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In the 35 years of Mike's practice, an important year was 1986. In that year, the National Association of Forensic Economics (NAFE) was formed, which provided a forum for forensic economists to compare their assumptions, methods and data sources. In 1988, Mike and colleague Frank Slesnick began publishing an every-three-or-so year survey of NAFE members, and the tracking of "prevailing practice" began. It was generally believed that in the ensuing 10 or 20 years, the NAFE professional meetings and articles in NAFE-sponsored and related journals would result in a conversion of methods; thus, there would be a reduction in the large range of losses provided by forensic economists (FE's) in cases with similar facts and in the same jurisdiction. This has simply not happened and may be a major reason why significant cases have both a plaintiff and defense economist.

Focusing upon the lost earning capacity category of damages, divergence among economists in loss estimates comes from any or all of the significant variables in calculations:

- 1) The wage loss base: Our surveys show this value should be the value expected given past earnings. But differing interpretations of past earnings and the use of loss scenarios that have little to do with past earnings mean that plaintiff and defense economists can vary greatly in the lost earnings base to be carried forward. Everything else in an earnings projection is an adjustment to this base. If the base goes up or down 20 percent, for example, the present value loss goes up or down approximately 20 percent.
- 2) Age-earnings profiles applied to wage bases are an annual wage increase above the overall wage increase in the economy. It is a payoff to education, most easily recognized as promotions and a good career track. There is enormous variation among forensic economists in whether or not they apply this adjustment to the lost wage base, how frequently they do so, and the methods that they use to add this adjustment to the general rate of annual wage growth.
- 3) Fringe benefits: There remains a large difference in the categories of fringe benefits that forensic economists consider as lost earning capacity, from the 7.65% Social Security contribution by employers to retirement annuities. Methods of quantification and forecasting also vary. Health insurance reform legislation is likely to increase the divergence in loss calculation methods and forecast values.
- 4) Net Discount Rate (NDR): This is the positive difference between the discount rate used to lower future values downward less the wage rate used to compound the earnings base into the future. Our surveys show a consensus in the positive 1-2% range, meaning the base is reduced, in net, by a compounding 1-2 percent rate annually. Yet, some economists use conservative NDR's above two percent, and others use negative NDR's (with wage growth higher than discount rates).
- 5) Worklife Expectancy: Solid research by some of our colleagues since 2000 has produced academically reliable worklife expectancy tables. Most forensic economists now use these tables for the end date of the lost earning capacity projection. Yet, a minority of economists will show the scientific worklife estimate of lost earning capacity but also show loss estimates ending at age 65, or 67, or 70. All of the alternative loss estimates are implicitly given equal weight by the economist. Large absolute and percentage increases above the scientifically-based loss estimate may result.

- 6) Personal Consumption in Wrongful Death: First, state legal parameters vary greatly and divide into three groups--no consumption deduction, a likely consumption deduction, or a personal maintenance deduction. These are explained in previous newsletters and articles. Within legal categories, however, methods may vary dramatically. A good example is when two persons worked and earned the same annual income. When one dies, do we consider his personal expenditures out of total family income (husband and wife) or deceased income only. Our surveys have shown that forensic economists are fairly evenly split as to the method they use. Their choice is important. In the example, the personal consumption deduction from earning capacity would be either 30 percent or 60 percent depending upon the chosen method.
- 7) Vocational Post-Injury Estimates: To determine the loss of earning capacity that an injured person has sustained, an accurate assessment of mitigation potential must be made. In some catastrophic cases, the post-injury ability to earn might be easily assumed to not exist. However, in most cases a vocational evaluation must be completed to determine the anticipated post-injury earnings. These analyses and the conclusions reached on post-injury earning capacity may also vary significantly among testifying experts. In the next newsletter, these variations will be discussed in the context of vocational evaluation methods that we have found to be effective.

One can only speculate as to why these differences exist among forensic economists after 24 years of professional dialogue. There are differences in knowledge and in ethics, and some differences occur because continuing academic research yields new methods and data sources. Whatever the reason(s), we accumulate and closely track the reports of experts whom we oppose. We are confident in our own methods when criticizing those of others, our surveys have helped to establish prevailing practice, and we certainly want to know if other experts vary their methods when on different sides of a case. The "consistency" standard may be the most important of the eight principles in the NAFE "Statement of Ethical Principles."

We continue to be active in research and professional activities. George remains a member of the seven-member Board of Directors of the American Rehabilitation Economics Association (AREA) and serves as the editor of their journal *The Earnings Analyst*. Mike will chair a NAFE panel on the application of the NAFE "Statement of Ethical Principles" at the June meetings of the Western Economic Association International. Please give us a call or email when we can answer questions or otherwise be of help, and we are always happy to participate in continuing legal education sessions.

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