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INTRODUCTION

For the sake of brevity, the Respondents, Harold Ageloff and Carol M. Ageloff, as Personal Representatives of the Estate of Scott Alan Ageloff, the Plaintiffs below, shall be referred to herein as the Plaintiffs. The Movant, Delta Airlines, Inc., the Defendant below, shall be referred to as the Defendant, or as Delta. Record references are by volume number, document number and page number as assigned on the Federal Court Docket (App. 1). For example, the reference R4-9-6 indicates:

R	Record Reference
4	Volume Number
9	Document Number
6	Page Number

STATEMENT OF THE CASE

Delta adopts and incorporates by reference the Joint Statement of Facts transmitted to this Court by the United States Court of Appeals for the Eleventh Circuit on February 17, 1989, (App. 5-10), with the exception of those paragraphs pertaining to the testimony of Delta's expert economist, Dr. Hartley Mellish. (App. 9-10) The testimony of Delta's expert is not under review and is irrelevant to any questions of law before this Court.

The following graphs (Figures 1 and 2) will assist in understanding the testimony of the Plaintiffs' economists. Both graphs represent the annual savings of the decedent as projected by the economists. The horizontal axes indicate time in years beginning with the decedent's actual death and ending with the decedent's life expectancy. The vertical axes indicate the amount in dollars assumed to have been saved by the decedent. The yellow bars signify the economists' estimates of the actual earnings that Scott Ageloff would receive from his employment at Harry's Kidsworld and retained as part of his estate. The red bars are the economists' projections of the decedent's annual saved income attributable to income from investments alone. The amounts shown in red are the subject of this appeal.

It should be emphasized that the graphed projections are for annual savings only. The projected income of the decedent ranges from four to ten times the figures indicated on the graphs. The net accumulations estimated by each economist (unreduced to present value) is the sum of all the bars appearing on the graph.

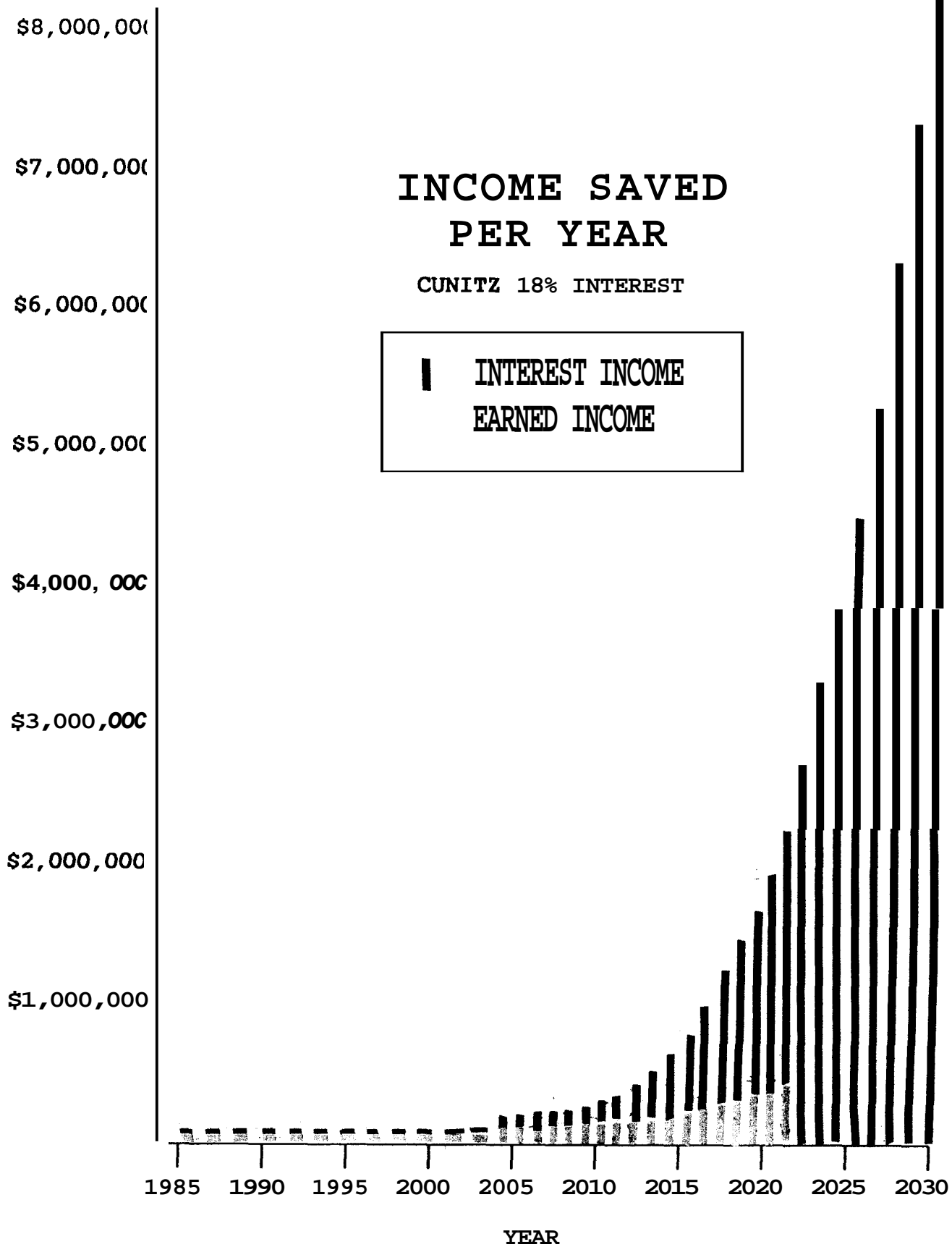


FIGURE 1

\$4,000,000

\$3,500,000

\$3,000,000

\$2,500,000

\$2,000,000

\$1,500,000

\$1,000,000

\$500,000

INCOME SAVED PER YEAR

GOFFMAN 12.5% INTEREST

INTEREST INCOME
EARNED INCOME

1985 1990 1995 2000 2005 2010 2015 2020 2025 2030

YEAR

FIGURE 2

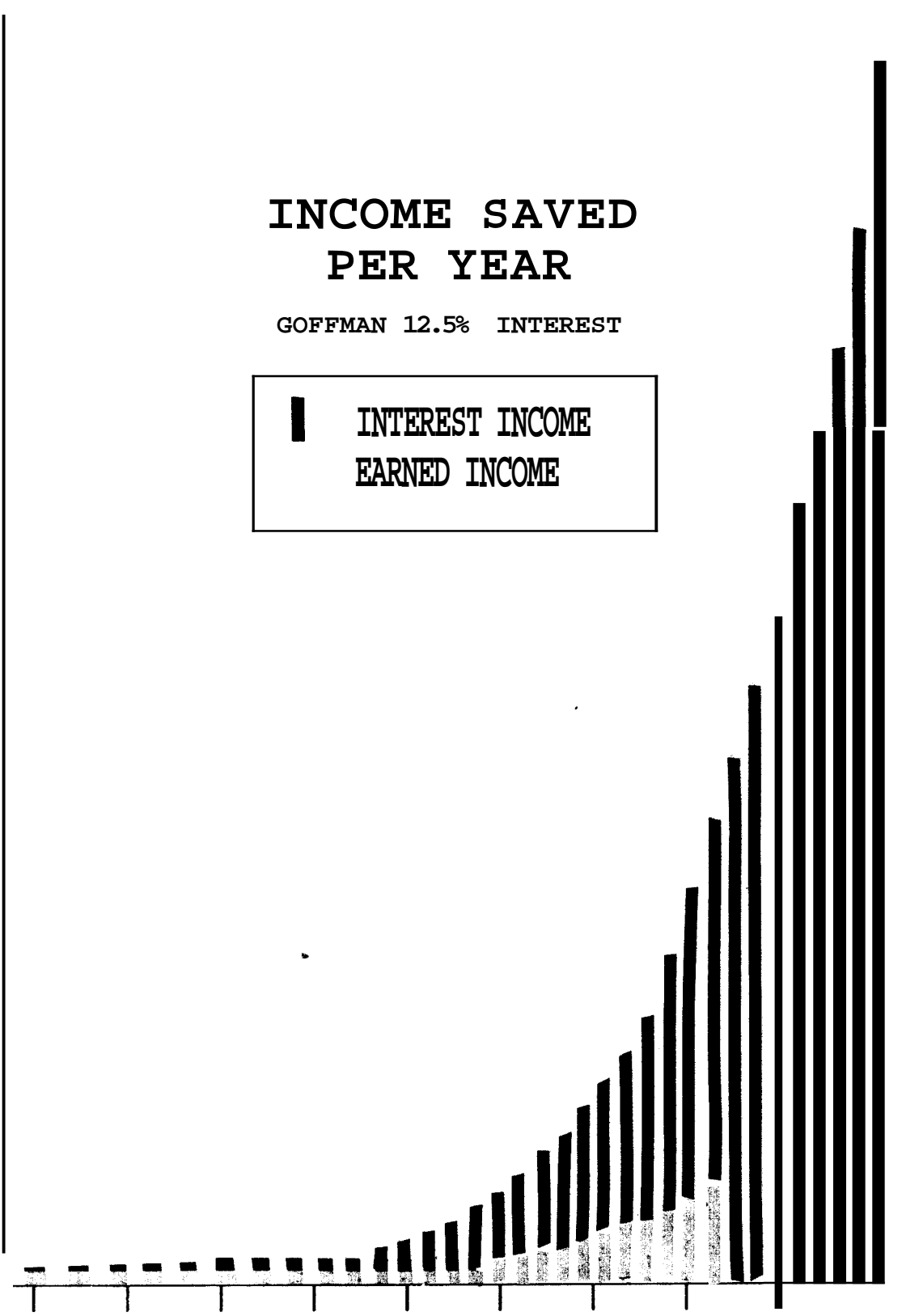


Figure 1 depicts the testimony of Dr. Cunitz. The graph illustrates the tremendous exponential increases in income that result from including investment income calculated at an 18% interest rate. Observe that the earned income (yellow bars) end in the year 2021, the year that Dr. Cunitz assumed the decedent would retire. Thereafter, between the years 2022 and 2030, the estate experiences its most dramatic accretion -- nearly 43 million dollars, almost 80% of the unreduced net accumulations projected by Dr. Cunitz. Stated differently, the estate continues to grow over 400% even though the decedent is no longer earning a "business or salary income." Dr. Cunitz conceded that the estate would continue to grow even if the decedent had died upon the date of retirement. (R6-71-48).

Without the income from investments, Dr. Cunitz's projections would yield a present value of approximately \$550,000 for net accumulations. Dr. Cunitz, however, testified that the present value of net accumulations would be \$2,829,688, an increase of over 500%.

Figure 2 illustrates the testimony of the Plaintiffs' other economist, Dr. Goffman. The graph again reveals the extreme exaggeration of the decedent's income by the inclusion of interest on investments. As with Dr. Cunitz's calculations, the vast majority of the decedent's income is received after the projected retirement date. By merely excluding the pure investment income received after retirement, Dr. Goffman's projections would yield a present value of approximately \$640,000 for net accumulations. Excluding all income from investments would yield a present value

for net accumulations of approximately \$475,000. Dr. Goffman, however, testified to a present value of \$1,974,190, an increase of over 400%.

CERTIFIED QUESTIONS

1. Does the definition of Net Accumulations under Fla. Stat. §768.18(5) of the Florida Wrongful Death Act:
 - (a) include investment income?
 - (b) exclude the investment return on future savings of a Decedent as constituting "income from investments continuing beyond death?"

2. Under the Florida Wrongful Death Act, should determination of the future inflationary effects on prospective net accumulations be calculated upon the (i) below-market-discount method, (ii) the case-by-case method, (iii) the total offset method?

SUMMARY OF ARGUMENT

The questions certified by the United States Court of Appeals for the Eleventh Circuit require interpretation of the Florida Wrongful Death Act in accordance with legislative intent. The intent of the legislature is to be determined by the language of the statute and the legislative history.

The legislative intent of the Act was to create a single, purely compensatory wrongful death action where liability would not attach without losses demonstrably caused by the decedent's death. The investment income claimed by the Plaintiffs in the instant case has not been lost to the estate as a result of the decedent's death. Recovery of the actual salaried income of the decedent enables the estate to earn the claimed interest income through investment of the proceeds. Permitting a damage award to include passive income results in double recovery of this income.

The legislature also intended to provide uniformity and predictability by specifically enumerating recoverable elements of damage. The definition of net accumulations specifies only "net business or salary income" and does not include investment income. The legislature's specific mention of active income implies the exclusion of passive income.

Moreover, the legislature expressly excluded investment income continuing beyond death from recoverable "net business or salary income." Accordingly, investment income is not an element of damage under the Florida Wrongful Death Act.

Lastly, the uniformity and predictability intended by the legislature may be achieved only by standardizing the method of computation used by economists in predicting the future effects of inflation. The method preferred in commentary by both the United States Court of Appeals for the Fifth Circuit (binding the Eleventh Circuit) and the Florida District Court of Appeal for the Second District is the below-market-discount method. Only this method will assure uniformity and reduce unnecessary depletion of judicial resources. Accordingly, future inflationary effects on net accumulations should be calculated upon the below-market-discount method.

ARGUMENT

I.

The Damages Granted a Decedent's Estate Under the
Florida Wrongful Death Act Do Not Include Investment Income

A. Legislative Intent of the Florida Wrongful Death Act

The issue of whether investment income is an element of damage recoverable under the Florida Wrongful Death Act requires the Court to engage in statutory interpretation. The polestar by which the Court must be guided in construing the Act is the determination of legislative intent. Scarborough v. Newsome, **7 So.2d 321** (Fla. **1942**).

Since the Florida Wrongful Death Act is in derogation of the common law, it would ordinarily be strictly construed. The Act, however, is remedial and must be construed liberally. Section **768.17** Florida Statutes. Yet, the Act cannot be construed so "liberally" as to reach a result contrary to the clear intent of the legislature. Stern v. Miller, **348 So.2d 303** (Fla. **1977**). The statutory provisions must be construed to be consistent with the objectives sought to be accomplished. The Court is without authority to do by statutory construction that which the legislature has not intended. Stern, supra. Judicial construction of a wrongful death statute cannot impose damages not stated in the statute. Flanders v. Georgia S. & F. Ry. Co., **67 So. 68** (Fla. **1914**) (construing previous act).

The legislative intent in promulgating the Florida Wrongful Death Act is declared in **§768.17** of the Act itself. That section states that "[i]t 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."

Another source for determining the intent of the legislature is the Recommendations and Report on Proposed Revision of Florida Wrongful Death Statutes, Florida Law Revision Commission, December 1969 (hereinafter "FLRC Report"), in which the Commission proposed the statute under review.¹

The objective expressed by the Florida Law Revision Commission in proposing the legislation was "to allow full recovery on behalf of those who were dependent on the deceased and who have sustained demonstrable losses of support and services by the wrongful death." FLRC Report, p. 8. The Commission also recognized that the prior death acts were equally unfair to the tortfeasor and provided windfalls to those who had not sustained losses by reason of the decedent's death. FLRC Report, p. 8, 33. The two-fold intention, therefore, of the Florida Wrongful Death Act is to provide fair compensation to those who had suffered losses as a result of a wrongful death, and to protect defendants from unfair recoveries not attributable to actual losses.

B. Legislative Intent of the "Net Accumulations" Formula

Net accumulations, as an element of damages to the estate, is awardable pursuant to Fla. Stat. §768.21(6)(a) which provides in pertinent part:

Loss of the prospective net accumulations of an estate, which might reasonably have been

¹The original draft of Fla. Stat. §768.18(5) was adopted by the legislature without revision or amendment. See, FLRC Report, p. 10.

expected but for the wrongful death, reduced to present money value, may also be recovered . . .

The term "net accumulations" was a departure from previous statutory language which stated only that "the jury shall give such damages as the party or parties may have sustained by reason of the death of the party killed." Fla. Stat. **§768.02**, enacted **1883**. The Florida courts interpreted this terse language to mean that, when the estate was the only party entitled to recover, "the proper measure of such damages is the present worth of the decedent's life to an estimated prospective estate that he probably would have earned and saved after becoming of age and during his life expectancy to be left at his death." Florida East Coast Ry. Co. v. Hayes, **64 So. 504** (Fla. **1914**).

The Florida Law Revision Commission examined several different theories of damage measurement utilized by different states where loss to the estate is recoverable; The Commission dubbed the damage theory employed by Florida courts as the "future accumulations" theory. The Commission preferred this theory over the others because the future accumulations theory "seems more equitable since the jury must not only evaluate the decedent's propensity to earn, but also his propensity to save." FLRC Report, p. **32**.

More importantly, the Florida Law Revision Commission described future accumulations as follows:

Another theory of recovery to the estate subscribed to by several states is to measure damages by the present value of decedent's probable future accumulations. [footnote omitted] This is the Florida position when there is no survivor in the three prior classes. Like the probable "net income" theory, this method of measurement relies solely on probable business income without regard to possible

investment income. [footnote omitted] (emphasis added) FLRC Report, p. 31-32.

If the Florida Law Revision Commission intended to describe the current state of Florida law, its position was poorly supported, if not mistaken. The case cited in support of the proposition that investment income could not be included in future accumulations is Louisville & N.R. Co. v. Jones, 34 So. 246 (Fla. 1903) which held only that it is improper for the jury to consider investment income as an element of damage where there is no evidence pertaining to investment income. Moreover, the Fourth District Court of Appeal had held in Smith v. Lassing, 189 So.2d 244 (Fla. 4th DCA 1966), cert. den. 195 So.2d 567 (Fla. 1966) that evidence of future investment income was admissible to prove damages to the estate. See, discussion infra.

Whether the Florida Law Revision Commission misinterpreted prior Florida law does not alter the fact that the intent of the Commission is crystal clear. The Commission was proposing a statute which measured damage to a decedent's estate solely on the basis of "probable business income without regard to possible investment income." This proposal was unmistakably and unambiguously communicated to the legislators who passed the provision into law. Accordingly, the unquestionable intent of the legislature as expressed in the "net accumulations" formula in the Florida Wrongful Death Act is to provide a measure of damages to an estate which would not include investment income.

C. The Inclusion of Investment Income Would Result
in Double Recovery

Limiting net accumulations to income other than that generated by passive investments is necessary to maintain coherency with the remaining provisions of the statute. As noted above, Fla. Stat. §768.21(b)(a) provides that the net accumulations must be reduced to present value. The present value calculation yields a lump sum which is mathematically equivalent to the prospective annual losses projected for the estate. Assuming the discount rate applied in determining the present value of the income stream is realistically related to the available interest rates, the lump sum may be invested to yield a cash flow duplicating the annual losses. The lump sum, therefore, is essentially an annuity which provides the same annual cash flows as would have been retained by the decedent had he lived.

As the payment is received by the estate or its distributees each year, it may be reinvested to earn the investment income projected for the decedent. The result is that the distributees duplicate the prospective investment pattern of the decedent and accumulate interest on the annual payments at the same rates as could have been obtained by the decedent.

The obvious advantage of this method of compensation is that the jury need not speculate as to the future investment opportunities which would have been available to the decedent. By providing the estate with an income stream identical to the projected savings of the decedent, the estate or its distributees can apply the monies to actual investments at actual interest rates

available at the time of the investment. Certainly, the reduction of unnecessary speculation in the determination of damages was a benefit intended by the legislature.

If the Court, however, were to permit passive income to be included in net accumulations, the operation of the statute would be circumvented and the beneficiaries of the estate would receive double recovery. If the decedent's estate is given the advantage of prospective investment income, the beneficiaries would receive the projected interest earnings as well as the real interest earnings on the annual payments. This double recovery would contravene the statute's express purpose of protecting defendants from damages which are not attributable to an actual loss. Double recovery would subvert the compensatory intent of the Florida Wrongful Death Act by making it punitive in application. Clearly, the legislature did not intend to provide the beneficiaries with this double recovery. See also, Dobbs v. Griffith, 70 So.2d 317 (Fla. 1954) (under prior death act, double damages for the same loss may not be recovered).

D. Investment Income Is Not a Loss To The Estate

The reduction to present value calculation required by our statute is not itself the cause of double recovery. The calculation is merely a mathematical model which reflects the underlying theoretical flaw of including investment income. As pointed out above, it simply demonstrates that passive income is never lost as a result of the decedent's death.

By definition, investment income is generated passively by the "labor" of capital, not by the labor of the decedent. Clearly, an

asset will produce income independent of any labor of the decedent. Indeed, often an individual's objective in a capitalist society is to garner enough assets so that the individual's labor is no longer necessary. The death of the decedent, therefore, does not terminate the earning potential of investments.

While this is intuitively true for investments held by the decedent at his death, it is also true for hypothetical investments projected over the decedent's estimated lifespan. By compensating the estate for the lost earnings from the decedent's own labor, the estate is provided with capital which produces income autonomously. The estate is provided with the very same capital which would have generated income for the estate if the decedent had lived.

E. The Analysis in Smith v. Lassing Is Unsound

As to the difference between active income and passive income, Delta must respectfully disagree with the Fourth District Court of Appeal in Smith v. Lassing, supra. In Smith the court affirmed the trial court's ruling that evidence of decedent's investment income was admissible in a wrongful death case. The decedent was an unemployed, 63-year-old widow whose sole income was derived from rental properties and savings account interest. In rejecting the defendant's argument that the decedent's investment income should not be considered in determining the estate's prospective accumulations, the court stated that:

Earnings may be forth-coming even though not realized by the sweat of the brow and even though not denominated as salary consequent to being in someone's employ. Some people labor for others, some are self-employed, others realize their living by investments and trading of assets, and in all such cases income or

earnings may be accumulated in an estate within the proper bounds for consideration as allowable damages in wrongful death actions. Id., at 247.

The court's analysis in Smith was incomplete. It is certainly true that income may be realized by one's own labor or the "labor" of one's assets. **As** demonstrated above, however, the passive income from assets is never lost to the estate. The court never seems to consider that although there are various forms of income, not all are contingent upon the life of the decedent.

The court was forced into this conclusion because it could not differentiate "earned income" from "investment income". Id., at 247. The court explained that:

The management of rental properties for profit may very well entail the use of skill and the expenditure of effort to the same extent as might be involved in a classic instance of employment by another for wages in a master-servant relationship. Id., at 247.

The case sub judice does not present the same problem since the decedent's earned income and passive income are clearly differentiated as demonstrated in Figures 1 and 2. Although less apparent, the decedent's income in Smith is also easily classified. The court failed to distinguish the income generated by the decedent's management of the properties and the income generated by the properties themselves. The income earned by working as a property manager is the savings realized by eliminating the need to hire someone else to manage the properties. **As** a property manager, the decedent performed a valuable service for her estate, a service which was lost upon her death. The value of this service could have easily been proven by evidence of the earnings of similarly situated

property managers. The properties, however, would continue on under new management and continue to generate income for the estate.

This analysis holds true for anyone who may "realize their living by investments and trading of assets". When an individual earns his living by managing the investments of others, there is no confusion between the income earned by that activity and the income generated by the investments. Merely because an individual chooses to perform that activity for himself does not justify labeling the investment income as compensable under the Florida Wrongful Death Act.

F. The Absence of Specific Language To Include Investment Income Is Conclusive

Since passive investment income and income produced by the "sweat of the brow" are distinguishable, it is apparent that compensating the estate for the lost capital and the income generated by that capital, results in double recovery of the capital income. Such a result would be contrary to the legislative intent without specific language permitting such recovery.

The legislature provided a specific formula for "net accumulations" given in §768.18(5) of the Florida Wrongful Death Act:

"Net accumulations" means that 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 his estate if he had lived his normal life expectancy.

Conspicuous by its absence, are the words "investment income." The statute specifically lists "business or salary income", but does

not mention investment income. By enumerating business income and salary income (both of which are active) the statute impliedly excludes other forms of income such as passive investment income. See, Thayer v. State, 335 So.2d 815 (Fla. 1976).

Additionally, the statute does not define net accumulations as the estimated net worth of the estate at the end of the decedent's life expectancy. Such a definition would arguably include any investment income retained by the estate. The statute, however, carefully limits the damages to the unspent portion of the decedent's business and salary income, without regard to the actual size of the decedent's estimated estate.

One of the stated objectives of the Florida Wrongful Death Act was to provide guides for damages computation including specification of recoverable elements. FLRC Report, p. 39. It may be assumed, therefore, that the damage formula of net accumulations specifies all the recoverable elements contemplated by the legislature.

Accordingly, the absence of specific language in the statute to include investment income in net accumulations is sufficient to conclude that the legislature did not intend for it to be included. The Court should then answer part (a) of the first Certified Question in the negative and need not address part (b). If, however, the Court finds that the absence of a specific directive to include investment income is not controlling, then the Court should consider part (b).

II.

The Damages Granted a Decedent's Estate Under the Florida Wrongful Death Act Specifically Excludes Investment Income

A. The Exclusion of Investment Income Applies to Hypothetical Investments Projected Beyond the Decedent's Death.

In addition to providing a formula for computing net accumulations, Fla. Stat. **§768.18(5)** clarifies that:

"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. (emphasis added)

It is difficult to imagine a more definite expression of the legislative intent to exclude investment income from the calculation of net accumulations. The Plaintiffs argue, however, that the word "continuing" presupposes investments in existence before the decedent's actual death and therefore does not apply to the hypothetical investments projected into the future by the economists.

The Plaintiff's interpretation assumes that the phrase "continuing beyond death" modifies the word "investment" so that the time that investment is made becomes relevant as to whether the exclusion will apply. This interpretation is faulty since the primary meaning of investment is "[a]n expenditure to acquire property or other assets in order to produce revenue"², or simply "[t]he act of investing."³ It follows logically that the phrase would more probably mean: "...excluding income from acts of

²Black's Law Dictionary 741 (5th ed. 1979)

³Webster's II New Riverside University Dictionary 642 (1984).

investing continuing beyond death" which would unquestionably apply to the projected investment income sought by the Plaintiffs.

Moreover, whether the investment was made before or after the decedent's actual death cannot determine whether the exclusion will apply because many investments held before death will be time-restricted and require renewal or reinvestment after death. For example, if the decedent has enrolled in a stock reinvestment plan prior to death, the income from the stock will continue to be reinvested after death. Clearly these investments "continuing beyond death" would not be a compensable loss since the estate would already receive the income. Yet, the Plaintiffs' interpretation would make this income part of net accumulations.

The logical interpretation is that the phrase "continuing beyond death" refers to the income from investments. The exclusion would, therefore, apply to any investment income received after death regardless of when the investment was made. The intended meaning is clarified by substituting "income from investments" with the equivalent expression "investment income." The exclusion then applies to "investment income continuing beyond death."

This interpretation does not imply that the particular investments generating the income existed prior to the decedent's death. It merely presupposes that a decedent with investment income prior to death may be assumed to have continued investing had he lived. It is the continuing income from the decedent's propensity for investing that is excluded.

For example, if the exclusion applied to "salary income continuing beyond death", there would be no question that it would

apply to any wages received after death, even if it is assumed that the decedent would have changed jobs sometime after actual death. Similarly, the phrase "business income continuing beyond death" would not imply that the income would have to be derived from the same pre-death business to be excluded. In short, it is when the income is earned, not when the income producing entity (the investment) is created, that controls the application of the exclusion. If the income is earned after the date of death, it must be excluded from net accumulations.

B. The Purpose of the Phrase "Continuing Beyond Death" Is To Limit the Exclusion To Investment Income Not Lost To the Estate.

Having demonstrated that the exclusion applies to all investments made before or after death, it may appear at first blush that the legislature could have accomplished the same result by simply excluding all investment income without mention of "continuing beyond death" at all. Yet, such an exclusion would be overly broad and would impermissibly exclude investment income which does not continue beyond the decedent's death and are, therefore, lost to the estate.

For example, investments which are jointly owned with a right of survivorship would become the property of the joint owner upon the decedent's death. The income from such investments would be forever lost to the estate. The lost income, therefore, would represent damages to the estate as a result of the decedent's death and are compensable under the Florida Wrongful Death Act. As previously shown, however, the investment income in the instant case

has not been lost and does not fall within this narrow exception to the exclusion.

Accordingly, the Court should answer Certified Question 1(b) in the affirmative.

III.

Under the Florida Wrongful Death Act, Expert Testimony Regarding Future Inflationary Effects On Net Accumulations Should Be Limited to Calculations Based Upon the Below-Market-Discount Method.

Although a Florida appellate court has ruled that evidence of inflationary trends is admissible in a wrongful death action, Seaboard Coast Line R.R. Co. v. Garrison, 336 So.2d 423 (Fla. 2d DCA 1976), no Florida court has ruled on the proper methodology for calculating the effects of future inflation.

There are three different methods of adjusting damage awards for inflation which have been identified by the federal courts, namely: 1) the below-market-discount method; 2) the case-by-case method; and 3) the total offset method. These various methods were described and critiqued by the Fifth Circuit Court of Appeals in Culver v. Slater Boat Co., 722 F.2d 1114 (5th Cir. 1983) (known as "Culver II").⁴ The court in Culver II held that, in federal

⁴The Court in Culver II explained that:

In the below-market-discount method, the fact-finder does not attempt to predict the wage increases the particular plaintiff would have received as a result of price inflation. Instead, the trier of fact estimates the wage increases the plaintiff would have received each year as a result of all factors other than inflation. The resulting income stream is discounted by a below-market discount rate. This discount rate represents the estimated market interest rate, adjusted for the effect of any income tax, and then offset by the estimated rate of general future price inflation. *Id.*, at 118.

cases, the "fact-finders in this Circuit must adjust damage awards to account for inflation according to the below-market discount rate method" Id., at 122. The court found that "[a]doption for this method guards against the wide disparity in results, the extended duration in trial time, and the increased cost to the parties..." Id., at 121.

The calculations performed by the Plaintiffs' economists in the instant case conformed to the case-by-case method -- the same method used in the Florida case of Garrison, supra. The economist's methodology, however, was not at issue in Garrison. Still, the Garrison court conceded the wisdom of the below-market-discount method:

An equivalent approach was utilized in Feldman v. Allegheny Airlines, Inc., D.Conn. 1974, 382 F.Supp. 1271, aff'd. in relevant part, 2nd Cir. 1975, 524 F.2d 384. There, instead of computing the effect of inflation on future earnings and then reducing to present value using a high interest rate, the court achieved the same result by using an "inflation adjusted discount rate." That rate is obtained by subtracting the projected rate of inflation from the projected interest rate. The Connecticut court used an inflation adjusted discount rate of 1.5%, while Dr. Roberts [plaintiff's economist in Garrison] in effect adopted an inflation adjusted discount rate of 2%. We think the approach of the Connecticut court could be beneficial because fewer calculations are involved. This could simplify the burden on the jury, particularly in a case involving conflicting economic testimony. (emphasis added) Id., at 425, n.4.

The court in Garrison clearly recognized that the use of the below-market-discount method would provide generalized benefits by conserving judicial time and effort. These were the same benefits enumerated by the Fifth Circuit in Culver II. Yet, the Culver II

court also found that the below-market-discount method would guard against the "wide disparity of results." This apparently conflicts with the pronouncement in Garrison that the below-market-discount method was "an equivalent approach" to the case-by-case method.

The explanation is that the two methods are equivalent only so long as each of the case-by-case computations is performed with an inflation rate which does not vary for any given point in time. In other words, in performing the case-by-case calculations, the same inflation rate must be used in reducing to present value as is used in calculating increases in the income projections. If the same rate is not used throughout the calculations, then the result will differ from the result obtained by the below-market-discount method.

In the instant case, both experts estimated a 6.5% rate of inflation over the decedent's lifetime. (R6-71-28 and R4-69-123) This figure was used to augment each year's salary in order to keep pace with the cost of living. Yet the discount rate used by each was only 7 percent. (R5-70-146 and R6-71-32) Since the discount rate represents the real discount rate in addition to inflation, the estimate of 6.5% inflation leaves a real discount rate approximating only .5 percent.⁵

In other words, the Plaintiffs' economists either 1) used a different inflation rate for reduction to present value, or 2) used,

⁵The real discount rate is expressed by the formula:
$$(d - i) / (1 + i)$$

where "d" is the unadjusted discount rate and "i" is the expected inflation. The real discount rate used by the economists would actually be .47 percent.

in effect, a below-market-discount rate of .5 percent. Although it can never be shown that the Plaintiffs' economists would not have used a .5% real interest rate had they been required to use the below-market-discount method, the analysis demonstrates the difficulty in exposing the true interest rates used in the case-by-case method. The sheer complexity of the case-by-case method obscures distorted variables and assumptions which cause disparities in the results. The additional and unnecessary mathematical manipulations in the case-by-case method invite blunders and inaccuracies by both experts and juries alike.

The inherent complexity of economic testimony is compounded when, as in the instant case, there is conflicting evidence -- not only as to economic assumptions, but as to the method of computation. Yet the legislative intent of the Florida Wrongful Death Act was to simplify wrongful death actions and to provide certainty and uniformity in the computation of damages. FLRC Report, p. 39. It is apparent that, to achieve this purpose, purely economic damages should be calculated by a uniform method. The uniform method should be that which simplifies the burden upon the jury, the parties, and the court. This Court should answer Certified Question Number 2 by holding that the below-market-discount method should be applied to compute economic damages in wrongful death actions.

CONCLUSION

The Court should respond to the Certified Questions as follows:

1. As to Question 1(a): No.
2. As to Question 1(b): Yes.
3. As to Question 2: Future inflationary effects should be calculated by the below-market-discount method.

DATED this 14th day of March, 1989.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by mail this 14th day of March, 1989 to Philip Burlington, Esq., Law Offices of Edna Caruso, P.A., Suite 4B, Barristers Building, 1615 Forum Place, West Palm Beach, FL 33401 and Kathlyn G. Fadely, Esq., U.S. Department of Justice, Torts Branch, Civil Division, P.O. Box 14271, Washington, D.C. 20044-4271.

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