A Forensic Economic Thought Experiment

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It is rare that a forensic economist can estimate future losses with certainty; even in the case where the future annual loss is known precisely, the duration of the loss likely depends on the continued survival of the plaintiff. However, suppose we knew exactly what an injured plaintiff’s future earnings would have been but for the injury. There would consequently be no error in our estimate of the lost earnings, and it would be possible to calculate an award for those lost earnings that neither under- or overcompensates the plaintiff. If we then increased the award to account for the earnings that would have been received had the plaintiff not been voluntarily absent from the labor force, we clearly will have overcompensated the plaintiff.

At first glance, the conclusion reached by this thought experiment seems unremarkable. Clearly, adding any amount to an award that neither under- or overcompensates the plaintiff will result in overcompensation. The conclusion is more significant if we consider two passages from Horner and Slesnick’s 1999 paper, “The Valuation of Earning Capacity: Definition, Measurement and Evidence” (Journal of Forensic Economics, 12(1), pp. 13-32):

Thus, to analyze the earning capacity of an attorney who has chosen to stay home with pre-school children rather than enter or remain in the labor market, we need not investigate the process by which such a decision is made, nor attempt to estimate the year-by-year probability of returning to the market. (p. 15)

The existing worklife tables, including mean future working years and median years to final separation, are based on labor force participation status. This underlying data does not distinguish between voluntary and involuntary nonparticipation. Thus, these tables are not an ideal instrument for measuring earning capacity. (p. 29, footnote 24)

These passages imply that voluntary absences from the labor force should be included in work life expectancy when measuring earnings capacity – a position that directly conflicts with the conclusion reached in the first paragraph above.

This conflict raises the question of whether the distinction between voluntary and involuntary absences from the labor force is material when considering the loss of earnings capacity. The short answer is “Yes, but not to the extent that the two quoted passages suggest.” Clearly, voluntary absences should be ignored when considering the existence of earnings capacity – the classic example of the injured homemaker who left a job in order to raise a family demonstrates this. However, the conclusion reached in the first paragraph just as clearly demonstrates that voluntary absences should not be ignored when measuring earnings capacity or work life expectancy. In the case of our homemaker, the published work life estimates for an initially inactive individual exclude voluntary absences from work life, but account for the likelihood of a return to the labor force. Consequently, use of the initially inactive work life estimates recognizes that no loss occurs during voluntary labor force absences while acknowledging the existence of the capacity to earn but for the injury. Absent specific legal instruction to the contrary, voluntary absences from the labor force should be treated like any other absence when estimating earnings capacity or work life expectancy – else the plaintiff will be overcompensated on an a priori or before-the-fact basis. By the same token, voluntary absences play no role in deciding whether a loss of earnings capacity exists and should be ignored in making this determination.

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The Allied Social Science Association (ASSA) meeting is a great conference to attend not only for the NAFE sessions but also for special lectures and events.

Even if you have visited often, Chicago always has new restaurants to try. I have listed here a few places that I enjoy and I have put together a map showing the location of several restaurants and bars (some are a little off the tourist trail). It also shows the Sheraton Grand Chicago where the NAFE sessions will be held and a few popular sites.

Follow this link to access the map: https://drive.google.com/open?id=1DRanNNmlhuGynna0FzjMjlj12veo&usp=sharing

And even in January there are lots of things to do in Chicago – visiting the Field Museum or the Art Institute, ice-skating at Millennium Park, shopping at Eataly, or, if you are lucky, finding tickets to Hamilton (check this link for the League of Chicago Theatres to find out what is playing and to buy tickets: http://chicagoplays.com/)

Lots to do, lots to see, and I’m looking forward not only to the conference, but also to seeing friends and enjoying the city. I hope to see you in Chicago.