October 18, 2021

RE: 2019 Survey of Forensic Economists

We hope that you have been doing well since our last newsletter. It has been some time since our last communication, and therefore we will provide an update on some of our activities in 2021. One of the most noteworthy developments has been research related to forensic economic issues involving the ongoing opioid litigation. Over a period of 18 months, beginning in January 2020, George collaborated with epidemiological experts from The Johns Hopkins University and Columbia University regarding abatement costs attributable to alleged prescription opioid saturation in the Huntington, West Virginia community. This work culminated with George’s testimony in the United States District Court for the Southern District of West Virginia in late June 2021. George concluded that a 30-year redress model would cost approximately $2.5 billion to effectively abate the adverse consequences resulting from opioid use disorder in Cabell County. This bench trial has yet to be concluded, and we will advise you as to the outcome upon judicial determination. Meanwhile, you may review the history of this landmark litigation by referencing <https://apnews.com/article/wv-state-wire-opioids-business-health-610ab297877634b78aa7cbaf7a70b83b>.

The ongoing COVID-19 pandemic has proven to be disruptive of ongoing research activities in vocational rehabilitation and forensic economics. After being cancelled in 2020, George was able to serve as a faculty member at the annual conference of the American Rehabilitation Economics Association (AREA). Although the May 2021 AREA conference was conducted virtually, George, and co-presenter Kristin Kucsma of the Sobel Tinari Economics Group in New York, presented a 6-hour class focusing on the calculation of lost earnings for self-employed individuals. Additional research efforts on damages issues have been slowly forthcoming as we collectively strive for a return to pre-COVID normalcy.

This newsletter focuses on the 2019 survey of forensic economists nationwide, which was conducted before the onset of the COVID pandemic and published in the *Journal of Legal Economics* late in 2020. It is unlikely that answers to questions reported before would have been significantly affected by COVID and the economic downturn and rapid recovery that followed. Mike and his colleague Dr. Frank Slesnick created the survey in 1990, published 10 sets of survey results through 2015, and then handed over the process in 2017 to current authors David Schap, David Rosenbaum, and Michael Luthy. Survey results of prevailing practice among forensic economists have often been discussed in US civil cases. The response rate by the 567 expert witnesses surveyed was more than 39 percent to the electronic survey.

The most fundamental questions concern estimates of earnings growth rates and of the interest (discount) rates used to reduce future earnings values to a present value. The plaintiff’s own, earnings history is commonly used in determining the (lost) wage base but is typically insufficient for determining the wage growth rate. A large plurality of those surveyed (43%) use a long-term historical average of growth rates to project the wage base into the future; use of government forecasts for growth rates was the next choice from 21% of respondents. 70% of respondents use one growth rate for future years versus different rates for different sets of years.

A large change from past surveys occurred in the enlarged share of respondents who use an historical average of interest rates in determining the discount rate (34%) verses use of currant interest rates or other alternatives. Our office has consistently advocated for the use of historical averages.

Sharp differences appear for some questions, as with the costs of health insurance. One-third of respondents use the last employer contribution level, but another one-third would use a higher cost of replacing the previous coverage. There is remarkable agreement, on the other hand, to sources which should be used for worklife expectancy and household services estimates. The preference for valuing lost household services at the market wage for particular lost services remains over several, other alternatives. The services loss would end at the decedent’s life expectancy (42%) or at the decedent’s healthy life expectancy (29%).

In most states – but not Kentucky and West Virginia in our market area – some type of self-consumption deduction must be made from a decedent’s estimated earning capacity. Survivors would not have had the use of this money even absent the wrongful death. For the first time, a majority of respondents (51%) also make a self-consumption deduction from an estimate of lost household services, assuming that some services provided by the decedent were only for his or her benefit. While there is data supporting a 30% deduction form earning capacity, no such percentage figure for household services has research-based support. It is unclear in Kentucky and West Virginia if the prohibition on any deduction from earning capacity also applies to household services.

Other questions in the survey aim at practice issues for economists and issues of ethical conduct. We will make you aware of relevant survey results, from this or earlier surveys, in preparation for depositions and trial.

As previously reported, we remind you that Mike has effectively retired from active forensic economic practice. Mike will remain affiliated with the firm in an emeritus status, but will not be accepting new case retentions. George has now entered his 24th year of professional practice as a forensic damages expert and will continue to work with both plaintiff and defense attorneys on issues related to this topic. George remains interested in providing any continuing legal education support which your organization may be sponsoring.

Sincerely,

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