

October 15, 2012

RE: Major Results from 2012 Survey of Forensic Economists

In January-February 2012, Mike and Drs. Frank Slesnick and Mike Luthy, conducted their every-three-year survey of members of the National Association of Forensic Economics (NAFE). The response rate to this electronic survey was one-third of the 583 NAFE members in North America. The average years practicing forensic economics was 25 for respondents and annual practice earnings were 61%:38% from plaintiff-side versus defense-side work. The survey results were presented as a paper on June 30, 2012 at the NAFE sessions which were part of the Western Economic Association International annual meeting in San Francisco. We have also submitted these results to the *Journal of Forensic Economics*, which we expect to have published as a peer-reviewed article. Past survey articles have often been cited in the literature of forensic economics and in reports and testimonies regarding generally accepted practice. This newsletter describes the major results of this ninth survey since 1990.

The most fundamental forecast value which must be chosen by an economist in estimating lost earning capacity is the net discount rate; this is (approximately) the difference between the interest (discount) rate used to discount to present value and the assumed annual earnings growth rate. In the 2012 survey, this value ranged from +1.1 to +1.6 percent per year, depending upon how the question was asked. The higher the net discount rate, the lower is the present value loss amount. Those who use a "total offset" method, with a 0 percent per year net discount rate, were again discredited by the survey. Only 10 percent of respondents used a 0%, or a negative, net discount rate.

Concerning forecasts related to medical costs and life care plans, the annual rate of increase in nursing home costs averaged 4.2 percent per year in a 30-year forecast, or 1.3 percent/year above the 2.9 percent forecast for general price inflation. The forecast value for attendant care cost increases is 3.39 percent annually, which was almost the same as the 3.26 percent forecast of compensation growth for workers generally. Thus, it is important that portions of life care plans involving unskilled care workers not be grown by forecasts for growth in medical cost items.

Many of the responses confirmed prevailing practice in other important methods and data sources. In wrongful death cases, 66 percent of respondents followed the more conservative approach of calculating the consumption of the deceased from total family income, versus 34 percent who only deduct from the income of the deceased. This difference in method causes a dramatic difference in loss estimates when the surviving spouse had significant annual earnings. In estimating lost household services, the majority method involves the costs of one or more individuals to replace the particular services that were lost. An increasing majority of respondents use tables published (primarily) in forensic economic journals as their source for worklife expectancy estimates. Finally, a large majority of forensic economists believe that privately published tables on worklife of the disabled are unreliable for estimating worklife losses.

Methodological issues with sharp differences of opinion among respondents are highlighted in the 2012 survey. Almost 45 percent of respondents use a historical average of interest rates in choosing their discount rate, but almost 39 percent only consider current interest rates. In particular cases, this fundamental choice may make a large difference in the loss results. Of the plurality who consider a historical period of interest rates, the average period considered was 29.7 years. As another example, there has been a wide disagreement among respondents to this series of surveys about the term (length) of

maturities for interest rates used in determining discount rates. The 2012 survey again shows this significant variation. 10.3 percent of respondents emphasize short term (one year or less) government securities, 13.9 percent intermediate term (1-10 years), 30.9 percent long term (greater than 10 years), 32.1 percent mixed, and 12.7 percent other.

Finally, the 2012 survey featured entirely new questions in this long series of surveys. For example, in estimating the replacement value of lost household services, respondents were asked if they added agency costs (fees) to the costs of household services. More than 80 percent of respondents did not add agency costs. Similarly, more than 80 percent of respondents did not estimate a longer worklife expectancy for self-employed persons versus employed persons. Finally, respondents were asked if they had calculated economic losses in several, less-tangible categories of economic damages within the past five years. The "No" responses were overwhelming and are as follows: pain and suffering, 97.6 percent; companionship, 89.0 percent; relationship, 96.3 percent; consortium, 96.2 percent; guidance, counsel and/or advice, 81.0 percent; and enjoyment of life (hedonic), 96.4 percent.

Please feel free to call or email if you have questions about these results or have other questions. We are always willing to speak about issues in economic damages at continuing legal education sessions.

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