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FIELD(1), Esquire
FIELD(2)
FIELD(3)

RE: Establishing the Lost Earnings Base

Dear FIELD(5):

We have three updates on our professional work. First, George Barrett has been elected to a two-year term as one of seven Board of Directors members for the American Rehabilitation Economics Association (AREA). This is the leading, national association of vocational/rehabilitation professionals who testify as expert witnesses. Second, we have a new staff member Mrs. Lori Halstead, who is a forensic case analyst and will be working with you and your staff as we produce our analyses and case reports. Lori has a Bachelor's degree in finance and an MBA from Marshall University and comes to us from the banking industry. Third, The Plaintiff and Defense Attorney's Guide to Understanding Economic Damages was published last month by the Lawyers & Judges Publishing Company, Inc. You may order copies at www.lawyersandjudges.com or use the enclosed brochure and order form.

It is our research emphasis and the research-based methods behind our written reports and testimonies which, we hope, set us apart from many of our competitors. With the completion of the 2007 book, we are moving on to such topics as the vocational-economics interface in personal injury cases and the personal consumption deduction from earning capacity in 2-adult-earner households when one of the adults dies. Another topic is the (proper) establishment of a "BUT FOR" earning capacity base through worklife expectancy. We shall attempt to use this Newsletter to give you some thoughts on this topic which you may find useful in dealing with damages experts.

*The annual earnings base decision is often the most important decision made by a forensic economist in terms of the effect on the "bottom line" lump sum loss. Since all calculations ultimately involve adjustments to this annual base, percentage changes to the base translate directly to changes in the present value loss estimate. The earnings base decision involves more common sense judgment than other decisions from economists who, hopefully, have expertise about workers and labor markets. It is the most likely point of significant disagreement between forensic economists on opposing sides of a case.

*Despite its central importance to lost earning capacity estimates, forensic economists have largely ignored this as a research topic in the 20-or-so years since journals in forensic economics appeared. This may largely be due to the judgment involved in these decisions versus net discount rate and other issues more typically explored through scientific testing known to economists. Only one refereed article has specifically explored the topic: Brookshire and Caruthers, "Principles of Establishing the Lost Earnings Base," Litigation Economics Digest (1994). Thirteen principles were developed based upon survey responses by U.S. forensic economists to earnings histories in hypothetical cases. Please let us know if you would like a copy of this article.

*While this earnings base decision would seem to be straightforward, it is not that simple. There is basic dispute about what the term "earning capacity" means in establishing the lost wage base, and

this is a focus of the 1994 survey article. Different source documents may be the best sources-- income tax returns, W-2's, or social security wage printouts--given the facts of each particular case. Forensic economists and accountants may have large differences of opinion, for example, on whether or not, or how, the sole proprietor Schedule C earnings report before an alleged wrongful death may be re-arranged into different amounts for estimating lost earning capacity. It is important to know the track record on such issues of the economist you are hiring and of the damages expert on the other side of the case.

*Experts on economic damages are increasingly likely to keep records of lost-earnings-base decisions by other experts who may be on the other side of lost earning capacity cases. The logic of establishing the lost earnings base must be reasonable and consistent when the relevant facts of a case, for damages-estimation purposes, are similar. What if an expert worked almost exclusively on the plaintiff (defense) side of cases and considered different numbers of past years in establishing the lost earnings base depending of which number of years made the lost wage base the highest (lowest). A plaintiff expert who uses a 6-past-years-earnings average when the least-recent-years numbers are very high has some explaining to do if in other cases, when the last earnings year is the highest earnings level ever attained, this last full year becomes the lost earnings base.

*A concept related to such consistency checks might be labelled "reversibility." Assume the actual earnings in the 3 years before the 2007 injury year are:

2004	\$40,000
2005	\$50,000
2006	\$60,000

Most forensic economicsts would use \$60,000 as the lost earnings base for estimating damages. But what if the numbers had been reversed in those years, so that \$40,000 was the 2006, last-year-earnings figure. Fewer forensic economists would use \$40,000 as the loss base. More than before would average the 2006 earnings with the 2005 and 2004 earnings. Especially when an economist has a pattern of reversibility flip-flops, which produce either consistently high or low numbers, this expert has a problem.

*The appropriate base should be the best predictor of what earnings would have been but for the event at issue, as adjusted for earnings growth and discounting.

Your comments are always appreciated, and we continue to look forward to opportunities for teaching and discussing damages issues at CLE and related meetings. Please let us know when we may be of help.

Sincerely,

Michael L. Brookshire, Ph.D.
Forensic Economist

George A. Barrett, MBA, MSRC, CRC, CVE
Forensic Economist/Vocational Evaluator

Lawyers & Judges Publishing Company

Announces the release of

The Plaintiff and Defense Attorney's Guide to Understanding Economic Damages

*Edited by Michael L. Brookshire, Ph.D.,
Frank Slesnick, Ph.D., and John O. Ward, Ph.D.*

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Other Products of Interest:

Measuring Loss in Catastrophic Injury Cases

By Kevin Marshall, JD, Ph.D. and Thomas Ireland, Ph.D.

The measurement of loss in catastrophic injury cases is an interdisciplinary effort involving the participation of many specialists including economists, rehabilitation counselors and therapists, health care providers, life care planners, attorneys, and others, including the patient and his or her family. Areas covered include the interdisciplinary nature of measuring loss, the role of the forensic economist in determining loss, working with life care planners and rehabilitation and vocational experts, impact of a reduced life expectancy, types of settlements including annuities, structured settlements and periodic payment judgments, and suggestions for building an expert damages team when working on this type of case. In this book, you'll find the information necessary to assess and derive a fair and accurate measurement that will, as fairly as possible, compensate the injured party and/or his or her family for his or her actual losses.

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Assessment of Earning Capacity, Second Edition

By Michael S. Shabnasarian, Ph.D.

Earning capacity is quite often under appreciated and not fully understood. In *Assessment of Earning Capacity* the author recommends standardization, objectivity, and consistency in vocational evaluations. He begins by introducing you to vocational expert services, guiding you through consultation and standard methods to determining earnings capacity. From there he takes you through several comprehensive case studies examining common situations that require vocational assessment, such as personal injury cases, family law, employment law. He also includes an all new chapter on long term disability insurance. Finally, the author presents tips on appearing as an economic expert in court. You will learn what is required for trial preparation, and testimony. He presents sample deposition questions and tips to prepare you for intense cross-examination.

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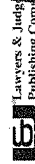
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The Plaintiff and Defense Attorney's Guide to Understanding Economic Damages

Michael L. Brookshire, Ph.D.
Frank Slesnick, Ph.D.
John O. Ward Ph.D.



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