A 2009 Survey of Forensic Economists:
Their Methods, Estimates, and Perspectives

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I. Background

As part of an ongoing longitudinal research effort, the authors conducted an electronic survey of National Association of Forensic Economics (NAFE) members in January and February 2009. The topics covered were similar to those investigated in earlier surveys such as the value of certain key economic variables, as well as open-ended questions involving ethical practices in the forensic consulting business. This survey also included a significant number of new questions, which will be noted later in the paper.

The 2009 survey was conducted electronically based upon the authors' experience with the 2006 survey. That survey was the first conducted electronically and resulted in improvements with regards to the return rate, as well as accuracy in recording information. Comments concerning the 2009 survey indicate that respondents appreciate taking the survey electronically, and there is every expectation that this practice will continue in the future.

II. Methodology

In December 2008, the authors sent e-mail to 10 beta testers, which had a link to the survey for the purpose of evaluating the content of the questions. The reaction of the testers was generally positive. Comments were closely examined, and many were incorporated into the survey. Announcement of the survey was given in both the NAFE Newsletter and on the NAFE-L. On January 13, e-mail was sent to the members of NAFE, which excluded libraries and law firms. The e-mail provided a link to the survey and indicated that the respondent had approximately four weeks to complete the survey. Contact information was provided if the respondent had any questions. During the four-week period, several e-mail reminders were sent to individuals who had not taken the survey. On February 15, 2009, the survey was closed and the answers given at that date were those used in the survey results indicated in this paper.

There were 191 usable responses, which represented a return rate of 32.65%. The following table indicates the survey year, number of surveys sent, the number responding, and the response rate for the current and previous surveys.

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Year	Number Sent	Responses	Response Rate
1990	288	136	47.2%
1991	396	99	25.0%
1993	565	162	28.67%
1997	702	179	25.5%
1999	681	184	27.0%
2003	746	177	23.73%
2006	616	179	29.06%
2009	585	191	32.65%

Over the last 19 years, the number of surveys sent increased dramatically from 1990 through 2003, but has declined in the last two surveys. After an initial response rate of 47% for the first survey, the rate had remained around 25% until 2006 when it increased to 29%. In the current survey it increased to 32.65%. Both the 2006 and 2009 surveys were conducted electronically, which no doubt was a factor increasing the return rate.

    The results of the survey will be examined with a direct comparison to earlier surveys, although for some of the questions that have appeared continuously not all surveys are included. For those particular questions, the first and last (current) surveys are included, along with some surveys in the intervening years. Where possible, the exact wording of previous surveys was retained. However, it was sometimes necessary to add or delete certain options. There were also several new questions including which specific taxes to consider when calculating after-tax income is required, the efficacy of using tables estimating worklife for the disabled, the proper discount rate for commercial damages cases, and several others.

    Although comparisons are made with earlier surveys, there was no determination whether the same individuals responded to the different surveys or whether those who responded were representative of the current NAFE population. Even if the survey is not entirely representative of the NAFE population, it is reasonable to assume that individuals with the greatest interest and experience in the field completed the survey. Question 45 in the survey indicates that the average number of years respondents have practiced as forensic economists is 23.7, which strongly implies that those completing the survey were "veterans" in the field.

    For most of the survey questions, the results will be explained and directly compared to earlier surveys. To simplify the presentation, the following codes will be used when referring to the surveys:

S1 – Brookshire, Slesnick and Lessne, *JFE*, Vol III, No 2, Spring/Summer 1990
S2 – Brookshire and Slesnick, *JFE*, Vol IV, No 2, Spring/Summer 1991
S3 – Brookshire and Slesnick, *JFE*, Vol VII, No 1, Winter 1993
S4 – Brookshire and Slesnick, *JFE*, Vol X, No 1, Winter 1997
S5 – Brookshire and Slesnick, *LED*, Vol IV, No 2, Fall 1999
S6 – Brookshire, Luthy, and Slesnick, *LED*, Vol VI, No. 2, Summer 2003
S7 – Brookshire, Luthy, and Slesnick, *JFE*, Vol XIX, No. 1, Winter 2006
S8 – Current Survey, Spring 2009

Complete citations of the surveys are listed in the References at the end of the paper. Since there will be frequent mention of earlier surveys, corresponding questions will be coded in the following manner: (survey, survey question, page number). For example, a reference to (S5, 2, 68) will mean the second question in survey S5 on page 68. It should be noted that not all questions appeared in every previous survey. Therefore, a particular table will not necessarily list each of the previously published surveys, S1 through S8.

Most questions allow for individual comments and the last three questions are open-ended. It has been the experience of the authors that the comments are often more valuable than the statistical results. Because of the requirements imposed by the electronic survey form, comments were listed as a separate question. For example, Question 1 asked the respondent to indicate the expected rate of inflation and Question 2 asked the respondent to provide any comments concerning their answer to Question 1. To simplify the presentation of our results, comments will not be referenced as separate questions.

During the development of previous surveys, several members of NAFE expressed concern that some forensic experts were improperly using earlier survey results. Because of these discussions, the authors have agreed to the following statement:

This article stems from a survey of the NAFE (National Association of Forensic Economics) membership. The views of the respondents do not necessarily represent the view of the National Association of Forensic Economics, or of its Board of Directors, or of all the members of NAFE. The authors have not attempted to determine what biases, if any, exist in the results due to (a) the general composition of all experts who testify about economic damages, (b) the effect of non-responses, (c) the effects of various state and federal case and statutory laws, and (d) the accuracy and truthfulness of the responses received. To have determined the actual practice of all forensic economists and correcting for these potential biases was beyond the scope of the research effort.

III. Comparison of Survey Results

Question 1. *Assume the judge instructs that you MUST incorporate price inflation into a 30-year forecast of economic loss. Complete the following sentence: "I would use _____ % as the average annual rate of price inflation (increase in the CPI) over this 30-year period." For this and other similar questions, give your answer as a percent rather than a decimal. For example, write 3.25 rather than 0.0325.*

The number of usable responses was 184. The results of the current survey, S8, are as follows in comparison to earlier surveys.

	(S1,15,22)	(S4,1,2)	(S7,2,32)	(S8)
Mean	5.0%	4.0%	3.1%	3.1%
Median	-	4.0%	3.0%	3.0%

The above surveys are for years 1990, 1997, 2006, and 2009. The interquartile range of responses was between 2.7% and 3.3%, indicating a tight distribution. The answers varied between 0% and 6.5%. The mean forecast value of estimated inflation over the next 30 years has fallen nearly 2 percentage points since the 1990 survey, although it is unchanged since the previous survey in 2006.

Selected Written Comments from Survey Respondents on Question 1:

- This was the most recent forecast (Q4/2009) from the Federal Reserve Bank of Philadelphia, Survey of Professional Forecasters.
- This is the average annual increase in the overall CPI from 1946 to 2007.
- This is the current long-term projection of the Social Security Trustees, and consistent with historic changes in the CPI.
- I rely on CBO forecast.
- I would typically be close to the average social security increase over the past several years.
- Economic Report of the President. Actually I use a 40-year span for almost all calcs.
- Geometric average annual growth in CPI-U, 1990-2008.

Question 3. *Assume the judge instructs that you MUST estimate a net discount rate in your forecast of economic loss for a 30-year period. The net discount rate may be based upon either nominal or real values. Please note that for this question the net discount rate is (approximately) equal to the interest rate minus the general rate of wage increase for all U.S. workers. Complete the following sentence: "I would use _____% per year as the average net discount rate over 30 future years." (Please note that if you would not use a fixed rate, provide an explanation in the "Comments" section below.)*

The number of usable responses was 171. There are two general methods for computing the net discount rate (NDR). One method, as utilized in the current survey, is to ask the question directly. The other method, used in the previous survey, is to ask for an estimate of the rate of increase in earnings and the discount rate and then calculate the difference between these two variables. Results of the 1999, 2003, and current survey, which all used the direct method, are given below.

	(S5,4,70)	(S6,4,31)	(S8)
Mean	2.13%	1.89%	1.76%
Median	2.00%	2.00%	1.75%

The results of this survey support the conclusion that how a question is asked may influence the response. In three earlier surveys (1990, 1993, and

1997), the indirect method was utilized and the net discount rate was approximately 1%. As shown above, the net discount rate was significantly higher in the following two surveys. In the 2006 survey, the indirect method was once again utilized. The result was a net discount rate equal to 1.33%—a significant decline from the previous survey (S6). In the current survey, the net discount rate is 1.75%. It would be hard to justify an increase of the net discount rate from 1.33% to 1.75% based upon evidence from the past three years. A reasonable conclusion is that the form of the question has an impact on the answer provided.

The interquartile range was 1% to 2.19%. The minimum value was –2% and the maximum value 7.66%. Approximately 8.2% of the responses indicated that the net discount rate was 0% or lower. A 0% NDR is commonly referred to as the total offset rule. The survey results show that the large majority of respondents do not support the total offset rule.

Selected Written Comments from Survey Respondents on Question 3:

- This is the difference between the average real interest rate over the past 10 years (2.2%) and the average increase in private sector earnings over the past 10 years (0.77%).
- I use TIPS rate less 0.4% for non-inflation wage increases.
- I use a laddered interest rate assumption and estimate that the NDRs would be between 0.6% and 2.5%.
- I would use a range depending on the plaintiff's educational attainment level. The net discount rate I use is lower the higher the plaintiff's educational attainment level.
- I would provide three scenarios comparing ECI to 1-year, 10-year, and Aaa corporate bonds. From 1980-present these numbers average roughly 2%, 3%, and 4% respectively.
- Because the 30-year T-bond rate has fluctuated around 4% while the increase in weekly wages has fluctuated around 3%, the net discount rate in this case would be about 1%.

Question 5. *Assume the judge instructs that you MUST forecast the rate of increase in the cost of nursing home care for an individual who will be living in such a facility over the next 30 years. The nursing home will provide for all necessary services except for specialist physicians and diagnostic services. Complete the following sentence: "I would use_____% as the average annual (nominal) rate of increase in nursing home care costs over the 30-year period."*

The number of usable responses was 169. This is a new question. The mean value is 4.36% and the median value is 4.4%. The 50% interquartile range is from 3.5% to 5%. The minimum value is –0.5%, and the maximum value is 11%. It should be noted that eliminating the few obvious outliers had little impact on the overall statistics. This question was written in conjunction with the following question concerning the rate of increase in attendant care costs, since a significant part of the labor costs incurred by nursing homes are those of attendants.

Selected Written Comments from Survey Respondents on Question 5:

- Based on historic rate of change in the Nursing Homes and Adult Daycare Services component of the CPI.
- Public policy changes with the new administration may have a significant effect on this. While historically, these costs have increased at a higher rate than inflation, there is nothing to indicate this will continue.
- Based on 2.5% for general inflation, plus 1% for real wage growth. Nursing home care is mainly wages.
- This is a tough question. The CPI detailed index helps but reimbursement rates and price increases are not the same.
- This is the average annual compound rate for the last 10 years for the nursing home component of the CPI.

Question 7. *Assume the judge instructs that you MUST forecast the rate of increase in attendant care costs over the next 30 years as part of estimating the cost of a life care plan. The attendant will be relatively unskilled requiring, at most, a certificate as a nurse's aide. Complete the following sentence: "I would use _____% as the average annual (nominal) rate of increase in attendant care costs over the 30-year period."*

The number of usable responses was 171. The results of this survey and the 1999 and 2003 surveys are as follows.

	(S5,3,69)	(S6,3,30)	(S8)
Mean	4.08%	3.98%	3.54%
Median	4.00%	4.00%	3.50%

The interquartile range is from 3% to 4%. The minimum value is 0% and the maximum value is 9%. There is a significant drop (about one-half percent) in the mean and median values since 1999 and 2003. It should also be noted that the rate of increase in attendant care is about 1% lower than the rate of increase in nursing home costs. Although employees similar to attendants are often employed in nursing homes, respondents generally felt that other nursing home costs would rise more rapidly. In previous surveys, responses related to increases in attendant care were generally of the same order as the general rate of increase in wages.

Selected Written Comments from Survey Respondents on Question 7:

- This is the sum of the real increase in wage rates paid for home health care services over the past 10 years (0.14%) and expected inflation (2.5%).

- Based on 2.5% for general inflation, plus 1% for real wage growth. Nursing home case is mainly wages.
- If the attendant is unskilled and not a CVA or some sort of nurse, I would use the historical CPI-U for the last 10 years (2.60%). If a nursing or nursing aide certificate was required, I would use 4.11%.
- A multi-year average of increases in wages of attendants, orderlies and nurses aides.
- Unskilled nursing etc would increase the same as all workers.

Question 9. *Assume that you are estimating the economic loss of a two-year old African American male who will be unable to work at any time in the future. Both parents are high school graduates. Assume that reliable historical data (up to the current year) are available related to earnings as a function of age, race, gender, and level of education. As an example, there are earnings data for African-American males, age 25-29, given that their highest level of education is a B.A. degree. What data would you use to make your estimate of economic loss?*

The number of usable responses was 181. This is the second time the question has been included in the survey. The results of the previous survey and this survey are as follows.

	(S7,10,36)	(S8)
a) I would use only gender-specific data.	42.4%	48.1%
b) I would use only race-specific data.	0.6%	0.5%
c) I would use both race and gender-specific data	44.8%	43.6%
d) I would not use such data.	12.2%	7.7%

There was a small increase in the percentage that would use only gender-specific data and a small decrease in the percentage that would not use any of the data. Most respondents would use either gender-specific or race-specific and gender-specific data. It appears there is still little agreement concerning whether race-specific data should be used even when available.

Selected Written Comments from Survey Respondents on Question 9:

- I would also provide data for White males and present whatever data are available concerning the rate of decrease in wage differentials, to argue that black/white and male/female differentials may be smaller in the future than they are now (and have been in the past).
- This is a tough call. Ten years ago, I was happy using gender specific data on the presumption that racial discrimination was diminishing. But I am not sure that's the case and I am on the edge between using only gender and gender+race data. In any event, I believe that good re-

search methodology requires the use of the best data that reflects the case regardless of "political correctness."

- It is our role to be scientists and to bring to bear the best available (general) data when such data are necessary. To fail to use gender and race specific data is to make political correctness more important than science, and we must not move down that slippery slope.
- I would only use the data for White Males as they are the ONLY cohort that did not suffer any past gender or racial bias in hiring, promotion, pay levels and consequently not continue the negative impact of past gender or racial bias. I would really look forward to the opposing economist defense of perpetuating past racial and or gender bias.
- Neither gender nor race specific. I believe its against the law in my jurisdiction.

Question 11. *Assume that Mr. Jones is married and earns $70,000 per year. Mrs. Jones earns $50,000 per year. Mr. Jones dies and the forensic economist MUST deduct self-consumption of the deceased based upon expected consumption (as opposed to maintenance consumption). Is the base used for estimating self-consumption total family income equal to $120,000 or is the base the income of the decedent equal to $70,000? (The attorney instructs you that the governing law says nothing about which is the proper base and the choice is up to the expert economist.)*

There were 175 usable responses for this question. The responses for this question and a similar question from the previous survey are given below.

		(S7,16,39)	(S8)
a)	I would use the decedent's income equal to $70,000 as a base.	53.4%	38.3%
b)	I would use total family income equal to $120,000 as a base.	46.6%	61.7%

The survey results indicate an increase in the percentage who would use total family income versus the decedent's income. However, for this survey a numerical example was included, which was not the case in the previous survey. Thus, the increase might have been a product of how the question was worded, as well as changing attitudes of the respondents. It is clear that this issue is still unsettled among forensic economists.

Selected Written Comments from Survey Respondents on Question 11:

- I would consider the wife's income a collateral source of income to Mr. Jones, hence not subject to his own consumption.

- I use the Patton-Nelson tables that are based on family income.
- This is the only option that makes sense. If there are negative economic losses, then the plaintiff's attorney would simply not ask for that category of damages.
- California ruling focuses on the decedent.
- Because household consumption data includes all income available to the family.
- I would make sure, however, that they were not a couple that kept their finances separate from one another or combined them in a manner that would contradict such approach.
- I use a self-consumption worksheet that the family has filled out to determine the amount—avoiding the above issue.

Question 13. *In a case of the wrongful death of a spouse, do you make a deduction for the household services provided by the deceased for his/her own consumption of these services? (Assume that the relevant legal parameters would allow such a deduction to be calculated.)*

There were 180 usable responses. This question was also asked in the last survey, (S7, 22, 42). In the previous survey, 54% indicated they did make such a deduction and 46% did not. In this survey, only 45% indicated they made such a deduction and 55% indicated they did not. There has been, then, a slight decline in the percentage who makes this deduction. Clearly, this is another unsettled area.

Selected Written Comments from Survey Respondents on Question 13:

- As a general rule, no. Most services are performed on behalf of the family and are not divisible. One could always imagine exceptions, however.
- Most household consumption is joint consumption. Would adjust for special circumstances where one spouse has a substantial "habit" of going his/her own way, so to speak.
- I don't do so now but will likely change when we have good data on what the deduction should be. Meanwhile, I try to at least mention the issue in deposition and trial.
- I don't know how to do this.
- No. But this is a continuing problem that needs to be addressed in the literature. Presumably there are six types of household services in a husband-wife household – husband for wife, wife for husband, husband for husband, wife for wife, husband for husband and wife, wife for wife and husband.

Question 15. *If you answered "Yes" to Question 13, please answer the following question.*
The percentage deduction I use for self-consumption of household services in a wrongful death case is as follows:

There were 78 usable responses to this question. This is a new question. The results are as follows:

a)	I use the same percentage as applied to self-consumption of earned income.	47.4%
b)	I use a percentage rate different from that applied to self-consumption of earned income. This percentage is _____% (In the "Comments" section, please indicate how you arrive at that percentage rate.)	52.6%

Originally, the question was written so the respondent would indicate a percentage of household services for the measure of self-consumption. However, it was decided that the percentage was too case-specific, and therefore more generic responses as indicated above would be more appropriate. The answers were about evenly split between using a percentage of self-consumption equal to that used for earned income and some other percentage.

Selected Written Comments from Survey Respondents on Question 15:

- 20 to 25% unless there is specific detailed information about the family and the activities that suggests a different rate would be appropriate.
- The percentage must be constructed on a case by case basis.
- I would use 50%.
- The percentage I use for self-consumption of household services ranges from 25% (for a household of 3 or more) to 33.3% (for a household of 2).
- 20%. I have no way to back this up, however. This area could use some research.
- 10% based on K. Krueger research.

Question 17. *In most states, self-consumption must be deducted from earnings in a wrongful death case. Self-consumption of the deceased would have occurred during the remaining years of worklife and the years in retirement. Please check the option that comes closest to the methodology you use to calculate self-consumption of the deceased during the years in retirement. (Assume that the court mandates self-consumption of the deceased should be calculated.)*

There were 165 usable responses for this question. It is a new question, and is designed to determine how respondents calculate consumption during the years of retirement. The results are given below.

a)	Self-consumption during the years of retirement is calculated in the years the person would have been retired as a percentage of retirement income.	49.7%
b)	Self-consumption during the years of retirement is calculated in the years when the person was working as a reduction in the percentage of the employer contributions to retirement fringe benefits.	18.8%
c)	Self-consumption is not considered either in the retirement years or as a reduction in employer fringe benefit contributions in the working years.	19.4%
d)	Other	12.1%

There is no overwhelming consensus with regards to this question. However, close to one-half of the respondents indicated that consumption during retirement is calculated during the actual years of retirement. Two other options, that self-consumption during retirement is calculated by reducing employer benefits during working years or self-consumption is simply ignored, was the choice of about 20% of the respondents. The result is a bit surprising, given that the first option requires additional work as income during the retirement years itself must also be calculated. In contrast, the second option only requires estimation through the end of worklife.

Selected Written Comments from Survey Respondents on Question 17:

- For contribution plans, calculate when working. For defined benefit plans, calculate when retired.
- I use Consumer Expenditure Survey Data on the spending patterns of individuals over age 65, a predominantly retired population. I use this information in dollars, not percentages of income.
- My approach to calculating the present value of retirement benefits is to include this as a percentage of wages. As such, it is not possible to estimate the self-consumption from retirement income because I do not calculate the retirement income as an independent element of loss. A self-consumption reduction of the employer contribution to retirement fringe benefits seems a reasonable method to make this adjustment in accordance of the state laws on this matter.
- Given time value of money, the consumption offset must be made in the retirement years when it would have been realized.
- However, if pension losses are computed separately, then a consumption deduction is made in retirement.
- Sometimes I use Social Security retirement income as consumption offset.
- I have to think about it if I have to do it. I never had to do it.

- Because self-consumption is a function of family income, retirement income of both husband and wife should be considered.
- I usually leave out retirement benefits as an element of loss and assume that during the retirement years, 100% of retirement income is consumed by the decedent.
- This question should allow for more than one answer. If the retirement benefit is in the form of a defined benefit then I calculate the retirement benefit absent the wrongful death and deduct for own consumption for each year the benefit would have been paid. If the retirement benefit is a defined contribution I include the contribution as part of earnings and deduct for own consumption to determine loss of earnings over period of working life.

Question 19. *Assume that Jack Jones is killed in an automobile accident. He was 50 years old at the time of the accident and had received the average earnings of all U.S. workers for each year he participated in the labor force. He was married with no children. One of the fringe benefits that are often calculated is lost employer-provided Social Security benefits. Please check the option that comes closest to the methodology you use to calculate these benefits.*

The number of usable responses for this question is 165. This is another new question. The results are as follows.

a)	Social Security benefits are calculated as a percentage of earnings during the individual's remaining But For worklife.	41.2%
b)	Social Security benefits are calculated by taking the difference between the But For and actual streams of such benefits upon retirement, with an additional deduction for what the employee's contributions would have been between the date of death and the projected date of retirement.	23.6%
c)	Other. (Please explain in the "Comments" section below.)	35.2%

The first option was chosen by about 41% of the respondents—Social Security benefits are accounted for as an add-on to employer-provided fringe benefits during worklife. A more accurate but certainly more difficult calculation is the second option, which indicates that benefits are calculated when received during retirement, with an adjustment for those benefits actually received given injury or death. The first option did receive the highest percentage and, as expected, the more complicated second option was significantly lower. However, the third option was also a common response, which represent either an alternative approach or a combination of approaches. The Comments below contain some of the techniques of those who checked this third option.

Selected Written Comments from Survey Respondents on Question 19:

- Social Security benefits are calculated by taking the difference between the But For and actual streams of such benefits upon retirement, with NO additional deduction for what the employee's contributions would have been between the date of death and the projected date of retirement.
- I normally do not calculate a loss of Social Security Benefits. If I do, then I would calculate the explicit 'But for' benefit loss, deducting the plaintiff's contribution and offset benefits.
- I would use the second option except that in California the actual benefit received cannot be deducted as it is considered a collateral source.
- I generally use the first alternative but may revert to the second when the person was close to retirement.
- I do not include it because the wife would receive his benefits and would be able to consume them 100% instead of the decedent and the wife consuming them at the time of his retirement.
- Social Security is paid by employer and employee so they cancel out.
- Social Security is considered a collateral source.
- Social Security is not reduced from pre-retirement earnings and thus included in the annual earning loss.
- I almost always ignore Social Security.
- SSA not included when you say it's "often calculated" you are incorrect.
- If you want to count employer S.S. contributions as a fringe benefit, shouldn't you also have to subtract S.S. contributions from the decedent's earnings?
- The calculations based on Dr. Rodgers calculations in Martin Determining Damages book spells out that this damage should not be used.

Question 21. *If your answer to question 19 was a percentage of earnings (first response), please answer the following question: The percentage of earnings that I use for calculating Social Security benefits is____%*

There were 66 usable responses for this question. The responses were not surprising. The average rate was 6.42% and the median rate was 6.2%—exactly the legal rate. The interquartile range was from 6% to 7.65%. 7.65% is the rate for Social Security plus Medicare. No doubt, many individuals included the rate for Medicare in their answers. Nevertheless, the general results indicate that the average response is approximately equal to the legal rate.

Selected Written Comments from Survey Respondents on Question 21:

- Social Security tax less Medicare and Disability.
- Social Security benefits include 6.20% for OASDI and 1.45% for Medicare components. I include both as a percentage of wages.
- If I were to do it would be 5.3, not counting Medicare, disability.

- I use the Department of Labor's Employee Costs for Employee Compensation tables. The percentage varies by industry and location.

Question 23. *When determining the interest rate for present value purposes over 30 future years, I generally use:*

There were 177 usable responses for this question. As with Question 1 concerning inflation, this question has been asked in nearly every survey. The following provides the results for the 1990, 1997, 2006 and 2009 surveys.

		(S1,19,24)	(S4,9,34)	(S7,30,45)	(S8)
a)	current interest rates.	24.6%	34.2%	34.2%	32.2%
b)	historical average.	57.6%	48.0%	41.1%	42.9%
c)	a forecast of interest rates.			6.3%	9.0%
d)	some other method.	7.8%	17.1%	17.7%	14.1%
e)	not applicable.			0.6%	1.7%

Earlier surveys had shown a general trend towards the use of current rates and away from historical rates. This trend has apparently stopped, as indicated from the above results. The statistics are difficult to interpret because two new categories were added in the last several surveys—a forecast of interest rates and not applicable.

Selected Written Comments from Survey Respondents on Question 23:

- TIPS
- I use a net discount rate of 0% to 1% and don't cite specific interest rates.
- The historical alternative, versus last year or heavy weighting of the last year, looks really good in early 2009. In fact, it makes more common sense than current rates more times than not.
- It depends—for calculating lost income I use current yields and forecasted inflation. For calculating lost medical expenses I use historical rate of medical inflation by category and historic yields for the matching time period.
- However, I select the historical period that I feel is most likely to be repeated over the interval that I am forecasting.
- I look at current rates, a historical average, and I look at the most current Livingston and Survey of Professional Forecasters' surveys.
- Historical average rates are not available to the plaintiff at the time of compensation. I use current yields to maturity as a option actually available to the recipient at the time.
- 1950-2007 90-day T-Bills.
- I use a combination of #1 and #2.

- I consider both historical and forecast by the Council of Economic Advisors and the SS Trust Fund.

Question 25. *If you selected "some historical average of interest rates" for question 23, which of the following best reflect how you chose the number of years to be averaged?*

There were 89 usable responses for this question. The results are as follows.

a)	The number of years equal to the expected worklife (in this example, 30 years).	27.0%
b)	The number of years is fixed, independent of expected worklife.	52.8%
c)	Other.	20.2%

In previous surveys, a similar question asked the actual number of years. However, it was felt that the above set of options would provide more general information. The first option is termed the "mirror" approach where the number of years of historical information utilized reflects the number of years in the future for a particular case. But there is a preference for a fixed number of years. Of interest, the "Comments" section indicated that of those who use a fixed number of years independent of expected worklife, the average was 26.88 years. This response may have been influenced by the example utilized in the question where expected worklife was 30 years.

Selected Written Comments from Survey Respondents on Question 25:

- I report both 30-year and 10-year rates for a range of returns and adjust based on how long the loss is projected to continue.
- I use the arithmetic mean of the last 20 years of available data.
- 20-year average…but what we are always after is the best predictor…so methods may need to be adapted as the future unfolds.
- For longer expected worklife projections use long-term historical average interest rates. For shorter term worklife look to current forecasts of interest rates.

Question 27. *Assume that you are hired in a case where taxes must be considered. Assume that records show that the plaintiff pays all of the following taxes and there are accurate records of all taxes paid. Please check all of the taxes that you would consider in this case in order to properly account for taxes.*

There were 170 usable responses for this question. This is a new question and was added because there is some controversy concerning which taxes

should be considered when a case requires deduction for taxes such as an FELA cases and as required in certain states such as Florida. The results are given below.

a)	Federal Income Tax.	100%
b)	State Income Tax.	94.7%
c)	Local Income Tax.	76.5%
d)	Social Security Tax.	38.2%
e)	Tier 1 and Tier 2 taxes if a FELA case.	34.1%
f)	Other (please specify).	9.7%

As expected, most of the respondents indicated that they would deduct state and federal income taxes. There was a lower percentage for deducting a local income tax, but it is not clear why these taxes would be treated differently than state and federal income taxes. Significantly fewer respondents indicated that they would deduct either the Social Security tax or Tier 1 and Tier 2 taxes, if applicable.

Selected Written Comments from Survey Respondents on Question 27:

- Social Security and Tier 1 & 2 provide cash returns so they are not explicit taxes.
- I don't take cases that require me to account for taxes.
- And Medicare tax of 1.45%.

Question 29. *Assume the same case as described in Question 25, where taxes must be considered. That question asked what taxes you subtract from earnings when the court mandates that taxes must be considered. This question asks how you account for taxes when discounting to a present value. Please check the option that best describes the method you would use.*

There were 170 usable responses for this question. Like the previous question, this is an addition to the survey.

a)	I make an adjustment to the rate on taxable securities.	30.6%
b)	I use the rate earned on tax-free assets (such as Municipals).	27.1%
c)	I use the same discount rate in cases where taxes are considered and excluded.	22.3%
d)	I use an iterative program to simultaneously consider the effects of taxes on wage earnings and on interest income on the lump sum award at trial.	15.3%
e)	Other.	.7%

As indicated in the results, there is little consensus concerning the answer to this question. The first answer generally refers to a technique that reduces the after-tax return based upon the plaintiff's specific tax rate. The second answer solves the problem by assuming investment in tax-free securities and is obviously easier to calculate, as well as explain to the jury, compared to the first answer. The third answer simply assumes that the discount rate does not change given that taxes are considered. The fourth answer is a more complicated approach. Although the specific technique may vary among those who use such an iterative program, such programs usually establish tax brackets based upon current taxes, which are then indexed over time. The estimated earned income and interest income are then taxed according to the brackets for each specified year. The program is designed so that the ending balance is $0. This option was the least popular among the first four specified.

Selected Written Comments from Survey Respondents on Question 29:

- I have had two judges instruct specifically to deduct taxes from projected earnings and ignore them on lump sum award.
- I use tax-free municipal bonds.
- If taxes are to be deducted when calculating the plaintiff's "true" loss of earnings; they have to be added when calculating the true, net discount rate. The only accurate way of doing this is to use the iterative approach.
- With a deduction for taxes you are projecting an after-tax income stream and it is reasonable to use a tax-free interest rate to replace this lost after-tax income stream.
- I use the first alternative and adjust the taxable U.S. government security rate (that I would normally use) downward by an historical relationship of low-risk municipal bond yields to U.S. government yields from comparable maturities.
- Tax-free Muni's if possible otherwise, it's back to the iterative program.
- I use Municipals as stated above for cases that call for a tax-free rate. But in other cases, such as employment cases where the lump sum will be received upfront the 4th choice above applies.

Question 31. In determining worklife expectancy, my generally preferred technique involves using… (check one):

There were 172 usable responses for this question. The results for the 1999, 2006, and 2009 surveys are as follows (see table on next page).

This particular question has been given since the second survey in 1991. However, in the 1997 survey several new options were added so comparison with earlier surveys is difficult. As shown, worklife tables as published in various journals such as the *Journal of Forensic Economics* and *Journal of Legal Economics* have come to dominate the results. And as indicated in the comments, some of those who use a combination of techniques also use these tables. On the other hand, use of the BLS tables, which were used by 71.6% of the res-

pondents in 1991, has declined to approximately 6%. Other techniques such as LPE (life, participation, and employment) and fixed retirement dates are still used, but by a relatively small minority.

		(S5,8,75)	(S7,35,47)	(S8)
a)	BLS Tables.	23.6%	8.3%	5.8%
b)	tables as published in economics journals.	21.4%	46.2%	55.8%
c)	median or mean years to final labor force separation.	6.7%	4.5%	2.9%
d)	LPE approach.	9.6%	10.9%	8.1%
e)	ending loss calculation at some fixed retirement date.	8.4%	9.0%	7.0%
f)	a combination of above techniques	25.3%	21.2%	20.3%

Selected Written Comments from Survey Respondents on Question 31:

- I use Ciecka/Skoog tables, from *JFE*'s, unless more case specific information is available.
- The LPE technique has served me well in explanations to juries, but I always know, and frequently mention, the best available alternative from out of the literature. I follow the make-whole principle so that reductions are made for all types of non-participation and for unemployment.
- Krueger, Skoog and Ciecka's Markov worklife model in the *Journal of Forensic Economics* 19(1).
- A combination of LPE and Tables such as those of Skoog and Ciecka.
- Age 67 if plaintiff is alive. Worklife in a death case.
- The jury instruction says "Lost Earnings CAPACITY" not average. The injury took away their "capacity to work" not what the average would be.
- Generally it is always "safer" to use Bulletin 2254 for purposes of validating the testimony. However, I will often offer two calculations: one using 2254 and the other using full Social Security eligibility age. Of course, when working for the defense, it is always 2254. Right?

Question 33. *Vocational experts are often asked to estimate the worklife of a plaintiff after an injury occurs. Some will utilize privately published worklife disability tables, which are normally based upon U.S. Census data. In your opinion, are such tables reliable for the purpose of estimating worklife?*

There were 170 usable responses to this question. This is a new question and is looking at whether the respondent believes that worklife tables specifically for the disabled which use government data are reliable when estimating worklife in a court setting. The results are given below.

a)	Yes.	17.6%
b)	No.	61.8%
c)	I am not familiar with such tables.	20.6%

One can also look at the results by focusing upon those who are familiar with the tables. With that reduced sample, the breakdown is 22.22% "Yes" and 77.78% "No." It appears that at this point in time, a significant majority of the respondents to this survey do not believe such tables are reliable.

Selected Written Comments from Survey Respondents on Question 33:

- Those tables do not address how and to what extent a person is injured.
- The tables are totally unreliable. See articles by Skoog and Toppino, or other papers on this topic in the JFE. The tables are not considered reliable or valid by most forensic economists.
- The literature and common sense are clear. The so-called VEI or Gamboa tables are more likely to mislead rather than help a trier of fact.
- The VEI tables are not unreliable. I am not familiar with any other tables.
- These are utterly unreliable, and constitute "junk science," as was shown in the Skoog-Toppino and Ciecka-Rodgers-Skoog papers. The ACS data suffer from the same problem. They have not been published in a properly peer-reviewed publication—they are privately published.
- Never had a vocational expert attempt this.
- Better than pretending that a disability simply doesn't exist. Close is better than obviously wrong.
- Using these tables turns the economist or the vocational expert into a medical expert. The statistics are too broad to be meaningful for an individual case.

Question 35. *A plaintiff's attorney asks you to calculate lost enjoyment of life (hedonic damages) in an injury case. Would you be willing to calculate such damages?*

There were 173 usable responses to this question. The percentages answering "Yes" and "No" are given below for the 1999, 2003, and current survey. The question was not asked in the 2006 survey.

		(S5,10,79)	(S6,10,35)	(S8)
a)	Yes.	23.59%	17.82%	16.2%
b)	No.	76.41%	82.18%	83.8%

It is clear that the great majority of respondents would be unwilling to write a report where they would measure hedonic damages. Some of the rea-

sons are indicated in the comments below. There is an argument for adding a third option, "I am not familiar with the use of hedonic damages." This type of option was provided in Question 33 concerning worklife disability tables. However, since the previous questions concerning hedonic damages were written without this option, it was decided to keep the existing format.

Selected Written Comments from Survey Respondents on Question 35:

- Far too speculative to quantify.
- No basis for measuring the value of an individual life.
- Your question assumes that the expert would provide an opinion of a specific dollar value for a specific person. I would not do this, but I would provide, as assistance to the jury, information about value of statistical life studies.
- Ted Miller and others are more correct now than ever. The straightforward application of (statistically significant) willingness to pay conclusions about whole life values provides more of a scientific basis here than in many other areas of our loss estimates. A drawback is that we can only talk about benchmark values, but that is also true for minor child earnings, household services estimates, etc.
- Not an economic loss. There is no way to calculate this damage. This should be left up to the trier of fact.
- But, whenever the methodology has advanced enough to gain general acceptance among experts, I WILL consider it. Similarly, with the help of other disciplines (e.g., psychologists), the measuring of happiness is gaining some ground and it is not viewed as "silly quasi-science."

Question 37. *A defense attorney asks you to critique an economist's report that has calculated the lost enjoyment of life (hedonic damages) allegedly suffered by an injured plaintiff. Would you be willing to critique such a report?*

There were 174 usable responses for this question. Responses to the 1999, 2003, and current survey are as follows.

		(S5,11,80)	(S6,11,36)	(S8)
a)	Yes.	81.67%	71.84%	82.2%
b)	No.	18.33%	28.16%	17.8%

Although the large majority of respondents would not write a report for a plaintiff's attorney concerning hedonic damages, an equally large majority would be willing to critique such a report. Given that a forensic economist would not be willing to critique a hedonics report unless they were familiar with the appropriate literature, it seems reasonable to conclude that with reference to Question 35, most of those respondents who indicated they would not write a hedonics report did so for reasons other than unfamiliarity with the

literature. There was a decline in the percentage of individuals who stated that they would be willing to critique a hedonics approach between the 1999 and 2003 surveys, but that decline has apparently been reversed.

Selected Written Comments from Survey Respondents on Question 37:

- I know other FEs who are more qualified than I to take such a case and would refer the attorney to them.
- Only a handful of NAFE members have actually invested the time to know how to critique those people who mis-use the willingness to pay literature.
- When I provide such critiques, I will explain all the problems with the methodologies currently used by economists to calculate lost enjoyment of life.

Question 39. *Assume that the hiring attorney gives you a hypothetical that is clearly within your area of expertise. As an example, given that you are a forensic economist, the hypothetical asks you to assume that the plaintiff, a 30-year-old who has worked for a company for four years in a junior management position, will eventually work his/her way up through the management ranks and become CEO. Which of the following best describes what you would do in this case? (Check one.)*

The number of usable responses for this question was 174. This is a new question. The motive for the question was a discussion on the NAFE-L, which looked at the kinds of hypotheticals proper for a forensic economist to accept from the hiring attorney. The results are given below.

a)	I would accept the hypothetical from the attorney and incorporate it into my report without stating explicitly the source of the hypothetical.	1.2%
b)	I would accept the hypothetical from the attorney and incorporate it into my report, but I would state explicitly that the hiring attorney was the source of the hypothetical.	37%
c)	I would accept the hypothetical from the attorney, state explicitly that the hiring attorney was the source of the hypothetical, and explicitly label any conclusions as "hypothetical."	31.2%
d)	I would reject the hypothetical and indicate that it would not be included in my report unless additional information was provided.	17.3%
e).	Other	13.3%

There is no dominant, accepted answer to this question. The only definitive conclusion is that the expert should not accept the hypothetical without at least

indicating in the report the source of the hypothetical. If one combines the second and third answers, then it might be concluded that the majority of respondents feel that accepting a hypothetical is proper as long as the source of the hypothetical in the written report is clear.

Selected Written Comments from Survey Respondents on Question 39:

- But the hypothetical would not be in the body of the text. It would be in a footnote that is clearly labeled to be outside the facts of the case and requested by counsel.
- I would do so reluctantly, given lack of supporting evidence.
- If one actually reads and follows the NAFE statement of ethical principles, then under the "Consistency" principle…last sentence…the third alternative must be used. I do not hesitate to point this out when on the defense side. If most members do not follow the third alternative, then the Board either needs to kick them out or change the ethics rules.
- I would consider the assumption, based on the attorney's request, as one scenario. I would also include one or two other scenarios (no promotion; some promotion).
- In using the labeled hypothetical, I am still aware that my name will be on the report, and I would not do the hypothetical if I thought the assumptions were too much of a "stretch."
- In related situations, I label the result as "not reasonably certain."
- I do not accept silly assignments.
- All of our estimates of future earnings are hypothetical.
- I would accept it and label it hypothetical and *strongly* urge a secondary calculation be performed.

Question 41. *When you have determined a discount rate in a commercial damages (lost profits) case, what has been your most commonly used source for choosing a (nominal) discount rate? (Check one.)*

There were 172 usable responses for this question. This is a new question that was included because the authors perceived a wide difference in prevailing practice.

a)	Prime lending rate.	1.2%
b)	The cost of capital for the plaintiff company.	16.9%
c)	The same rate that I use in personal injury cases.	12.8%
d)	A build-up interest rate based upon assessments of various risks.	29.7%
e)	The "hurdle rate" used by the plaintiff company in evaluating its own uses of funds.	1.7%
f)	I don't have sufficient experience with these types of cases.	27.9%
g)	Other. (Use "Comments" Section to explain.)	9.9%

It is not surprising that 28% of respondents did not make a choice among the source alternatives, because responses to other questions have indicated that many forensic economists do little or no work in commercial damages. There is no majority choice among source (method) options. The "build up" choice exceeds the "cost of capital" choice by a two-to-one ratio. Interestingly, almost 13% of respondents use the same discount rate as in personal injury cases, for reasons not explained in the comments. The comments do show a range of thoughts about how various risks should be considered in the overall analysis of lost profits damages.

Selected Written Comments from Survey Respondents on Question 41:

- It really depends on the case. No approach fits all commercial disputes.
- I would also look at the weighted cost of capital.
- According to financial theory, the rate should reflect the riskiness of the lost income stream so it may be more or less than the firm's cost of capital.
- I prefer to utilize the "hurdle rate" but have found many of my commercial damages clients to be unaware of any required internal rates of return prior to initiating project investment. In such cases, I typically revert to the prime rate of interest. I have encountered many who advocate the "build-up" method but I feel that this over-estimates business risk when historical sales/profit data are already being used to estimate the but-for projections.
- Adjusted CAPM-based cost of equity. Not the WACC!!
- Based on the market/external/internal conditions, I incorporate various risks in company's sales, expenses, etc. instead of the discount rate. Otherwise they will be double discounted!

Question 43. *John Smith, a forensic economist, died unexpectedly on January 2, 2009. His earnings for the last five years are as follows. (Please assume earnings are expressed in 2009 dollars.)*

<div align="center">

2004 - $121,000
2005 - $124,000
2006 - $126,000
2007 - $227,000
2008 - $130,000

</div>

In 2007, Smith had been hired in a major class action suit that involved 320 plaintiffs so he was unusually busy. The controlling law requires that you estimate earning capacity, but this term has not been clearly defined. What full-year, dollar base would you choose for 2009, the first year of economic loss? (In the "Comments" section, please briefly explain your rationale.)
My 2009 full-year base earnings estimate is $_____.

This is a new question. The number of usable responses for this question is 145. The average value was $140,390 and the median value was $135,000. The

interquartile range was from \$131,025 to \$145,600. The minimum value was \$125,000 and the maximum value \$230,000.

It is clear that since only three respondents indicated a value approximately equal to earnings in 2007, earning capacity is not considered equal to the maximum earnings attained. The 75th percentile equal to \$145,600 is the same as the average for all five years. The average value for the four years other than 2007 is \$125,250. This value is lower than the 25th percentile equal to \$131,025. What the data seem to imply with regards to the 2007 outlier is that few assume that the outlier is equal to earning capacity, some average the outlier with other data available to determine earning capacity, but most appear to count it but not at full value. Some of the reasons for answers given are reported in the Comments section below.

Selected Written Comments from Survey Respondents on Question 43:

- 2007 clearly is an outlier. The value for 2009 would be 130,000 x 1.81%, the average growth rate between 2004 and 2008.
- This is the midpoint of the average excluding and including 2007. To exclude 2007 assumes that such a level of activity will never occur again, even though the experience might have resulted in additional similar business. To include it assumes it would happen once every five years. This method reduces the frequency to once every 10 years.
- Based upon historical data the most reasonable measure of central tendency is to exclude 2007, use the most recent figure.
- The \$145,600 5-year average is the best predictor of the future. The high year of 2007 should not be given more than a one-fifth chance of repeating in the future, unless one is a plaintiff-biased nut whose only principle is using the highest possible base in each case.
- Would assume an "average" year's earnings without outliers.
- Inadequate information to be able to even discuss.
- I used a weighted average of all available years with declining weights; (0.33, 0.27, 0.20, 0.13, 0.07).

Question 45. *Please complete the statement: "I have been practicing and earning income in the field of forensic economics for _____ years."*

There were 173 usable responses for this question. The average number of years was 23.7 and the median value was 25. The interquartile range was from 16 years to 31 years. The minimum and maximum values were 2 years and 46 years. In the 2006 survey (Question 42, p. 51) the average was 20.9 years and the median was 20 years. This question was also been asked in earlier surveys. In the 1990 survey, the average number of years in the field was 11.6. Clearly, the number of years of experience has increased. However, as was mentioned in the 2006 survey, at some point the "veterans" will be retiring. After that, the average years of experience should decline as younger forensic economists enter the field.

Selected Written Comments from Survey Respondents on Question 45:

- I thought that we would have resolved most of our methodological problems by now. Boy, was I wrong.
- Hard to believe that it's been that long….
- I still get situations and questions that are new.

Question 47. *My total annual TAXABLE LABOR INCOME in 2008 (in percentage terms) came from the following sources: (Total MUST sum to 100%. Do <u>not</u> include income earned outside of the labor market such as dividends, interest, pensions, 401(k) income, and Social Security benefits.)*

The number of usable responses for this question was 162. This question has been asked in most previous surveys, and has revealed some interesting trends. The results for the surveys in 1991, 2003, and 2009 are shown below.

		(S1,1,15)	(S6,17,38)	(S8)
a)	Faculty Salaries.	45.16%	22.94%	16.75%
b)	Administrative salary.	6.36%	3.77%	1.78%
c)	Income (consulting) in forensic economics.	34.28%	52.87%	64.48%
d)	Income in other consulting fields.	10.12%	13.89%	8.33%
e)	Other taxable labor income.	4.08%	5.95%	4.18%

The trends are clear. Forensic economists are earning less from faculty salaries and more from consulting income. Since 1991 earnings from forensic consulting has increased from 34% to 64%. Faculty salaries, on the other hand, have fallen from 45% to a little below 17%. Nor surprisingly, forensic economists are earning a significant proportion of their total earnings from forensic economic consulting. In 1991, only 21.3% of the respondents earned 50% or more from forensic economic consulting. In the current survey that figure is almost 62%. In fact, 34% of the respondents to the 2009 survey indicated they received 100% of their earnings from forensic economic consulting.

The previous survey postulated a number of possible explanations. Some consultants are switching out of academia due to the higher income that may be earned. Still another explanation is that if forensic economists are approaching retirement age, one option is to retire from teaching but to continue consulting—an occupation that is flexible in terms of hours and location. It may also be important that practitioners are less worried than in earlier years about heavy reliance on consulting income being used against them at trial.

Selected Written Comments from Survey Respondents on Question 47:

- I am recently retired from teaching and now only do consulting work in the field of forensic economics.
- Foundation sponsored research.
- The 70% comes from my work as a CPA, primarily tax work.
- Being a forensic economist is my full time job.
- I am a professional sports official.
- Increasing amount of consulting income; mainly because I control the rate of increase in the hourly rate (and have gotten busier) whereas my salary is contractually set just a few percent per year.
- Has not changed for 25 years.
- Retired faculty member.
- 2008 was a very good year, typically I'm about 50/50 teaching vs. forensic income.
- Started to do more work for my university administration.
- Yes, the consulting % rose dramatically after I retired—no surprise.

Question 50. *My earnings as a forensic economist in the calendar year 2008 were derived as follows: (Earnings should be a percentage of consulting earnings as a forensic economist, not total earnings).*

The number of usable responses was 169. The results from the 1999, 2003, and the current survey are as follows.

		(S5,16,87)	(S6,15,37)	(S8)
a)	Plaintiff-side work.	66.99%	65.20%	59.22%
b)	Defense-side work.	32.72%	34.02%	39.46%
c)	Other.	0.29%	0.68%	1.31%

There has been a slight decline in the percentage of plaintiff's cases in the last three years. The split of income from plaintiff versus defense work is now approximately 60:40. An interesting question is whether a sizable number of forensic economists are predominately hired for either one side or the other. 14.02% of the respondents indicated that 90% or more of their cases are for the plaintiff, while 25% indicated that 80% or more are for the plaintiff. The comparable numbers for those hired by the defense are 4.27% and 8.54%. Thus, there are some forensic economists who heavily depend upon being hired by either the plaintiff or defense, but the large majority have some balance in their forensic practice.

Selected Written Comments from Survey Respondents on Question 50:

- It is important to me that my office has achieved a 50:50 split, and a jury can appreciate what that must mean about impartiality.
- Neutral party work for court or for both sides by mutual agreement.
- Pretty stable last several years, 50/50 for a long time.

Question 52. *I would estimate that my earnings as a forensic economist in calendar year 2008 were derived from the following types of cases: (Percentages should be based on consulting earnings as a forensic economist, not total earnings.)*

The number of usable responses for this question was 165. The responses to the 1999, 2003, and current survey are as follows.

		(S5,20,91)	(S6,18,39)	(S8)
a)	Personal injury and wrongful death cases	66.07%	69.40%	68.11%
b)	Antitrust or commercial cases	12.25%	7.85%	13.86%
c)	Discrimination or other labor cases	11.72%	12.17%	11.43%
d)	Divorce cases	3.42%	5.14%	2.04%
e)	Other types of cases	6.54%	5.64%	4.55%

There has been little change in the types of cases where forensic economists are hired, with over two-thirds personal injury/death cases. Almost 31% of the respondents indicated that at least 90% of their earnings were PI/D while almost 54% indicated that at least 80% of their earnings were PI/D cases.

Selected Written Comments from Survey Respondents on Question 52:

- Regulatory
- Forensic accounting.
- Life care plans – 20%.

Question 54. *Some forensic economists have very large practices and others are hired for only a few cases a year. Whatever number of cases for which you have been hired in the last few years, check the response that is closest to your situation.*

There were 171 usable responses for this question. This is a new question. Originally, it was thought that the question would ask how many cases the respondent handled in the last year. That question would provide information concerning the size of the practices of the respondents. However, given the current state of the economy, it was decided to ask a somewhat different question

—namely, do you have as many cases as you wish given your other time constraints? The answers are given below.

a)	I have fewer cases than I would like to have.	20.5%
b)	The number of cases that I have is about the number that I want to have.	70.2%
c)	I have more cases than I would like to have.	9.3%

As indicated, the large majority are content with their number of cases despite the downturn in the economy. It could also be that this consulting industry is reasonably immune to downturns in the economy. However, another explanation might be that the number of cases has declined and forensic economists have simply adjusted to the change.

Selected Written Comments from Survey Respondents on Question 54:

- But not a lot fewer…we stay very busy except for a few heart-stopping weeks which seem to occur randomly during each year.
- I've been trying to wind this down for several years, but the money is just too good and I keep getting referrals.
- But…I have a tough time turning down a new case.
- In the last six months my case load has lightened up somewhat; I would like to be busier.

Question 56. *Please use the space below to outline or discuss any ethical dilemmas or issues you believe to be important for forensic economics practitioners. These may be issues that you have personally faced, that others have faced, or that you believe the profession should address.*

- I was asked by the plaintiff's attorney in a wrongful death case not to make a deduction for personal consumption expenses. I stupidly agreed to do this and was grilled during a deposition by the defense, who noted (correctly) that I had done so in past cases. The important point is for the expert to do what's right.
- I've encountered the following: 1) Opposing economists who cherry-pick elements of my valuation rather than produce their own valuation without knowledge of my opinion; 2) Cryptic sources and lack of detailed explanations that prevent me from replicating their calculations; and 3) Flip-flopping methodology, whether it's changing current net discount method to historical net discount method, or from historical net discount method to current TIIS method.
- Using expert reports to put forward scenario analyses without reasonable support (i.e., the human calculator); hiding behind attorney-supplied key assumptions that oftentimes can be independently investigated for reasonableness.

- I have been asked to produce a draft copy of my report but tell the defense that there was no draft copy. I declined.
- Many members do not follow the spirit of the NAFE ethical principle of disclosure, and many ignore the last sentence of the principle of consistency regarding hypotheticals from attorneys. The NAFE Board must somehow address this or eliminate the ethical principles altogether.
- In my experience, some forensic economists abuse the notion of earning capacity, claiming that "capacity" implies much more than "probable earnings" or "expected earnings." This is a big problem when economists assume the 30-year-old decedent would have worked until age 70, instead of working over the worklife expectancy.
- The market does not seem to weed out the unethical and the incompetent nearly fast enough. Indeed, one notorious FE continues to use different discount rates and worklife expectancy methods depending on which side has hired him.
- Knowing what to do when the opposing attorney explicitly lies about your deposition testimony in front of the judge, and you have no opportunity at that time to address this.
- Very aggressive Life Care Plan items and their current costs.
- The preparation of reports which are based upon speculation and/or gross generalization continues seemingly unabated. Additionally experts continue to fail to disclose the basis for their opinions. I would like to see both issues addressed by our profession.

Question 57. Please use the space below for any additional comments you wish to make about this survey or suggestions for future surveys.

- I enjoy reading the results of the survey to see how I compare with the rest of the profession.
- Good job. Far superior to prior one's.
- I think it would be appropriate for the membership of NAFE to consider having some sort of peer-review program, either on a pro bono basis or greatly reduced fees.
- It would be interesting to ask how many FEs routinely calculate a tax adjustment (for the lump sum) in employment cases.
- The quality & sophistication of the questions have improved over the years. You are learning from your experience.

IV Summary and Conclusions

The 2009 survey was the second conducted electronically, the response rate was a healthy 33% and the response rate was an average of 24 years experience practicing forensic economics. The income percentage from plaintiff versus defense work fell slightly to approximately 60:40, and personal injury and wrongful death work continue to dominate the attention of respondents.

Many survey questions are repeated in every survey or have been asked in many surveys, so responses to important forecast values, or methods, or sources

can be tracked over time. For example, the mean 30-year forecast of price infla-tion response was 3.1% annually in this survey, which is exactly the same as the 2006 survey response but has trended downward from the 5.0% response in 1990. The mean response for growth in nursing home costs for nursing home care was 4.36% annually and for attendant care costs was 3.54% annually. The mean response for the net discount rate over 30 future years was 1.75%, which was higher (surprisingly) than the 2006 result.

One question initially asked in 2006, with the addition of a numerical ex-ample, brought a significantly different response in 2009. In the latest survey, most respondents (62%) take self-consumption deductions out of total family income versus only out of the income of the deceased (38%); responses were 53% to 47%, respectively, in 2006. Responses in other areas—the use of current versus an historical average of interest rates in discounting and the sources used for worklife estimates changed little in comparison with the 2006 survey.

The 2009 survey contained a wide range of new questions, which make the results and selected comments particularly interesting. There is no consensus on whether or how self-consumption should be deducted from retirement in-come. There is significant disagreement regarding the calculation of Social Se-curity benefits as losses. New insight is provided for how forensic economists deal with income tax effects when such calculations are legally proscribed. Res-pondents clearly believed that U. S. Census data currently used by some voca-tional experts in opining about lowered worklife expectancy are unreliable. Fi-nally, responding to an ethics-related question about using a client attorney hypothetical as an assumption, most would use the hypothetical and clearly indicate the attorney as the source of the hypothetical assumption.

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