

**PLUNKETT COONEY**  
DETERMINED. DISTINCTIVE. FEARLESS.®

## Avoiding Plaintiffs' Lottery Tickets

Dealing with Economic Experts, Blackboard Damages & *Denney*

Presented by  
**Justin J. Hakala ■ Eric T. Ramar ■ Robert G. Kamenec**

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## Today's Presenters



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## Cracking the Calculus

Understanding the Math & Other Preliminary Considerations

Presented by  
**Justin Hakala**

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Age	Year	Lost Wage	Discount Factor	Present Value
53	2019	\$3,089.98	1.00	\$3,089.98
54	2020	\$88,400.00	1.00	\$88,400.00
55	2021	\$91,936.00	1.00	\$91,936.00
56	2022	\$95,613.44	1.05	\$91,060.42
57	2023	\$99,437.96	1.10	\$90,193.18
58	2024	\$103,415.50	1.16	\$89,334.19
59	2025	\$107,552.12	1.22	\$88,483.39
60	2026	\$111,854.20	1.28	\$87,648.68
61	2027	\$116,323.47	1.35	\$86,830.25
62	2028	\$120,959.25	1.42	\$86,027.28
63	2029	\$125,762.84	1.49	\$85,239.87
64	2030	\$130,734.79	1.56	\$84,467.09
65	2031	\$135,875.67	1.63	\$83,708.92
66	2032	\$141,186.05	1.70	\$82,965.45
67	2033	\$146,657.50	1.77	\$82,236.76
68	2034	\$152,290.59	1.85	\$81,522.84
69	2035	\$158,086.87	1.92	\$80,823.67
70	2036	\$164,046.91	2.00	\$80,139.24
71	2037	\$170,172.18	2.08	\$79,469.56
72	2038	\$176,464.18	2.16	\$78,814.64
73	2039	\$182,933.47	2.25	\$78,174.48
74	2040	\$189,581.59	2.33	\$77,549.09
75	2041	\$196,410.09	2.42	\$76,938.46
76	2042	\$203,420.59	2.50	\$76,342.69
77	2043	\$210,613.70	2.59	\$75,761.79
78	2044	\$217,999.99	2.68	\$75,195.76
79	2045	\$225,580.00	2.77	\$74,644.60
80	2046	\$233,355.39	2.86	\$74,108.31
81	2047	\$241,326.80	2.95	\$73,586.88
82	2048	\$249,494.95	3.04	\$73,080.31
83	2049	\$257,860.49	3.13	\$72,588.60
84	2050	\$266,424.16	3.22	\$72,111.84
85	2051	\$275,186.61	3.32	\$71,650.03
86	2052	\$284,148.50	3.41	\$71,203.17
87	2053	\$293,310.50	3.51	\$70,771.26
88	2054	\$302,673.29	3.61	\$70,354.30
89	2055	\$312,237.56	3.71	\$69,952.29
90	2056	\$321,904.01	3.81	\$69,565.23
91	2057	\$331,673.44	3.91	\$69,193.12
92	2058	\$341,546.56	4.01	\$68,835.96
93	2059	\$351,524.07	4.11	\$68,493.75
94	2060	\$361,606.78	4.22	\$68,166.49
95	2061	\$371,795.41	4.32	\$67,854.18
96	2062	\$382,090.78	4.43	\$67,556.82
97	2063	\$392,493.71	4.53	\$67,274.41
98	2064	\$403,005.03	4.64	\$66,996.95
99	2065	\$413,625.58	4.75	\$66,734.54
100	2066	\$424,356.21	4.86	\$66,487.18
101	2067	\$435,197.76	4.97	\$66,254.87
102	2068	\$446,151.08	5.08	\$66,027.61
103	2069	\$457,218.03	5.19	\$65,805.40
104	2070	\$468,400.47	5.30	\$65,588.24
105	2071	\$479,699.27	5.41	\$65,376.13
106	2072	\$491,116.30	5.52	\$65,169.07
107	2073	\$502,652.44	5.63	\$64,967.06
108	2074	\$514,309.57	5.74	\$64,770.10
109	2075	\$526,088.58	5.85	\$64,578.19
110	2076	\$537,990.37	5.96	\$64,391.33
111	2077	\$549,915.84	6.07	\$64,209.52
112	2078	\$561,965.90	6.18	\$64,032.76
113	2079	\$574,141.46	6.29	\$63,861.05
114	2080	\$586,443.44	6.40	\$63,694.40
115	2081	\$598,872.75	6.51	\$63,532.81
116	2082	\$611,430.30	6.62	\$63,376.28
117	2083	\$624,117.01	6.73	\$63,224.81
118	2084	\$636,933.80	6.84	\$63,078.40
119	2085	\$649,881.58	6.95	\$62,937.05
120	2086	\$662,960.37	7.06	\$62,799.76
121	2087	\$676,170.10	7.17	\$62,666.53
122	2088	\$689,511.70	7.28	\$62,537.36
123	2089	\$702,985.19	7.39	\$62,412.25
124	2090	\$716,591.50	7.50	\$62,291.20
125	2091	\$730,330.65	7.61	\$62,174.21
126	2092	\$744,203.68	7.72	\$62,061.28
127	2093	\$758,211.53	7.83	\$61,952.42
128	2094	\$772,355.24	7.94	\$61,847.63
129	2095	\$786,635.85	8.05	\$61,746.91
130	2096	\$801,053.40	8.16	\$61,650.26
131	2097	\$815,608.93	8.27	\$61,557.69
132	2098	\$830,303.59	8.38	\$61,469.12
133	2099	\$845,138.42	8.49	\$61,384.55
134	2100	\$860,113.47	8.60	\$61,303.98
135	2101	\$875,229.79	8.71	\$61,227.41
136	2102	\$890,487.43	8.82	\$61,154.84
137	2103	\$905,886.45	8.93	\$61,086.27
138	2104	\$921,426.91	9.04	\$61,021.70
139	2105	\$937,109.88	9.15	\$60,961.13
140	2106	\$952,936.42	9.26	\$60,904.56
141	2107	\$968,907.59	9.37	\$60,851.99
142	2108	\$985,024.46	9.48	\$60,803.42
143	2109	\$1,001,287.10	9.59	\$60,758.85
144	2110	\$1,017,695.58	9.70	\$60,718.28
145	2111	\$1,034,250.00	9.81	\$60,681.71
146	2112	\$1,050,951.44	9.92	\$60,649.14
147	2113	\$1,067,799.91	10.03	\$60,620.57
148	2114	\$1,084,795.41	10.14	\$60,595.99
149	2115	\$1,101,938.04	10.25	\$60,575.41
150	2116	\$1,119,228.81	10.36	\$60,558.83
151	2117	\$1,136,667.73	10.47	\$60,546.25
152	2118	\$1,154,255.81	10.58	\$60,537.67
153	2119	\$1,171,994.07	10.69	\$60,533.09
154	2120	\$1,189,882.53	10.80	\$60,532.51
155	2121	\$1,207,921.21	10.91	\$60,535.93
156	2122	\$1,226,110.13	11.02	\$60,543.35
157	2123	\$1,244,450.31	11.13	\$60,554.77
158	2124	\$1,262,942.77	11.24	\$60,570.19
159	2125	\$1,281,587.54	11.35	\$60,589.61
160	2126	\$1,300,385.64	11.46	\$60,613.03
161	2127	\$1,319,337.10	11.57	\$60,640.45
162	2128	\$1,338,443.04	11.68	\$60,671.87
163	2129	\$1,357,704.49	11.79	\$60,707.29
164	2130	\$1,377,122.58	11.90	\$60,746.71
165	2131	\$1,396,698.34	12.01	\$60,790.13
166	2132	\$1,416,432.80	12.12	\$60,837.55
167	2133	\$1,436,326.10	12.23	\$60,888.97
168	2134	\$1,456,378.37	12.34	\$60,944.39
169	2135	\$1,476,590.65	12.45	\$60,999.81
170	2136	\$1,496,963.00	12.56	\$61,059.23
171	2137	\$1,517,496.45	12.67	\$61,122.65
172	2138	\$1,538,191.05	12.78	\$61,190.07
173	2139	\$1,559,047.85	12.89	\$61,261.49
174	2140	\$1,580,066.90	13.00	\$61,336.91
175	2141	\$1,601,248.25	13.11	\$61,416.33
176	2142	\$1,622,592.95	13.22	\$61,499.75
177	2143	\$1,644,101.05	13.33	\$61,587.17
178	2144	\$1,665,773.60	13.44	\$61,678.59
179	2145	\$1,687,610.75	13.55	\$61,773.01
180	2146	\$1,709,613.65	13.66	\$61,871.43
181	2147	\$1,731,782.45	13.77	\$61,973.85
182	2148	\$1,754,117.20	13.88	\$62,080.27
183	2149	\$1,776,618.05	13.99	\$62,190.69
184	2150	\$1,799,285.05	14.10	\$62,305.11
185	2151	\$1,822,118.35	14.21	\$62,423.53
186	2152	\$1,845,118.00	14.32	\$62,545.95
187	2153	\$1,868,284.15	14.43	\$62,672.37
188	2154	\$1,891,615.85	14.54	\$62,802.79
189	2155	\$1,915,113.25	14.65	\$62,937.21
190	2156	\$1,938,776.40	14.76	\$63,075.63
191	2157	\$1,962,604.45	14.87	\$63,218.05
192	2158	\$1,986,597.55	14.98	\$63,364.47
193	2159	\$2,010,755.75	15.09	\$63,514.89
194	2160	\$2,035,079.10	15.20	\$63,669.31
195	2161	\$2,059,567.65	15.31	\$63,827.73
196	2162	\$2,084,221.45	15.42	\$63,990.15
197	2163	\$2,109,040.65	15.53	\$64,156.57
198	2164	\$2,134,025.30	15.64	\$64,326.99
199	2165	\$2,159,175.55	15.75	\$64,501.41
200	2166	\$2,184,491.45	15.86	\$64,680.83
201	2167	\$2,209,973.05	15.97	\$64,865.25
202	2168	\$2,235,620.40	16.08	\$65,054.67
203	2169	\$2,261,433.65	16.19	\$65,249.09
204	2170	\$2,287,412.85	16.30	\$65,448.51
205	2171	\$2,313,558.05	16.41	\$65,652.93
206	2172	\$2,339,869.30	16.52	\$65,862.35
207	2173	\$2,366,346.65	16.63	\$66,076.77
208	2174	\$2,392,990.15	16.74	\$66,296.19
209	2175	\$2,419,799.85	16.85	\$66,520.61
210	2176	\$2,446,775.80	16.96	\$66,750.03
211	2177	\$2,473,918.05	17.07	\$66,984.45
212	2178	\$2,501,226.65	17.18	\$67,223.87
213	2179	\$2,528,699.65	17.29	\$67,468.29
214	2180	\$2,556,337.10	17.40	\$67,717.71
215	2181	\$2,584,139.15	17.51	\$67,972.13
216	2182	\$2,612,105.85	17.62	\$68,231.55
217	2183	\$2,640,237.25	17.73	\$68,496.97
218	2184	\$2,668,533.40	17.84	\$68,768.39
219	2185	\$2,696,994.35	17.95	\$69,044.81
220	2186	\$2,725,620.15	18.06	\$69,326.23
221	2187	\$2,754,410.85	18.17	\$69,612.65
222	2188	\$2,783,366.50	18.28	\$69,904.07
223	2189	\$2,812,487.15	18.39	\$70,200.49
224	2190	\$2,841,772.85	18.50	\$70,501.91
225	2191	\$2,871,223.55	18.61	\$70,808.33
226	2192	\$2,900,839.30	18.72	\$71,119.75
227	2193	\$2,930,620.05	18.83	\$71,436.17
228	2194	\$2,960,575.75	18.94	\$71,757.59
229	2195	\$2,990,706.45	19.05	\$72,083.01
230	2196	\$3,021,013.10	19.16	\$72,413.43
231	2197	\$3,051,495.75	19.27	\$72,748.85
232	2198	\$3,082,154.45	19.38	\$73,089.27
233	2199	\$3,112,989.15	19.49	\$73,434.69
234	2200	\$3,143,999.80	19.60	\$73,785.11
235	2201	\$3,175,186.45	19.71	\$74,140.53
236	2202	\$3,206,549.10	19.82	\$74,501.95
237	2203	\$3,238,087.80	19.93	\$74,869.37
238	2204	\$3,269,802.50	20.04	\$75,242.79
239	2205	\$3,301,693.25	20.15	\$75,622.21
240	2206	\$3,333,760.00	20.26	\$76,007.63
241	2207	\$3,365,992.75	20.37	\$76,399.05
242	2208	\$3,398,391.45	20.48	\$76,796.47
243	2209	\$3,430,956.10	20.59	\$77,199.89
244	2210	\$3,463,686.75	20.70	\$77,609.31
245	2211	\$3,496,583.40	20.81	\$78,024.73
246	2212	\$3,529,646.05	20.92	\$78,446.15
247	2213	\$3,562,874.70	21.03	\$78,873.57
248	2214	\$3,596,269.35	21.14	\$79,306.99
249	2215	\$3,629,830.00	21.25	\$79,746.41

## Blackboard Damages:

- Lost Earnings Capacity: \$1.8MM
- Future Medical Costs: \$8.6MM
- Household Services: \$627,357
- Fringe Benefits: \$338,946
- **Total: \$11.5MM**

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## Earnings Capacity: End Date

Working to  
75 years old?!

73	2039	\$196,245.47	2.41	\$77,389.84
74	2040	\$193,695.29	2.53	\$76,651.80
75	2041	\$201,443.10	2.65	\$75,921.76
Past:		\$183,425.98		\$183,425.98
Future:		\$2,847,184.53		\$1,574,417.97
Totals:		\$3,030,610.51		\$1,846,904.36

### Footnotes:

1. Calculations begin: 12/1/2019
2. Calculations end: 12/31/2041
3. Date of Birth: 5/6/1966
4. Figures based on earnings capacity of \$85,000/year
5. Adjustment for earnings growth/inflation: 4% per year
6. Future amounts are reduced to present value, via: MCL 600.6303(2)

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- Q. Social security retirement age is about 67 and 2/3; were you planning on working until about then and retiring?
- A. Yes. The sooner I could retire, the better.

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## Blackboard Damages:

- Lost Earnings Capacity: ~~\$1.8MM~~ \$1.3MM
- Future Medical Costs: \$8.9MM
- Household Services: \$627,357
- Fringe Benefits: \$338,946
- Total: ~~\$11.5MM~~ \$11.0MM

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## Reduction to Present Value

- Birth trauma case involving management of a twin gestation pregnancy

TOTAL NET PRESENT VALUE OF FUTURE LOSSES			
Twin A		Option I	\$14,396,000
		Option II	\$16,065,700
TOTAL NET PRESENT VALUE OF FUTURE LOSSES			
Twin B		Option I	\$25,921,300
		Option II	\$26,076,700

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## Reduction to Present Value

- Loss amounts identified in this section are set forth in today's dollars, but the stream of future loss amounts is discounted to reflect the probable net level of interest earnings relative to inflation/price increases or wage growth

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## Reduction to Present Value: Statute

MCL 600.6306:

- The court must reduce a verdict to a judgment, including:
  - All future medical and other health care costs and future economic damages, “reduced to present value at **a rate of 5% per year, compounded annually**, for each year in which those damages will accrue, as found by the trier of fact under section 6305(1)(b).”

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## Reduction to Present Value—Revised Report

The purpose of this Addendum is to update the future earnings and medical/life care expenses to incorporate a five percent (5.0%) discount rate per the Michigan statute. This

Twin A	LOSSES		FUTURE LOSSES	
	Option I	\$14,500,000	Option I	\$10,471,200
	Option II	\$16,000,000	Option II	\$11,763,600
Twin B	LOSSES		REVISOR LOSSES	
	Option I	\$25,900,000	Option I	\$19,121,900
	Option II	\$26,000,000	Option II	\$19,247,200

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## Reduction to Present Value

- Twin A: ~~\$16.1MM~~ \$11.8MM
- Twin B: ~~\$26.1MM~~ \$19.2MM
- Total: ~~\$42.1MM~~ \$31.0MM

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## Liens-Case Study: Anoxic Brain Injury

- 29-year-old woman suffers cardiac arrest d/t post-partum cardiomyopathy about one week after an ED presentation for dyspnea, chest pain, and headache.
- \$19MM of \$25MM life care plan is for "Supported Life Care," (attendant care)

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## Liens: Attendant Care

### OPTION I: Supported Adult Life Care in the Family Home\*

CNA/HHA (12 Hours/Day)	29	53	301	\$270.00	\$81,270.00
Skilled Nurse (12 Hours/Day)	29	53	301	\$660.00	\$198,660.00
Skilled Nurse (Respite 24 Hours/Day)	29	53	64	\$1,320.00	\$84,480.00

- Attendant care: \$364,410 per year

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## Case Study: Medicaid Lien

06/01/2017	= 7,500.00	= 8,765.30	07/13/2017	162944221	MEDILODGE OF FARMINGTON
07/01/2017	= 7,750.00	= 8,990.81	08/17/2017	162944221	MEDILODGE OF FARMINGTON
08/01/2017	= 7,500.00	= 8,765.30	09/14/2017	162944221	MEDILODGE OF FARMINGTON
09/05/2017	= 6,250.00	= 5,864.50	11/01/2017	162944221	MEDILODGE OF FARMINGTON
09/07/2017	= 52.32	= 52.32	11/01/2017	162944221	MEDILODGE OF FARMINGTON
01/01/2017	= 7,750.00	= 8,990.81	05/11/2017	162944221	MEDILODGE OF FARMINGTON
02/01/2017	= 7,000.00	= 8,314.28	05/11/2017	162944221	MEDILODGE OF FARMINGTON
12/19/2016	= 2,860.00	= 2,860.00	06/22/2017	162944221	MEDILODGE OF FARMINGTON

- Medicaid covers attendant care
- \$7,500/month, or \$90,000/year

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### LCP vs. Medicaid Payments

Michigan MSA	Retain	<ul style="list-style-type: none"> <li>▪ \$4.8MM</li> <li>▪ \$10.0MM</li> </ul>
Michigan Medicaid	Retain	
Michigan Medicaid	Retain	
Michigan Medicaid	Retain	

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### Collateral Sources & MSAs

- Michigan vs. Common Law Collateral Source Rule
  - Michigan provides for setoff
  - Liens are not setoff, but are paid back at negotiated rate
- National Trend:
  - Seeking setoff for future payments, Medicare set-asides, Special Needs Trusts
  - Trying to tell the jury that plaintiff will not be responsible for future medical costs

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### Collateral Sources & MSAs

- What can you tell the jury?
  - Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, if controverted, or bias or prejudice of a witness.
  - MRE 411 (Liability Insurance)

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## Life Expectancy

- End-points of the plaintiffs' economists nearly always use the CDC tables specific to the gender, race, and age of the plaintiff.
- Statistical estimate vs. medical/clinical estimate


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Age	Sex	Year	Life Expectancy	Present Value	Future Value
100	Male	2000	1.00	\$100,000.00	\$100,000.00
101	Male	2000	0.99	\$99,000.00	\$99,000.00
102	Male	2000	0.98	\$98,000.00	\$98,000.00
103	Male	2000	0.97	\$97,000.00	\$97,000.00
104	Male	2000	0.96	\$96,000.00	\$96,000.00
105	Male	2000	0.95	\$95,000.00	\$95,000.00
106	Male	2000	0.94	\$94,000.00	\$94,000.00
107	Male	2000	0.93	\$93,000.00	\$93,000.00
108	Male	2000	0.92	\$92,000.00	\$92,000.00
109	Male	2000	0.91	\$91,000.00	\$91,000.00
110	Male	2000	0.90	\$90,000.00	\$90,000.00
111	Male	2000	0.89	\$89,000.00	\$89,000.00
112	Male	2000	0.88	\$88,000.00	\$88,000.00
113	Male	2000	0.87	\$87,000.00	\$87,000.00
114	Male	2000	0.86	\$86,000.00	\$86,000.00
115	Male	2000	0.85	\$85,000.00	\$85,000.00
116	Male	2000	0.84	\$84,000.00	\$84,000.00
117	Male	2000	0.83	\$83,000.00	\$83,000.00
118	Male	2000	0.82	\$82,000.00	\$82,000.00
119	Male	2000	0.81	\$81,000.00	\$81,000.00
120	Male	2000	0.80	\$80,000.00	\$80,000.00
121	Male	2000	0.79	\$79,000.00	\$79,000.00
122	Male	2000	0.78	\$78,000.00	\$78,000.00
123	Male	2000	0.77	\$77,000.00	\$77,000.00
124	Male	2000	0.76	\$76,000.00	\$76,000.00
125	Male	2000	0.75	\$75,000.00	\$75,000.00
126	Male	2000	0.74	\$74,000.00	\$74,000.00
127	Male	2000	0.73	\$73,000.00	\$73,000.00
128	Male	2000	0.72	\$72,000.00	\$72,000.00
129	Male	2000	0.71	\$71,000.00	\$71,000.00
130	Male	2000	0.70	\$70,000.00	\$70,000.00
131	Male	2000	0.69	\$69,000.00	\$69,000.00
132	Male	2000	0.68	\$68,000.00	\$68,000.00
133	Male	2000	0.67	\$67,000.00	\$67,000.00
134	Male	2000	0.66	\$66,000.00	\$66,000.00
135	Male	2000	0.65	\$65,000.00	\$65,000.00
136	Male	2000	0.64	\$64,000.00	\$64,000.00
137	Male	2000	0.63	\$63,000.00	\$63,000.00
138	Male	2000	0.62	\$62,000.00	\$62,000.00
139	Male	2000	0.61	\$61,000.00	\$61,000.00
140	Male	2000	0.60	\$60,000.00	\$60,000.00
141	Male	2000	0.59	\$59,000.00	\$59,000.00
142	Male	2000	0.58	\$58,000.00	\$58,000.00
143	Male	2000	0.57	\$57,000.00	\$57,000.00
144	Male	2000	0.56	\$56,000.00	\$56,000.00
145	Male	2000	0.55	\$55,000.00	\$55,000.00
146	Male	2000	0.54	\$54,000.00	\$54,000.00
147	Male	2000	0.53	\$53,000.00	\$53,000.00
148	Male	2000	0.52	\$52,000.00	\$52,000.00
149	Male	2000	0.51	\$51,000.00	\$51,000.00
150	Male	2000	0.50	\$50,000.00	\$50,000.00
151	Male	2000	0.49	\$49,000.00	\$49,000.00
152	Male	2000	0.48	\$48,000.00	\$48,000.00
153	Male	2000	0.47	\$47,000.00	\$47,000.00
154	Male	2000	0.46	\$46,000.00	\$46,000.00
155	Male	2000	0.45	\$45,000.00	\$45,000.00
156	Male	2000	0.44	\$44,000.00	\$44,000.00
157	Male	2000	0.43	\$43,000.00	\$43,000.00
158	Male	2000	0.42	\$42,000.00	\$42,000.00
159	Male	2000	0.41	\$41,000.00	\$41,000.00
160	Male	2000	0.40	\$40,000.00	\$40,000.00
161	Male	2000	0.39	\$39,000.00	\$39,000.00
162	Male	2000	0.38	\$38,000.00	\$38,000.00
163	Male	2000	0.37	\$37,000.00	\$37,000.00
164	Male	2000	0.36	\$36,000.00	\$36,000.00
165	Male	2000	0.35	\$35,000.00	\$35,000.00
166	Male	2000	0.34	\$34,000.00	\$34,000.00
167	Male	2000	0.33	\$33,000.00	\$33,000.00
168	Male	2000	0.32	\$32,000.00	\$32,000.00
169	Male	2000	0.31	\$31,000.00	\$31,000.00
170	Male	2000	0.30	\$30,000.00	\$30,000.00
171	Male	2000	0.29	\$29,000.00	\$29,000.00
172	Male	2000	0.28	\$28,000.00	\$28,000.00
173	Male	2000	0.27	\$27,000.00	\$27,000.00
174	Male	2000	0.26	\$26,000.00	\$26,000.00
175	Male	2000	0.25	\$25,000.00	\$25,000.00
176	Male	2000	0.24	\$24,000.00	\$24,000.00
177	Male	2000	0.23	\$23,000.00	\$23,000.00
178	Male	2000	0.22	\$22,000.00	\$22,000.00
179	Male	2000	0.21	\$21,000.00	\$21,000.00
180	Male	2000	0.20	\$20,000.00	\$20,000.00
181	Male	2000	0.19	\$19,000.00	\$19,000.00
182	Male	2000	0.18	\$18,000.00	\$18,000.00
183	Male	2000	0.17	\$17,000.00	\$17,000.00
184	Male	2000	0.16	\$16,000.00	\$16,000.00
185	Male	2000	0.15	\$15,000.00	\$15,000.00
186	Male	2000	0.14	\$14,000.00	\$14,000.00
187	Male	2000	0.13	\$13,000.00	\$13,000.00
188	Male	2000	0.12	\$12,000.00	\$12,000.00
189	Male	2000	0.11	\$11,000.00	\$11,000.00
190	Male	2000	0.10	\$10,000.00	\$10,000.00
191	Male	2000	0.09	\$9,000.00	\$9,000.00
192	Male	2000	0.08	\$8,000.00	\$8,000.00
193	Male	2000	0.07	\$7,000.00	\$7,000.00
194	Male	2000	0.06	\$6,000.00	\$6,000.00
195	Male	2000	0.05	\$5,000.00	\$5,000.00
196	Male	2000	0.04	\$4,000.00	\$4,000.00
197	Male	2000	0.03	\$3,000.00	\$3,000.00
198	Male	2000	0.02	\$2,000.00	\$2,000.00
199	Male	2000	0.01	\$1,000.00	\$1,000.00
200	Male	2000	0.00	\$0.00	\$0.00
201	Male	2000	0.00	\$0.00	\$0.00
202	Male	2000	0.00	\$0.00	\$0.00
203	Male	2000	0.00	\$0.00	\$0.00
204	Male	2000	0.00	\$0.00	\$0.00
205	Male	2000	0.00	\$0.00	\$0.00
206	Male	2000	0.00	\$0.00	\$0.00
207	Male	2000	0.00	\$0.00	\$0.00
208	Male	2000	0.00	\$0.00	\$0.00
209	Male	2000	0.00	\$0.00	\$0.00
210	Male	2000	0.00	\$0.00	\$0.00
211	Male	2000	0.00	\$0.00	\$0.00
212	Male	2000	0.00	\$0.00	\$0.00
213	Male	2000	0.00	\$0.00	\$0.00
214	Male	2000	0.00	\$0.00	\$0.00
215	Male	2000	0.00	\$0.00	\$0.00
216	Male	2000	0.00	\$0.00	\$0.00
217	Male	2000	0.00	\$0.00	\$0.00
218	Male	2000	0.00	\$0.00	\$0.00
219	Male	2000	0.00	\$0.00	\$0.00
220	Male	2000	0.00	\$0.00	\$0.00
221	Male	2000	0.00	\$0.00	\$0.00
222	Male	2000	0.00	\$0.00	\$0.00
223	Male	2000	0.00	\$0.00	\$0.00
224	Male	2000	0.00	\$0.00	\$0.00
225	Male	2000	0.00	\$0.00	\$0.00
226	Male	2000	0.00	\$0.00	\$0.00
227	Male	2000	0.00	\$0.00	\$0.00
228	Male	2000	0.00	\$0.00	\$0.00
229	Male	2000	0.00	\$0.00	\$0.00
230	Male	2000	0.00	\$0.00	\$0.00
231	Male	2000	0.00	\$0.00	\$0.00
232	Male	2000	0.00	\$0.00	\$0.00
233	Male	2000	0.00	\$0.00	\$0.00
234	Male	2000	0.00	\$0.00	\$0.00
235	Male	2000	0.00	\$0.00	\$0.00
236	Male	2000	0.00	\$0.00	\$0.00
237	Male	2000	0.00	\$0.00	\$0.00
238	Male	2000	0.00	\$0.00	\$0.00
239	Male	2000	0.00	\$0.00	\$0.00
240	Male	2000	0.00	\$0.00	\$0.00
241	Male	2000	0.00	\$0.00	\$0.00
242	Male	2000	0.00	\$0.00	\$0.00
243	Male	2000	0.00	\$0.00	\$0.00
244	Male	2000	0.00	\$0.00	\$0.00
245	Male	2000	0.00	\$0.00	\$0.00
246	Male	2000	0.00	\$0.00	\$0.00
247	Male	2000	0.00	\$0.00	\$0.00
248	Male	2000	0.00	\$0.00	\$0.00
249	Male	2000	0.00	\$0.00	\$0.00
250	Male	2000	0.00	\$0.00	\$0.00
251	Male	2000	0.00	\$0.00	\$0.00
252	Male	2000	0.00	\$0.00	\$0.00
253	Male	2000	0.00	\$0.00	\$0.00
254	Male	2000	0.00	\$0.00	\$0.00
255	Male	2000	0.00	\$0.00	\$0.00
256	Male	2000	0.00	\$0.00	\$0.00
257	Male	2000	0.00	\$0.00	\$0.00
258	Male	2000	0.00	\$0.00	\$0.00
259	Male	2000	0.00	\$0.00	\$0.00
260	Male	2000	0.00	\$0.00	\$0.00
261	Male	2000	0.00	\$0.00	\$0.00
262	Male	2000	0.00	\$0.00	\$0.00
263	Male	2000	0.00	\$0.00	\$0.00
264	Male	2000	0.00	\$0.00	\$0.00
265	Male	2000	0.00	\$0.00	\$0.00
266	Male	2000	0.00	\$0.00	\$0.00
267	Male	2000	0.00	\$0.00	\$0.00
268	Male	2000	0.00	\$0.00	\$0.00
269	Male	2000	0.00	\$0.00	\$0.00
270	Male	2000	0.00	\$0.00	\$0.00
271	Male	2000	0.00	\$0.00	\$0.00
272	Male	2000	0.00	\$0.00	\$0.00
273	Male	2000	0.00	\$0.00	\$0.00
274	Male	2000	0.00	\$0.00	\$0.00
275	Male	2000	0.00	\$0.00	\$0.00
276	Male	2000	0.00	\$0.00	\$0.00
277	Male	2000	0.00	\$0.00	\$0.00
278	Male	2000	0.00	\$0.00	\$0.00
279	Male	2000	0.00	\$0.00	\$0.00
280	Male	2000	0.00	\$0.00	\$0.00
281	Male	2000	0.00	\$0.00	\$0.00
282	Male	2000	0.00	\$0.00	\$0.00
283	Male	2000	0.00	\$0.00	\$0.00
284	Male	2000	0.00	\$0.00	\$0.00
285	Male	2000	0.00	\$0.00	\$0.00
286	Male	2000	0.00	\$0.00	\$0.00
287	Male	2000	0.00	\$0.00	\$0.00
288	Male	2000	0.00	\$0.00	\$0.00
289	Male	2000	0.00	\$0.00	\$0.00
290	Male	2000	0.00	\$0.00	\$0.00
291	Male	2000	0.00	\$0.00	\$0.00
292	Male	2000	0.00	\$0.00	\$0.00
293	Male	2000	0.00	\$0.00	\$0.00
294	Male	2000	0.00	\$0.00	\$0.00
295	Male	2000	0.00	\$0.00	\$0.00
296	Male	2000	0.00	\$0.00	\$0.00
297	Male	2000	0.00	\$0.00	\$0.00
298	Male	2000	0.00	\$0.00	\$0.00
299	Male	2000	0.00	\$0.00	\$0.00
300	Male	2000	0.00	\$0.00	\$0.00
301	Male	2000	0.00	\$0.00	\$0.00
302	Male	2000	0.00	\$0.0.	





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## Voodoo Economics

Challenging Assumptions & Limiting Financial Exposure

Presented by  
**Eric Ramar**

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## Earnings Capacity: Starting Salary

- Is starting salary calculated properly using past W2s?
- Plaintiff's economist experts oftentimes will take great latitude in calculating reasonable starting salary.

Age	Year	Lost Wage	Discount Factor	Present Value
53	2019	\$3,089.98	1.00	\$3,089.98
54	2020	\$88,400.00	1.00	\$88,400.00
55	2021	\$91,936.00	1.00	\$91,936.00
56	2022	\$95,613.44	1.05	\$91,060.42
57	2023	\$99,437.98	1.10	\$90,193.18
58	2024	\$103,415.50	1.16	\$89,334.19
59	2025	\$107,552.12	1.22	\$88,483.39
60	2026	\$111,854.20	1.28	\$87,640.69

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## Earnings Capacity: Starting Salary

Age	Year	Lost Wage	Discount Factor	Present Value
53	2019	\$3,089.98	1.00	\$3,089.98
54	2020	\$88,400.00	1.00	\$88,400.00
55	2021	\$91,936.00	1.00	\$91,936.00
56	2022	\$95,613.44	1.05	\$91,060.42
57	2023	\$99,437.98	1.10	\$90,193.18
58	2024	\$103,415.50	1.16	\$89,334.19
59	2025	\$107,552.12	1.22	\$88,483.39
60	2026	\$111,854.20	1.28	\$87,640.69

- Plaintiffs with inconsistent income are particularly important. Is it better to look at past 1-2 years of income or past 10 years when determining an average salary for plaintiff?

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## Earnings Capacity: Starting Salary – Using the Proper Occupation

- Vocational Rehab experts are an often-overlooked piece of the damages puzzle.
- Plaintiff will utilize a vocational rehab expert to testify regarding what profession the plaintiff would have been able to perform but-for the negligence/injury at-issue and will provide information related to average hourly/annual salary for that profession.

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## Earnings Capacity: Starting Salary – Using the Proper Occupation

- Economist will use the Vocational Rehab expert's data to project future wage loss.
- Effective cross-examination of the vocational rehab expert can damage the reliability of the entire economist report.

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## Example of Attack on Vocational Rehab Expert Opinion

- Plaintiff spent portion of her pre-injury time as a makeup artist at a salon. Plaintiff's vocational rehab expert provided testimony on the hourly wages based upon BLS data for makeup artist.

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## Example of Attack on Vocational Rehab Expert Opinion

- The Problem:
  - The Expert used the wage estimates for a makeup artist in the performance/theater setting (BLS Occupation #39-5091).
  - The more accurate job category should have been under Cosmetologists (BLS Occupation #39-5012) which has the description of “Provide beauty services including...apply makeup.”

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## Example of Attack on Vocational Rehab Expert Opinion

- The difference:
  - Makeup Artist-Performance/Theater (BLS Occupation #39-5091).

Percentile	10%	25%	50% (Median)	75%	90%
Hourly Wage	\$11.50	\$18.39	\$36.41	\$57.00	\$69.92
Annual Wage (2)	\$23,920	\$38,250	\$75,730	\$118,560	\$145,420

  - Cosmetologist (BLS Occupation #39-5012).

Percentile	10%	25%	50% (Median)	75%	90%
Hourly Wage	\$ 9.06	\$ 10.34	\$ 13.16	\$ 18.25	\$ 25.68
Annual Wage (2)	\$ 18,840	\$ 21,520	\$ 27,380	\$ 37,970	\$ 53,410

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## Projection Used by Economist With Vocational Rehab's Input

Year	Age	Projected Compensation	Actual Compensation	Loss Compensation	MCL Factor	Present Value Loss Compensation
2018	29.3	\$37,333	\$7,707	\$29,627	1.000	\$29,627
2019	30.3	75,733	5,676	70,057	1.000	70,057
2020	31.3	75,733	6,514	69,219	1.000	69,219
2021	32.3	78,762	7,707	71,056	1.000	71,056

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## Earnings Capacity: Future Growth

- How does expert determine wage growth from year to year?
- Plaintiff's experts typically use a flat rate (4%) to determine wage growth into the future.

Age	Year	Lost Wage	Discount Factor	Present Value
53	2019	\$3,089.98	1.00	\$3,089.98
54	2020	\$88,400.00	1.00	\$88,400.00
55	2021	\$91,936.00	1.00	\$91,936.00
56	2022	\$95,613.44	1.05	\$91,060.42
57	2023	\$99,437.98	1.10	\$90,193.18
58	2024	\$103,415.50	1.16	\$89,334.19
59	2025	\$107,552.12	1.22	\$88,483.39
60	2026	\$111,854.20	1.28	\$87,640.69

Continued

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## Earnings Capacity: Future Growth

- More reliable determination of wage growth is looking to past 5-10 years of income of plaintiff and determining growth over that time.
- More often, growth of plaintiff's salary in the past 5-10 years is less than the 4% provided by the expert.

Age	Year	Lost Wage	Discount Factor	Present Value
53	2019	\$3,089.98	1.00	\$3,089.98
54	2020	\$88,400.00	1.00	\$88,400.00
55	2021	\$91,936.00	1.00	\$91,936.00
56	2022	\$95,613.44	1.05	\$91,060.42
57	2023	\$99,437.98	1.10	\$90,193.18
58	2024	\$103,415.50	1.16	\$89,334.19
59	2025	\$107,552.12	1.22	\$88,483.39
60	2026	\$111,854.20	1.28	\$87,640.69

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## Earnings Capacity: Personal Consumption

- Does the expert subtract from his projections the amount plaintiff would have spent on personal consumption?
- Plaintiff's experts almost always neglect to subtract dollar amounts a person would have spent on themselves over their lifetime.

Continued

Age	Year	Lost Wage	Discount Factor	Present Value
53	2019	\$3,089.98	1.00	\$3,089.98
54	2020	\$88,400.00	1.00	\$88,400.00
55	2021	\$91,936.00	1.00	\$91,936.00
56	2022	\$95,613.44	1.05	\$91,060.42
57	2023	\$99,437.98	1.10	\$90,193.18
58	2024	\$103,415.50	1.16	\$89,334.19
59	2025	\$107,552.12	1.22	\$88,483.39
60	2026	\$111,854.20	1.28	\$87,640.69
61	2027	\$116,324.37	1.34	\$86,800.02
62	2028	\$120,967.90	1.41	\$85,978.30
63	2029	\$125,782.00	1.48	\$85,166.45
64	2030	\$130,667.99	1.55	\$84,364.57
65	2031	\$135,625.00	1.62	\$83,571.67
66	2032	\$140,653.25	1.71	\$82,787.78
67	2033	\$145,752.00	1.80	\$82,011.92
68	2034	\$150,921.43	1.89	\$81,244.12
69	2035	\$156,161.74	1.98	\$80,484.34
70	2036	\$161,473.18	2.08	\$79,731.60
71	2037	\$166,856.00	2.18	\$78,984.84
72	2038	\$172,310.56	2.28	\$78,243.06
73	2039	\$177,837.13	2.37	\$77,506.24
74	2040	\$183,436.00	2.47	\$76,774.40
75	2041	\$189,107.50	2.57	\$76,047.52
76	2042	\$194,851.93	2.67	\$75,324.60
77	2043	\$200,669.50	2.77	\$74,606.64
78	2044	\$206,560.50	2.87	\$73,893.64
79	2045	\$212,525.25	2.97	\$73,185.60
80	2046	\$218,564.00	3.07	\$72,482.52
81	2047	\$224,676.00	3.17	\$71,784.40
82	2048	\$230,861.50	3.27	\$71,091.24
83	2049	\$237,120.00	3.37	\$70,403.04
84	2050	\$243,451.50	3.47	\$69,719.80
85	2051	\$249,856.50	3.57	\$69,041.52
86	2052	\$256,335.50	3.67	\$68,368.20
87	2053	\$262,888.00	3.77	\$67,699.84
88	2054	\$269,514.50	3.87	\$67,036.44
89	2055	\$276,215.50	3.97	\$66,378.00
90	2056	\$282,991.50	4.07	\$65,724.52
91	2057	\$289,843.00	4.17	\$65,076.00
92	2058	\$296,770.50	4.27	\$64,432.44
93	2059	\$303,774.50	4.37	\$63,793.84
94	2060	\$310,855.50	4.47	\$63,160.20
95	2061	\$317,913.00	4.57	\$62,531.52
96	2062	\$325,047.50	4.67	\$61,907.80
97	2063	\$332,259.50	4.77	\$61,289.04
98	2064	\$339,549.50	4.87	\$60,675.24
99	2065	\$346,918.00	4.97	\$60,066.40
100	2066	\$354,365.50	5.07	\$59,462.52
101	2067	\$361,892.50	5.17	\$58,863.60
102	2068	\$369,499.50	5.27	\$58,269.64
103	2069	\$377,187.00	5.37	\$57,680.64
104	2070	\$384,954.50	5.47	\$57,096.60
105	2071	\$392,802.50	5.57	\$56,517.52
106	2072	\$400,731.00	5.67	\$55,943.40
107	2073	\$408,740.50	5.77	\$55,374.24
108	2074	\$416,831.50	5.87	\$54,810.04
109	2075	\$424,903.50	5.97	\$54,250.80
110	2076	\$433,057.00	6.07	\$53,696.52
111	2077	\$441,292.50	6.17	\$53,147.20
112	2078	\$449,609.50	6.27	\$52,602.84
113	2079	\$458,008.50	6.37	\$52,063.44
114	2080	\$466,490.00	6.47	\$51,529.00
115	2081	\$475,054.50	6.57	\$50,999.52
116	2082	\$483,701.50	6.67	\$50,475.00
117	2083	\$492,431.50	6.77	\$49,955.44
118	2084	\$501,245.00	6.87	\$49,440.84
119	2085	\$510,142.50	6.97	\$48,931.20
120	2086	\$519,124.50	7.07	\$48,426.52
121	2087	\$528,191.50	7.17	\$47,926.80
122	2088	\$537,344.00	7.27	\$47,432.04
123	2089	\$546,582.50	7.37	\$46,942.24
124	2090	\$555,906.50	7.47	\$46,457.40
125	2091	\$565,316.50	7.57	\$45,977.52
126	2092	\$574,813.00	7.67	\$45,502.60
127	2093	\$584,396.50	7.77	\$45,032.64
128	2094	\$594,067.50	7.87	\$44,567.64
129	2095	\$603,825.50	7.97	\$44,107.60
130	2096	\$613,670.00	8.07	\$43,652.52
131	2097	\$623,601.50	8.17	\$43,202.40
132	2098	\$633,620.00	8.27	\$42,757.24
133	2099	\$643,726.50	8.37	\$42,317.04
134	2100	\$653,921.00	8.47	\$41,881.80
135	2101	\$664,203.00	8.57	\$41,451.52
136	2102	\$674,573.00	8.67	\$41,026.20
137	2103	\$685,031.00	8.77	\$40,605.84
138	2104	\$695,577.50	8.87	\$40,190.44
139	2105	\$706,213.00	8.97	\$39,780.00
140	2106	\$716,938.00	9.07	\$39,374.52
141	2107	\$727,753.00	9.17	\$38,974.00
142	2108	\$738,658.50	9.27	\$38,578.44
143	2109	\$749,655.00	9.37	\$38,186.84
144	2110	\$760,743.00	9.47	\$37,799.20
145	2111	\$771,922.00	9.57	\$37,416.52
146	2112	\$783,192.50	9.67	\$37,037.80
147	2113	\$794,555.00	9.77	\$36,663.04
148	2114	\$806,009.50	9.87	\$36,292.24
149	2115	\$817,556.00	9.97	\$35,925.40
150	2116	\$829,194.00	10.07	\$35,562.52
151	2117	\$840,923.00	10.17	\$35,203.60
152	2118	\$852,744.00	10.27	\$34,848.64
153	2119	\$864,657.00	10.37	\$34,497.64
154	2120	\$876,662.50	10.47	\$34,150.60
155	2121	\$888,760.00	10.57	\$33,807.52
156	2122	\$900,949.50	10.67	\$33,468.40
157	2123	\$913,231.50	10.77	\$33,133.24
158	2124	\$925,606.50	10.87	\$32,802.04
159	2125	\$938,074.00	10.97	\$32,474.80
160	2126	\$950,634.50	11.07	\$32,151.52
161	2127	\$963,287.50	11.17	\$31,832.20
162	2128	\$976,033.50	11.27	\$31,516.84
163	2129	\$988,873.00	11.37	\$31,205.44
164	2130	\$1,001,806.50	11.47	\$30,898.00
165	2131	\$1,014,834.00	11.57	\$30,594.52
166	2132	\$1,027,956.00	11.67	\$30,295.00
167	2133	\$1,041,172.50	11.77	\$29,999.44
168	2134	\$1,054,483.00	11.87	\$29,707.84
169	2135	\$1,067,888.00	11.97	\$29,420.20
170	2136	\$1,081,388.00	12.07	\$29,136.52
171	2137	\$1,094,983.00	12.17	\$28,856.80
172	2138	\$1,108,673.00	12.27	\$28,581.04
173	2139	\$1,122,458.00	12.37	\$28,309.24
174	2140	\$1,136,339.00	12.47	\$28,041.40
175	2141	\$1,150,316.00	12.57	\$27,777.52
176	2142	\$1,164,389.50	12.67	\$27,517.60
177	2143	\$1,178,559.00	12.77	\$27,261.64
178	2144	\$1,192,825.00	12.87	\$27,009.64
179	2145	\$1,207,187.50	12.97	\$26,761.60
180	2146	\$1,221,646.00	13.07	\$26,517.52
181	2147	\$1,236,201.00	13.17	\$26,277.40
182	2148	\$1,250,852.50	13.27	\$26,041.24
183	2149	\$1,265,601.00	13.37	\$25,809.04
184	2150	\$1,280,447.50	13.47	\$25,580.80
185	2151	\$1,295,392.00	13.57	\$25,356.52
186	2152	\$1,310,435.50	13.67	\$25,136.20
187	2153	\$1,325,578.50	13.77	\$24,919.84
188	2154	\$1,340,821.00	13.87	\$24,707.44
189	2155	\$1,356,163.50	13.97	\$24,499.00
190	2156	\$1,371,606.00	14.07	\$24,294.52
191	2157	\$1,387,149.00	14.17	\$24,094.00
192	2158	\$1,402,792.50	14.27	\$23,897.44
193	2159	\$1,418,536.00	14.37	\$23,704.84
194	2160	\$1,434,380.50	14.47	\$23,516.20
195	2161	\$1,450,325.00	14.57	\$23,331.52
196	2162	\$1,466,370.00	14.67	\$23,150.80
197	2163	\$1,482,515.50	14.77	\$22,974.04
198	2164	\$1,498,762.00	14.87	\$22,801.24
199	2165	\$1,515,109.00	14.97	\$22,632.40
200	2166	\$1,531,556.50	15.07	\$22,467.52
201	2167	\$1,548,104.50	15.17	\$22,306.60
202	2168	\$1,564,753.00	15.27	\$22,149.64
203	2169	\$1,581,502.00	15.37	\$21,996.64
204	2170	\$1,598,351.50	15.47	\$21,847.60
205	2171	\$1,615,301.50	15.57	\$21,702.52
206	2172	\$1,632,352.00	15.67	\$21,561.40
207	2173	\$1,649,503.50	15.77	\$21,424.24
208	2174	\$1,666,756.00	15.87	\$21,291.04
209	2175	\$1,684,109.50	15.97	\$21,161.80
210	2176	\$1,701,574.00	16.07	\$21,036.52
211	2177	\$1,719,149.50	16.17	\$20,915.20
212	2178	\$1,736,836.00	16.27	\$20,797.84
213	2179	\$1,754,633.50	16.37	\$20,684.44
214	2180	\$1,772,542.00	16.47	\$20,575.00
215	2181	\$1,790,562.00	16.57	\$20,469.52
216	2182	\$1,808,693.50	16.67	\$20,368.00
217	2183	\$1,826,936.00	16.77	\$20,270.44
218	2184	\$1,845,289.50	16.87	\$20,176.84
219	2185	\$1,863,754.00	16.97	\$20,087.20
220	2186	\$1,882,329.50	17.07	\$20,001.52
221	2187	\$1,901,016	17.17	\$19,919.84

Summary:

Present Value

\$1,974,421.98

Present Value

\$1,974,417.57

Present Value

\$1,974,398.46

Assumptions:

1. Compensation range

\$120,000 - \$140,000

2. Compensation range

\$120,000 - \$140,000

3. Cost of Health

\$500,000

4. Cost of Health

\$500,000

5. Retirement savings capacity

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## Household Services

- In *Thorn v Mercy Mem'l Hosp Corp*, 281 Mich App 644, 661, 761 NW2d 414 (2008), the court of appeals ruled that the category of damages known as “loss of household services” is available as an element of damages in a wrongful-death case.
- Such damages do not fall under the “umbrella of loss of society and companionship” but are a distinct element of damages that can be awarded by the jury on a proper showing. *Id.* at 662.

*Continued*

Avoiding Plaintiffs' Lottery Tickets

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## Household Services

- The court also held that in a wrongful-death case based on medical malpractice, such damages are economic rather than noneconomic and therefore are not subject to reduction pursuant to the medical malpractice damages cap, MCL 600.1483. *Id.* at 666–667.

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## Household Services

- A party asserting a claim has the burden of proving damages with reasonable certainty. *Hoffman v Auto Club Ins Ass'n*, 211 Mich App 55 (1995).
- Uncertainty as to the amount of damages does not preclude an award, but uncertainty as to the existence of damages does. *Bruno v Detroit Institute of Technology*, 51 Mich App 593 (1974).
- Remote, contingent, or speculative damages may not be recovered. *Sutter v Biggs*, 377 Mich 80 (1966); *Hoffman*.

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## Household Services: Basis for Projections

- Is there any evidence in the case to support notion that plaintiff performed any of these household services prior to the injury at-issue?

Age	Year	Example Hrs/Day	Household Services	Discount Factor	Present Value
53	2019	1	\$620.00	1.00	\$620.00
54	2020	1	\$7,592.00	1.00	\$7,592.00
55	2021	1	\$7,895.68	1.00	\$7,895.68
56	2022	1	\$8,211.51	1.05	\$7,820.46
57	2023	1	\$8,539.97	1.10	\$7,746.00
58	2024	1	\$8,861.57	1.16	\$7,672.25
59	2025	1	\$9,236.83	1.22	\$7,599.16

Continued

Avoiding Plaintiffs' Lottery Tickets

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## Household Services: Basis for Projections

- Testimony obtained through family members will be first indication of whether plaintiff even performed any household services.
- Plaintiff's expert will decline to comment on the number of hours of household services plaintiff provided.

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## Household Services: Duration of Projections

- Is there any evidence in case to support notion that plaintiff would have been able to perform these household services up to age 83?

77	2043	1	\$18,712.12	2.93	\$6,366.74
78	2044	1	\$19,480.61	3.07	\$6,335.81
79	2045	1	\$20,238.03	3.23	\$6,275.47
80	2046	1	\$21,048.59	3.39	\$6,215.71
81	2047	1	\$21,890.63	3.56	\$6,156.51
82	2048	1	\$22,766.18	3.73	\$6,097.88
83	2049	1	\$23,676.80	3.92	\$6,039.80
Post			\$50,977.36		\$46,945.56
Future			\$375,439.30		\$162,773.49
<b>Totals:</b>			<b>\$426,416.85</b>		<b>\$209,119.04</b>

Continued

Avoiding Plaintiffs' Lottery Tickets

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## Household Services: Duration of Projections

- Expert will agree that he/she is not a physician.
- Expert will typically agree that they have not reviewed many of plaintiff's medical records (typically he/she will have reviewed zero).
- Goes back to basis for life expectancy opinion.

Avoiding Plaintiffs' Lottery Tickets

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## Future Medical Costs: Medical Necessity

- Is there any evidence in case from physician attesting that services projected are medically necessary?

Age	Year	One Time Costs	Recurring Costs	Discount Factor	Present Value
53	2019	\$200,000	\$300,000.00	1.00	\$300,000.00
54	2020		\$300,000.00	1.00	\$300,000.00
55	2021		\$300,000.00	1.00	\$300,000.00
56	2022		\$300,000.00	1.00	\$300,000.00
57	2023		\$313,500.00	1.05	\$298,571.43
58	2024		\$327,607.50	1.10	\$287,149.66
59	2025		\$342,349.84	1.16	\$295,734.66

Continued

Avoiding Plaintiffs' Lottery Tickets

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## Future Medical Costs: Medical Necessity

- Expert lacks foundation to say what medical care plaintiff will need in future.
- Without testimony from healthcare provider attesting that certain medical care is needed to a reasonably degree of certainty, expert cannot include same in his/her projections.

Age	Year	One Time Costs	Recurring Costs	Discount Factor	Present Value
53	2019	\$200,000	\$300,000.00	1.00	\$300,000.00
54	2020		\$300,000.00	1.00	\$300,000.00
55	2021		\$300,000.00	1.00	\$300,000.00
56	2022		\$300,000.00	1.00	\$300,000.00
57	2023		\$313,500.00	1.05	\$298,571.43
58	2024		\$327,607.50	1.10	\$287,149.66
59	2025		\$342,349.84	1.16	\$295,734.66

Avoiding Plaintiffs' Lottery Tickets

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## How...do we Combat a Life Care Plan?

- Letter from a treating physician that the Life Care Planner relied upon when justifying recommendations in her report.

The last sentence of the first paragraph of his cover letter discusses that they have incorporated my recommendations into their report. The report is quite lengthy, approximately 46 pages. I thought that I was only commenting upon those pages which pertained to my specialty, and I made notes on those pages, specifically, pages 9, 12, and 14, which relate to evaluations by a pediatric physiatrist, such as myself, to Botox injections, and to PT, OT, Speech Therapy, and Music Therapy, etc. I did not understand myself to be commenting upon the other sections of that report that do not pertain directly to my specialty.

Avoiding Plaintiffs' Lottery Tickets

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## Life Expectancy: Using Plaintiff's Own Expert's Testimony

- What evidence from this case do you have to support notion that plaintiff would have lived to age 83?

77	2043	1	\$18,712.12	2.93	\$6,366.74
78	2044	1	\$19,480.81	3.07	\$6,335.81
79	2045	1	\$20,250.00	3.23	\$6,275.47
80	2046	1	\$21,048.59	3.39	\$6,215.71
81	2047	1	\$21,860.55	3.56	\$6,156.55
82	2048	1	\$22,786.16	3.73	\$6,097.66
83	2049	1	\$23,676.80	3.92	\$6,039.80
Total:			\$50,977.56		\$48,945.56
Future:			\$379,436.30		\$482,713.49
Totals:			\$430,413.85		\$531,659.04

- Expert typically will have not reviewed any of plaintiff's medical records, and, thus, will not be knowledgeable of plaintiff's comorbidities.

Continued

Avoiding Plaintiffs' Lottery Tickets

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## Life Expectancy: Using Plaintiff's Own Expert's Testimony

- Opinions from other experts in the case regarding life expectancy act to eliminate portions of the expert's projections.

Avoiding Plaintiffs' Lottery Tickets

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## Question to Plaintiff's Medical Expert(s)

- Q. What is your opinion as to the life expectancy of the plaintiff but-for the alleged negligence in this case?
- A. My opinion is that he would have lived for an additional 15-20 years.

Avoiding Plaintiffs' Lottery Tickets

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## Life Expectancy: Using Plaintiff's Own Expert's Testimony

70	2036	\$555,583.48	1.96	\$280,607.41
71	2037	\$580,584.73	2.08	\$279,271.18
72	2038	\$606,711.05	2.18	\$277,941.32
73	2039	\$634,013.04	2.29	\$276,617.79
74	2040	<del>\$662,543.63</del>	2.41	\$275,300.56
75	2041	<del>\$692,368.09</del>	2.53	\$273,989.61
76	2042	<del>\$723,614.24</del>	2.65	\$272,684.90
77	2043	<del>\$756,072.55</del>	2.79	\$271,388.40
78	2044	<del>\$790,066.40</del>	2.93	\$270,094.08
79	2045	<del>\$826,649.90</del>	3.07	\$268,807.92
80	2046	<del>\$862,804.15</del>	3.23	\$267,527.88
81	2047	<del>\$901,630.34</del>	3.39	\$266,253.94
82	2048	<del>\$942,203.70</del>	3.56	\$264,986.06
83	2049	\$984,602.87	3.73	\$263,724.22

Avoiding Plaintiffs' Lottery Tickets

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PLUNKETT COONEY  
DETERMINED. DISTINCTIVE. FEARLESS.

## Dealing With *Denney*...

and *Daubert* to Limit Economic Damages

Presented by  
Rob Kamenec

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**MCL 600.2922****Michigan's Wrong Death Act**

(6) In every action under this section, the court or jury may award damages as the court or jury shall consider fair and equitable, under all the circumstances **including** reasonable medical, hospital, funeral, and burial expenses for which the estate is liable; reasonable compensation for the pain and suffering, while conscious, undergone by the deceased during the period intervening between the time of the injury and death; and damages for the loss of financial support and the loss of the society and companionship of the deceased.

Avoiding Plaintiffs' Lottery Tickets

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**MCL 600.2922(6)**

The word "**including**" in MCL 600.2922(6) "indicates an intent by the Legislature to permit the award of any type of damages, economic and noneconomic, deemed justified by the facts of the particular case."

*Denney v Kent Co Rd Com'n*, 317 Mich App 727, 731; 896 NW2d 808, 812 (2016)

- Economic damages include "**damages incurred due to the loss of the ability to work and earn money....**"
- Because an underlying claim 'survives by law' and must be prosecuted under the wrongful-death act, ... any statutory or common-law limitations on the underlying claim apply to a wrongful-death action." Survival damages thus allowed

Continued

Avoiding Plaintiffs' Lottery Tickets

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**Denney v Kent Co Rd Comm**

Subsequent cases adopting *Denney* rule:

- *White v FCA US, LLC*, 350 F Supp 3d 640 (ED Mich, November 19, 2018)(applying Michigan law)
- *Estate of Langell by Touma v McLaren Port Huron*, 2020 WL 4382791(Mich App, July, 30, 2020) (unpublished)

Continued

Avoiding Plaintiffs' Lottery Tickets

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## Denney v Kent Co Rd Comm

The issue and the solution:

- Survivors would not have benefitted from the decedent's lost wages during his/her lifetime. Thus, award of such damages is a windfall
  - Distinguish from loss of the decedent's financial support of the survivors while alive.

*Continued*

Avoiding Plaintiffs' Lottery Tickets

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## Denney v Kent Co Rd Comm

- Michigan Supreme Court - not persuaded that the question presented should be reviewed. 500 Mich 997; 894 NW2d 608 (2017)
- Solution: amend the WDA
  - Efforts under way.

Avoiding Plaintiffs' Lottery Tickets

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## Daubert/Reliability Statute

In an action for the death of a person or for injury to a person or property, a scientific opinion rendered by an otherwise qualified expert is not admissible unless the court determines that the opinion is reliable and will assist the trier of fact.

In making that determination, the court **shall** examine the opinion and the basis for the opinion, which basis includes the facts, technique, methodology, and reasoning relied on by the expert, and **shall** consider all of the following factors:

*Continued*

Avoiding Plaintiffs' Lottery Tickets

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## Daubert/Reliability Statute

- (a) Whether the opinion and its basis have been subjected to scientific testing and replication.
- (b) Whether the opinion and its basis have been subjected to peer review publication.
- (c) The existence and maintenance of generally accepted standards governing the application and interpretation of a methodology or technique and whether the opinion and its basis are consistent with those standards.

*Continued*

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## Daubert/Reliability Statute

- (d) The known or potential error rate of the opinion and its basis.
- (e) The degree to which the opinion and its basis are generally accepted within the relevant expert community. As used in this subdivision, "relevant expert community" means individuals who are knowledgeable in the field of study and are gainfully employed applying that knowledge on the free market.

*Continued*

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## Daubert/Reliability Statute

- (f) Whether the basis for the opinion is reliable and whether experts in that field would rely on the same basis to reach the type of opinion being proffered.
- (g) Whether the opinion or methodology is relied upon by experts outside of the context of litigation.

*Continued*

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## Daubert/Reliability Statute

(2) A novel methodology or form of scientific evidence may be admitted into evidence **only** if its proponent establishes that it has achieved general scientific acceptance among impartial and disinterested experts in the field.

*Continued*

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## Daubert/Reliability Statute

(3) In an action alleging medical malpractice, the provisions of this section are **in addition to**, and do not otherwise affect, the criteria for expert testimony provided in section 2169.

- Court **shall** apply Daubert factors, unless court first finds that expert opinions are unreliable under Michigan Rule of Evidence 702.
- Not all courts allow reliability challenge at trial; most disallow if not earlier raised.

*Continued*

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## Daubert/Reliability Statute

- Most courts will hold an evidentiary hearing upon request of one of the parties.
- Proponent of expert opinion carries the burden of proof/persuasion unreliability
- Financial expert opinions are subject to reliability analysis.

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**Five questions to ask:**

**Reliability & Your Damages Expert**

1. Can your financial expert explained complex financial analyses in terms that the jury can understand?
  - *The most qualified expert can lose the jury with spreadsheets, discount rates, financial projections, and basically pure eco-talk*
2. Is your expert hypothesizing excessively or instead tying the expert opinion to a discernible methodology?
  - *The more the opinion is based on the relevant facts, the more reliable and convincing the opinion.*

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**Five questions to ask:**

**Reliability & Your Damages Expert**

3. Is your expert relying on his/her own facts and data, the or those supplied by counsel?
  - *Be assured this question will be asked during cross-examination.*
4. Will your expert survive a reliability contest?
  - *The most convincing expert is no expert at all if the opinions are stricken as unreliable.*

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**Five questions to ask:**

**Reliability & Your Damages Expert**

5. Is your expert willing and able to assist in opposing the *Daubert* motion brought against your expert and preparing the *Daubert* motion brought against the opposing expert?
  - *Budgetary concerns are important, including the unnecessary use of multiple expert witnesses.*

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## The Appellate Perspective

### Be aggressive with financial damage claims.

- Absent effective cross-examination, little chance of overturning or reducing a "lottery ticket" type verdict.
- Absent calling your own financial expert/economist, little chance of remittitur.
- Lack of a *Daubert* challenge likely waives any reliability issue on appeal.

*Continued*

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## The Appellate Perspective

- Submission of your own financial analyses gives the appellate court an alternative to the inflated verdict.
- Challenge verdict forms that are not supported by the expert testimony, and those portions of the form that are unrealistic (life expectancy, work expectancy, lack of reduction of present value, discount rates too low and inflation rates too high).

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## Conclusion

- Be on guard for opinions about losses that exceed the boundaries of reason.
- Lost profit damages are not equivalent to "**the purchase of a winning lottery ticket**" and are limited to the actual damages sustained.
- *Sostchin v Doll Enterprises, Inc*, 847 So 2d 1123, 1129 (Fla App, 2003)

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## Questions & Answers



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## We Want to Hear From You!



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## Today's Presentation



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Thank You!



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