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4. It is well known that people Ms. Bennett's age may change their majors and occupational goals before actually graduating from college or reaching their middle twenties. A 2000 news release from the U.S. Bureau of Labor Statistics (See Attachment A) notes that "the average person in the U.S. holds 9.2 jobs from the age 18 to age 34" and that "more than half of these jobs were held between the ages of 18 and 24."

5. These facts fit in with basic career theory. Vocational theorists note that there are stages of career development that between the ages of approximately 15 to 24, people explore a wide range of options, trying to narrow down their focus and specify work options. (See Attachment B for an explanation of the exploration stage of career development) Clearly, use of a specific occupation for someone in the early part of the career exploration phase would be inappropriate.

6. Defendant is claiming that lack of measurable earnings history at the time of injury for a minor precludes the ability to measure the impact of a permanent impairment of future ability to work and earn money, however, vocational and economic research (See Attachment C) has long documented the ability to measure future earning capacity by education level and other proxies.

7. Further, defendant contends that the average earnings figures by disability status and education level used in my analysis are unacceptable because they include persons who are severely disabled and are not specific to persons with a head injury. My analysis explored Ms. Bennett's lifetime earning capacity both in terms of annual expected earnings (how much) and worklife expectancy (how long).

8. The figures used to represent Ms. Bennett's annual expected earnings were derived from the Current Population Survey conducted by the United States Bureau of the Census and are specific to those persons working year-round, full-time. Clearly, with the requirement that respondents work year-round, full-time, the figures would not include people with severe work disability; the figures would include only those individuals who were able to sustain regular employment. In assessing Ms. Bennett's post-injury worklife expectancy, I used worklife expectancy statistics specific to persons with non-severe work disability. Therefore, defendant's contention that the data I used are inappropriate because they include persons with a severe work disability is clearly wrong - in terms of both annual earnings and worklife expectancy.

9. With regard to defendant's arguments that my figures are too generic, averages from various populations have long been accepted as a means for prediction - life expectancy, earnings and others. No statistics, no matter how fine-tuned, can provide an exact predictor of an individual's future. This is as true of annual earnings as it is of various

measures of worklife expectancy and growth and discount rates. Economics, actuaries, insurance companies, and gambling establishments use population averages when making rational estimates on human outcomes. The basic belief is that, in the absence of more specific and precise information, the best predictors of outcomes are statistical averages or relative frequencies. Following this, it is not true that disability data would have to be disaggregated by type, severity, or duration of disability in order to be reliable or meaningful.

10. Even if disaggregated data existed, its use would be limited at best. Persons with the same diagnosis and the same length of time since injury can have dramatically different experiences in the work place, especially when education level is factored in. Consider an example of two men with identical hand injuries resulting in reduced grip strength and limited range of motion. This injury would have an enormous impact on a carpenter, who would likely need to leave his employment. For an English professor, however, the effect may be minimal.

11. Obviously, it would be wonderful if sound data existed pertaining to 19-year-old female, high school graduates who had sustained head injury at the age of 16 and who had planned to attend college. If such data existed, estimating loss of lifetime earning due to injury would be considerably easier and could eliminate the need for expert witnesses. Such data, though, do not exist and would be impossible to collect.

12. What this points to, however, is the fact that earnings statistics of all sorts must be used responsibly and applied by persons familiar with the world of work and career theory. When assessing persons with disability, the user must be familiar with the effects of impairment on ability to work and earn money as well as the experiences of disabled persons in the labor market.

13. Defendant further questions the appropriateness of using the government earnings and worklife data for Ms. Bennett, contending that there is no evidence that she meets the definition of work disability underlying these data. At the same time, however, they acknowledge the treating physicians opinion that Ms. Bennett has reached maximum medical improvement.

14. Obviously, if Ms. Bennett does make a complete recovery from her injuries, there will be no future loss of lifetime earnings. Based on the doctor's opinion of maximum medical improvement, however, there is not reasonable expectation for this recovery. The fact that she can be treated for residual emotional problems such as depression does not mean that her other, cognitive impairments will suddenly disappear.

15. Defendant further implies that because Ms. Bennett is able to pursue higher education she has sustained no loss. This is contrary to what vocational and rehabilitation counselors know about the effect of disability in the workplace. In data reported by the Census Bureau, even persons with a college degree show a significant reduction in expected earnings when they work year-round, full-time. According to the 2000 Current Population Survey, average college graduates without a work disability earned \$62,502 , their counterparts with a work disability earned \$49,703, or 20% less.

16. Defendant even acknowledges that Ms. Bennett "could benefit from special academic accommodations, including tutoring and taping lectures". These are services not needed by most college students, and her need for these services in order to succeed in college would obviously affect her ability to succeed on the job in as high a capacity as she could have had she not been injured. Based on her impairments and on the opinion of her treating physician, Ms. Bennett clearly meets the definition of work disability. The U.S. Department of Commerce defines work disability as existing when a person is limited in terms of the amount or kind of work he or she can do on a job because of a physical or mental impairment.

17. Following from these facts, the best measure of Ms. Bennett's earning capacity is clearly the average representing the range of options open to her. This is reasonably represented by the average earnings by education level that could have accrued to her absent injury compared with average earnings by education level that can accrue to her as a person with a work disability.

18. In order to be conducted reliably, the method of analysis of loss of earning capacity needs to be applied by someone familiar with the world of work and with career theory. My knowledge, skill, experience, training, and education all combine to qualify me as an expert. As noted in my Curriculum Vitae (See Attachment D), I have a Master's degree in Vocational Counseling and a PhD in Vocational Counseling and Vocational Education. I have further postdoctoral education in economics, finance, rehabilitation counseling, and was awarded an MBA degree. I have twenty-five years experience within the field of disability as a vocational counselor, researcher, university professor, and vocational expert with the U.S. Department of Health and Human Services.

19. My experience also includes several presentations and publications specific to work disability from brain injury, the injury in this case. During just the last two years, these include:

- "Quantifying Economic Damages" Presentation to the Kentucky Academy of Trial Attorneys. *Litigating the Brain Injury Case Conference*. Bowling Green, Kentucky, June 2001.
- "Defining Economic Damages: The Importance of Worklife Expectancy." Presentation to the 2001 Utah Trial Lawyers Association/Utah Brain Injury Association Conference. Salt Lake City, Utah, February 2001.
- "The Economic Issues of Traumatic Brain Injury." Presentation to The Brain Injury Association of New York State's third Annual Conference. New York, New York, June 2000.
- "Vocational Rehabilitation and Economic Loss." Presentation to the Utah Trial Lawyers Association/Utah Brain Injury Association Conference. Salt Lake City, Utah, January 2000.
- "Mild Brain Injury: Vocational and Economic Consequences." Presentation to the Brain Injury Associations 13<sup>th</sup> Annual Conference for Attorneys. Phoenix, Arizona, September 1999.
- "The Vocational Economic Consequences of Brain Injury: An Update." The Neurolaw Letter, Vol. 8, No. 11, July 1999. (With Paul Prachyl)
- "Important Considerations When Computing the Present Value of Lost Earning Capacity." ATLA tbi, Vol. 6, No. 6, Spring 1999. (With Ronald E. Missun)

20. It is with this education and experience that I examine Ms. Bennett's permanent limitations to analyze their impact on her ability to function in the workforce.

21. My analysis results are derived not only from specialized knowledge noted previously, but also from studies conducted by the U.S. Census Bureau. The education dollars and worklife expectancy statistics used in the analysis for Ms. Bennett are based on the Bureau's Current Population Survey (CPS).

22. The CPS survey is the primary source of employment data for persons in the United States, the source of the government's monthly unemployment rates that are widely quoted by the media. Conducted monthly by the Census Bureau, the CPS is used for a wide variety of purposes within the Federal government. According to a joint web site maintained by the Bureau of Labor Statistics and the Census Bureau:

The CPS is the primary source of information on the labor force characteristics of the U.S. population. The sample is scientifically selected to represent the civilian noninstitutional population. ([www.bls.census.gov/cps/overmain.htm](http://www.bls.census.gov/cps/overmain.htm) - emphasis added)

23. In addition, government and private researchers use CPS to study employment patterns of the U.S. population with work disabilities (See Attachment E) as support for governmental policy decisions. This includes work funded by the Department of Education, National Institute on Disability and Rehabilitation Research and conducted by researchers at Cornell University. They have published multiple papers using the CPS to study the effects of work disability on earnings and employment.

24. In a presentation before the National Association of Forensic Economics (NAFE) in November 2001, John McNeil, a special assistant for disability statistics and former division chief for the U.S. Census Bureau, reaffirmed the application of CPS data for the study of persons with a work disability. Mr. McNeil has since retired from the Census, but he signed the attached affidavit stating he sees no reason by the CPS data for work disability cannot be used in the manner applied by Vocational Econometrics (Attachment F).

25. Herman Miller, a former division chief with the Census Bureau, has also signed an affidavit supporting use of the CPS for studying the employment experiences of people with a work disability (See Attachment G).

26. The scientific testing criteria are principally directed to the "hard" sciences (e.g. engineering), and have less significance for vocational and economic testimony, since we are concerned with the future experience of people, which can never be tested or known with absolute certainty. However, data from the CPS are produced and extensively tested by the U.S. Department of Commerce, Bureau of the Census. The probabilities of life are drawn from the life tables from the U.S. Department of Health and Human Services, National Center for Health Statistics, which produces and extensively tests the tables.

27. Use of CPS data to measure earnings and employment rates of persons with a work disability is the subject of multiple articles (See Attachment E). These citations are by no means intended to be exhaustive, merely indicative that the data I used in estimating Ms. Bennett's earning capacity have been extensively reviewed and used in the scientific literature.

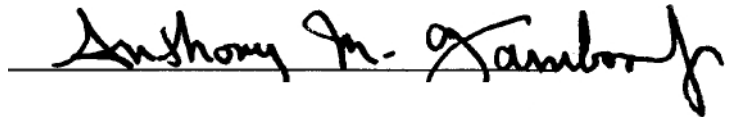
28. With regard to error rates, one can compute the standard error of a worklife expectancy using the formula for the standard of error of a probability. Due to large sample

size of the CPS, one could show that the standard error of a worklife expectancy would not exceed 3% of the estimate.

29. Prior to concentrating exclusively on forensic consulting, my experience included working with and placing people with disabilities in jobs, as well as working in formal education settings to teach others to work with people with disability.

30. The U.S. Census Bureau, following research conducted by the Social Security Administration during the 1960s, developed the earnings and worklife data I used. These were not developed specifically for forensic purposes, but were developed to track the experiences of people with a work disability. Use of these data by nonforensic researchers has also been documented (See Attachment E).

FURTHER, THE AFFIANT SAYETH NAUGHT



Anthony M. Gamboa, Jr., Ph.D., MBA  
Senior Vocational Economic Analyst

Subscribed and sworn to before me, a notary public, in this 5<sup>th</sup> of October, 2001.



Notary Public

My Commission Expires 5-5-05