

Forming Expert Opinions That Provide a Foundation for the Forensic Economist

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Valuation procedure

- Daubert Standard, Rule 26-B
- Marlin, "Estimating Monetary Loss Due To Personal Injury," Journal of Forensic Economics, 1988, 1(2), 1-18.
- Slesnick, Luthy, Brookshire "A 2012 Survey of Forensic Economists: Their Methods, estimates, and Perspectives" Journal of Forensic Economics, 2013, 24 (1), 67-99
- Journal of Forensic Economics series on state laws and practices, 2002 forward

Earnings capacity loss:

back pay/front pay

- Estimation of earnings had the injury not occurred less expected earnings post injury (3 approaches)
- Dates:
 - a. Accident date
 - b. Post accident employment (actual versus potential)
 - c. Valuation (trial) date
 - d. Expected work life post trial date (retirement)
 - e. Life expectancy

Earnings capacity loss back pay/front pay

- Present Value as of Trial Date
 - a. Discount rate
 - b. Earnings growth rate

Company funded portion of fringe benefits

- Life/Health/Disability Insurance (ACA implications?)
- Retirement
- Legally Required
 - Social Security/Medicare
 - Federal/State Unemployment Insurance
 - Workers Compensation
- Valuation issues
 - Cost as a percentage of income vs replacement value vs company costs
 - Actual vs estimated (proxy) values

Household Services (most room for improvement)

- Personal Care
- Household activities
- Shopping
- Caring for others

Life Care Plan

- Medical Services
- Medical Commodities

Valuation Issues: Pre Injury Earnings Capacity

- Pre injury vocational capacity/earnings history established: (should this be done by VE or FE?)
 - o Education/training, past job/earnings history, statements by former employers of plaintiff's work capacity.
 - Historical earnings (W-2's, 1099's, Social Security statement of earnings)
 - Generic earnings, percentile

Valuation Issues: Earnings Capacity

- Probationary period, early career (not necessarily first job).
- Multiple occupations, not necessarily in highest paying when injured. Option to return to prior profession.*
- Part time work
- Variable income (salesman on commission, business owner)
- Housewife
- College Student (change majors?)
- Minor (level of education?)

Post Injury Issues

Intersection of FE methodology and VE data sources. Three different approaches are taken by FE's. VE should provide starting point for post accident earnings, NOT growth pattern, ending date or Present Value.

Post Injury Issues: Three Valuation Approaches

- Steady (average) wage growth approach: Starting salary complication: average includes new entrants and peak earners. Where is plaintiff in earnings life cycle, cohort percentile?
 - ❑ Baseline earnings: Regional vs state vs national (local, when available, much easier trial venue). Which percentile?

Post Injury Issues...

- BLS wage data are available by occupation for the Nation, regions, States and many metropolitan areas.
<http://www.bls.gov/bls/blswage.htm>
- Career info: <http://www.careerinfonet.org>
- O*NET: <http://www.onetonline.org/>
- State resources: <http://www.tn.gov/labor-wfd/>

Post Injury Issues...

- ❑ **Wage growth**
 - Historical plaintiff income
 - OASDI CPI/wage growth rates
<http://www.ssa.gov/oact/tr/2013/index.html>
 - OOH profession wage growth
<http://www.bls.gov/ooh/>
- ❑ **Work life ending (retirement date)**
 - WL tables (Skoog et al JFE)
 - Social Security ages
 - Plaintiff statement, company policy

Post Injury Issues...

- **Age earnings profile:** needs entry level salary to be properly applied. combines 2 data sets: baseline earnings and age earnings profiles based on profile, education
<http://www.census.gov/hhes/www/cpstables/032013/perinc/toc.htm>
- **LPE:** Joint probability of Life expectancy, Workforce participation, Employment approach. Ends at age 75.
http://www.vocecon.com/resources/data/wl_data.aspx
- **Consistency of data source for pre and post earnings.** Compatible with FE practice.

Other issues with Earnings Capacity which should be addressed in VE report

- ❑ **Multiple post accident vocational/earnings capacity scenarios**
 - Show options, let jury make decision.
 - Probabilities (expected earnings)

Other issues ...

- Potential for employment (entry level in another profession).
 - Job openings, trends (previous web sites), unemployment rates
 - OOH. <http://www.bls.gov/ooh/>
 - ADA hiring guidelines
 - FE based:
 - WLE tables include recessions/job searches/etc
 - National Bureau of Economic Research: US Business Cycle Expansions and Contraction <http://www.nber.org/cycles.html>

Other issues...

- Diligence of job search effort
- Previous/concurrent application for disability
 - Social Security
 - Federal Employee (reimbursement)
 - Veterans Administration
 - Disability policy (collateral source rule)

Other issues...

- Education/Training
 - Cost of training including transportation and living expense
 - American Council on Education (click on Higher Education Topics) <http://www.acenet.edu/Pages/default.aspx>
 - Cost of University of Tennessee Education <http://onestop.utk.edu/your-money/cost-estimators/>
 - Online National Center for Educational Statistics <http://nces.ed.gov/collegenavigator>

Other issues...

- Duration of training
- Duration of post completion job search
- Catch up to previous earnings capacity? (e.g nurse completing advanced studies at time of accident)
- Part time earnings: problem with percentages. Firms hire full time and part time, not in between. However, someone can be full time at a lower earnings percentile
- Capacity for mitigation (offset) even if not employed (controversial)

Fringe Benefits

- None: Contract Employee (1099)
- Retirement: ERISA 1,000 hour rule if retirement benefits offered.
- Health care: ACA 30 hours full time, 75% of 40 hr/wk full time.
- Actual employer costs versus estimated (ECEC) <http://www.bls.gov/news.release/ecec.toc.htm>

Household Services

What impact does injury have on one's capacity to perform normal HH functions?

Household Services

- ❑ HHS worksheet
- ❑ Goes to end of life, not work life. U S Life Tables
http://www.cdc.gov/nchs/products/life_tables.htm
- ❑ Post accident household services (physical/mental/emotional limitations on common household activities)
- ❑ Proxy: United States Department of Labor, Bureau of Labor Statistics, American Time Use Survey, Table 3
<http://www.bls.gov/news.release/atus.toc.htm>
- ❑ Co-ordination of employment and HH services approach (age earnings profile)

Life Care Plan

- ❑ Doctors, medications, therapy, hospital stays, nursing home, special equipment.
- ❑ US Department of Labor, Bureau of Labor Statistics, Consumer Price Index, Medical Care Services, Medical Care Commodities sub components
❑ <http://data.bls.gov/cgi-bin/surveymost?cu>
- ❑ ADA implications. Congdon-Hohman and Matheson, "Potential Effects of the Affordable Care Act on the Award of Life Care Expenses," Journal of Forensic Economics, 2013, 24(2) 153-160
