



This document was downloaded from Vocational Economics Inc.
(www.vocecon.com). For more information

on this document, visit:

<http://www.vocecon.com/resources/challenges/cases/chcsvei.aspx>

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

MICHELLE JONES, ET AL	§	
Plaintiffs,	§	
vs.	§	CIVIL ACTION NO. 501CV179
	§	DF
JIM RANGLES, M.D., ET AL	§	
	§	
Defendants	§	

**DEFENDANTS' JOINT MOTION TO STRIKE, LIMIT, OR EXCLUDE THE
PROFFERED EXPERT TESTIMONY OF CARRELL M. CHADWELL, Ph.D -**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendants, JIM RANGLES, M.D., DOUGLAS SHEENA, M.D., DANA BLEAKNEY, M.D., BAYLOR MEDICAL CENTER AT GARLAND, BAYLOR FAMILY PRACTICE CENTER, EMCARE, INC., EMCARE HOLDINGS, INC., EMCARE OF TEXAS, INC., EMCARE PHYSICIANS NETWORK, INC., EMCARE OP, L.P., EMCARE MEDICAL SERVICES, INC., EMCARE PHYSICIAN STAFFING SERVICES, INC., TEXAS EM-1 MEDICAL SERVICES, THE CLIFTON, PERRY ASSOCIATION, P.C. a/k/a THE M. CLIFTON PERRY M.D., P.A., M.C. PERRY, M.D., M.C. PERRY, M.D., P.A., ANATOMIC AND CLINICAL, PATHOLOGY LABORATORIES, L.L.P., and HEALTHTEXAS PROVIDER NETWORK CENTER d/b/a GARLAND FAMILY PRACTICE a/k/a BAYLOR FAMILY PRACTICE CENTER (herein collectively referred to as "Defendants"), and pursuant to applicable law, make and file this their Joint Motion to Strike, Limit, or Exclude the Proffered Expert Testimony of Plaintiffs' designated expert Carrell Chadwell, Ph.D., and in support thereof would respectfully show the Court as follows:

I

BACKGROUND

A.

PROCEDURAL POSTURE

This Motion has been filed by thee deadlines set forth in the applicable scheduling order.

B.

FACTS

This is a medical malpractice case arising from the death of Jeffrey Leonard. On or about March 15, 2000, Mr. Leonard sought medical treatment at Baylor Medical Center at Garland, subsequently he had appointments at Garland Family Practice Center, one of which he kept, two of which he did not. Mr. Leonard was diagnosed with subacute bacterial endocarditis and secondary sepsis. He was declared brain dead on March 31, 2000. On April 2, 2000, Mr. Leonard was removed from life support at the request of his family and subsequently expired.

As part of their claim for damages, Plaintiffs seek \$748,159.00, stated in terms of present value, for the loss of earning capacity and replacement costs for household services resulting from Jeffrey Leonard's death.

C.

DESIGNATED EXPERT

Plaintiffs designated Carrell Chadwell, Ph.D., to testify as an expert in support of Plaintiffs' claim for lost earnings and replacement costs for household services.

Dr. Chadwell set forth her vocational economic assessment with analysis and conclusions regarding Plaintiffs' claims in a report dated April 26, 2002. A copy of the report is annexed hereto as *Exhibit A*.

To summarize the report, Dr. Chadwell concluded Jeffrey Leonard's earning capacity to be \$15,551.00 per annum (in 2002 dollars), based on his actual earnings as an employee of Super Movers, Inc., from 1999 to 2000, with fringe benefits estimated in the report at 22%. Chadwell concluded his work life expectancy was 27.4 years. She calculated the present value of the economic damages resulting from Jeffrey Leonard's death to be \$558,484.00 (calculated based on total offset). Chadwell calculated the replacement cost for lost household services resulting from Jeffrey Leonard's death to be \$189,675.00 (as stated in present value). According to the report, the total loss to Plaintiffs is \$748,159.00 (as stated in present value).

Dr. Chadwell's report is presented on the letterhead of Vocational Economics, Inc. (hereinafter VEI), with offices in several U.S. metropolitan areas. The address of Dr. Chadwell's VEI franchise is listed as 3102 Oak Lawn Avenue, Suite 700, Dallas, Texas 75219.

Carrell M. Chadwell's deposition was taken on August 16, 2002. A copy of the transcript is annexed hereto as *Exhibit B*.

D.

SUMMARY OF DEFENDANTS' ARGUMENT

Defendants submit Chadwell's proffered opinions are inadmissible as expert testimony under applicable law.

First, based on her report and deposition testimony, Carrell M. Chadwell, Ph.D., is not qualified as an expert on the economics-related issues of lost earnings and replacement costs for

household services. These issues include *inter alia* the following areas of scientific, technical, or specialized knowledge: individual earning capacity; present value measurements; life expectancy; worklife expectancy; past and future employment patterns; investment theories and methods; employee profiles; the value of lost household services; and interpretation of relevant government statistics.

Second, based on Chadwell's deposition, the methodology and techniques she used in researching, analyzing and formulating her opinions, are unreliable according to the strict requirements for the admissibility of expert testimony and will seriously mislead, confuse and prejudice, rather than assist, the trier of fact in determining the issues before him or her.

Lastly, Chadwell's opinions are not relevant, because they are not sufficiently tied to the facts of the case to assist the trier of fact in determining the issues before him or her.

Immediately following is Defendants' discussion of applicable law. Thereafter, Defendants present a veritable catalog of excerpts from Chadwell's deposition testimony that demonstrate its blatant failure to satisfy the requirements for the admissibility of expert testimony, and her lack of qualifications as an expert under applicable law.

II.

APPLICABLE LAW

Carrell M. Chadwell's proffered opinions, to be admissible as expert testimony at trial, they must satisfy threshold requirements. Chadwell must be qualified as an expert by her actual qualifications, education, training, skill, and experience. Chadwell's opinions on lost earnings and

the replacement costs for household services must also be reliable and relevant. As the proffering party, Plaintiff bears the burden to demonstrate that Chadwell's opinions meet these criteria.

The United States Supreme Court set forth the requirements for expert testimony to be admissible at trial under Rule 702 of the Federal Rules of Evidence. Daubert v, Merrell Dow Pharmaceuticals. Inc., 509 U.S. 579, 595-99 (1993) The Daubert standard requires the following of expert testimony for it to be admissible under Rule 702:

1. The witness must be qualified;
2. The testimony must pertain to "scientific, technical or other specialized knowledge;" and
3. The testimony must "assist the tier of fact to understand the evidence or to determine the fact in issue."

Daubert, 509 U.S. at 589-91.

With regards to proffered expert testimony, the Court has a "gatekeeping" obligation to ensure that such testimony satisfies these requirements before ruled admissible. Kumho Tire Company, Ltd. V. Carmichael, 526 U.S. 137, 119 S.Ct. 1167 (1999); Chambers v. Exxon Corporation, 81 F. Supp.2d 661(N.D. LA. 2000).

A.

CARRELL CHADWELL, PHD MUST BE QUALIFIED AS AN EXPERT.

At the outset, a court must determine whether, based on Rule 104(a) of the Federal Rules of Evidence, a witness is qualified as an expert on the subject matter or issues to which they presume to testify. They must be qualified by actual qualifications, education, training, or experience; and academic degrees, for example, are not determinative of this requirement. Daubert,

509 U.S. at 592-593; Hucker v. City of Beaumont, 147 F.Supp.2d 565 (E.D. Tex. 2001.) (holding it is Plaintiffs' burden to prove the qualifications, education, training or experience of proffered experts are sufficient, credentials are not determinative, and Defendants' Motion to Limit a proffered expert's testimony only denied because of failure to make a proper Daubert challenge); Watkins v. Telsmith, 121 F.3d 984 (5th Cir. 1997) (holding Plaintiff's proffered expert excluded under Daubert, where, in addition to expert's unreliable methodology, expert lacked education in mechanical engineering, and experience in machine design was limited to one project in an engineering class; application of Daubert factors is germane to evaluating whether an expert is a hired gun or a person whose opinion in the court room will withstand the same scrutiny it would among his professional peers); Wilson v. Woods, 163 F.3d 935 (5th Cir. 1999) (holding proffered expert was not qualified to testify as an expert in a motor vehicle accident reconstruction where: expert's "expertise" in this area was no greater than that of any other individual with a general scientific background, the expert never taught accident reconstruction courses; and the expert never experimented or conducted studies in the field, or published anything on the subject); see also Broders v. Heise, 924 S.W.2d 148 (Tex. 1996) (excluding proffered expert testimony of highly qualified emergency room physician based on lack of training and experience with narrow specific emergency room treatment question before the court).

B.

**THE METHODOLOGY OR TECHNIQUES UNDERLYING
THE PROFFERED EXPERT OPINION MUST BE RELIABLE**

The second Daubert requirement goes to the evidentiary reliability of a proffered expert opinion. Daubert, 509 U.S. at 590. In Daubert, the United States Supreme Court set forth non-

exclusive factors for the gate keeping court to consider in determining the reliability of a proffered expert's opinions. They are: 1) whether the theory or technique asserted can be and has been tested; 2) whether the technique relies upon the subject interpretation of the expert; 3) whether the theory or technique asserted as been subjected to peer review and publication; 4) whether and to what extent the technique or theory has known or potential rate of error; 5) whether the theory or technique is generally accepted as valid by the relevant scientific community; and 6) whether there are non-judicial uses which have been made of the theory or technique. Id. at 593-94; see also E.I. Du Pont de Nemours and Co., Inc. v. Robinson, 923 S.W.2d 549, 557 (Tex. 1995).

For purposes of this case and this motion, the Daubert standards apply to all expert testimony proffered under Rule 702 of the Federal Rules of Evidence. The Daubert requirements for the admissibility of proffered expert testimony applied to “scientific,” “technical” or “other specialized” matters. Id. at 147-48; Kuhmo Tire Co., 526 U.S. at 147-48. Thus, proffered expert testimony such as that of Carrell M. Chadwell, Ph.D., on the economics-related issues of lost of earnings and replacement costs for household services resulting from Jeffrey Leonard's death, in the instant case, are subject to the Daubert requirements for the admissibility of expert testimony.

The court must undertake an assessment of whether the reasoning or methodology underlying a proffered expert's testimony is scientifically valid. Daubert, 509 U.S. at 591-593. The court must look to the methodology employed by the expert in analyzing data and the scientific basis for that analysis. Kuhmo Tire Co. Ltd., 526 U.S. at 153. Accordingly, the court's focus is to be on the principles and methodology employed or relied upon to generate the opinions, **not on the conclusions that they generate.** Daubert, 509 U.S. at 595. (Emphasis added.)

In determining the sufficiency of the methodology, principles, or theories underlying a proffered expert's opinions it is the research, investigation, analysis, calculations, etc., the proffered expert undertook in reaching their opinions, and **not** the plausibility, reasonableness, appeal, or popularity of the opinions, that the Court must examine in determining the Daubert prong of reliability. See Kuhmo Tire Co., Ltd., 526 U.S. at 137 (reversing Court of Appeals and holding that District Court did not abuse its discretionary authority in its application of Daubert to exclude tire failure analyst's expert testimony, where District Court did not doubt expert's qualifications, but found underlying methodology unreliable, based on no evidence that other experts in the industry used the analyst's approach with regards to examinations of tires, no articles or papers validated analyst's approach, and analyst's own testimony cast doubt upon the reliability of his theory and opinions); Watkins, 121 F.3d at 984 (holding District Court properly applied the principles of Daubert and did not commit manifest error in excluding expert's testimony or lack of a sufficiently reliable scientific or technical basis, where expert's underlying method or technique did not include the testing of any proposed alternative, the investigation into designs of other conveyers, or drawings or the performance of calculations that would allow the tier affect to infer that his theory was supported by valid engineering principles, in case where conveyor at a gravel plant collapsed, killing employee); Moore v. Ashland Chemical, Inc., 151 F.3d 269 (5th Cir. 1998) (citing Daubert in holding an expert's assurances that he has utilized generally accepted scientific methodology is insufficient; also, the proponent of an expert need not prove to the judge that the expert's testimony is correct, but must prove by preponderance of the evidence that the testimony is reliable; citing *In Re Paoli R. R. Yard PCB Litigation*, 35 F. 3d 717 (3rd Cir. 1994)).

C.

PROFFERED EXPERT OPINIONS MUST BE RELEVANT TO BE ADMISSIBLE.

The Daubert standard of relevance requires proffered expert opinions to be sufficiently tied to the facts of the case such that the opinions will aid the jury in determining the issues before it. FED.RULES.EVID.RULE 702; Daubert, 509 U.S. at 591. This consideration has been described as one of "fit." Id. The studies, data, and other information upon which the proffered expert would rely for their opinion must closely "fit" the facts of the case. Ashland Chemical, Inc. 151 F.3d at 276-77 (holding that in case where causal relationship between Plaintiff's exposure to industrial chemicals and pulmonary illness was issue, Plaintiff's proffered expert physician's testimony was properly excluded, because physician had insufficient information regarding underlying facts for the opinion to satisfy Daubert requirement of relevance); General Electric Co. v. Joiner, 552 U. S. 136, 118 S.Ct. 512 (1997) (reversed and remanded based on finding that District Court did not abuse its discretion in excluding expert testimony based on epidemiological studies, where the studies upon which the Plaintiffs' expert relied did not support his conclusions that Plaintiffs' exposure to a chemical agent contributed to his cancer).

D.

**PROFFERED EXPERT TESTIMONY IS INADMISSIBLE WHERE
THREAT OF PREJUDICE OUTWEIGHS PROBATIVE VALUE.**

Finally, a Court assessing a proffer of expert testimony under Rule 702 of the Federal. Rules of Evidence should also be mindful of applicable rules in addition to those set forth above. Daubert 509 U.S. at 595. Among other applicable rules, Rule 403 of the Federal Rule of Evidence permits the exclusion of relevant evidence "if its probative value is substantially outweighed by the danger

of unfair prejudice, confusion of the issues, or misleading the jury," Id. Expert evidence can be both powerful and quite misleading because of the difficulty in evaluating it. Id. Because of this risk, the Court in weighing possible prejudice against probative force under Rule 403 exercises more control over experts than over lay witnesses. Id.

III.

ARGUMENT

CARRELL CHADWELL'S OPINIONS DO NOT SATISFY THE REQUIREMENTS FOR THE ADMISSIBILITY OF EXPERT TESTIMONY UNDER THE LAW.

A.

INTRODUCTION

Carrell Chadwell, PhD, should be excluded from testifying at trial because her testimony and qualifications blatantly fail to satisfy the requirements for expert testimony, based on the standards set forth in Daubert and its progeny, as discussed above.

Chadwell is **not qualified** by her actual qualifications, skill, knowledge, education, training, or experience to testify as an expert as to the issues on which she presumes to testify as such.

Chadwell's testimony is **unreliable** and will not assist a trier of fact in determining the issues before him or her because: 1) the methodology and techniques underlying Chadwell's opinions fail to meet the evidentiary reliability factors propounded in Daubert and its progeny; Chadwell's knowledge and use of a "methodology" or "technique" are limited to her perfunctory use of a software program from a litigation expert service; 2) her opinions are poorly researched, where they are researched at all; and 3) her testimony was generated solely for the purpose of litigation, thus

making her an advocate rather than properly objective and committed to rendering a well-researched, thoroughly analyzed opinion(s) based on the specific facts of the case.

Also, Chadwell's testimony is **not relevant**. Chadwell's testimony is based on assumed, mistaken, erroneous facts. It thus lacks the necessary **precise fit** between her opinions and the facts of the case.

Finally, all Defendants will be seriously prejudiced if Carrell Chadwell, Ph.D., with her lengthy and seemingly impressive paper credentials and boasts of expertise is permitted to testify as an expert on Plaintiffs' claim of lost earnings and replacement costs.

B.

THE METHODOLOGY AND TECHNIQUES UNDERLYING CARRELL CHADWELL, PH.D.'S OPINIONS LACK SUFFICIENT RELIABILITY UNDER THE LAW.

Defendants explored the methods and techniques underlying Chadwell's opinions, as set forth in her report dated April 26, 2002. Defendants focused their questioning on the requirements for the admissibility of expert testimony by scrutinizing how Chadwell reached her opinions - the tools and data she used to research, test, confirm, analyze, and develop her opinions -- in order to ensure they would be reliable and properly assist a trier of fact. Below, Defendants set forth - in transcriptions or references to testimony - excerpts from Chadwell's testimony that expose the unreliability of the methodology and techniques underlying her opinions. Defendants note this list is not exhaustive and only a cover-to cover review of Chadwell's deposition testimony will fully expose its inadequacy as admissible expert testimony.

For the Court's convenience, Defendants hereby restate the factors that a trial court may consider in making a threshold determination of admissibility under Federal Rule of Evidence 702,

according to Daubert: 1) the extent to which the theory has been or can be tested; 2) the extent to which the technique relies upon the subjective interpretation of the expert; 3) whether the theory has been subjected to peer review and/or publication; 4) the technique's potential rate of error; 5) whether the underlying theory or technique has been generally accepted as valid by the relevant scientific community; and 6) the non-judicial uses which have been made of the theory or technique; Chadwell's testimony admits the failure of her "methodology" to satisfy these factors.

1.

**Chadwell's near-exclusive reliance on insufficient computer software
in forming her expert opinions indicates a lack of reliability.**

a.

NO RESEARCH INTO COMPUTER SOFTWARE

To derive her opinions regarding Plaintiffs' claim of lost earnings and the replacement costs for household services, Chadwell used a software program from Vocational Economics, Inc. (VEI), the legal expert service, for which she works as an independent contractor providing expert services to attorneys. Essentially, after selecting categories or numbers from materials forwarded to her by VEI, she plugged in the data, and the computer spit out the results that appear in her report.

Q Did you use a software program on this case?

A Let me just check and see. I used a software program – actually, I guess that they now call this part of the VALE where you plug in the figures you put down, their age, the educational status, disability status, preinjury earnings, postinjury, all that stuff, it applies the appropriate worklife expectancy and it generates this table that is in the report called Worklife Probability.

Ex. B, page 95, lines 16 to 24.

Defendants explored this issue further. The same blatant failure to satisfy the threshold requirements for expert testimony under Daubert, and its progeny was clear.

Q Okay. Have you done any independent research on the methodology used in the software program which took the raw data you inputted, you know, computed using the methodology, and spit out the report - have you done any independent research on the methodology?

A No.

Q Are you aware of anyone that's done independent research on the methodology, other than the creators of the methodology who created it?

A No.

Ex. B, page 119, line 18, to page 120, line 2.

Note, VALE is an acronym for Vocational Assessment of Lost Earnings. ***Ex B, page 95, lines 1 to 2.***

Also, Carrell Chadwell does not know how the software program she used to derive her opinions regarding lost wages was created. ***Ex. B, page 98, lines 3 to 9.***

Moreover, though Chadwell testified she knows how the VALE program was developed, or what information and data was inputted into the software program that allowed her to plug in figures and receive her opinions, she nevertheless used and relied on the software's information and data **without confirming the accuracy of the material inputted; and without confirming the date the material was inputted.** ***Ex. B, page 98, line 11, to page 101, line 9.*** (Emphasis added.)

b.

OPINION GENERATED BY ANOTHER VEI EMPLOYEE IN ANOTHER STATE

Defendants also refer the Court to the following exchange regarding Chadwell's opinions regarding replacement costs for household services. Tellingly, Chadwell **does not even own** the

software program necessary to derive this figure on her own. She forwarded non-specific, non-unique (to Jeffrey Leonard's household) bits of information to a VEI office in Louisville, Kentucky, where a woman in that office input and ran the data and then prepared the report. Again, Chadwell failed to investigate, confirm the accuracy of, or otherwise take any steps to ensure the reliability of, the methodology of this program upon which she based her opinions on the replacement costs for household services.

Q Well, the methodology here included taking eight categories from an article; breaking the hours down you get from Michelle Jones; sending all that to Louisville, where they put it into the computer; and that computer, however it does it, chooses an occupational category for the functional wage; and you don't know how they choose that occupational category?

A The computer does not choose that, that has been selected for these categories. And the same occupation is always used for each of the categories.

Q And do you now who selected it?

A I suppose the developers of the program.

Q So you don't know who; is that correct?

A Right.

Ex. page 143, fine 25, to page 144, line 13.

In addition to Chadwell's failure to research, verify, independently analyze, or interpret the methodology used by the VEI personnel in Louisville, Kentucky, the methodology itself is patently unreliable.

To measure the replacement cost for lost household services, an occupation was selected to represent the type of person that would have to be hired to do the household services. Chadwell had no knowledge of what occupation was used to measure the value of Jeffrey Leonard's lost household services. This **critical item** of information is a function of the VALE software program. ***Ex. B,***

page 136, line 3, to page 138, page 10. (Emphasis added.) **The program selected** a model or benchmark occupation for determining the value of Jeffrey Leonard's household services:

Q All right. Bottom line is, someone else chose these occupational benchmarks and they chose them using whatever thought process they used and you don't know what it is, but it was what was used, correct?

A Uh-huh.

Ex. B, page 146, line 24, to page 147, line 3.

Q What was the occupation used for washing, ironing, clothing care?

A I don't know.

Q What was the occupation used to physical or other family care?

A I don't know.

Q What were the specific values used in determining the functional wage of each of those unknown occupations?

A. The values used, what do you mean by that?

Q Well, like \$7 was used, what underlying supporting data was used to say that unknown occupation had a functional wage of \$7, do you know as a matter of fact?

A Let me check and I can tell you. Let's see, that would be from the U S. Bureau of Statistics.

Q Let me see what you've looked at.

A Earnings data.

Q Exhibit 14, and what is it - which one is it on Exhibit 14?

A National Earnings, the second category there.

Q How do you know that?

A Because that's where the data is provided. I mean, that's –

Q How do you know that's what was used in this software program?

A Because that's what Vocational Economics uses for their software,

Q How do you know that?

A I know because I have both read it in the manuals and that was part of the training that I took.

Q They tell you that's what they use?

A Yes, that's correct.

Q But you have not actually independently checked any of the methodology used in the software program; is that correct?

A No, I didn't drive out and look at their computer runs.

Q You say that in a mocking way, but you're the expert today and you're the only one I get to depose -

A Right,

Q -- and so you haven't looked at any of the underlying methodology used to see if it's accurate?

A I have not personally looked at the data underneath it, no.

MR. MARYE: Objection, side bar.

Q (BY MR. STEWART) All right. And do you know if this methodology that was utilized in this software has been peer-reviewed anywhere?

A Household services, I do not know.

Q All right. Now, so you can't - all you can say is, This is what the software program spit out and I believe the program, but I can't tell you really what went into the program.

A Yes. That's true of every instrument I use.

Ex. B, page 138, line 5, to page 140, line 9.

Thus, Chadwell simply assumed the reliability of the profit-driven VALE software and presumptuously proffers the figures generated by that program as an "expert" opinion.

2.

The methodology and techniques underlying Chadwell's opinions are not peer-reviewed or relied upon by experts without a proprietary interest in VEI

Chadwell learned from VEI that the VALE software she relied upon is used by individuals besides those with a proprietary interest, but could not identify them except to say she was told consultants going into court have inquired about the program. *Ex. B, page 99, line 24, to page 101, line 25*. See also, *Ex. B, page 120, line 21, to page 121, line 3* (where Chadwell admits she does not know of any vocational economists outside of those using the proprietary VALE software that use the LPE methodology).

Chadwell relied upon this software program to derive her opinions of Jeffrey Leonard's lost earnings for Plaintiff without knowing whether it had ever been peer-reviewed,

Q All right. Now, are you aware of any peer-review organization that has evaluated this program?

A The VALE program, I don't know if it has ever been evaluated.

Q All right. So to your knowledge - the VALE program you utilized in this case that, in essence, took your raw input and then created Exhibit 11 in your report, to your knowledge, the underlying aspects of the program, methodology of the program and how the program effectively crunches your input has never been peer-reviewed, to your knowledge?

A I do not know.

Q You have no knowledge of that?

A I have no knowledge of that.

Ex. B., page 105, lines 7, to 21

In support of this point, see also, *Ex. B, page 113, line 17, to page 114, line 11*; and *Ex. B, page 114, line 12, to page 116, line 17* (Chadwell never told that the LPE methodology used by the VALE software program had been peer-reviewed).

The following excerpt from Chadwell's testimony neatly summarizes Defendants' point.

Q All right. So just to put a period on this point, you know of no peer-reviewed and publications that have evaluated, examined, critiqued, and reviewed the LPE methodology and the general methodology used in the VALE 2000 software program that you utilized to create the report; is that correct?

A I cannot recall any.

Q All right. And don't know of any as you sit here today?

A Not that I recall.

Ex B, page 119, lines 8 to 17.

Thus, Carrell Chadwell, PhD, would state her opinions - as an expert - on Plaintiff's claims for lost earnings and replacement costs for household services based on a software program, that, 1) calculates and spits out the lost earnings assessment; 2) relies on Chadwell as the expert "vocational economist" for several items of basic information only, most of which is also taken from tables and charts provided by VEI (discussed in more detail below); 3) had never been peer-reviewed as far as Chadwell knew when she relied upon the program; 4) Chadwell never researched in terms of appropriateness or accuracy before using to derive her opinions; and 5) in the case of deriving replacement costs for lost household services, was owned, used, and controlled by a woman in Louisville, Kentucky, with bits of information from Chadwell.

Applying the specific reliability factors under Daubert, one finds: 1) before she presumed to rely on VALE program with its LPE methodology from the legal expert service, VEI, Chadwell

did not know the extent to which it had or could be **tested**; she did not know whether it had been subjected to **peer review or publication**; 3) she did not know whether the relevant scientific, technical, or specialized. knowledge community had **generally accepted** the underlying theory or technique as valid; and 4) as she could not identify anyone other than individuals with a proprietary interest in the legal expert services, VEI, she arguably could not name any **non-judicial** uses that have been made of the VALE software program. Indeed, Chadwell signed on with VEI, underwent their training, and utilized their software to derive the opinions she would use in a court of law, for the purpose of providing expert testimony to attorneys. (See also the discussion at *Ex. A page 63, line 9, to page 81, line 24*, regarding Chadwell's relationship with VEI, their contract for services, the process by which Chadwell receives a percentage of the amount VEI bills using its expert services; and the mass mailings from VEI to attorneys on behalf of Chadwell, which led to her meeting with the attorneys regarding her availability as an expert vocational economist.)

3.

**Chadwell's poor research into her subject matter indicates
an unreliable methodology or technique.**

Chadwell's actual work in deriving her opinion of decedent Jeffrey Leonard's lost earnings fails to satisfy the requirements for the admissibility of expert testimony. Her investigation into the facts of the case was shoddy and insufficient. Chadwell relied on tables provided by VEI for key pieces information that were fed into the VALE software program. She also relied on assumed, erroneous, incomplete, or speculative information to select her entries into the VALE program.

a.

FRINGE BENEFIT ESTIMATE

Chadwell's opinions of lost earnings include an estimate of his fringe benefits. The source for this number, which Chadwell inputted into a pop-up prompt on the VALE software program screen for her result, was a VEI publication summarizing Bureau of Labor Statistics, with Bureau of Labor Statistics documents attached. *Ex B, page 123, line 23, to page 125, line 13*. Thus, Chadwell did not independently research, verify, analyze, or otherwise interpret this information to determine the applicability of these fringe benefit numbers for decedent Jeffrey Leonard.

For purposes of the VALE computer program's fringe benefits function, Chadwell selected the fringe benefit estimate category for civilian workers. Chadwell's program did not include a category for 29-year-old males with Graduate Equivalency Degrees like decedent, Jeffrey Leonard. Although Jeffrey Leonard had worked in the service industries, Chadwell did not select this narrower category. She selected civilian worker, because, as she admitted, she didn't know what his next job would be she admitted do so would be speculative. She also admitted that her selection of this fringe benefit category was speculative. *Ex B, page 127, line 16, go page 129, line 23*.

b.

ASSUMPTIONS ABOUT COMPOSITION OF HOUSEHOLD

With regards to her "calculation" of the replacement cost for the lost household services of Jeffrey Leonard, Chadwell either overlooked, or did not deem other seemingly common sense factors to be critical to a careful and accurate determination of her opinions.

As part of her investigation into what household services Plaintiff Michelle Jones would be losing as a result of Jeffrey Leonard's death, Chadwell did not inquire into what services were being performed by other members of the household. Instead, she made the assumption that over time it

would eventually be just the two of them and so she did not make any inquiry about that. *Ex B, page 296, line 3, to page 297, line 2.*

c.

INDEXES AND INVESTMENT VEHICLES

In prorating decedent Jeffrey Leonard's earnings for 2000 and adjusting them to 2002 dollars, Chadwell testified she used the CPI (Consumer Price Index). She took that from the CPI Index Summary provided by VEI. She did not check to see if VEI's information was correct. She did not go directly to the source herself. She did not verify the accuracy of the information. *Ex. B, page 168, line 7, to page 169, line 5* She simply accepted the manual from the medical-legal expert service with which she is an independent contractor, earning a percentage of the amounts billed to the solicited attorneys in need of an expert. See also, Chadwell's testimony regarding CPI as provided by Vocational Economics, Inc., at *Ex B, page 149, line 20, to page 151, line 2.*

Chadwell also selected an investment vehicle in order to determine the present value of Plaintiffs' claim for lost earnings and the replacement cost for household services resulting from the death of Jeffrey Leonard. Chadwell chose the total offset method to determine present value. The total offset method according to VEI's software, was based on the theory that a 91-day treasury bill is the most appropriate investment vehicle, period. VEI had been instructing that the 91-day treasury bills this was the most appropriate investment vehicle since Chadwell's original association with the legal expert service in 1994. Chadwell testified that in her professional opinion, VEI was correct, and the 91-day treasury bill just so happened to remain the most appropriate investment vehicle in this case. This, although the sum of her investment training was a portion of the three week VEI study program in Las Vegas, and although Chadwell admitted to doing no independent

research into the continuing propriety of the 91-day treasury bill to determine present value since her approximately single day of studying investments in Vegas. *Ex. B, page 258, line 18, to page 260, line 17*. See also, *Ex B, page 262, line 9, to page 266, line 15*, for deposition testimony detailing Chadwell's failures to research other investment options.

Q Your personal belief is that it should go in 91-day treasury bills?

A That is my professional opinion.

Q Well, your professional opinion, and you have no investment education at all, do you?

A That's not true. Investments were a part of what we studied at UNLV.

Q So a portion of three weeks was devoted to investments, is that correct?

A That's correct.

Q And how much of the three-week period in 1994 was directed to investing?

A A small portion, I don't know what percent that would be. Investment themselves, we may have spent maybe a day or two on that.

Q All right. And that's all the investment education you've had in your life?

A Other than what I've read just in general.

Q Well, but you haven't engaged in any systemic self-education in any investments have you?

MR. MARYE: Objection, form.

A No, not in any way.

Q (BY MR. STEWART) You do not hold yourself out as an expert in investment principles, do you?

A No, I do not.

Q All right. So the sum total in your entire life of investment education is one day in 1994; is that correct.

A *Approximately, Correct.*

Ex. B, page 253, line 22, to page 254, line 25.

As one continues to review of Chadwell's testimony, the instances of its failure to satisfy the threshold requirements of reliable underlying methodology or technique for expert testimony, pile up, and Plaintiffs' attempt to proffer Chadwell as an expert on the issue of lost earnings and replacement costs for household services becomes more improper.

4.

Chadwell's insufficient data regarding her subject indicates a lack of reliability.

Defendants questioned Chadwell at length about a paragraph in her report titled, "A Vocational Assessment", which states what Chadwell considers the unique characteristics of the individual being assessed. ***Ex. B, page 194, line 19, to page 195, line 2.*** However, Chadwell's testimony reveals she neither had, nor inquired about the details of Jeffrey Leonard's work history. ***Ex. B, page 195, line 1, to page 197, line 19, and page 202, lines 8 to 13.*** Nor did she endeavor to learn all she could about Jeffery Leonard's physical characteristics, (such as his enlarged heart, which is an issue in this case) or his family history. ***Ex. B, page 230, lines 6 to 22.*** She did not consider his general learning ability. Chadwell testified she will sometimes consider this, but in this case did not simply because she did not think it was appropriate. She offered no further explanation or justification or theory or principle for her exclusion of this unique factor. ***Ex B, page 227, line 21, to page 230, line 5.*** She did not endeavor to learn Jeffrey Leonard's actual earnings, which were certainly significant since Chadwell chose to base her estimates of lost earnings on Jeffrey Leonard's actual earnings rather than an earnings proxy. ***Ex. B., page 222, line, to page 223, line 7.*** Review of the entire deposition transcript shows that the list of such exchanges goes on and on,

as the above sampling would suggest. For purposes of judicial economy, Defendants limit its references to such testimony to the above and submit these are sufficient to demonstrate the inadequacy of Chadwell's testimony as expert testimony under Daubert and its progeny.

5.

Chadwell's opinions are unreliable because they were prepared solely for purposes of litigation.

In addition to an underlying methodology or techniques that are unexamined, untested, or not peer-reviewed, the preparation of an expert opinion solely for purposes of litigation can indicate a lack of reliability, as it points to an "expert" who is acting an advocate, bringing a predetermined opinion rather than a careful and unbiased review of the facts to the case. Robinson, 923 S.W.2d at 549.

Certainly, both parties in litigation will enlist experts whose opinions tend to support their case. However, this is very different from enlisting an expert who tailors their opinions or testimony to fit the position of the attorney who has hired him or her. In her deposition testimony, Chadwell shamelessly admits that decisions about the input for her "calculations" were determined by the wishes of Plaintiffs' attorney. The decisions were not entirely hers as an expert viewing the facts in an objective, careful, reliable manner. *Ex. B, page 206, line 8, to page 208, line 2* (testifying that although her duty as an expert is to identify and apply the unique characteristics of her subject, Chadwell knew of no health factors that would have impelled her to ask for information about Jeffrey Leonard's categorical subclass for worklife expectancy, and would only have done so if requested by the attorney who paid her); *Ex B, page 209, line 24, to page 211, page 5* (despite data showing decedent Jeffrey Leonard was not expected live past 45 years of age, Chadwell would

not have incorporated this information into her opinion unless requested to do so by the attorney who paid her.) Subsequently, when asked to recalculate based upon a limited life expectancy, Dr. Chadwell was unable to do so. *Ex. B , page 166, lines 19 to 21.*

Chadwell also testified that although it is her obligation as an expert to learn unique physical characteristics of the individual she is assessing, she does not believe it is incumbent upon her to explore it absent a request from the attorney who has hired her. *Ex. B, page 209, line 6, to page 227, line 9.*

6.

Summary on the Daubert, prong of reliability

Chadwell's deposition testimony is littered with additional and more complex examples of inadequate methodology or principles underlying her opinions, which renders her expert testimony unreliable and therefore inadmissible under applicable law. The instances, as identified and discussed in the preceding sections, are numerous and precisely the type of defects at which Daubert and its progeny are aimed. It is not an opinion's reasonableness, plausibility, appeal, or level of popularity among attorneys or other litigation-oriented experts that determine whether it is admissible as expert testimony under Daubert and its progeny. It is what goes into formulating the opinion, its foundation, the methodical research, data-gathering, and analytical steps taken in deriving the opinion. Just as the most charming and visually appealing house on a street will be worthless and potentially dangerous to potential inhabitants if the foundation upon which it is built is poorly constructed, so will a proffered expert's opinion -- as reasonable or plausible as it may sound to the court -- be worthless and potentially dangerous as misleading, confusing and prejudicial, if permitted before a jury wrapped in the aura of expertise, but failing to satisfy the threshold

requirements for expert testimony established by the Supreme Court. Thus, Carrell Chadwell's expert testimony should be stricken, limited, or excluded pursuant to applicable law.

C.

CARREL CHADWELL, PH.D. IS NOT QUALIFIED.

Defendants submit that under the standards of Daubert and its progeny, Carrell Chadwell, PhD, is not qualified to offer her Vocational Economic Assessment for decedent Jeffrey Leonard, as set forth in her report, dated April 26, 2002, and her deposition testimony.

In her Vocational Economic Assessment for Jeffrey Leonard, Carrell Chadwell, PhD, sets forth her analysis of Jeffrey Leonard's Earning Capacity, his Worklife Expectancy, the Present Value of Economic Damages resulting from his death, the estimated Replacement Cost for Household Services, the Total Loss, and her Case Comments. As discussed above in section III. B. 1. of this Motion, Chadwell relied upon computer software programs from VEI, a legal expert witness service. Prompted by pop-ups on VEI's computer program screen, Chadwell plugged in numbers that she selected with, the aid of materials from VEI, summarizing government employment, earnings, and other economic data, and her own expertise. Defendants have demonstrated the unreliability of the methodology and techniques underlying the computer program and Chadwell's use of the program. This section, which includes excerpts from and references to Chadwell's deposition testimony, demonstrate-Chadwell's lack of qualifications under Daubert and

its progeny to offer expert opinions regarding Plaintiffs' claims of lost earnings and replacement costs for household services resulting from Jeffrey Leonard's death.

a.

FORMAL EDUCATION

Defendants questioned Chadwell extensively about her formal education, including her degrees in psychology and coursework and internships in the area of vocational rehabilitation. Defendants questioned Chadwell about her training in such areas as economics, accounting and, investments. Chadwell's formal education did not include these subjects. For purposes of judicial economy, Defendants submit the following exchange as an illustration of Chadwell's lack of formal education in these relevant and significant economic-related subjects. The following series of questions were posed for each level of Chadwell's formal education. Review of the other transcript sections referenced reveal the same answers.

Regarding the coursework for her doctorate degree in Psychology at North Texas State University, in Denton, Texas, Chadwell testified as follows:

Q Did you take any courses or pursue any course of study in economics at North Texas State?

A Not in economics, no.

Q Accounting ?

A No.

Q Investments?

A No.

Q Business statistics?

A No.

Ex. B, page 31, lines 5 to 13.

Similar exchanges regarding Chadwell's lack economics-related background are found at **Ex. B., page 20, line 18, to page 21, line 11** (two years of undergraduate work at Texas Tech University; no economics training); **page 22, line 23, to page 23, line 25** (work towards master's degree at Texas Tech University; no economics training); **page 24, line 17, to page 26, line 4** (employment as a vocational rehabilitation counselor with the Texas Commission for the Blind; no economics training); **page 36, lines 6 to 12** (internship at the VA Medical Center in Waco, Texas, under the auspices of her doctorate program; no economics training); **page 42, lines 9 to 22** (employment as a vocational psychologist with the VA Medical Center in Dallas; no economics training); **page 49, lines 9 to 20** (as a private practice organizational consultant through 2001).

Chadwell's doctoral dissertation was entirely unrelated to economics, investments, accounting, or business statistics. **Ex. B, page 36, lines 6 to 12.**

Also, Chadwell has never written on any subject relevant to this lawsuit. **Ex. B, page 26, lines 5 to 19.**

b.

OTHER TRAINING

Chadwell's deposition testimony includes a summary of her experience, which plainly demonstrates a lack of qualifications to offer "expert" testimony on economics-related topics or theories, or calculations related to present value, future earning capacity, worklife expectancy, replacement cost for household services, investment values, and likely future employment. These are all hard, statistical based economic issues. Chadwell's formal education and employment, her

skill, expertise, and training, comprised psychological and vocational, rehabilitation issues. Of course, this would be besides her three-week course in Las Vegas, Nevada, through VEI, in 1994.

Q All right. So that we can understand what you've essentially been doing since 1986 through April of 2001, it was organizational consulting, career counseling, couples counseling, individual counseling, and psych evaluations, which were - or evaluations which were predominantly psych but with some vocational evaluations, and you were not doing vocational rehabilitation counseling, although you had clients that you were providing other services to who were also vocational rehab clients?

A Right.

Q Is that all fair?

A Again, with one exception or provision. Sometimes with the clients, particularly the ones - well, no, both the regular counseling clients and the career counseling clients, sometimes part of what I did was vocational rehabilitation. The whole idea of vocational rehabilitation is rehabilitating someone to be able to function well in the workplace, and a part of that is work-adjustment skills. I taught work adjustment skills at the VA Medical Center, and I also taught it with some of my clients in the private practice. So in that small way, I was still providing some vocational rehab services.

Q But it was a very small part of your day-in, day-out practice?

A Yes

Q Okay. So in reality, you didn't hold yourself out in private practice as predominantly being a vocational rehabilitation counselor, you were a counselor that may have done those kinds of clients, but you were providing, on the whole, general psychological counseling services?

A I emphasize my vocational expertise because I marketed, also, among some other psychologists. But I had a predominantly general practice with an emphasis on the vocational.

Q Right, but no vocational rehab?

A Right.

Ex. B, page 59, lane 15, to page 61, line 3.

During examination of Chadwell by the attorney who hired her as an expert, she testified as to how her vocational training, as discussed above, helped her in formulating her opinions in this case. She discussed how it helped her in determining pre and post-injury earning capacities, as well as worklife expectancy. *Ex. B, page 305, lines 10 to 25.* Yet, as the discussion of unreliability of Chadwell's opinions above shows, these were all figures that Chadwell: 1) ascertained in mechanical fashion from documents provided to Chadwell by VEI; 2) either failed to confirm, or did not even seek, because the attorney who hired her did not request it; and 3) then simply plugged into VEI's VALE computer program to derive figures appearing in her proffered expert report.

The following exchange demonstrates the extent Chadwell's economics-related training: It also points out the tremendous gap between Chadwell's qualifications and the specialized knowledge implicated by Plaintiffs' claim for lost earnings and replacement costs for household services.

Q Let's talk about very briefly, you went to - well, you had three training sessions involved in the University of Nevada at Law Vegas, correct?

A Yes, right.

Q Did you go there time?

A Yes.

Q How long did each one last?

A Well, I had the three weeks with them and, I think; another three weeks with VEI. And not all of VEI's was economic, most of it was other things. Most of the training at UNLV was economic.

Q So almost three weeks of training in your life in economics; is that correct?

A Actually, that wasn't in economics, that was three weep in that very tiny portion of economics that has to do with determination of present value figures in litigation.

Q Okay. Bottom line is, any kind of economic training that you've had is limited to something less than three weeks?

*A Yes. My economic training is limited to this one area of economics.
MR. STEWART: Non-responsive after yes.*

Q (BY MR. STEWART) You've had no training in accounting?

A No.

Q You've had no training in investments?

A No, that's not true. This included some training in investments.

Q So this - you've had this less than three weeks in economics with the remainder in investments?

A I'm sorry?

Q Well, you had a total of three weeks in Las Vegas?

A Economics and investments, they - I mean, it was all part of that.

Q All right. And you've had - in terms of business statistics, have you had any training?

A No.

Ex. B, page 180, line 7, to page 181, line 24.

Q All right. So the sum total of the Dallas branch of Vocational Economics, Inc, is three weeks in Las Vegas in 1994?

A The sum total of my formal training in economics was those three weeks, plus a little bit from the training from VEI

Ex. B, page 184, line 22, to page 185, line 2.

Thus, the sum of Carrell Chadwell's education, skill, training and experience in the disciplines, formulations, calculations, evaluations, etc., which are applicable to the Plaintiffs' claim

of lost earnings and replacement costs for lost household services comes from: 1) her association with VEI, and their proprietary three-week economics course in Las Vegas (along with a small amount of economics-related training from VEI personnel directly in connection with establishing Chadwell as a Dallas franchise); 2) the proprietary VALE software and economic-related documents VEI sends Chadwell to aid her in testifying as a expert through their service; and 3) her own self-proclaimed expertise on the subject matter.

Based on the foregoing, the proposition that Carrell Chadwell, PhD, is qualified to offer testimony on the lost earnings for decent Jeffrey Leonard under applicable law strains the bounds of reasonableness. If the Court has any doubt, Defendant submits the following exchanges, which are almost surreal and point up the absurdity of the proposition.

c.

COMPARISON WITH DOCTORATE-LEVEL ECONOMIST EXPERT

In the course of being questioned about her qualifications versus those of Defendants' lost earnings expert, a doctorate level economist, Chadwell testified Defendant's expert was as qualified as she to opine on a number of the issues involved in determining Jeffery Leonard's lost earnings. However, she, Carrell Chadwell, PhD, is better qualified than a doctorate-level economist to determine whether Jeffrey Leonard's worklife was more like that of a male or a female, and what method of determining present value is most appropriate in this case.

Q And so fringe, offset, disabled, age, actual earnings, and education; those were all the fields that you ultimately had to enter things into?

A No. I also had to choose which gender of worklife expectancy to use. There are times –

Q Male?

A *Well, there are times when you would use something different. More typically it's when you determine that a female has a more typically male pattern, but - so I selected that, yes.*

Q *You selected male and it took no specialized training for that, did it?*

A *No, actually, it does because you can't assume that a man's worklife is typical of the average male or a woman's of a woman. So it does take some expertise to determine which of those categories is he most similar to.*

Q *So you could have chosen male or female?*

A *Yes.*

Q *And it took specialized expertise to choose male for this person?*

A *Not in this - well, yes.*

* * *

Q *All right. So on the – I just want to understand; on the fringe, Helen Reynolds is just as qualified as you to determine the fringe field, right?*

A *Yes.*

Q *The offset or some other present value process, she's just as qualified as you to determine that?*

A *Yes.*

* * *

A *She is not as qualified as I to determine whether or not his actual earnings constituted a reasonable earning capacity.*

Q *But you both chose the same thing?*

A *Yes, we did.*

Q *All right. Education, she's just as qualified as you?*

A *Yes.*

Q She's not as qualified as you to select the male or female, the two choices that you had for gender; you tell us that she s not as qualified as you to make that decision?

A That's right.

* * *

Q And don't you think that in the final analysis, she is more qualified to determine what method is more appropriate from an economic standpoint, offset or something else?

A No.

Q All right. And you had three weeks of economics and she is a doctorate level economist?

A Yes.

Q All right.

Ex B, page 320, line 22, to page 325, line 4.

D.

RELEVANCE

To be admissible, a proffered expert's testimony must also satisfy the third prong of the Daubert; it must be relevant. A tight fit must exist between the facts upon which the proffered expert relies in formulating their opinions and the underlying facts of the case. Opinions based on assumed, erroneous, or insufficient facts, or studies with a weak connection to the subject matter of the case being litigated, do not satisfy the threshold requirements for admissible expert testimony.

At numerous points, Chadwell³'s deposition testimony reveals her opinions to be irrelevant by this measure. Her opinions are based on assumed, erroneous, or insufficient facts, such that the

opinions will be of no assistance to the jury in determining the issues before it, and actually serve only to confuse, mislead, or prejudice the tier of fact.

Examples supporting Defendants' argument are set forth below. Several of the examples are also referenced in this Motion's section III, B, 3, a, on the lack of reliability above. They are restated here for the Court's convenience.

a.

EMPLOYMENT HISTORY

In determining Jeffrey Leonard's future earning capacity, Chadwell chose to use the broader category of civilian worker instead of service worker, despite Jeffrey Leonard's employment history as a service worker. Chadwell testified that this speculative choice as to category included all the jobs that he has done and all the jobs he is likely to do. A mere two questions later, however, she also testified she did not have a lot of information about Jeffrey Leonard's work history. *Ex B, page 129, lines 1 to 11.* Thus, there is a poor fit, a weak nexus, between the facts of Jeffrey Leonard's work history as it relates to his future earnings capacity and Chadwell's opinion, thereby rendering her opinion irrelevant under applicable law.

b.

WORKLIFE EXPECTANCY

In determining Jeffrey Leonard's worklife expectancy for purposes of deriving his future earning capacity, Chadwell's analysis did not incorporate or otherwise consider the possible shorter life expectancy of age 45 for Jeffrey Leonard, based on opinions expressed in this case about his true life expectancy. She did not make any calculations taking this possibility into account. Also, she testified that she could not do an accurate analysis in light of this possibility because there are no

life tables for someone with a heart condition. *Ex. B, page 158, line 10, to page 161, line 17.* Thus, one finds further support for the argument there is a poor fit between the actual facts of this case and Chadwell's opinion, or the methodology she used in deriving her opinion, thereby rendering her opinion irrelevant under applicable law.

c.

PAST EARNINGS

In reviewing Jeffrey Leonard's past earnings to aid in determining his future earning capacity, Chadwell decided to use his actual past earnings as opposed to a proxy, based on a statistical employment/employee profile. However, one finds she knew little about his past actual earnings and did not endeavor to find that information out.

Q Okay. Where did he work from 1988 to 1999?

A Let me see if know that. I don't know. I had assumed it was probably the job at Cardinal Tools, but I don't know that for a fact

Q Were you aware of a fact that he did not file an income tax return and no one did on his behalf for the periods of December 31st, 1997, to December 31st, 1998, to December 31st, 1999?

A No.

* * *

Q (BY AM. STEWART) So you don't know what his actual earnings were during that period of time?

A No.

Q Okay. And you chose to use an actual earnings?

A Right.

Q Is it your belief that he earned nothing during that period of time?

A *I have no idea. He was unemployed part of that time earning nothing, and he probably had jobs during part of that time. I don't know what he earned.*

Q *And chose not to report the income?*

MR. MARYE. *Objection, form.*

Q *(BY MR. STEWART) Ma'am, it's not your province to determine what's relevant or not.*

A. *Well, to determine what's relevant to my analysis, yes. And I don't see that as relevant.*

Q *Well, what's relevant to your analysis because you've chosen to take actual earnings instead of proxy earnings is to get as much information as you can probably get about his actual earnings, isn't it?*

A *I got as much as was available to me, yes.*

Q *Did you ask anyone about his actual earnings for 1997?*

A *I asked, I believe, Attorney Marye, if there were any data available or W-2s, stuff like that, and there was nothing available.*

Q *Okay. Did you make any effort to determine exactly where he was employed in '97, '98, or '99?*

A *No.*

* * *

Q *You don't know the actual earnings that you've computed based upon the historical information, correct?*

A *Correct.*

Ex. B, page 221, line 2, to page 223, line 7.

The foregoing exchange suggests there is absolutely no fit or nexus whatsoever between the analysis Chadwell was doing with regards to her opinions of decedent Jeffrey Leonard's future earning capacity and the facts of his work history, let alone a nexus sufficient to satisfy the strict

requirements for admissible expert testimony. Based on the foregoing, it would be reasonable to suggest that in the view of Carrell Chadwell, PhD, Jeffrey Leonard's actual work history, employment status, and past earnings, were entirely unessential for her analysis. Perhaps an inconvenience, considering how she ignored them. And perhaps, Jeffrey Leonard's work history, employee profile, and household contributions, are simply not what Plaintiffs need them to be for purposes of this case.

d.

CLAIMED SUPERIOR KNOWLEDGE OF HOURS SPENT ON HOUSEHOLD SERVICES

To add insult to absurdity, Chadwell brazenly testified as follows regarding the number of hours spent on household services in the Leonard household.

FURTHER EXAMINATION BY MR. CAMPBELL:

Q I just want to make sure the records' clear; so when you learned in performing your Household Services Analysis that there were other members of the household that might contribute to those services, did you go interview them?

A No.

Q Are you familiar with the concept of secondary gain?

Q You know because of your experience and your familiarity with that concept that Michelle Jones would tend to overstate what Mr. Leonard did around the house, true?

A It's possible.

Q It's likely, isn't it?

A It's possible. But it doesn't matter she did because I didn't use her total number of hours anyway.

Ex. B, page 326, line 17 to page 327, line 8.

So, not only would Chadwell presume to understand such economic concepts as earning capacity, present value, investment values and strategies, replacement costs for household services, and worklife expectancies, with three weeks of economics training under the auspices of Vocational Economics, Inc, but she would also know enough - somehow, by some power not imparted to doctorate-level economists or the people who lived with Jeffrey Leonard - about the household she is analyzing to disregard relevant information from a member of that household. This is a textbook example of an inadequate fit between the opinions of a witness and the facts of the case. Chadwell selected the information to plug into her pop-up windows and obviously had no use for information with a basis in the facts of the case.

IV.

CONCLUSION

Carrell Chadwell, PhD, call herself an expert. Plaintiffs have designated her as an expert. Depending on the outcome of Defendant's instant Motion, Chadwell might testify before the jury as an expert. However, Defendants would respectfully submit, how can the Court know she is an expert for purposes of admitting her testimony as expert testimony? The economics-related issues on which Chadwell presumes to testify involve theories, calculations, forecasts, formulas, and statistical data that are wholly inaccessible to the layperson. Accordingly, these issues are the province of economists, statisticians, theoreticians, academics, politicians and staff, governmental administrators, bankers, stockbrokers, financial planners, and professional investors, to name a few. How can, it be ensured that Carrell Chadwell, Ph.D., an vocational economist with VEI, is truly an expert on Plaintiffs' claim of lost earnings and replacement costs for household services resulting from the death of Jeffrey Leonard, and that she will not seriously mislead, confuse, and prejudice

the jury by masquerading as an expert behind paper credentials punctuated with words like "vocational" economist" and "vocational counselor, and impressive buzzwords at trial like "offset method, " "CPI," and "91 -day treasury bill?"

Cross-examination at trial in the pressure of a jury is not the proper method for seeking to exclude, strike, or limit Chadwell's testimony, considering Daubert. The issue as to which Chadwell presumes to testify as an expert are subject to the Daubert standards, because they concern scientific, technical, or specialized knowledge, as discussed in the preceding paragraph. Thus, the Court is to scrutinize the reliability and relevance of Chadwell's opinions, as well as her qualifications. Doing so, requires the Court to look not at Chadwell's conclusions - their reasonableness, plausibility, appeal, or popularity - but at how she reached them. In other words, the Court must look under the hood of the opinions to make sure they are what Carrell Chadwell says they are, and she is who she says she is. This is the only way to ensure her opinions are those of an "expert" and not an "advocate."

Based on the foregoing, Defendants submit Chadwell's opinions fail abysmally to satisfy the threshold requirements for expert testimony under Daubert and its progeny. Thus, her testimony should be stricken, excluded, or limited at trial.

WHEREFORE, PREMISES CONSIDERED, Defendants pray this Court grant this Motion, and strike, limit, or exclude the opinions of proffered expert,, Carrell Chadwell, PhD, and for such other and further relief in law and in equity, as this Honorable Court may deem just, proper, and equitable.

Respectfully submitted,

/s/ Linda M. Stimmel

Linda Stimmel (by permission Victor Hlavinka) (Attorney
In Charge)

State Bar No. 00788475

James M. Stewart

State Bar No. 19211100

Stewart & Stimmel

1701 Market Street

Suite 318, LB 18

Dallas, TX 75202

214-752-6995

214-752-6929 (Facsimile)

**Attorneys for Defendants Dana Bleakney,
M.D. and
Baylor Medical Center at Garland**

/s/ Alan Cambell

Alan Campbell (by permission Victor Hlavinka)

State Bar No. 03692700

Cowles & Thompson

901 Main Street, Ste. 4000

Dallas, 75202

214-672-2000

214-672-2378 (Facsimile)

**Attorney for Anatomic and Clinical Pathology
Laboratories, L.L.P.,
M.C. Perry, M.D., P.A. and M.C. Perry, M.D.**

/s/ Russell Schell

Russell Schell (by permission Victor Hlavinka)
(Attorney in Charge)

State Bar No. 17736800

Jennifer F. Kashar

State Bar No. 24002074

Schell, Quillin, Mitchel & Cooley, L.L.P.

14185 Dallas Parkway, Suite 1000

Dallas, TX 75240

(214) 665-2000

(214) 754-0060 (Facsimile)

**Attorneys for Steven Hoel, M.D., Emcare, Inc.,
Emcare Holdings, Inc., Emcare of Texas, Inc., Emcare
Physicians Network, Inc., Emcare OP,
LP.,
Emcare Medical Services, Inc., Emcare
Physician Staffing Services, Inc.,
and Douglas Sheena, M.D.**

/s/ Stan Thiebaud

Stan Thiebaud (by permission Victor Hlavinka)
(Attorney in Charge)

State Bar Card No, 19836200

Cathryn R. Paton

State Bar Card No. 00797216

Stinnett Thiebaud & Remington L.L.P.

4800 Fountain Place

1445 Ross Avenue

Dallas, TX 75202

(214) 954-2200

(214) 754-0999 (Facsimile)

**Attorneys For Defendant
Health Texas d/b/a Garland
Family Practice Center a/k/a
Baylor Family Practice Center**

CERTIFICATE OF SERVICE,

In keeping with Rule 21a of the Texas Rules of Civil Procedure, I hereby certify that a true and correct copy of the foregoing instrument has been served upon all attorneys of record via:

Certified Mail/Return Receipt Requested

Telephonic Document Transfer (FAX)

Hand Delivery

Regular Mail

Dated: October 15, 2002

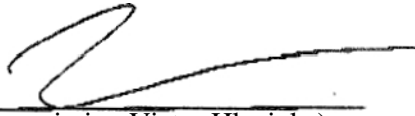

/s/ James M. Stewart

James M. Stewart (by permission victor Hlavinka)

Linda M. Stimmel

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that a conference was attempted with Plaintiffs regarding the merits of the foregoing Motion. No agreement could be reached; therefore, the Motion is presented to the Court for determination.

/s/ James M. Stewart 
James M. Stewart (by permission Victor Hlavinka)
Linda M. Stimmel

FIAT

This matter has been set for hearing on the ___ day of _____, 2002 at _____
o'clock. ___m.

Judge Presiding