

August 29, 2014

RE: Law and Economics

When considering the work of forensic economists, it is important to understand the differences between the economic specialties of "law and economics" and "forensic economics." Economists pursuing the former may be in economics departments of universities or on the faculties of colleges of law. Their research includes the impacts of various laws on the economy of the nation, individual states, and persons with various characteristics and situations. It extends to analysis of what the law should be in terms of economic or social objectives deemed to be important.

In contrast, a forensic economist focuses upon what the law is. He or she then performs economic analyses within legal guidelines and parameters of a particular jurisdiction. The largest focus of forensic economists nationwide is the proper calculation of economic damages. Forensic economists may have many, different specialties in economics, from labor economics to antitrust economics to finance, and they may be full-time practitioners not associated with a university.

We have previously discussed issues among forensic economists regarding the possible impact of the Affordable Care Act on economic forecasts of the costs of medical and related care. Yet, legal parameters have always affected how life care plans are developed and costed. A recent example of how such legal parameters may be clarified and/or changed is the June 4, 2014 decision of our home state West Virginia Supreme Court of Appeals in *Kenney vs. Liston*. A first requirement for economic damages calculations is that the "reasonable value" of medical services is represented by the initial bill from a provider, not a discounted billing or the amount which a provider ultimately accepts as payment in full. Secondly, the Court stated that the collateral source rule prevents the reduction of a medical cost damages arising from third party payments in four categories: insurance policies, employment benefits, gratuities, and social legislation benefits. Legal guidelines in other jurisdictions of our work are very different regarding these points, or legal parameters in these and other areas may be unclear. In the face of ambiguity, it is the role of the forensic economist to make clear the assumptions being made about legal guidelines for calculation, and, sometimes, a forensic economist may be prepared to discuss alternative calculations and results based upon differing interpretations of what the law and relevant court decisions mean.

On another topic, Mike and four other authors are completing work on the January 2015 survey of members of the National Association of Forensic Economics. This is the last survey study by Mike and Dr. Frank Slesnick; survey expert Dr. Michael Luthy will continue with this project, and forensic economists Dr. David Rosenbaum and Dr. David Schap will replace Brookshire and Slesnick. The survey studies have been conducted and published in forensic journals since 1989. Survey results have been cited in jurisdictions across the nation as indicative of generally accepted methods and data sources. As always, the new survey contains new questions, regarding, as examples, the impact of the Affordable Care Act, the appropriate roles of vocational rehabilitation experts versus economists in personal injury cases, and billing

and business policies of forensic economists. We will be discussing this 2015 survey and the results in future newsletters.

Finally, we have previously informed you that each of us wrote chapters in *Foundations of Forensic Vocational Rehabilitation* (New York: Springer, 2014). This is the first textbook for those training in this field, and it was organized and edited by Dr. Rick Robinson of Jacksonville, Florida. It is our opinion that this book will become an important foundation for appropriate methodologies in forensic vocational work. Both plaintiff and defense attorneys working in personal injury cases should consider this addition to their library.

As always, please give us a call or email when we can answer questions or be of help.

Michael L. Brookshire, Ph. D.  
Forensic Economist

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