

AREA

AMERICAN
REHABILITATION
ECONOMICS
ASSOCIATION

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.

NEWSLETTER FALL 2021
Matt Sims, Editor

COMING SOON! DON'T MISS IT!

THE FUNCTIONAL CAPACITY EVALUATION (FCE) EXPLAINED

A virtual workshop featuring V. Robert May, Ph.D.

Wednesday, October 13, 2021 (11am PDT | 2pm EDT)

Dr. Robert May will discuss Functional Capacity Evaluations for use in litigation foundation by vocational and economic experts. Dr. May is the director for certifying FCE's in North America and also for Life Care Planners. After the webinar, we will have a 30-minute virtual social! This workshop has already been approved for 1 CEU credit from both CRC and ABVE, and 1 CRE/CEA credit is offered from AREA.

For complete information, visit our website at www.a-r-e-a.org.



DO YOU KNOW?

Have You Visited AREA's Website Lately?

AREA continues to significantly update our website! Visit the [website](http://www.a-r-e-a.org) to see if you can find the answers to the following questions:

- (a) How many membership types do we have?
- (b) Who are the new Board members?
- (c) What Educational Opportunities are offered in 2021 and 2022?

MARK YOUR JANUARY CALENDAR!

Our next virtual workshop is currently scheduled for **Thursday, January 20** on **Transferable Skills Analysis** with Rod Stoneburner, MS, CRC (ret) (Southern California Vocational Evaluation).

SAVE THE DATE!

The **AREA 2022 Conference** is at the [Millennium Knickerbocker Hotel](#) in Chicago May 26-28, 2022. AREA plans this to be the first live in-person conference we've had in two years!

More information to follow!

MARKETING OPTIONS

Sponsors are ongoingly sought for the periodic virtual webinars for a request donation of \$75 per sponsor. Newsletter sponsor options are also available. Please contact Bob Paré (rpare@consultativerehab.com) for more information. We extend a big thank-you to all **Friends of the Association** for your invaluable contributions to AREA.

PRESIDENT'S LETTER *by Robert J. Paré, MS, FVE '19*



Dear Members & Friends of AREA:

Our organization is now in its 32nd year! It is frankly with some trepidation and yet much hope that I have only recently assumed the role of President for

our 2021-2022 year. Following in the profound footsteps of Allyn Needham, who just completed 2 out-of-the-ordinary and consecutive terms of service as your President, seems daunting. Allyn, as most of you know, is a kingpin of resources, tact, professionalism, connections, and knowledge that he has used to serve AREA so well in multiple roles over many years.

At this time, I also wish to thank Steve Bast (who also served 2 out-of-the-ordinary years as Past President) and Enrique Vega who have left the AREA Board and who are replaced (if such a thing is possible) by Thomas Roney as President-Elect and Christina Hughes as an At-Large Board Member.

My goals for the organization are many, and foremost is the attempt for fostering a bottom-up approach from and for the membership. To this end, we have enhanced our webpage, re-assigned and delegated responsibilities, welcomed Matt Sims to assume Newsletter coordination, and plan to construct a Hall of Presidents (thanks to Christina Hughes) as a monument of continuity for all 20+ who have served in that office since AREA's inception in 1989. Soon, our Board

meetings will become open to all AREA members and more information on that will follow.

We look forward to formalizing more intra-association connections with similar organizations whose purpose, though distinct from ours, has multiple facets and membership rosters similar to our own. The synergy among us, I believe, is a good thing and has far fewer unintended consequences than our stand-alone differences.

Please join us in our educational opportunities (2 webinars and an in-person conference in Chicago) as planned by Ron Smolarski—Educational Chair—for the upcoming months. Also, join us by being featured as a Friend of the Association, and by way of contributing ideas, input, and articles to the Board and to *The Earnings Analyst* publication.

Lastly, we welcome new members, thank ongoing and renewing ones, and even ask those whose membership has lapsed to consider rejoining us at this time! To a great Fall season for everyone, and we hope to "see" you soon!

Sincerely,

Bob Paré
AREA President

[CONTACT](#) AN AREA BOARD MEMBER

COMING SOON!

Watch for news on a new AREA feature ...

AREA HALL OF PRESIDENTS

Currently under construction, the "HALL" of past presidents will be featured on our website, ongoingly referenced and built, and culminate in a formal acknowledgment of appreciation at the on-site 2022 AREA Annual Conference in Chicago in May 2022.

For more immediate information, contact Christina Hughes at christina@chughesvs.com.

DO YOU HAVE AN INTEREST IN BECOMING A BOARD MEMBER?

One of our current Board members expressed some new scheduling conflicts going forward into the new year, particularly with regard to our May 2022 conference, and is open to relinquishing his director position if a suitable replacement can be found. If you are interested in becoming a Board member to complete this term, please contact our President, Bob Paré, at rpare@consultativerehab.com.

MEET YOUR 2021-22 BOARD MEMBERS

In each newsletter, we will now profile a couple members of the Board. Have you met ...



Allyn B. Needham

Ph.D., CEA '00

AREA Past President

Dr. Needham is a partner at Shipp Needham Economic Analysis, LLC, a Fort Worth-based litigation support and economic research firm. Prior to joining Shipp Needham Economic Analysis, he was in the banking, finance, and insurance industries for over 20 years. As an expert, he has testified on various matters relating to commercial damages, personal damages, business bankruptcy, and business valuation. Dr. Needham has published articles in the area of financial and forensic economics and provided continuing education presentations at professional economic, vocational rehabilitation, and bar association meetings. He has served as President of the American Rehabilitation Economic Association, Collegium of Pecuniary Damages Experts, and Southwestern Society of Economics. He has served as referee for several forensic economic publications and is currently serving on the Editorial Board of Quick Read, an online publication of the National Association of Certified Valuators and Appraisers. He has been a Certified Earnings Analyst since 2000.

CREDENTIALS

AREA is the only international certifying body that has this unique blend of professions in monetary loss assessment. In addition to membership status, unique designations available only through AREA are the RFE (Registered Forensic Economist), FVE (Forensic Vocational Expert), EA (Earnings Analyst) and the CEA (Certified Earnings Analyst). Unlike some credentials, ours are actually named such that they truly spell out your specific area(s) of expertise for every day and litigation experience.



J. Matthew Sims

MS, MC, NCC, RFE '09, FVE '09, IPEC

AREA Vice-President, External Membership Chair
Newsletter Editor

Mr. Sims has been performing vocational and economic damage evaluations since 2000, testifying as an expert since 2005, and he has been a partner at Sims & White, PLLC since 2008. He holds Master's degrees in both Counseling and Economics. He is a vocational expert and forensic economist, he works on 120 to 180 personal injury and related cases per year in Arizona, Nevada, Utah and New Mexico, and he is hired by both Plaintiff and Defense attorneys roughly 50/50 each.

Mr. Sims evaluates earnings and earning capacity, vocational history and vocational capacity, household service value and capacity, future medical costs, economic damages, and he offers rebuttal opinions to hedonic damage opinions. He provided business valuations from 2005 - 2016, and was a Social Security Vocational Expert from 2016 - 2020. He has taught as an adjunct professor in economics at Estrella Community College, published in household service value, published in small business owner earning capacity, and he has given conference presentations in these areas as well. He is also a current Board member for the American Rehabilitation Economics Association. In terms of credentials, Mr. Sims is a National Certified Counselor, Registered Forensic Economist, Forensic Vocational Expert and he is IPEC certified.

WELCOME OUR NEW MEMBERS

Tiffany M. Fischer-Blowers – Student member
Utah State University (Temple, TX)

Cortney Richert – Professional member
Special Tree Rehabilitation Systems (Romulus, MI)

RECENT CASE LAW OF INTEREST TO FORENSIC ECONOMISTS AND VOCATIONAL EXPERTS

Dr. Thomas Ireland, Professor Emeritus of Economics at the University of Missouri-St. Louis, has graciously been keeping a webpage with a collection of published court cases that are of interest to all of our professions. His website is located at <http://www.umsl.edu/~irelandt/index.html>.

Scrolling down to the link titled Legal Decisions Developed or Revised During 2021, the following four cases are presented here in this newsletter. Some of the citations contain a further explanation by Dr. Ireland himself. There are many more cases listed at this link and on the website, and you are encouraged to search through it.

① February 26, 2021

Diwara v. United States, 2020 U.S. Dist. LEXIS 40131 (E.D. PA 2020). This decision granted a motion to exclude the testimony of Dr. Bruce Grossinger, a neurologist, regarding the employability of Jennifer Diawara following her injuries in a motor vehicle accident caused by a U.S. Postal vehicle. The court said:

As a neurologist who treated Mrs. Diawara, Dr. [Bruce] Grossinger is certainly qualified to provide expert testimony related to her neurological treatment, neurological injuries, and any ways in which those neurological injuries cause her various limitations. However, even in light of the Third Circuit Court of Appeals' liberal interpretation of the specialized knowledge requirement, neither Dr. Grossinger's experience nor his opinion in this case demonstrate that he is qualified to offer an opinion on how those neurological symptoms or limitations impact her employability. Those opinions are of the sort that should be left to the judgment of a vocational expert.

② June 9, 2021

Sandmann v. Ky. Transp. Cabinet Dep't of Hwys. & Ky Claims Comm'n, 2021 Ky. App. Unpub. LEXIS 202; 2021 WL 1328566 (KY App. 2021). The Kentucky Court



of Appeals affirmed the decision of the Kentucky Claims Commission that there was insufficient evidence to support Sandmann's claim for lost future wages. In the process, the Court agreed that:

Sandmann testified that even though he was somewhat limited in how long he could walk, stand, drive, or sit, he still returned to his previous employment as an IT programmer for FedEx. He worked the same job, the same hours, and received the same pay—with regular annual increases. Sandmann also admitted he did not expect to retire early. Additionally, the Claims Commission did not find [Sara] Ford's testimony persuasive. It took issue with the lack of underlying support for Ford's opinion. She did not identify any work Sandmann would be unable to do in the future. She did not explain how she arrived at her figures, only that she estimated his work life expectancy. And, she did not refer to any medical opinions or records to document any of Sandmann's limitations.

(*per Dr. Ireland*) This was an instance in which an expert from Vocational Economics Inc., projected future wage loss for a person who was earning the same wages after his injury as before the injury and losses were based entirely on assumed reduction in worklife expectancy.

[Cont'd on page 5](#)

RECENT CASE LAW OF INTEREST ...[Cont'd from page 4](#)**③ June 12, 2021**

Smith v. Providence Health & Servs.-Or., 361 Ore. 456 (OR 2017). This decision of the Oregon Supreme Court determined that "loss of chance" is a cognizable injury in a medical malpractice action in the state of Oregon, reversing the decision of the trial court holding otherwise. As part of its analysis, the court said:

Loss of chance as a theory of recovery for negligence, and in particular for medical malpractice, has gained traction in the last half-century. At this point, courts in most states have reached the issue, and more than half of the jurisdictions in the United States that have considered the issue have embraced the theory, at least to some extent. See Lauren Guest, David Schap, and Thi Tran, The "Loss of Chance" Rule as a Special Category of Damages in Medical Malpractice: A State-by-State Analysis, 21 J Legal Econ 53, 58-60 (2015) (reviewing case law as of 2014 and concluding that 41 states had addressed loss of chance, with 24 states having adopted some version of the theory).

④ June 13, 2021

Kaniu v. Dickerson, 2013 U.S. Dist. Lexis 187675 (M.D. PA 2013). This case involved the lost earnings of an owner of a closely held business who was not paying himself a salary. The defense argued that this implies that the Plaintiff had no income, and moved to exclude the testimony of Dr. David Schap. The motion was denied. Federal judge Richard P. Conaboy, who described Schap's methodology as follows:

David Schap, a Professor in the Department of Economics at the College of the Holy Cross in Worcester, Massachusetts, has been retained as an expert by Plaintiff to assess: (1) his earnings loss in the time between the accident in question and the date chosen for use as the threshold for calculating Plaintiff's prospective earnings loss; and (2) the value of Plaintiff's prospective earnings loss. Using various scholarly publications and statistics from the Department of Health and Human Services, the Department of Commerce, and the Social Security

Administration, Professor Schap determined that, as a 54 year old male, Plaintiff's pre-injury work life expectancy was 9.17 years. Because Plaintiff paid his truck driver employees at an annualized rate of \$48,100.00 per year, and because Plaintiff is himself a professional truck driver who holds a commercial driving license (CDL), Professor Schap calculated Plaintiff's prospective wage loss as \$441,077.00 (9.17 x \$48,100.00) and calculated Plaintiff's "interim wage loss" in the 1.48 years between his accident and the beginning of the prospective loss as \$67,629.00 (1.48 x \$48,100.00). [Footnote omitted.]

INTERESTED IN GETTING PUBLISHED?

AREA co-publishes a journal called *The Earnings Analyst* (TEA). How about authoring an interesting case study, where maybe you have done something uniquely case specific, but still well founded, that you don't typically see!

TEA is a peer-reviewed professional journal that provides a great opportunity for those working in the field of forensic economics, vocational analysis, or life care planning to publish. If you have information which has been researched and proven effective in analyzing your forensic work, please consider submitting an article. Your experience, research and findings can help many in our field be better at their work.

If you have questions about how to make a submission, please contact Nora Ostrofe, Rachel Duchon or Cloie Johnson through the journal's website, <https://theearningsanalyst.com/>.

HOW HAS YOUR PRACTICE CHANGED?

Many aspects of our lives have changed since the beginning of the COVID-19 pandemic. If you would like to share with us how this has impacted your professional practice, to include how you handle COVID-19 situations in your reports, your story may be included in the next issue of our newsletter.

CONTACT: Matt Sims at sims@simsandwhite.com