviving spouse to recover consortium damages if the surviving spouse was not married to the decedent prior to the date of the decedent’s injury.”

*Domino’s Pizza, LLC v. Wiederhold*, --- So.3d ---- (2018), 2018 WL 2165224, 43 Fla. L. Weekly D1056 Black’s Law Dictionary defines “survivor” even more succinctly as “[o]ne who outlives another.” Survivor, Black’s Law Dictionary (9th ed. 2009). By extension, the common and ordinary meaning of a “surviving spouse” is a married person who outlives his or her husband or wife. Consequently, applying the plain meaning of these terms, we conclude the term “surviving spouse” is necessarily determined on the date of the other spouse’s death because one cannot be a survivor before that date.

### **D. Florida Statutes, Section 768.19 (sc. Right of action):**

When the death of a person is caused by the wrongful act, negligence, default, or breach of contract or warranty of any person, including those occurring on navigable waters, and the event would have entitled the person injured to maintain an action and recover damages if death had not ensued, the person or watercraft that would have been liable in damages if death had not ensued shall be liable for damages as specified in this act notwithstanding the death of the person injured, although death was caused under circumstances constituting a felony.

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*Martins v. Royal Caribbean Cruises Ltd.*, 174 F. Supp. 3d 1345 (S.D. Fla. 2016) The remedies under the Florida Wrongful Death Act are preempted by the Death on the High Seas Act (DOHSA), where the alleged wrongful act on the high seas results in the death of a non-seaman.

### **E. Florida Statutes, Section 768.20 (sc. Parties):**

The action shall be brought by the decedent's personal representative, who shall recover for the benefit of the decedent's survivors and estate all damages, as specified in this act, caused by the injury resulting in death. When a personal injury to the decedent results in death, no action for the personal injury shall survive, and any such action pending at the time of death shall abate. The wrongdoer's personal representative shall be the defendant if the wrongdoer dies before or pending the action. A defense that would bar or reduce a survivor's recovery if she or he were the plaintiff may be asserted against the survivor, but shall not affect the recovery of any other survivor.

*Thompson v. Hodson*, 825 So.2d 941, 951 (Fla. 1st DCA 2002) The personal representative, as the statutorily-appointed party plaintiff in the wrongful death case, is merely a conduit for the settlement proceeds, and he is duty-bound to apportion the proceeds equitably among the estate and the survivors.

*Wagner, Vaughan, McLaughlin & Brennan, P.A. v. Kennedy Law Group*, 64 So. 3d 1187 (Fla. 2011) The Act also eliminates the multiplicity of suits that resulted from each survivor bringing an independent action and avoids survivors racing to get the first judgment. . . . By statute, the personal representative is the only party with standing to bring a wrongful death action to recover damages for the benefit of the decedent's survivors and the estate. . . . The survivors may not bring separate legal actions and are required to participate in the single legal action filed by the estate.

### **F. Florida Statutes, Section 768.21 (sc. Damages):**

All potential beneficiaries of a recovery for wrongful death, including the decedent's estate, shall be identified in the complaint, and their relationships to the decedent shall be alleged. Damages may be awarded as follows:

(1) Each survivor may recover the value of lost support and services from the date of the decedent's injury to her or his death, with interest, and future loss of support and services from the date of death and reduced to present value. In evaluating loss of support and services, the survivor's relationship to the decedent, the amount of the decedent's probable net

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income available for distribution to the particular survivor, and the replacement value of the decedent's services to the survivor may be considered. In computing the duration of future losses, the joint life expectancies of the survivor and the decedent and the period of minority, in the case of healthy minor children, may be considered.

(2) The surviving spouse may also recover for loss of the decedent's companionship and protection and for mental pain and suffering from the date of injury.

(3) Minor children of the decedent, and all children of the decedent if there is no surviving spouse, may also recover for lost parental companionship, instruction, and guidance and for mental pain and suffering from the date of injury. For the purposes of this subsection, if both spouses die within 30 days of one another as a result of the same wrongful act or series of acts arising out of the same incident, each spouse is considered to have been predeceased by the other.

(4) Each parent of a deceased minor child may also recover for mental pain and suffering from the date of injury. Each parent of an adult child may also recover for mental pain and suffering if there are no other survivors.

(5) Medical or funeral expenses due to the decedent's injury or death may be recovered by a survivor who has paid them.

(6) The decedent's personal representative may recover for the decedent's estate the following:

(a) Loss of earnings of the deceased from the date of injury to the date of death, less lost support of survivors excluding contributions in kind, with interest. Loss of the prospective net accumulations of an estate, which might reasonably have been expected but for the wrongful death, reduced to present money value, may also be recovered:

1. If the decedent's survivors include a surviving spouse or lineal descendants; or

2. If the decedent is not a minor child as defined in s. 768.18(2), there are no lost support and services recoverable under subsection (1), and there is a surviving parent.

(b) Medical or funeral expenses due to the decedent's injury or death that have become a charge against her or his estate or that were paid by or on behalf of decedent, excluding amounts recoverable under subsection (5).

(c) Evidence of remarriage of the decedent's spouse is admissible.

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(7) All awards for the decedent's estate are subject to the claims of creditors who have complied with the requirements of probate law concerning claims.

(8) The damages specified in subsection (3) shall not be recoverable by adult children and the damages specified in subsection (4) shall not be recoverable by parents of an adult child with respect to claims for medical negligence as defined by s. 766.106(1).

*BellSouth Telecommunications, Inc. v. Meeks*, 863 So.2d 287 (Fla.2003) We therefore hold that the damages recoverable by a minor child under section 768.21(3) are not limited to the period of minority, but should be calculated based on the joint life expectancies of the minor child and the deceased parent.

*Guadalupe v. Peterson*, 779 So.2d 494, 497 (Fla. 2d DCA 2000) Provision of Wrongful Death Act defining "minor children" as children under 25 years of age, notwithstanding age of majority, included all children under age of 25, regardless of marital status; therefore, mother had claim for wrongful death of her 23-year-old married son, pursuant to provision allowing parents of deceased minor child to recover for mental pain and suffering from date of injury.

### **G. Florida Statutes, Section 768.22 (sc. Form of verdict):**

The amounts awarded to each survivor and to the estate shall be stated separately in the verdict.

### **H. Florida Statutes, Section 768.23 (sc. Protection of minors and incompetents):**

The court shall provide protection for any amount awarded for the benefit of a minor child or an incompetent pursuant to the Florida Guardianship Law.

### **I. Florida Statutes, Section 768.24 (sc. Death of a survivor before judgment):**

A survivor's death before final judgment shall limit the survivor's recovery to lost support and services to the date of his or her death. The personal representative shall pay the amount recovered to the personal representative of the deceased survivor.

### **J. Florida Statutes, Section 768.25 (sc. Court approval of settlements):**

While an action under this act is pending, no settlement as to amount or apportionment among the beneficiaries which is objected to by any survivor or which affects a survivor who is a minor or an incompetent shall be effective unless approved by the court.

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*Brown v. Brown*, 873 So.2d 601 (Fla. 5th DCA 2004) If the wrongful death case goes to trial, the jury will decide; if it settles, and agreement cannot be reached on allocation of the settlement proceeds, it is the judge who must hear the evidence on such issues and who must make the decision. To have the fact finder attempt to ascertain what another fact finder might have done based on hypothetical evidence is unworkable and unwise.”

### **K. Florida Statutes, Section 768.26 (sc. Litigation expenses):**

Attorneys’ fees and other expenses of litigation shall be paid by the personal representative and deducted from the awards to the survivors and the estate in proportion to the amounts awarded to them, but expenses incurred for the benefit of a particular survivor or the estate shall be paid from their awards.

*The Florida Bar, Litigation under Florida Probate Code §12.8 (11th ed. 2018)* Frequently, the decedent will have incurred medical expenses for treatment of the injury giving rise to a wrongful death claim. A variety of sources including, but not limited to, Medicaid, Medicare, health insurance policies, and auto insurance policies may have made payments to medical providers on behalf of the decedent. Medical payments from these sources may result in liens that attach to the estate’s share of the wrongful death recovery. These liens may attach regardless of whether there has been compliance with creditors’ claim requirements. The legal basis and method for calculating the lien differs depending on the identity of the payor.

## **III. Florida Probate Rules**

### **A. Florida Probate Rule 5.120 (sc. Administrator Ad Litem And Guardian Ad Litem):**

(a) Appointment. When it is necessary that the estate of a decedent or a ward be represented in any probate or guardianship proceeding and there is no personal representative of the estate or guardian of the ward, or the personal representative or guardian is or may be interested adversely to the estate or ward, or is enforcing the personal representative’s or guardian’s own debt or claim against the estate or ward, or the necessity arises otherwise, the court may appoint an administrator ad litem or a guardian ad litem, as the case may be, without bond or notice for that particular proceeding. At any point in a proceeding, a court may appoint a guardian ad litem to represent the interests of an incapacitated person, an unborn or unascertained person, a minor or any other person otherwise under a legal disability, a person with a developmental disability, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. The administrator ad



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litem or guardian ad litem shall file an oath to discharge all duties faithfully and upon the filing shall be qualified to act. No process need be served upon the administrator ad litem or guardian ad litem, but such person shall appear and defend as directed by the court.

### **B. Florida Probate Rule 5.636 (sc. Settlement Of Minors' Claims):**

d) Guardian Ad Litem. The court shall appoint a guardian ad litem on behalf of a minor, without bond or notice, with respect to any proposed settlement that exceeds \$50,000 and affects the interests of the minor, if:

- (1) there is no court-appointed guardian of the minor;
- (2) the court-appointed guardian may have an interest adverse to the minor; or
- (3) the court determines that representation of the minor's interest is otherwise inadequate.

(e) Valuation of Proposed Settlement. A proposed settlement is deemed to exceed \$50,000 if the gross amount payable exceeds \$50,000, without reduction to reflect present value or fees and costs.

### Committee Notes

When a civil action is pending, the petition for approval of settlement should be filed in that civil action. In all other circumstances, the petition for approval of settlement should be filed in the same court and assigned to a judge who would preside over a petition for appointment of guardian of a minor.

The total settlement to be considered under subdivisions (d) and (e) is not limited to the amounts received only by the minor, but includes all settlement payments or proceeds received by all parties to the claim or action. For example, the proposed settlement may have a gross value of \$60,000, with \$30,000 payable to the minor and \$30,000 payable to another party. In that instance the total proposed settlement exceeds \$50,000. Further, the "gross amount payable" under subdivision (e) is the total sum payable, without reducing the settlement amount by fees and costs that might be paid from the proceeds of the settlement. For example, if the proposed settlement is \$60,000 but \$20,000 of that sum will be paid to the attorneys representing the minor's interest in the action, the "gross amount payable" still exceeds \$50,000. Likewise, the "gross amount payable" cannot be reduced to reflect the present value of the proposed settlement on behalf of the minor.

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### IV. Florida Statutes Chapter 744 (sc. Florida Guardianship Law)

#### A. Florida Statutes, Section 744.301 (sc. Natural guardians):

(1) The parents jointly are the natural guardians of their own children and of their adopted children, during minority, unless the parents' parental rights have been terminated pursuant to chapter 39. If a child is the subject of any proceeding under chapter 39, the parents may act as natural guardians under this section unless the court division with jurisdiction over guardianship matters finds that it is not in the child's best interests. If one parent dies, the surviving parent remains the sole natural guardian even if he or she remarries. If the marriage between the parents is dissolved, the natural guardianship belongs to the parent to whom sole parental responsibility has been granted, or if the parents have been granted shared parental responsibility, both continue as natural guardians. If the marriage is dissolved and neither parent is given parental responsibility for the child, neither may act as natural guardian of the child. The mother of a child born out of wedlock is the natural guardian of the child and is entitled to primary residential care and custody of the child unless the court enters an order stating otherwise.

(2) Except as otherwise provided in this chapter, on behalf of any of their minor children, and without appointment, authority, or bond if the amounts received in the aggregate do not exceed \$15,000, natural guardians may:

- (a) Settle and consummate a settlement of any claim or cause of action accruing to any of their minor children for damages to the person or property of any minor children;
- (b) Collect, receive, manage, and dispose of the proceeds of any settlement;
- (c) Collect, receive, manage, and dispose of any real or personal property distributed from an estate or trust;
- (d) Collect, receive, manage, and dispose of and make elections regarding the proceeds from a life insurance policy or annuity contract payable to, or otherwise accruing to the benefit of, the child; and
- (e) Collect, receive, manage, dispose of, and make elections regarding the proceeds of any benefit plan as defined in s. 710.102, of which the minor is a beneficiary, participant, or owner.

(4) All instruments executed by a natural guardian for the benefit of the ward under the powers specified in this section are binding on the ward. The natural guardian may not, without a court order, use the property of the ward for the guardian's benefit or to satisfy the guardian's support obligation to the ward.

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### **B. Florida Statutes, Section 744.387 (sc. Settlement of claims):**

(1) When a settlement of any claim by or against the guardian, whether arising as a result of personal injury or otherwise, and whether arising before or after appointment of a guardian, is proposed, but before an action to enforce it is begun, on petition by the guardian of the property stating the facts of the claim, question, or dispute and the proposed settlement, and on any evidence that is introduced, the court may enter an order authorizing the settlement if satisfied that the settlement will be for the best interest of the ward. The order shall relieve the guardian from any further responsibility in connection with the claim or dispute when the settlement has been made in accordance with the order. The order authorizing the settlement may also determine whether an additional bond is required and, if so, shall fix the amount of it.

(2) In the same manner as provided in subsection (1) or as authorized by s. 744.301, the natural guardians or guardian of a minor may settle any claim by or on behalf of a minor that does not exceed \$15,000 without bond. A legal guardianship shall be required when the amount of the net settlement to the ward exceeds \$15,000.

(3)(a) No settlement after an action has been commenced by or on behalf of a ward shall be effective unless approved by the court having jurisdiction of the action.

(b) In the event of settlement or judgment in favor of the ward or minor, the court may authorize the natural guardians or guardian, or a guardian of the property appointed by a court of competent jurisdiction, to collect the amount of the settlement or judgment and to execute a release or satisfaction. When the amount of net settlement to the ward or judgment exceeds \$15,000 and no guardian has been appointed, the court shall require the appointment of a guardian for the property.

(4) In making a settlement under court order as provided in this section, the guardian is authorized to execute any instrument that may be necessary to effect the settlement. When executed, the instrument shall be a complete release of the person making the settlement.

### **C. Florida Statutes, Section 744. 3025 (sc. Claims of minors):**

(1)(a) The court may appoint a guardian ad litem to represent the minor's interest before approving a settlement of the minor's portion of the claim in a case in which a minor has a claim for personal injury, property damage, wrongful death, or other cause of action in which the gross settlement of the claim exceeds \$15,000 if the court believes a guardian ad litem is necessary to protect the minor's interest.

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- (b) Except as provided in paragraph (e), the court shall appoint a guardian ad litem to represent the minor's interest before approving a settlement of the minor's claim in a case in which the gross settlement involving a minor equals or exceeds \$50,000.
  - (c) The appointment of the guardian ad litem must be without the necessity of bond or notice.
  - (d) The duty of the guardian ad litem is to protect the minor's interests as described in the Florida Probate Rules.
  - (e) A court need not appoint a guardian ad litem for the minor if a guardian of the minor has previously been appointed and that guardian has no potential adverse interest to the minor.
- (2) Unless waived, the court shall award reasonable fees and costs to the guardian ad litem to be paid out of the gross proceeds of the settlement.
  - (3) A settlement of a claim pursuant to this section is subject to the confidentiality provisions of this chapter.

### **D. Florida Statutes, Section 744.3701 (sc. Confidentiality):**

- (1) Unless otherwise ordered by the court, upon a showing of good cause, an initial, annual, or final guardianship report or amendment thereto, or a court record relating to the settlement of a claim, is subject to inspection only by the court, the clerk or the clerk's representative, the guardian and the guardian's attorney, the guardian ad litem with regard to the settlement of the claim, the ward if he or she is at least 14 years of age and has not been determined to be totally incapacitated, the ward's attorney, the minor if he or she is at least 14 years of age, or the attorney representing the minor with regard to the minor's claim, or as otherwise provided by this chapter.
- (2) The court may direct disclosure and recording of parts of an initial, annual, or final report or amendment thereto, or a court record relating to the settlement of a claim, including a petition for approval of a settlement on behalf of a ward or minor, a report of a guardian ad litem relating to a pending settlement, or an order approving a settlement on behalf of a ward or minor, in connection with a real property transaction or for such other purpose as the court allows.
- (3) A court record relating to the settlement of a ward's or minor's claim, including a petition for approval of a settlement on behalf of a ward or minor, a report of a guardian ad litem relating to a pending settlement, or an order approving a settlement on behalf of a ward or minor, is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and may not be disclosed except as specifically authorized.
- (4) The clerk may disclose confidential information to the Department of Children and Families or law enforcement agencies for other purposes as provided by court order.

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### V. Standard Jury Instructions - Civil Cases

“This web site contains standard jury instructions prepared by the Florida Supreme Court Standard Jury Instructions Committee (Civil) and approved for publication by the Florida Supreme Court.”

[http://www.floridasupremecourt.org/civ\\_jury\\_instructions/index.shtml](http://www.floridasupremecourt.org/civ_jury_instructions/index.shtml)

#### 6.6

### WRONGFUL DEATH DAMAGES RECOVERABLE FOR ESTATE AND SURVIVORS: ELEMENTS

*a. Lost earnings:*

**The estate’s loss of earnings of the decedent from the date of injury to the date of death, less any amount of monetary support you determine a survivor lost during that period.**

*b. Lost accumulations:*

**The estate’s loss of net accumulations: “Net accumulations” is the part of the decedent’s net income [from salary or business] after taxes, including pension benefits [but excluding income from investments continuing beyond death], which the decedent, after paying his personal expenses and monies for the support of his survivors, would have left as part of this estate if he had lived his normal life expectancy.**

*Comment on 6.6b*

The estate may recover lost accumulations when the sole survivor is a parent without a cause of action in his or her own right, as well as when survivors include a spouse or lineal descendant. §768.21(6)(a), F.S. (1985); *Vildibill v. Johnson*, 492 So.2d 1047 (Fla. 1986). The committee expresses no opinion concerning whether “net accumulations” include income ending at death which is not derived from salary or business. See §768.18(5), F.S. (1985). See *Delta Airlines, Inc. v. Ageloff*, 552 So.2d 1089 (Fla. 1989) and *Wilcox v. Leverock*, 548 So.2d 1116 (Fla. 1989).

*c. Medical or funeral expenses:*

**Medical or funeral expenses due to the decedent’s injury or death which [have become a charge against the decedent’s estate] [were paid by or on behalf of the decedent by one other than a survivor].**

#### ELEMENTS FOR SURVIVORS

*d. Lost support and services:*

**The survivor’s loss, by reason of decedent’s injury and death, of the decedent’s support and services [including interest at (legal rate) on any amount awarded for such loss from the date of injury to the date of death]. In determining the duration of any future loss, you may consider the joint life expectancy of the survivor and the decedent [and the period of minority, ending at age 25, of a healthy minor child].**

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**In evaluating past and future loss of support and services, you shall consider the survivor's relationship to the decedent, the amount of the decedent's probable net income available for distribution to the survivor and the replacement value of the decedent's services to the survivor. ["Support" includes contributions in kind as well as sums of money. "Services" means tasks regularly performed by the decedent for a survivor that will be a necessary expense to the survivor because of the decedent's death.]\***

*\*The bracketed material should be given only when warranted by the evidence and requested by a party.*

### NOTE ON USE OF 6.6d

1. *Period of minority.* The period of minority for purposes of the wrongful death act is age 25. §768.18(2), F.S. The bracketed reference to the period of minority, in the first paragraph, should not be given if the minor survivor's dependency will continue beyond that age because the child is not "healthy," or if the decedent was a minor on whose support or services the claimant survivor would remain dependent beyond that time.

2. *Support and services specially defined.* The special definitions of these terms bracketed in the second paragraph should be given only when warranted by the evidence and requested by a party.

e. *Medical and funeral expenses paid by survivor:*

**[Medical] [or] [funeral] expenses due to the decedent's [injury] [or] [death] paid by any survivor.**

### \*ADDITIONAL ELEMENTS FOR SURVIVING SPOUSE, CHILD OR PARENTS OF CHILD

f. *Damages of surviving spouse:*

**The [wife's] [husband's] loss of the decedent's companionship and protection, and [her] [his] mental pain and suffering as a result of the decedent's injury and death. In determining the duration of such losses, you may consider the [joint life expectancy of the decedent and the surviving spouse] [life expectancy of the surviving spouse] together with the other evidence in the case.**

### NOTE ON USE OF 6.6f

\*Sections 768.18 and 768.21, Fla. Stat. (1990), applicable to causes of action accruing after October 1, 1990, expand eligible survivor claimants in wrongful death actions by surviving parents and children, but are not applicable to claims for medical malpractice as defined by Section 766.106(1), Fla. Stat. (1989).

The Committee revised this charge in 1987 to recognize that §768.21(2), F.S., and case law do not make "joint life expectancy" the only measure for the duration of future loss by a surviving spouse. The revision is intended to allow a jury determination, if warranted by the evidence, that in the case at hand the surviving spouse's loss will continue beyond the "joint life expectancy" until the survivor's death, or will end before that actuarial period has elapsed.

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*g. Damages by surviving child:*

**The loss by (name all eligible children) of parental companionship, instruction and guidance, and [his] [her] [their] mental pain and suffering as a result of the decedent's injury and death. In determining the duration of such losses, you may consider the [joint life expectancy of the decedent and [the surviving child] [each of the surviving children]] [life expectancy of [the surviving child] [each of the surviving children]] together with the other evidence in the case.**

NOTE ON USE OF 6.6g

As in the case of 6.6f, the Committee revised 6.6g in 1987 to recognize that "joint life expectancy" is not prescribed by §768.21(3), F.S., as the only measure of a child's future loss. The evidence may support a finding of a longer or a shorter duration.

*h. Damages by surviving parent of child:*

**The mental pain and suffering of (name parents) as a result of the injury and death of (name child). In determining the duration of such mental pain and suffering, you may consider the life [expectancy] [expectancies] of the surviving parent[s] together with the other evidence in the case.**

NOTE ON USE OF 6.6h

As in the case of 6.6f and 6.6g, the Committee revised 6.6h in 1987 to acknowledge that the duration of future losses compensable under §768.21(4), F.S., may be longer or shorter than "joint life expectancy," depending on the evidence.

**VI. Verdict Forms** – "The following Model Verdict forms are included as examples of how issues can be submitted to the jury."

[http://www.floridasupremecourt.org/civ\\_jury\\_instructions/index.shtml](http://www.floridasupremecourt.org/civ_jury_instructions/index.shtml)

**A. 8.1b - MODEL FORM OF VERDICT ITEMIZING WRONGFUL DEATH DAMAGES (TORT REFORM ACT OF 1986, §768.77, FLA.STAT. 1987)**

**B. 8.1d - MODEL FORM OF VERDICT ITEMIZING WRONGFUL DEATH DAMAGES WITH PAST AND FUTURE DAMAGES SEPARATED (TORT REFORM ACT OF 1986, §768.77, FLA. STAT. (1999))**

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**C. 8.1f - MODEL FORM OF VERDICT ITEMIZING WRONGFUL DEATH DAMAGES WITHOUT PAST AND FUTURE DAMAGES SEPARATED (TORT REFORM ACT OF 1986, §768.77, FLA. STAT. (1999))**