

February 28, 2018

RE: Relationships and Issues of Vocational Rehabilitation Experts (VE's) and Forensic Economists (FE's) in Personal Injury Cases.

Mike begins his 43rd year of practice in forensic economics, and George has been a forensic economist and later both a FE and a VE for 20 years. In 2017, we worked in seventeen states and the District of Columbia on a range of cases involving economic damages. The objective of this newsletter is to highlight the two key experts on damages in Personal Injury cases—the vocational expert (VE), who is typically a foundation expert for the other expert, the forensic economist (FE).

George is one of a handful of experts on damages in the U. S. who is trained and experienced as both a forensic economist and vocational expert. Mike has perhaps published more books and articles on the interface between FE's and VE's than any other forensic economist. In the only textbook on forensic vocational analysis (Rick Robinson, editor, 2014), Mike wrote the chapter on issues in the handoff to a forensic economist, and George authored a chapter on worklife expectancy. (It should be noted that Mike often works with VE's other than George, and George works with FE's other than Mike or often performs both roles.)

The two, forensic specialties developed over the last fifty years, with their own professional associations and professional literature of books and peer-reviewed journals. Forensic economists were Ph. D. or master's-level economists and finance professionals (often college professors) and sometimes CPA's, who estimated lost earning capacity and other categories of damages. Vocational rehabilitation experts were mostly master's level, sometimes Ph.D., graduates of programs in rehabilitation counseling, who achieved certifications such as Certified Rehabilitation Counselor (CRC). In personal injury cases, VE's focused on what FE's were not qualified by training to address: how a specific injury affects vocational functioning and earning capacity. The most typical interaction between these two experts is that the VE establishes the foundation for a post-injury earning capacity, which is used by an FE to establish a present value loss of earning capacity as the difference between pre-injury (But For) and post-injury (Residual) earnings scenarios.

Over the years, however, we have seen FE's and VE's attempt to work together in the following 8 categories or sub-categories of economic damages:

- 1.) Base annual earnings in Pre versus Post scenarios.
- 2.) Employer contributions to fringe benefits in Pre versus Post scenarios.
- 3.) The number of years of worklife expectancy in Pre versus Post scenarios.
- 4.) Earnings growth rates beyond the Pre versus Post earnings base.

- 5.) Age-earnings growth rates, beyond economy-wide growth, that may reflect rapid growth in individual cases during the decades following investments in education or specialized training.
- 6.) Likely household services in Pre versus Post scenarios.
- 7.) Education, training, and support programs that might allow, or enhance, earning capacity, usually in Post scenarios.
- 8.) Lost enjoyment of life, or other less tangible, damages relating to Pre versus Post scenarios.

The increasing complexity and range of subject matter of FE-VE relationships has been made even more problematic because of disagreements within and among the two specialties. First, FE's and VE's differ within their own groups about which of the above categories can be scientifically analyzed to assist a trier of fact in particular cases. Secondly, they differ within themselves on appropriate data sources and methods. Third, FE's and VE's may vigorously disagree about which expert is better suited to perform various types of analysis in regard to the above categories. For example, FE's typically believe the analysis of a pre-injury earning capacity scenario is their domain. Many VE's believe they can handle both Pre and Post earnings scenarios without an FE. There are large divisions of thought within and among both specialties about whether or not, and how, worklife expectancy differences due to an injury may be estimated.

Finally, the training and qualifications of FE's versus VE's are so different that experts in one of the fields may have poor understanding of the terminology, key concepts, and basic models of the other field. This may lead to mistakes, large and small, in the economic loss estimate simply due to mistakes in translation and sloppy handoffs between the two experts.

For the plaintiff or defense trial attorney, it has never been more important to consider how well their two, related experts will be able to work together. Both may have previously opined on the same subjects, or on the other expert when he/she was on the other side of a case, or on the proper role(s) of the other expert. Moreover, in opposing this pair of experts on the other side, ask your own pair about these potential problems between the pair of experts opposing them and attempt to do so before discovery depositions.

Another suggestion, especially when your VE and FE have not previously worked together, is that a telephone call between the two occur before either issues a report. Rather than being a sinister activity, we view this as important "due diligence" when one expert is the foundation for the other. The VE conclusions must be of a nature and format that the economist can utilize.

As always, feel free to call or email us with questions, and we are always pleased to speak at CLE sessions and seminars.