

April 27, 2009

RE: Survey Results from Forensic Economists

Since 1989, Brookshire, Slesnick, and Luthy have conducted and published a questionnaire survey of National Association of Forensic Economics (NAFE) members every three years or so. The latest survey of forensic economists and their methods was conducted in February 2009, with the U. S. economy in a particularly severe downturn. The results will be presented at the July 2009 meeting of the Western Economic Association International in Vancouver, British Columbia and hopefully published in a future edition of the *Journal of Forensic Economics*. The survey was sent to 585 NAFE members, and the 32.1 percent response rate was the highest since 1990. We will attempt to give you preliminary results to important questions both in this newsletter and the next.

For example, those surveyed were asked about values of their forecast variables when estimating economic damages for a 30-year, future period. The average (mean) forecast of future price inflation -- the average increase in the Consumer Price Index -- was 3.1 percent per year over these 30 years. Questions were also asked about expected medical cost inflation to compare with this 3.1 percent forecast growth rate for general price inflation. The average, annual increase for nursing home care was 4.4 percent, and the average inflation rate for attendant care (in life care plans) was 3.5 percent per year.

In lost earning capacity estimates, a critical variable is the net discount rate. This is the assumed rate of interest (discount) used to reduce future losses to present values less the assumed annual rate of earnings growth which increases loss values into the future. In the previous 2006 survey, this net discount rate was 1.33 percent annually, meaning that the base earnings loss is reduced by a net 1.33 percent discount rate compounding downward. The 2009 survey result was a 1.76 percent net discount rate; a higher net discount rate is more conservative and makes the loss estimates lower. This result is especially interesting since net discount rates since 2006 have been lower than in 2006, but, again, the February 2009 responses were in an unusual period of U. S. economic history.

In making their decisions about the discount rate per se, 42.9 percent of respondents use some historical average of interest rates, while 32.2 percent focus upon current interest rates at the time an economic loss estimate is made. For the plurality who forecast based upon an historical average of interest rates, the average period is 27 past years.

Another set of questions involved the self-consumption deduction from earning capacity in wrongful death cases. The U. S. increasingly features both adults working in a 2-adult household. When one of the adults dies, should his or her self-consumption be calculated out of deceased earnings only or out of total family income? The 2009 survey results show that 32.2 percent of respondents consider deceased income only, while 61.7 percent calculate consumption by the deceased out of total family income. This is an important difference in method. If both adults earned exactly the same income, for example, the consumption deduction would be twice as large under the latter and most prevalent method. (Brookshire and Slesnick have a recent paper on this specific topic.)

The decision regarding the lost earnings base, to which both net discount rates and consumption deductions are applied, is often the most significant difference between a plaintiff and defense economist working in the same case. A hypothetical question in the 2009 survey posed a self-employed male with steady earnings in four of the last five years but very high earnings in one unusually good year. The survey result confirms that forensic economists continue to believe that lost "earning capacity" in the future is best predicted by actual earnings in the past. It is not the best that a person has ever done or could possibly do in the abstract. When respondents considered the very high year of earnings in this lost earnings base, it was generally averaged with the other, past years. The common sense prediction is that especially good years will repeat in the future every five years, since this was true in the immediate past.

As a final preview of the survey results, one new question was asked about ethics. Every NAFE member is pledged to follow the Statement of Ethical Principles of the Association. A contentious issue is the proper handling of a hypothetical assumption supplied by the client attorney, which the economist would not choose on his or her own to estimate economic losses. Seventeen percent of respondents would refuse to make an estimate based upon the hypothetical; 37 percent would do so but clearly indicate that the attorney was the source of this hypothetical assumption; and 32 percent would do so, indicate the attorney as the source, and go further to clearly label any conclusion as "hypothetical." Those who would use the hypothetical generally indicated that the hypothetical assumption and conclusion would be coupled with their own assumptions, methods, and conclusions.

We continue to be busy in both the forensic economic and vocational specialties of our business, and we are pleased to be diversified by plaintiff and defense work; in a wide variety of personal injury, employment, commercial, and punitive damages cases; and over many states. Please give either of us a call or email if 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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