NEWSLETTER SPRING 2010

AREA

AMERICAN REHABILITATION ECONOMICS ASSOCIATION

APRIL 2010

REGISTER TODAY!

AREA's 2010 ANNUAL CONFERENCE

June 17th to June 20th in Chicago, Illinois

Click here for complete information & registration form!

INSIDE THIS ISSUE:

2010 ANNUAL CONFERENCE TO COVER MANY TOPICS OF INTEREST

MISCONCEPTIONS SURROUNDING PROBABILITY IN THE CALCULATION OF ECONOMIC DAMAGES

David G. Tucek, M.A., MBA

In calculating economic damages, the most relevant probabilities relate to the risks of dying, becoming disabled, injured or sick, and being unemployed. While many forensic economists recognize these risks either implicitly or explicitly in their work, a significant number do not.

This presentation will provide examples of the misuse and misconceptions about probability in the calculation of economic damages. The presentation will focus on five areas: (1) examples of ignoring probability (or risk) altogether; (2) the view that an expectancy approach assumes individuals live a series of fractional years; (3) the position that any probability used in an economic loss calculation must be greater than 50 percent; (4) the problem of the special case; and (5) the practice of valuing economic losses through life expectancy.

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THE STRUGGLE TO BE REAL IN THE COURTROOM

Michael K. Bush, J.D.

The courtroom during a civil lawsuit, especially when the stakes are high, is normally not a very warm and welcoming place. Because of the rules of evidence, communication is highly structured and difficult.

Any participant in a lawsuit knows that, based upon how they communicate, they will be either accepted or rejected by the all powerful jury. Therefore, the fear of rejection can be a crippling emotion which compromises true communication even more than the stylized rules of evidence.

The struggle to be real in the courtroom will primarily focus on Michael Bush's 30-day experience at the ranch of famed trial attorney Gerry Spence, in Dubois, Wyoming, back in 1995. Bush attended this 30-day course believing he would be taught trial techniques.

Instead, he was exposed to the underlying philosophy of Gerry Spence who, in his entire career, never lost a criminal case as a prosecutor or a defense attorney and was undefeated in civil litigation from the year 1969 until his retirement in 2008.

Bush's talk will discuss the art of communication in the courtroom and many of the mistakes which he believes attorneys and expert witnesses make which undercut their credibility and result in rejection by the jury.

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LIFE CARE PLANNING IN MEXICO: COST SUBSTANTIATION & USE OF THE WAGE, CPI, AND IMSS DATABASES

Penelope Caragonne, Ph.D.
Keith Sofka, A.T.P.

This presentation will focus on activities completed in Mexico as consulting experts for U.S. law firms. Eight years ago, Caragonne and Associates, LLC, began to receive requests from U.S. attorneys to convert the costs of a U.S. life care plan into the Mexico peso. Civil litigation involving aliens with catastrophic injuries is now a significant part of their consulting practice. This presentation will focus on many questions that are typically raised by U.S. attorneys.

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APPLYING LIFE EXPECTANCY DATA IN PERSONAL DAMAGES ASSESSMENT

Rick R. Gaskins, MBA, CPA

Life expectancy is a primary factor in personal injury and wrongful death damages assessment. Rick Gaskins will present a comprehensive tutorial on the application of life expectancy data in personal damages analysis, including: types of life expectancy tables, sources for life table data, consideration of gender, race and non-standard mortality, determination

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AREA 2010 ANNUAL CONFERENCE

AREA will be returning to the "Windy City" of Chicago (IL) for its 2010 Annual Conference to be held Thursday, June 17th through Sunday, June 20th at the Ambassador East Hotel, where we had a most enjoyable time last year. As in 2009, there will be a pre-conference "Boot Camp" much like last year, but with a slightly different orientation emphasizing the "why" of what we do, rather than just the "how." The Boot Camp and Main Conference offer attendees the opportunity to earn numerous CEU's at one event. Participants in this year's Boot Camp will be exposed to 2.0 contact hours on Ethics Standards as they apply to both forensic vocational rehabilitation and economic practice.

"Boot Camp" for Forensic Vocational and Economic Experts (Pre-Conference)

The "Boot Camp" will take place all day Thursday and continue through Friday morning. This workshop serves as a primer for currently practicing forensic vocational and economic experts, and for those persons aspiring to become forensic experts. The Boot Camp will provide instruction on the topics pertaining to the work of forensic vocational and economic experts, utilizing case study examples to aid participants in applying what they learn to their current and future practices. Our featured speakers will include Gerald R. Schneck, Ph.D., CRC-MAC, FVE, Professor of Rehabilitation Counseling and Coordinator of the Graduate Certificate Program in Forensic Vocational Rehabilitation at Minnesota State University, Mankato, who will address forensic vocational rehabilitation practices; and George Barrett, MSRC, MBA, CRC, a principal with Brookshire, Barrett & Associates, LLC, South Charleston, West Virginia, who will address the forensic economic areas of practice. Participants are encouraged to bring laptops, as they will have the opportunity to work on and be guided through spreadsheets within the forensic economic portion of the workshop, utilizing information from preselected case studies. The Boot Camp registration fee is $450 (members & non-members). A discount of $150 is available for those persons who attend both the Boot Camp and the Main Conference.

A total of 9.75 contact hours is being requested for award to "Boot Camp" participants, 7.25 contact hours of which will deal with content specific to forensic vocational rehabilitation and economics, coupled with 2.0 contact hours specifically dealing with Ethics. Award of Continuing Education Units (CEUs) is being applied for through the Commission on Rehabilitation Counselor Certification (CRCC) and the Commission for Disability Manager Standards (CDMS).

The Main Conference

Presenters will include David Tucek, MA, MBA (Misconceptions Surrounding Probability in the Calculation of Economic Damages); Michael K. Bush, JD (The Struggle to Be Real in the Courtroom); Penelope Caragonne, PhD and Keith Sofka, ATP (Life Care Planning in Mexico: Cost Substantiation & Use of the Wage, CPI, and IMSS Databases); Rick Gaskins, MBA, CPA (Applying Life Expectancy Data in Personal Damages Assessment); Mary Barros-Bailey, PhD, CRC (The Development of a Defensible Occupational Information System for Forensic Purposes); George Barrett, MSRC, MBA (Interest Rates and Economic Cycles); William Houston Reed, PhD, CRE (How to Survive a Frye/Daubert Challenge); and Rod Durgin, PhD, RFE (Moderator: Roundtable Discussion by AREA Members on Topics of Current Importance). A total of 12.25 contact hours is being applied for through CRCC and CDMS for completion of the Main Conference.

The Main Conference costs $300 with CEUs or $165 without CEUs for AREA members, and $350 with CEUs or $195 without CEUs for non-members. A total of 12.5 Continuing Education contact hours is being applied for through CRCC and CDMS for the Main Conference.

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CONFERENCE CALENDAR

Register Today!

Click here for complete Conference information & registration form.

June 3-4, 2010

7th Annual NAFE International Conference

Copenhagen, Denmark

June 17-20, 2010

American Rehabilitation Economics Association Annual Conference

Pre-Conference "Boot Camp": Thursday, June 17th to Friday, June 18th

Main Conference Sessions: Friday, June 18th to Sunday, June 20th

Ambassador East Hotel

Chicago, IL

June 29—July 3, 2010

Western Economic Association (WEA)

85th Annual Conference

Portland, OR

November 4-6, 2010

2010 IARP Forensic Conference

New Orleans, LA

November 20-22, 2010

80th Annual Southern Economic Association Meeting

Atlanta, GA

January 7-9, 2011

American Economic Association (AEA)

2011 Annual Meeting

Denver, CO

AREA 2010 CONFERENCE *(cont'd from page 2)*

Conference Registration

Deadline: Close of business, Monday, May 31st. Registrations received after May 31st will be assessed a $50 late fee.

Cancellations/Refunds: Written notice of cancellation and request for refund must be received by AREA no later than Monday, June 7th for a full refund. Requests received after June 7th will be subject to a $50 administrative fee. Register: Mail your check or money order, made payable to "AREA," to: AREA, c/o Margy Ashby, 127 N. Westwind Drive, El Cajon, CA 92020-2955.

Hotel Rooms/Reservations

Rooms at the Ambassador East Hotel are $179 per night for a King Deluxe. (All rates are subject to state sales and lodging taxes.) The Conference rate applies to the nights of June 14th to June 23rd for those who wish to turn their stay into a vacation. Additional per person charge is $20. Phone the Ambassador East Reservations Department toll free at 888.506.3471 or 312.787.7200 (x5196). Identify yourself as part of the "American Rehabilitation Economics" group in order to reserve your individual accommodations under our room block.

Further Information

For further information, please go to the AREA website at www.A-R-E-A.org or call the AREA Office at **800.317.2732** (toll free) or **619.440.2650**, or send an email to area@gasvcs.net.

AREA'S NEWEST MEMBERS

The following short biographical sketches are provided by way of introducing our newest AREA colleagues.

Scott Dale Gilbert — Associate Member: Scott received his Bachelor of Arts in Economics from the University of California, Berkeley, and his Masters and Doctorate from the University of California, San Diego. He is President of Gilbert Economics (Carbondale, IL) and serves as Director of the Undergraduate Studies program in Economics and as an Associate Professor and member of the Graduate Faculty at Southern Illinois University, Carbondale. He previously served on the faculty of the University of Mississippi in the Department of Economics.

Nicole B. King — Student Member: Nicole is currently completing her Masters in Rehabilitation Counseling at Texas Tech University Health Science Center and has previously completed a Masters in Economics from the University of Texas-El Paso. She is currently employed as a Vocational Rehabilitation Consultant with Conrado & Associates, El Paso, TX. Previous work experience includes serving as a Business Strategy Analyst with El Paso Water Utilities, and as a Business Development Representative with the El Paso Branch of the Federal Reserve Bank of Dallas.

Nik Marchol — Associate Member: Holds a Bachelors degree in Economics and has been employed as a Forensic Economist with The Udinsky Group of San Francisco, CA.

James J. Radke — Professional Member: James received his Masters in Behavioral Studies from the University of Wisconsin-Madison, and also completed additional graduate work at Loyola University (Chicago), Institute of Human Resources and Industrial Relations. He is the President of the Association for Career Transitions, Northbrook, IL.

Rick Robinson — Professional Member: Rick is currently a Vocational Rehabilitation Consultant with Robinson Work Rehabilitation Services Company of Jacksonville, FL. He completed a Masters in Counselor Education from the University of North Florida and a Masters of Business Administration from Regis University, Denver, CO. He is currently enrolled in a doctoral program in Rehabilitation Science at the University of Florida. Rick holds numerous professional certifications and licensures.

CONFERENCE TOPICS OF INTEREST

(cont'd from page 1)

APPLYING LIFE EXPECTANCY DATA IN PERSONAL DAMAGES ASSESSMENT *(cont'd)*

Rick R. Gaskins, MBA, CPA

of joint life expectancy, and selection of model for the application of life expectancy data in litigation. Guidance will be given on creating a life table analysis spreadsheet that provides the functionality experts need in personal damages assessment, including joint life expectancy and non-standard mortality. At the conclusion, the expert will be able to make informed decisions about selection of life expectancy data and about choice of model for application of the data, and be able to effectively present and defend the life expectancy elements in a personal damages assessment.

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THE DEVELOPMENT OF A DEFENSIBLE OCCUPATIONAL INFORMATION SYSTEM FOR FORENSIC PURPOSES

Mary Barros-Bailey, Ph.D., CRC

Since Kerner v. Fleming and Rinaldi v. Ribicoff in 1962, the Social Security Administration (SSA) has had the burden of proof that an individual could actually (not theoretically) work due to an impairment. The DOT has been used extensively by SSA as the predominant source of occupational information for the person-job match. In 1980, the National Research Council recommended fundamental changes to the DOT, which eventually resulted in its final revision in 1991 and eventual replacement by the O*NET in 1998. This session will present SSA's current effort to develop an occupational information system (OIS) to replace the DOT for disability adjudication. The SSA's OIS will be the first developed for disability and forensic purposes. The Occupational Information Development Advisory forensic purposes. The Occupational Information Development Advisory Panel (OIDAP) was chartered by the SSA to provide advice and recommendations for the development of the OIS. This session will answer "Why not the DOT?" and "Why not the O*NET?" for forensic purposes. Cases challenging the use of the DOT will be presented. In addition, the OIDAP's September 2009 recommendations for data elements for the content model and classification system will be reviewed along with SSA's research and development activities (*e.g.*, medical-vocational study, person-side instrument development, etc.). In 2010, SSA Commissioner Astrue requested further advice from the OIDAP on areas involving sampling and data collection plans, recommendations for developing a recruitment, training, and certification program for field job analysts, methods for the person-job link, and review of pertinent reports relevant to the OIS's development. The status of the OIDAP activities on current recommendation requests will be covered.

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INTEREST RATES & ECONOMIC CYCLES

George Barrett, MSRC, MBA

When a lump sum is awarded for compensation of future losses, it is assumed that this principal will be invested in an interest bearing account. These interest earnings, which accrue through time, can be used to offset the future losses. Economists account for these offsets through a mathematical operation known commonly as discounting to present value. Perhaps the most debated methodological issue in forensic economics over the past 20 years has been related to the appropriate interest rate to apply to future losses. It is generally accepted that interest rates fluctuate with changes in the macro economy. Since forensic economic projections typically span multiple decades, changes in the economic cycle often alter the interest rates available for successful plaintiffs to invest settlements and jury awards. When these changes in interest rates occur, the plaintiff can expect to experience higher interest earnings as the applicable discount rate increases while lower interest rates will result in reduced interest earnings. Because the "make-whole" principle relies heavily on accrued interest earnings to fully compensate the plaintiff for economic losses, the changing interest rates through time might lead to shortfalls or windfalls.

This presentation will focus on why economic cycles affect interest rates and the various methods by which these fluctuations are taken into consideration.

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HOW TO SURVIVE A FRYE/DAUBERT CHALLENGE

William H. Reed, Ph.D., CRE

A *Motion in Limine* is a legal document drafted by opposing counsel in civil litigation cases to petition the court to exclude an expert before the expert can appear as a witness at the trial. The language in the motion usually attacks the credentials of the expert as being deficient and/or the methodology for being "not generally accepted in the scientific community." Occasionally, a motion is brought against an expert that argues that his or her field of expertise is not within the appropriate relevant scientific community to address the issues.

Motions in Limine are also known as Frye or Daubert challenges, depending upon which standard the state has adopted. An unsuccessful defense against a challenge can result in the loss of credibility, income and even career.

This presentation provides one approach to a defense based, in part, on papers in professional journals, surveys of practitioners, and the law.

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ROUNDTABLE DISCUSSION ON TOPICS OF CURRENT IMPORTANCE

Moderator: Rod Durgin, Ph.D., RFE

A roundtable format that will include Conference speakers who will answer any questions as they pertain to the vocational, economic and legal perspectives presented. This session presents an opportunity for further discussion and dialogue regarding different opinions and viewpoints.

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A R E A

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AREA Needs Your Writing Skills

As with all professional organizations, the benefits that members receive depend not only upon the payment of dues, but on the many ways by which they share their individual talents and resources to the group. Some find that they can provide leadership for an organization by service on the Board of Directors in any of a variety of capacities, while others might present or assist in the conduct of training conferences, conduct research and/or write articles that deal with current and evolving topics or concerns that face the field.

At this time, AREA has a number of needs that can only be met by the contribution of the time and energy of its members, who are willing to take on a variety of tasks and challenges that the organization faces in making its efforts worthwhile to each of us and to those practitioners and beneficiaries who ultimately are impacted by what we do in advancing our work.

One of the important ways that AREA attempts to provide ongoing documentation of the research efforts and issues that are being faced in our field is by publishing papers in a key document of the association. AREA is in dire need of manuscript submissions to include in our key publication, *The Earnings Analyst (TEA).*

Unfortunately, for the past few years, there have been extremely limited numbers of manuscripts submitted for possible inclusion in this important publication.

George Barrett, our current Editor of *The Earnings Analyst,* is hoping to publish a double issue of the journal in the foreseeable future, but is dependent upon many of us to review the issues and efforts we have faced and undertaken to better our profession, and then to commit some time to writing a topic which we feel would be beneficial to the areas of forensic economics and vocational practice.

Topics covered in previous *The Earnings Analyst* issues can be found on the following webpage:

http://www.a-r-e-a.org/journal.shtml

For more information regarding how to prepare and propose a manuscript for potential publication in *The Earnings Analyst,* please contact the Editor:

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About AREA

Established in 1989, AREA has pursued two missions: bringing recognition to the combined use of vocational rehabilitation and economic loss assessment as a distinct discipline, and providing a peer-exchange forum for vocational, economic and rehabilitation experts who practice within this growing field.

AREA supports professional growth by offering opportunities for continuing education and university credit at its Annual Conference. AREA also participates in conference sessions held with other vocational, economic and rehabilitation organizations to encourage the sharing of knowledge among related forensic professionals.

Currently, AREA is the only international certifying body that has the unique blend of professions in loss assessment. Additionally, it is the first to establish a Registry of both Forensic Vocational and Forensic Economic Experts.

As forensic experts, AREA members offer opinion and testimony in a wide variety of cases. Often they involve some type of injury, which has resulted in an alleged loss of earnings or loss of earning capacity.

Our role is to determine the nature and extent of any loss, from a vocational and/or economic perspective. This, in turn, helps the Court in its assessment of damages.

Economic and vocational experts identify what the person could have earned prior to the incident, compared to what they are likely to earn following the incident. Economic experts calculate the value of those earnings over time, so the difference, if any, between the two income streams is clearly understood. Those who act as vocational/economic experts blend the two disciplines, and offer testimony in both arenas.