

September 7, 2015

RE: 2015 Survey of Forensic Economists

In January-February 2015, Mike and four co-authors conducted their every-three-year survey of members of the National Association of Forensic Economics (NAFE). Mike and Dr. Frank Slesnick began this series of survey studies in 1990 and were joined in 2003 by electronic survey expert Dr. Mike Luthy. Mike Brookshire and Frank Slesnick end their survey work with the 2015 survey, and forensic economists Dr. David Schap of Massachusetts and Dr. Dave Rosenbaum of Nebraska will go forward with future surveys. Two papers will be given at the NAFE meetings of the Southern Economic Association in November and the American Economic Association in January 2016, and an article based upon this survey has been submitted to the *Journal of Forensic Economics*. Past survey articles have often been cited in the literature of forensic economics and in reports and testimonies regarding generally accepted methods and practices. The response rate from 590 NAFE members in North America was an outstanding 33.1 percent. This newsletter is a preview of important responses on methodological issues, and the next newsletter will discuss other responses regarding forensic economists and their practices.

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 2015 survey, this value ranged from +1.04 to +1.36 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, which is a 0 percent per year net discount rate, were again discredited by the survey. Only 12 percent of respondents used a 0 percent, or a negative, net discount rate.

Some responses reflect significant disagreements among forensic economists. In determining their interest (discount) rate, for example, 40 percent use a historical average of interest rates--with 30 years being the average historical period--but 38 percent use current interest rates. This difference may produce significant differences in loss estimates, as low current rates produce higher present value estimates. In wrongful death cases, large differences in loss estimates can also result from calculating self-consumption based on total family income versus decedent income only. In the 2015 survey, 65 percent use total family income and 35 percent use decedent income only. The latter approach means much higher net losses to a survivor when both adults in a two-adult household earn a significant share of total family income. This difference is equally important under the "personal maintenance" deduction standard in Tennessee and Pennsylvania, and it should be noted that no type of consumption deduction from earning capacity may be made in Kentucky or West Virginia.

In regard to worklife expectancy, most forensic economists have moved to "Markov-calculated" source studies as published in economic journals. For calculations of lost household services, most forensic economists cost the hiring of one or more individuals to replace the particular services that were lost, versus the cost of a "housekeeper", for example.

For the first time, those surveyed were asked about possible impacts of the Affordable Care Act of 2010 on present value estimates of life care plans. (At the time of the survey, an important constitutional challenge to the ACA had not yet been decided by the U. S. Supreme Court.) Most respondents were uncertain whether the implementation of the ACA would produce significant changes in the estimation of future medical and related care costs. However, a third believed that collateral source rules and subrogation procedures in state laws would prevent significant changes in estimates of the present value of life care plans.

Another new question asked how forensic economists used the opinions of vocational rehabilitation experts in personal injury cases. At least two generalizations are possible from the responses. Forensic economists are much more likely to accept the opinion of a vocational rehabilitation expert in a post-injury analysis than in a pre-injury analysis. Secondly, in a post-injury (residual earning capacity) analysis, forensic economists are much more likely to accept the opinion of a vocational expert on wage levels than on worklife expectancy.

Finally, Mike and Frank Slesnick are completing a book chapter on the 25 years of survey studies on forensic economists and their viewpoints. The book is expected to be published by Palgrave Macmillan in 2016, is entitled *Forensic Economics: Determining Damages in Civil Litigation*, and is edited by our colleague Dr. Frank Tinari in New Jersey. As always, please give either of us a call or email if we can be of help.