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|  | **Ceiling Collapse**[[1]](#footnote-1)**Confidential Information For Plaintiff's Counsel**  |

You are a partner in a small but respected litigation firm concentrating in plaintiff's personal injury work. You recently completed a product liability trial that took nearly all of your time for the past few months. While a verdict was obtained, the damage award was lower than you had anticipated. A fair settlement in the Williams case would bring welcome revenues into the firm.

The recent product liability trial makes you appreciate the Williams case. There will be no problem establishing liability here—ceilings are not intended to collapse on innocent victims. Unfortunately you have had little time to spend with your clients, the family of the deceased, who represent his estate. You handled the initial interview six months ago and since then have made sure your associates kept discovery on track.

The discovery and expert work have clearly established the liability theories. Your expert's report proves that the negligence of both IHP and Suffolk Plumbers contributed to the accident. You understand that one is claiming an indemnification obligation from the other, but you don't really care how they allocate liability between themselves. You have not even checked on the defendants' policy limits because you are confident that IHP, at least, can pay any conceivable judgment.

The deceased, Donald Williams, was temporarily employed as a bartender at the time of his death. He had apparently stopped into the hotel to deliver some baseball tickets to a friend who tended bar at the hotel restaurant. Don had not finished college and had run into some trouble as a youth. You suspect that he may even have had a juvenile record, but it was not necessary to probe that issue, as no prior record could possibly come into evidence in the case. Donald Williams is not on trial, nor would any court determine that such matters were relevant to the Wrongful Death Statute.

Don's mother died when he was 25. According to Don's sibling, Dee, that seemed to turn him around. He continued to support himself with construction jobs and bartending gigs, but began attending night school in computer programming. He had also signed up as volunteer in the local "Big Brother/Big Sister" program, and took a real interest in his two young nephews, often taking them to the park or a ball game. Don regularly offered to babysit for his nephews in the evenings when he wasn't bartending to give Dee’s and Dee’s spouse a much-needed night out. Because of his experience in construction, Don was handy around the house; he regularly performed small repairs in Dee’s and his father's triple decker, and had begun an ambitious renovation of the third floor unit at the time of his death.

You know that money is tight for the Dee’s family. The husband is working now, but has experienced a number of lay-offs in recent years. The deceased’s father is relatively secure but his retirement pension is not large. Thus, while they are getting along, a large recovery in this case would be helpful to the family.

You understand from your associate that Dee and the father are understandably emotional about Don's death. When the subject of settlement was broached with them, Mr. Williams shouted that his son was "worth all of the money in the world, and these damned corporations who caused his death aren't going to get away cheap while I’m alive!" You have not had much chance to review carefully with them the elements of the Wrongful Death Statute, which limits recovery by the estate to (1) the decedent's pain and suffering and (2) the value of loss of financial support, companionship, and consortium. The grief of the decedent’s family is technically not a compensable item under the statute, and you are certain that the insurers will be raising this damages limitation. You will argue that based on your experience in wrongful death cases, the picture painted of the deceased and the apparent suffering of family members does affect the jury award.

While terribly unfortunate for the deceased, one positive force for a high damages award is a fact you believe is not yet known either to the family or the defendants. You may be able to establish that the plaintiff suffered pain at least for some time between the accident and his death 24 hours later. The family had told you that Don never regained consciousness and the medical reports indicated that he was unconscious upon admission to the hospital and unresponsive to pin prick tests. However your review of some notes on the hospital record from the overnight resident on duty prompted you to call the resident. He confirmed that in the middle of the night the deceased was moaning softly for several brief, intermittent periods. During one of those episodes an electro-magnetic monitor was hooked up, and the readings confirmed that he was capable of experiencing pain. You will want to be careful about raising this issue, because you have been told that Mr. Williams has expressed relief that his son died without pain.

On the one hand, this is a riskless case for you to try. The only question is how much your client will recover, not whether a verdict will be returned in the plaintiff's favor. On the other hand, the deceased's family will not be well served by waiting for this trial for two years, and then reliving Don's death, and there is a risk of a conservative verdict if the jury strictly applies the Wrongful Death Statute standards. You do not see a jury awarding less than $500,000 in this case and you see the more likely verdict range as $800,000 to $1.2 million.

You would be happy to settle at a reasonable figure, perhaps in the $600,000 to $750,000 range. However you will be guided by your client. You hope that the mediator will be able to help the client separate emotion from the cold language of the Wrongful Death Statute.

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