

A Transatlantic Dialogue on Personal Injury/Death Damages

“Personal Injury and Wrongful Death Damages Calculations: Transatlantic Dialogue” (the **Dialogue**) is both a book ¹ and the theme of an ongoing set of National Association of Forensic Economics (NAFE) sponsored meetings beginning in Edinburgh in 2004, designed to compare the U.S. economic-damages methodology with that used in the U.K. and continental Europe to calculate and award economic damages in wrongful injury and death litigation.

Subsequent meetings were held in Dublin, Ireland and Florence Italy involving Economists and Actuaries from The U.S., Great Britain, Ireland and Italy. These meeting were followed by meetings in Boston in 2006 and Chicago in 2007, in conjunction with NAFE meetings at annual American Economic Association Conferences. That dialogue focused on a comparison of the methodologies for projecting work life expectancies and lost earnings capacity in the U.S., which occurs in an adversarial trial setting, to the system of scheduled damages as represented by the “Ogden Tables” in the UK. The Ogden Methodology consisted of generating multipliers, incorporating contingencies of life, work and a discount rate and work to be applied to multiplicands, representing earnings or pension lost to equal a lump sum loss. The **Dialogue** has continued to the present through collaborative research by NAFE members in the U.S and the UK. The “transatlantic

¹ **Personal Injury and Wrongful Death Damages Calculations: Transatlantic Dialogue** , John O. Ward and Robert J. Thornton, Contemporary Studies in Economic and Financial Analysis, Vol 91, Emerald, JAI Press, UK, 2009

dialogue” label has been adopted in more recent workshops such as “What is Life Worth? A Transatlantic Dialogue in Personal Injury and Death,” co-organized with NAFE at the University of York Business and Society School.

The purpose of today’s session is to summarize the results of the “Transatlantic Dialogue” over the past 22 years and to discuss the changes that have taken place in the Ogden Table methodology in recent years, as represented by the work of the Centre for Actuarial Compensation and Valuation of Life (CAVOL) at York University. The **Dialogue** was published in 2009 and attempted to compare and contrast the US damages methodology with the UK Ogden Table methodology. Little has changed in the past 16 years that would likely change the opinions of authors about the transferability of that scheduled damages model to the US, but, the Ogden Table methodology has come closer to the US methodology in a number of important ways over the past decade through Markov work life estimates and refinements in the reduction factors used to adjust multiplicands.

The **Dialogue** includes chapters covering the origin and structure of the Ogden Tables and methodologies for calculating pecuniary damages in the US. The chapter by Mathias Kelly, provided a history of the adoption of actuarial methods for calculating and awarding pecuniary damages in personal injury/death litigation in the UK beginning with the **Wells v. Wells** decision that officially recognized the Ogden Tables, named after Sir Michael Ogden who was largely responsible for the adoption of the tables in the UK. Mathias Kelly discusses the evolution of the tables and the work of the Ogden Working Party in developing and improving the methodologies underlying the tables over past two decades. The Ogden Working Party’s first published tables appeared in 1984 and focused on

actuarial life expectancy data in generating multipliers. The 1994 edition of the tables included such contingencies as unemployment, regional variations in economic activity, age and illness in generating multipliers. The most recent tables appeared in 2020 with a revision in 2022.² Other chapters in the book by Victoria Wass, Robert McNabb, Zoltan Butt, Steven Haberman, Richard Verrall and Richard Cropper addressed issues of calculating work life expectancy used in the Ogden Tables, the reduction factors in employment due to disability in calculating a multiplicand in the tables and the transfers of risk inherent in using the tables.

The balance of the **Dialogue** dealt with the basic structure of the personal injury/death model used in calculating damages in the US, with an overview by John Ward, a discussion of Markov work life research by Gary Skoog and James Ciecka and an appraisal of the efficiency of the U.S. damages model by Kurt Krueger and Gary Albrecht, and the potential for developing scheduled damages models in the US given the experience of the September 11, 2001 Victim's Compensation Fund in the U.S. and similar scheduled damages models used in the US and the European Union countries. The broader transatlantic discussion also highlights contrasting treatment of bereavement and moral damages in Europe versus common-law areas, and the influence of European human-rights law on wrongful-death awards.

While the emphasis of the **Dialogue** was on the Ogden tables, the papers also dealt with the legal framework and objectives of tort law in the UK and the US the objective of

² Government Actuary's Department, **Actuarial Tables with Explanatory note for use in Personal Injury and Fatal Accident Cases**, 8th edition, 2020, updated in 2022.

awarding lost earnings and pension damages in the UK is to make the plaintiff whole but without enrichment. So, earnings loss is based on earnings after taxes and awards are net of public benefits received. In the UK the damages model seeks uniformity awards for like cases between jurisdictions. In the US each State has its own tort law rules for determining damages including case law or statute specifications of discount rates, tax reductions in the earnings base, self-consumption rates to be used in death actions, limits on awards of general damages and punitive damages. Federal law typically follows the rules set at the State level, but there are specific rules for calculating damages in Federal Tort Claims, Federal Employment Liability and Jones act, maritime cases. Also, there is an underlying objective that awards serve as deterrents to harmful products and actions. While a greater degree of uniformity and predictability may be a goal of tort reform in the US such objectives would be difficult to attain given the structure and diversity of the U.S. tort system. My Chapter in the **Dialogue** was entitled, *Economic Damages and Tort Reform: A Comparative Analysis of the Calculation of Economic Damages in Personal Injury and Death Litigation in the United States and the United Kingdom*. In that chapter I point out the similarities of both methodologies – they both have the objective of making the plaintiff whole but the US model allows collateral source exclusions not allowed in the UK model. Both allow periodic payment while based on a lump sum award and both allow recovery for lost household services and both allow for the recovery of future medical needs based on full recovery without reduction for insurance covered payments. Ogden-based UK loss of earnings calculation, earnings growth and promotion are dealt with outside the tables, then

folded into the multiplicand and/or the reduction factor for contingencies other than mortality rather than by adjusting the multiplier itself.

Ogden Tables in the UK

As previously discussed, the Ogden Tables are an official set of actuarial tables, prepared under the Government Actuary's Department, expressly "to assist those concerned with calculating lump sum damages for future losses in personal injury and fatal accident cases in the UK." They implement the classic multiplicand \times multiplier method: a present-day annual loss (earnings, care, etc., net of tax) is multiplied by a tabled factor that already embeds mortality, discount rate, and timing of payments. Adjustments for disability and other factors can be made through "reduction factors". UK: a single rate applies across cases until changed, and tables are periodically updated.

In common torts the treatment of collateral benefits significantly diverges between the US and the UK systems. While the US relies heavily on the collateral source rule, the UK enforces a strict rule against double recovery that directly impacts the baseline figures used in Ogden Table damages calculations. The earnings multiplicand in the Ogden calculation is net of taxes and past loss usually provides reimbursement for public assistance. UK courts require the multiplicand to be entirely net of income tax, National Insurance, and applicable state benefits before applying the Ogden multiplier. Under 1874 *Bradburn v Great Western Railway* precedent, courts make an exception for private insurance payouts and charitable donations, which are not deducted from the claimant's damages. Since the decision on appropriate damages is made by a judge, not a jury, and

limits testimony by economic and actuarial experts, the objectives of the tables are simplicity, consistency, and uniformity.

Multipliers are published at selected real discount rates set by government (e.g., 0% and +0.5%), so a change in the statutory rate automatically shifts all multipliers and hence awards. Additional tables (A–D and reduction-factor tables) incorporate “contingencies other than mortality” such as disability and employment risk, supplying suggested reduction factors by age, gender, education, and work status. The Ogden Table methodology uses “reduction factors” for employment and disability risks, incorporating labor-market data (age, sex, education, disability, etc.) to adjust multipliers for work-life realities.

In an Ogden-based UK loss of earnings calculation, earnings growth and promotion are dealt with outside the tables, then folded into the multiplicand and/or the reduction factor for contingencies other than mortality rather than by adjusting the multiplier itself.

In Ogden-based dependency calculations, you still treat self-consumption (personal living expenses) and fringe benefits separately: Ogden gives you the multiplier framework, but it does not prescribe the deduction rates or the fringe-benefit percentage—those are inputs to the multiplicand.

In a typical UK loss-of-earnings claim, the court first fixes the annual net loss (the multiplicand) using individualized evidence, then selects the appropriate Ogden multiplier based on age, term to retirement, and discount rate to reach a capital sum. The tables thus standardize the time-value-of-money and survival, leaving disputes mainly over the

multiplicand and the choice/adjustment of the reduction factors for contingencies. The Ogden Tables provide pre-computed multipliers by age, mortality, and discount rate for future loss of earnings and care, so once parties agree the annual multiplicand, the present value is largely mechanical.

Because the multiplier is anchored by a government-set discount rate and official tables, there is less room for partisan projection of earnings paths and discount factors than in typical U.S. PI practice, reducing expert time and scope for battle-of-the-experts on pure valuation methodology.

Pain, suffering, and loss of amenity are assessed with Judicial College Guidelines and precedents; Ogden Tables are not used for general damages but only for future pecuniary components.

Ogden provides a relatively uniform framework, narrowing the range of acceptable discount and mortality assumptions and thus constraining the spread of expert opinions on future loss.

The deficiencies of the Ogden approach are potential reduced specificity to the facts of a case. While occupational experts can provide the court with specific facts to consider concerning an injured person's employment, the judge receive very limited, if any, input from economic or actuarial experts. The resulting damages may be less exact than those calculated with input from economic and actuarial experts on the issue of the multiplier.

While the benefits of the Ogden approach to damages in the UK are: uniformity, consistency, simplicity, predictability and the cost effectiveness of the process, It is

difficult to see how those benefits could be transferred to the US Tort system, given the lack of uniformity of rules and the multiple jurisdictions of the US system.

The US Methodology for Damages Calculations

Forensic economists usually project year-by-year earnings and benefits (often using work life tables, labor-force participation probabilities, and earnings-growth assumptions) and then discount the resulting stream at an expert-selected real or nominal rate.

Contingencies such as unemployment, disability, or labor-force exit are typically managed through individualized modeling (e.g., Markov work life tables, explicit probabilities) or judgmental percentage reductions, rather than via a legislatively endorsed table of “contingencies other than mortality.” Courts admit or exclude such methods under standards like Daubert or Frye, but there is no government-issued analogue of the Ogden Table methodology that binds state or federal courts nationwide. Unlike the UK principle that there should be no “windfall” in awarded damages, the collateral source rule does apply in the US and lost earnings are typically based on gross earnings.

Conceptual Comparisons of the Ogden Approach with the US Tort Model

A concise way to put it is that Ogden’s multipliers do the same basic calculations that are performed by economic experts in the U.S., but they package the discounting and survival calculation into a single published number. In the UK, the “discount rate” debate happens once in public policy and then flows through to all claims via revised tables; in the US,

discount rates, growth assumptions, and contingencies are contested case by case, and State by State, through expert testimony.

Thus, where Ogden yields a relatively standardized capitalization structure with individualized multiplicands and adjustments, US recovery is more expansive with individualized structure (projection model, rates, contingencies) as well as individualized inputs. With differing assumptions about growth, inflation, discount rates, and work-life often producing wider divergence between plaintiff and defense experts, making economist methodology a key battleground.

Litigation Cost Comparisons of Ogden and the US Tort Model

The U.S. Chamber of Commerce Institute for Legal Reform³ estimates that US tort costs (lawsuit costs and compensation) reached \$529 billion in 2022, equating to roughly \$4,207 per household. These costs are rising, growing at an average annual rate of 7.1% since 2016, with commercial liability costs growing even faster at 8.7% annually. The report estimates that overall liability costs in the U.S. are roughly four times those of the least costly European countries. The UK is placed at the lowest tier of costs.

On top of fees, plaintiffs incur case expenses: filing fees (often in the \$100–\$500 range), depositions (commonly \$500+ per session), and expert witness fees that can run from hundreds to well over \$10,000 per expert in significant cases.

³ **Tort Costs in America: An Empirical Analysis of Costs and Compensation of the U.S. Tort System**, November 2024

Because the default rule is that each side bears its own attorney's fees (the American rule), defendants cannot recover their fees if they win, which contributes to a higher volume of claims and higher aggregate liability cost. In England & Wales, personal injury litigation uses a loser-pays rule: the losing party typically pays at least a substantial portion of the winner's costs, which strongly affects settlement incentives and risk pricing.

US contingency fees plus the American rule encourage a larger plaintiffs' bar, extensive discovery, and the use of multiple experts, increasing defense spend and insurer reserves even when individual claimant out-of-pocket spend is low.

US juries can award uncapped non-economic and punitive damages in many jurisdictions, which pushes up expected claim values, litigation spend, and settlement ranges.

In the UK Judicial College Guidelines and the more constrained approach to general damages (and near-absence of US style punitive damages) keep typical awards lower, which feeds back into lower overall liability and defense costs despite high legal spend in some complex sectors like NHS clinical negligence.

Costs to the plaintiff from the recovery of damages can be substantial in the US, most personal injury lawyers in the US work on a contingency basis and charge between about 25% and 40% of the total settlement or verdict, with 33% being the most common figure.

In addition, the recovering plaintiff typically pays for expert's fees. When modeling, many analysts therefore assume a combined "load" of about 40–50% for fees plus costs in ordinary cases, adjusting upward for highly complex litigation or unusually high expert reliance.

Ogden-based Awards Cut Transaction Costs and Promote Uniformity

The Ogden Tables provide pre-computed multipliers by age, mortality, and discount rate for future loss of earnings and care, so once parties agree the annual multiplicand, the present value is largely mechanical.

Because the multiplier is anchored by a government-set discount rate and official tables, there is less room for partisan projection of earnings paths and discount factors than in typical US PI practice, reducing expert time and scope for battle-of-the-experts on pure valuation methodologies. Use of the Ogden Tables produces substantially more uniform and predictable awards for future pecuniary loss across UK courts, though variation remains around factual inputs and judicial adjustments. Uniformity is strongest on the multiplier side: life expectancy, discount rate, and basic annuity factors are fixed centrally and updated periodically, so two claimants of the same age and injury pattern will attract similar multipliers nationwide.

Residual variation arises in the multiplicand (earnings trajectory, residual capacity, care regime) and in judicial discretion over adjustments, so awards remain individualized but within a narrower band than under purely case-by-case judicial multipliers.

Scholars and actuaries criticize Ogden for limited treatment of contingencies other than mortality, discrete discount-rate steps, and simplified earnings growth assumptions, which can reduce fine-grained tailoring for atypical claimants. More recently, changes in reduction factors have incorporated disability status into the calculations, but the disability levels are poorly defined.

Dialogue: Transfers of Methodologies

Given the high costs of personal injury/death litigation in the US , the lack of uniformity in verdicts for similar cases and the lack of uniformity between States on issues of self-consumption, discounting, collateral sources and taxes, some argue that the system of scheduled damages represented by the Ogden Tables should be considered, at least in part, for the US. The same is true in the UK in terms of adopting parts of the US system of damages analysis. Some US jurisdictions have patterns or “rule-of-thumb” approaches to discounting, and many rely on government actuarial life tables, but these are not compiled into a single, legislatively endorsed Ogden-style set of multipliers. The result is greater variation across states and cases than in the UK, with more room for Daubert challenges and disputes over real discount rates, productivity growth, and contingencies.

While Ogden Tables combine mortality, employment contingencies, and a specified real discount rate into multipliers for future financial losses, with detailed explanatory notes on method. In the U.S., courts expect experts to show their own data, assumptions, and calculations rather than relying on a legislatively approved table.

While the US system of damages calculation is not a scheduled damages system, the US has a system of Workers Compensation that minimizes advocacy, promotes uniformity, and attempts to minimize costs, while the UK does not treat injury on the job damages differently than any other personal injury/death litigation. The US tort system allows “Class Actions” where a representative group of plaintiffs represent a much larger group in the determination of liability and damages, with subsequent distribution to the group by formula. The example of the September 11, 2001 terrorist attack and the resulting Victims’ Compensation Fund (VCF), where plaintiffs could avoid litigation to recover damages through a federally managed compensation fund using scheduled damages

demonstrates that uniformity, predictability and managed costs can be attained in the US tort system without the advocacy shown in general personal injury/death torts.

Similarly, the Ogden Tables have shown flexibility in adjusting schedules for reduction factors for occupational history, disability status, and age earnings cycle adjustments.

There are benefits to be achieved through a continued dialogue on person injury/death damages, adopting the unique features of the Ogden Tables and the US damages model that promote greater accuracy, uniformity and predictability in damages calculations, while reducing the costs of litigation where possible. Given the unique features of the multi – jurisdictional Us tort system it is unlikely that an Ogden Table methodology could ever be adopted, but some features of that methodology would be desirable from the perspectives of uniformity and predictability. Similarly the Ogden Table methodology would benefit from more involvement by economists and actuaries in the design of reduction factors that would enhance the specificity of damages calculations.

Several areas where the Ogden Methodology could be enhanced would include;

1. Household Service Loss – developing a schedule of hours of household services of individuals by marital status, children in the home, employment status and age using the UK National Time Use Survey in the same way that the publication, **Dollar Value of a Day (DVD)** by Expectancy Data in the US provides such scheduled values of household services for valuation of loss in personal injury and death litigation. Rather than relying on anecdotal evidence of individuals on services performed, the scheduled value of hours of the DVD provide a more objective way to value such losses.
2. Self-Consumption of Earnings – In wrongful death loss to survivors the Ogden Methodology relies on rule of thumb measures of an individual’s consumption of family income. Family

budget survey data in the UK could be used to derive self-consumption tables of individuals by income level, family size and age as is done in the US.

3. Age Earnings Cycle corrections – In the UK such corrections are made using gross adjustments to the earnings projections by adjusting the Ogden multipliers periodically by age. Using National data on earnings by age and education, tables such as those generated by Expectancy Data and research cited in the **Journal of Forensic Economics** in the US, could be generated specific to the UK. The tables could be built into the multiplicands to more objectively project lost earnings capacity.

Hopefully, our **Dialogue** will produce such research in the UK and a greater consideration of more cost effective methods of analyzing personal injury/death damages in the US.