

Calculating Economic Losses in Personal Injury and Wrongful Death Cases in Alabama

Charles L. Baum II, Ph.D.¹

Introduction

In personal injury PI and wrongful death WD cases, attorneys may consider hiring a forensic economist (an economist serving as an expert in a legal matter) to calculate the present value of economic losses, such as from lost earnings. The economist is to assist the court by providing estimates that are to a reasonable a degree of economic certainty, as the case permits.

Alabama statutes and case law for WD torts only allow for punitive—not compensatory—damages.¹ When awarding damages, Alabama Pattern Jury Instructions preclude consideration of “the (pecuniary) (monetary) value of the life of the decedent,” as well as other financial and pecuniary losses sustained by the survivors of the decedent as a result of the decedent’s death.² Alabama courts acknowledge that this is designed to discourage future homicides rather than to compensate survivors for pecuniary losses.³

An important exception to this is for WD torts brought under the 1908 Federal Employers Liability Act (FELA) for railroad workers and the 1920 Jones Act for maritime workers in Alabama courts (where Alabama courts and Federal courts have concurrent jurisdiction). In these cases, compensatory losses for survivors are allowed, so calculating the present value of economic losses may be important.⁴ For example, jury instructions for Alabama FELA and Jones Act cases state that compensatory damages may include, among other things, “(a) benefits of monetary value, including money, goods and services, that the decedent customarily contributed to each survivor; (b) decedent’s present and future earnings; (c) other money or assets the decedent would have received in the future during his lifetime....”⁵

Similar to FELA and Jones Act cases, Alabama PI cases allow for compensatory damages for those injured.⁶ Alabama Pattern Jury Instruction explicitly mention “loss of earnings” as permissible compensation,⁷ potentially necessitating the present value calculation of future economic losses.

I. Earnings Capacity

Forensic economists typically measure economic losses from lost earnings using “lost earnings capacity.” Essentially, the economist will compare earnings capacity before an event, such as an injury, with earnings capacity after the event.⁸ Earnings capacity is an individual’s ability to earn income when working to their potential, measured by the amount the individual is able to earn.⁹ Earnings capacity should not be affected—or reduced—by an individual’s decision to stay home to care for a child or sick family member (instead of working) or to work a job paying less than the maximum amount the individual has the ability to earn.¹⁰

Most economists agree that a good measure of earnings capacity is actual earnings. When an

¹ Professor of Economics, Middle Tennessee State University, W: (615) 556-9287,

baumeconomics@gmail.com. (Author biographical sketch at the end of the document.)

individual's past earnings is not deemed to be an accurate reflection of their earnings capacity (or when information on past earnings is unavailable), the economist may use occupation-specific average earnings reported by the Bureau of Labor Statistics. This information is available in their report, *Occupational Employment Statistics*, for each state and for each metropolitan and nonmetropolitan area.

As explained above, Alabama courts allow recovery for the pecuniary value of lost earnings in PI cases and in FELA and Jones Act matters. The appropriate measure in these instances appears to be lost earnings capacity: "In a personal injury action, a plaintiff is entitled to recover both the value of the work time lost prior to the trial ("lost earnings") and the value of the reduction in his ability to earn a living ("impairment of earning capacity)." ¹¹ This also illustrates that plaintiffs can recover back pay—defined as losses from the tort to the trial—and front pay—which are losses incurred after the trial. The courts, in their instructions to juries, provide factors to consider when awarding damages for what would reasonably have been earned absent an injury, which include "the plaintiff's earning capacity, his earnings, the manner in which he ordinarily occupied his time before the injury, (and) his inability to pursue his occupation." ¹² Much the same, in Alabama FELA and Jones Act cases, lost past and future earnings are recoverable, and earnings capacity is considered. ¹³

II. Employment Benefits

Common employment benefits include various types of insurance (e.g., health, dental, vision, disability) and employer contributions, on behalf of the worker, to retirement funds and government programs (e.g., Social Security programs, workers' compensation, and unemployment insurance). Each has value, so forensic economists often include lost employment benefits as part of economic losses. ¹⁴ The pecuniary value of an individual's employment benefits could be the amount actually paid by the employer to provide them. However, this amount may be different than the cost the individual

(or their survivors) would incur to replace them in the market due to group rates and tax deductibility. Market quotes could be used to identify the replacement cost for some benefits, such as health insurance. Alternatively, the economist may identify the value of lost fringe benefits using national or occupation-specific averages. The Bureau of Labor Statistics regularly provides information on the cost of employment benefits in their report, "Employer Costs for Employee Compensation." ¹⁵ This is provided separately for civilian, private-industry, and state and local government workers and for workers by occupation. Currently, the employer cost of fringe benefits is about 26 percent of wages on average for private-sector workers. ¹⁶

Alabama courts consider damages from lost employment benefits, but these losses must be proven to be awarded. ¹⁷ Alabama statutes do not provide unique instructions for calculating the value of lost employment benefits, and such losses should likely be treated in the same manner as lost wage and salary earnings.

III. Household Services

It might seem that lost household services are recoverable for the same reasons lost earnings are recoverable, but Alabama statutes and Alabama case law do not mention this source of loss, with perhaps one exception: parents have been awarded damages for lost services that would have been provided by an injured minor child in Alabama PI cases. ¹⁸ Nevertheless, the pecuniary value of lost

household services is typically recoverable in many other states and in suits against the United States government, so this may be an area for Alabama courts to evaluate further.¹⁹ FELA and admiralty-maritime cases filed in Alabama have considered the value of lost household services.²⁰

Generally, economists understand lost household services to be household chores that would otherwise have been provided, such as cleaning; cooking; lawn and garden work; shopping and consumer goods purchasing; household management; and caring and helping other household or family members. Information on time that otherwise would have been spent providing household services by the injured party may be unavailable. When this is the case, many forensic economists project the value of household services using Expectancy Data (2015), which is based on average time spent on various activities as reported by the U.S. Bureau of Labor Statistics from the American Time Use Survey and corresponding average occupation and industry wages as reported by the U.S. Bureau of Labor Statistics' Occupational Employment Statistics (Bureau of Labor Statistics, 2014a; 2014b).²¹

IV. Growth Rates

Earnings typically grow over time with inflation and productivity. Wages would increase over time with prices to maintain purchasing power, and wages would increase over time as workers become more productive with the newest and latest technologies.²² Workers also become more productive over their careers as they acquire work experience and learn new skills on the job, although wage growth often slows or stops as workers approach retirement.²³

Forensic economists may use an individual's past rates of earnings increases to project future earnings growth. However, when information on an individual's past earnings is not available, economists may predict future earnings increases using historical growth rates experienced by all or part of the labor force. The Bureau of Labor Statistics provides this kind of information regularly in two reports, *Employment and Earnings* and *Employment Cost Index*.²⁴ In addition, analysts forecast earnings growth rates for several federal agencies (the Congressional Budget Office, the Social Security Advisory Board, and the Economic Report of the President), and these forecasts are publically available.²⁵

To make the injured party whole, Alabama courts allow awards of front pay to grow over time with anticipated raises.²⁶ However, the growth rate to be used is not specified by Alabama statutes or case law.

V. Worklife and Life Expectancies

Worklife expectancy is often used when calculating front pay to estimate the number of years an individual would have remained in the labor force and been employed. Many forensic economists identify worklife expectancy using tables published by researchers who have projected worklife expectancies using federal government data, accounting for the probability of living, having the ability to work (e.g., not disabled), and being willing to work (e.g., not voluntarily leaving the labor force).²⁷ These researchers typically provide projections separately by age, gender, race, and education for individuals currently in and not in the labor force. Alternatively, some economists use the LPE method, which estimates the annual probability an individual would have lived (L), participated in the labor force (P), and been employed (E). The forensic economist will often tailor

the probabilities used for the L, P, and E factors for the individual's gender, race, age, and education. In still other instances, the forensic economist will project worklife expectancy using a fixed point, such as the Social Security Normal Retirement Age (NRA), which ranges from 65 to 67 depending on date of birth.

Alabama courts recognize the appropriateness of examining losses over one's worklife,²⁸ but they state no preference for which methodology to use when approximating the number of remaining years of employment absent the tort. Alabama statutes mandate that life tables be provided regularly by the superintendent of insurance.²⁹ These tables are to be used in court, but they are not necessarily considered conclusive. Alabama Pattern Jury Instructions imply the information these tables provide may be adjusted for a case's particular circumstances,³⁰ and supplemented with additional information, as illustrated in Alabama case law.³¹ An economist would likely recognize that remaining worklife expectancy is less than remaining life expectancy.

VI. Mitigating Factors

Forensic economists typically assume that those harmed take reasonable actions to limit damage and offset losses with mitigating factors.³² For example, in PI cases, eventually returning to work to receive earnings and employment benefits after an injury, when possible, is a primary way of limiting damage. Economists may also consider deducting collateral sources of income from losses, as mitigating factors. The intent of this would be to prevent double recovery. However, deducting collateral sources of income received by the injured party that are not provided or financed by the defendant may become a windfall for the defendant. Just the opposite, a payment from a policy financed by the defendant would typically be credited against the liability of the tortfeasor.

Alabama rules traditionally have made pecuniary benefits from collateral sources other than the defendant inadmissible.³³ However, legislative tort reforms passed in 1987 currently require collateral medical (and hospital) benefits in cases involving medical expenses to be disclosed but not necessarily deducted from economic losses.³⁴ Forensic economists may wish to refrain from deducting collateral medical benefits when a third-party has subrogation rights to receive reimbursement from the plaintiff in the event of an award. In Alabama FELA and Jones Act cases, the injured party has a duty to mitigate.³⁵ However, if the plaintiff does not adequately attempt to mitigate, then it would be the defendant's responsibility to establish that.³⁶

VII. Personal Maintenance Expenditures

In WD cases, but not PI cases, forensic economists may deduct an amount that the decedent is projected to have spent on their own consumption, had they lived, from the economic losses. This amount may be approximated from financial records showing what the decedent actually had been spending on their own consumption. Unfortunately, detailed and accurate records on an individual's consumption are often not available. In these instances, the economist may approximate the decedent's own consumption using national consumption averages. The Patton-Nelson tables, which are published periodically based on Consumer Expenditure data, allow the economist to approximate the percent of total household income the decedent would have consumed, adjusting for the decedent's gender, household size, and household income.³⁷ It is important to adjust for household size because individuals consume a smaller portion of household income in larger

households and some household consumption (e.g., the use of a refrigerator) is common to all household members. It is important to adjust for household income because the propensity to consume (but not the level of consumption) decreases with income. These percentages are based on total household income rather than on the decedent's earnings because a decedent may have spent more on their own consumption than they earned using income from other sources.³⁸

Since only punitive damages are allowed in Alabama WD cases, neither Alabama statutes nor Alabama case law mention personal consumption deductions.³⁹ Economists have deducted consumption expenditures in WD cases with federal guidelines.⁴⁰

VIII. Discount Rate

With rare exceptions, forensic economists discount future losses to their present value to identify the lump-sum payment—paid in the present—that will grow when invested to the amount lost earnings and benefits would have been in the future. If the nominal amount of future losses were paid in the present without discounting, then this payment plus interest when invested would grow to a larger amount in the future than the losses. Amounts in the more distant future are discounted by more than losses in the nearer future because a longer period is available over which to earn interest.

Rates of return are higher on riskier investments (e.g., stocks) than on less risky assets (e.g., bonds), all else equal, to compensate the investor for assuming greater risk. Many forensic economists⁴¹—but not all⁴²—intend for those with losses to bear no risk to attain a sufficiently high rate of return to be made whole from a lump-sum payment made in the present. In turn, most economists intend to discount using the risk-free rate of return, so that those with losses are not penalized by incurring risk. Many forensic economists believe that the investment closest to being risk-free is a U.S. Treasury Security and so will use as their discount rate the rate on a 3-month Treasury bill, a 10-year Treasury note, or a 30-year Treasury bond or the rates on a mix of treasuries.

Economists may base their discount rate on historical averages, current rates, or forecasted future rates. Historical averages may be made over the past 20 or 30 years or over a past period whose length mirrors the period into the future over which losses are projected. Current rates represent the rates at which a lump-sum payment could be invested today, but current rates may not accurately reflect future rates.⁴³ Forecasted future rates are inevitably based on historical rates and are provided by economists for the Social Security Advisory Board, the Congressional Budget Office, and the Economic Report of the President.⁴⁴

Some economists use a net discount rate instead of separately incorporating earnings growth rates and nominal discount rates. A net discount rate is the nominal discount rate (referred to as the discount rate above) minus the earnings growth rate. In rare instances, economists will use the total offset method, which assumes wage growth equals the nominal risk-free interest rate, in which case there is no net discounting.

When awarding future damages (e.g., front pay) in PI cases, Alabama courts are guided by the present value of future lost earnings.⁴⁵ Alabama Pattern Jury Instructions state, “In arriving at the amount of your award for any loss of [future earnings] [earnings capacity], you should consider...the present cash value of any loss of [future earnings] [earnings capacity] which you are

reasonably satisfied from the evidence in the case that plaintiff is reasonably certain to suffer in the future, as a proximate result of the injury in question. ... 'Present cash value' means the sum of money needed now, which, when added to what the sum may reasonably be expected to earn in the future, will equal such earnings at the time in the future when these earnings would have been received."⁴⁶ However, the specific rate and methodology to use is not currently stipulated or defined.^{47,48} The below-market discount rate method for discounting to present value is to be used in Alabama FELA and Jones Act cases.⁴⁹

IX. Interest

Just as economists discount future losses to their present value, economists may add interest to past losses.⁵⁰ A lump-sum received today can grow, when invested, to the projected amount lost in the future, and past losses, if invested, could have grown to a larger amount today. In Alabama, prejudgment interest may only be awarded when damages are certain.⁵¹ Since all damages in Alabama WD cases are punitive, courts believe it will be rare that prejudgment interest will be awarded in those cases.⁵² Economists have included prejudgment interest in Alabama FELA and admiralty-maritime cases.⁵³

X. Taxes

Lost earnings in PI and WD cases would otherwise—absent the tort—have been taxed, but any award for economic damages likely will not be.⁵⁴ As a consequence, forensic economists may deduct projected income taxes from their measure of economic losses. Alabama law does not address whether income taxes should be incorporated. In some instances (in PI cases), Alabama courts have held that income taxes need not be deducted.⁵⁵ However, federal guidance requires income taxes to be deducted from losses in FELA and Jones Act cases,⁵⁶ and economists in these cases filed in Alabama courts have done so.⁵⁷

Conclusions

This session will summarize common approaches used by economists to quantify economic losses. However, the economist must follow the guidance provided by Alabama statutes and case law. Lawyers should understand relevant Alabama court proceedings to know which methods are acceptable.

Author Biographical Sketch

Charles L. Baum is a professor of economics at Middle Tennessee State University, where he has taught since 1999. Baum received his Ph.D. in economics from the University of North Carolina-Chapel Hill earlier that year. From 2008 to 2014, he served as the chair of the MTSU Department of Economics and Finance. He is a member of the National Association of Forensic Economists (NAFE) and the American Academy of Economic and Financial Experts (AAEFE), and he has served as an economics expert for plaintiffs and defendants in numerous cases around the southeastern United States. Baum has published several articles in peer-reviewed economics journals on the methodologies used when calculating economic losses. In July 2015, Baum published an article in the *Tennessee Bar Journal* on guidance provided by Tennessee statutes on

economic damages in employment termination cases. To contact Baum, please e-mail him at baumeconomics@gmail.com or call at 615-556-9287.

¹ Code of Alabama 1975 §§6-5-410; *Tillis Trucking Co. v. Moses*, 748 So.2d 874, 890 (Ala.1999), *Savannah & Memphis Railroad Co. v. Shearer*, 58 Ala. 672 (1877).

² Alabama Pattern Jury Instructions §11.18.

³ *Savannah & Memphis Railroad Co. v. Shearer*, 58 Ala. 672, 680 (1877).

⁴ Another exception is Alabama WD cases brought against the United States government. Under the Federal Tort Claims Act, WD suits brought against the United States are to follow state laws on damages, with two provisions: prejudgment interest is not to be included and punitive damages are not allowed. However, no damages would then be recoverable in states (such as Alabama) that only allow punitive awards in WD cases. Therefore, federal guidelines make compensatory damages recoverable in these WD suits when state law only allows for punitive damages. See *Lauderdale v. U.S.*, 666 F.Supp 1511, 1516 (M.D.Ala.1987).

⁵ Alabama Pattern Jury Instructions §17.15 - §17.19.

⁶ *Carnival Cruise Lines v. Snoddy*, 457 So.2d 379, 381 (Ala.1984).

⁷ Alabama Pattern Jury Instructions §11.04.

⁸ Brookshire, Michael L., and Stan V. Smith. (1990). *Economic/Hedonic Damages: The Practice Book for Plaintiff and Defense Attorneys*. Chicago, IL: Smith Economics Group, LTD; Martin, Gerald D. (2010). *Determining Economic Damages*. Costa Mesa, CA: James Publishing Corporation.

⁹ Shahnasarian, Michael. (2011). *Assessment of Earnings Capacity*. Tucson, AZ: Lawyers & Judges Publishing Company Inc. (Third Edition); Horner, Stephen M., and Frank Slesnick. (1999). "The Valuation of Earning Capacity Definition, Measurement and Evidence." *Journal of Forensic Economics*, 12 (1): 13-32.

¹⁰ Corcione, Frank P., and Robert J. Thornton. (1991). "Female Work Experience: Voluntary Versus Involuntary Labor Force Activity." *Journal of Forensic Economics*, 4 (2): 163-174.

¹¹ *Carnival Cruise Lines v. Snoddy*, 457 So.2d 379, 381 (Ala.1984).

¹² Alabama Pattern Jury Instructions §11.10.

¹³ *CSX Transp., Inc. v. Miller*, 46 So.3d 434, 450 (Ala.2010); *Illinois Central Gulf R.R. v Russell*, 551 So.2d 960, 964 (Ala.1989).

¹⁴ Launey, George V. (1990). "On Valuing Lost Fringe Benefits in Death Cases." *Journal of Forensic Economics*, 3 (2): 86-86.

¹⁵ Bureau of Labor Statistics. (2014). "News Release." U.S. Department of Labor, Employer Costs for Employee Compensation - June 2014. Washington, D.C.: U.S. Bureau of Labor Statistics.

¹⁶ *Id.*

¹⁷ *Alphonso v. Esfeller Oil Field Const.*, 2009 WL 857392, *2 (S.D.Ala.2009); *Davis v. Copas*, 455 So.2d 27, 30 (Ala.Civ.App.1984).

¹⁸ *Gess v. U.S.*, 991 F.Supp. 1332, 1347, 1350, (M.D.Ala.1997); *Smith v. Richardson*, 277 Ala. 389, 394, 171 So.2d 96, 100 (1965).

¹⁹ For example, see *Lauderdale v. U.S.*, 666 F.Supp 1511, 1517 (M.D.Ala.1987).

²⁰ *Martinez v. Puerto Rico Marine Management, Inc.*, 755 F.Supp 1001, 1005 (S.D.Ala.1990); *Purdy v. Belcher Refining Co.*, 781 F.Supp. 1559, 1563 (S.D.Ala.1992).

²¹ Bureau of Labor Statistics. (2014a). “American Time Use Survey – 2014 Results.”

Washington, D.C., U.S. Bureau of Labor Statistics:

<http://www.bls.gov/news.release/pdf/atus.pdf>; Bureau of Labor Statistics. (2014b).

“Occupational Employment Statistics, May 2014 Data.” Washington, D.C., U.S. Bureau of Labor Statistics: <http://www.bls.gov/oes/tables.htm>; Expectancy Data. (2015). “The Dollar Value of a Day: 2014 Dollar Valuation.” Shawnee Mission, KS: Expectancy Data.

²² Becker, Gary. (1975). *Human Capital*. New York, NY: National Bureau of Economic Research.; Ben-Porath, Yoram. (1967). “The Production of Human Capital and the Life Cycle of Earnings.” *Journal of Political Economy*, 75 (4): 352-365.; Gilbert, Roy F. (1997). “Long-Term and Short-Term Changes in Earnings Profiles.” *Journal of Forensic Economics*, 10 (1): 29-49.

²³ Gohmann, Stephan F., Myra J. McCrickard, and Frank Slesnick. (1998). “Age-Earnings Profiles Estimates: Do They Change Over Time?” *Journal of Forensic Economics*, 11 (3): 173-188).

²⁴ Bureau of Labor Statistics. (2014). “Employment & Earnings Online.” Washington, D.C.: U.S. Department of Labor: <http://www.bls.gov/opub/ee/>; Bureau of Labor Statistics. (2014). “Employment Cost Index.” Washington, D.C.: U.S. Department of Labor: <http://www.bls.gov/news.release/eci.toc.htm>.

²⁵ Social Security Trustees Report. (2014). “2014 OASDI Trustees Report.” Washington, D.C.: Social Security Administration, 2014 OASDI Trustees Report, Economic assumptions and Methods, Tables V.B1 and V.B2.

²⁶ *Alphonso v. Esfeller Oil Field Const.*, 2009 WL 857392, *2 (S.D.Ala.2009); *Illinois Central Gulf R.R. v Russell*, 551 So.2d 960, 963 (Ala.1989); *Jack Cole Co. v. Hays*, 281 Ala 118, 199 So.2d 659, 665 (Ala.1967).

²⁷ Krueger, Kurt. (2004). “Tables of Inter-Year Labor Force Status of the U.S. Population (1998-2004) to Operate the Markov Model of Worklife Expectancy.” *Journal of Forensic Economics*, 17 (3): 313-381.

Millimet, Daniel L., Michael Nieswiadomy, Hang Ryu, and Daniel Slottje. (2003). “Estimated Worklife Expectancy: An Econometric Approach.” *Journal of Econometrics*, 113 (1): 83-113; Skoog, Gary R., James E. Ciecka, and Kurt V. Krueger. (2011). “The Markov Process Model of Labor Force Activity: Extended Tables of Central Tendency, Shape, Percentile Points, and Bootstrap Standard Errors.” *Journal of Forensic Economics*, 22 (2): 165-229.

²⁸ *Alphonso v. Esfeller Oil Field Const.*, 2009 WL 857392, *4 (S.D.Ala.2009); *Clark v. Container Corp. of America, Inc.*, 589 So.2d 184, 193 (Ala.1991); *Ensor v. Wilson*, 519 So.2d 1244, 1271 (Ala.1987).

²⁹ Code of Alabama 1975 §§35-16-3 and §§35-16-4.

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- ³⁰ Alabama Pattern Jury Instructions §11.20.
- ³¹ *Bostrom Seating, Inc. v. Adderhold*, 852 So.2d 784, 798 (Ala.Civ.App.2002).
- ³² Brookshire, Michael L., and Stan V. Smith. (1990). *Economic/Hedonic Damages: The Practice Book for Plaintiff and Defense Attorneys*. Chicago, IL: Smith Economics Group, LTD; Martin, Gerald D. (2010). *Determining Economic Damages*. Costa Mesa, CA: James Publishing Corporation.
- ³³ *Marsh v. Green*, 782 So.2d 223 (Ala.2000).
- ³⁴ Code of Alabama 1975 §12-21-45 (see also §6-5-522). *Crocker v. Grammer*, 87 So.3d 1190 (Ala.Civ.App.2011); *Marsh v. Green*, 782 So.2d 223 (Ala.2000).
- ³⁵ *CSX Transp., Inc. v. Miller*, 46 So.3d 434, 454 (Ala.2010).
- ³⁶ *CSX Transp., Inc. v. Miller*, 46 So.3d 434, 454 (Ala.2010).
- ³⁷ Ruble, Michael R., Robert T. Patton, and David M. Nelson. (2009). "Patton-Nelson Personal Consumption Tables 2005-2006." *Journal of Forensic Economics*, 20 (3): 217-225.
- ³⁸ Brookshire, Michael L., and Frank L. Slesnick. (2009). "Self-Consumption in Wrongful Death Cases: Decedent or Family Income?" *Journal of Forensic Economics*, 21 (1): 35-53.
- ³⁹ Relatedly, a court in an Alabama matter declined to deduct business expenses associated with traveling to work (*Alphonso v. Esfeller Oil Field Const.*, 380 Fed.Appx. 808, 810 (11th Cir.2010)).
- ⁴⁰ *Martinez v. Puerto Rico Marine Management*, 755 F.Supp. 1001, 1008 (S.D.Ala.1990); *Illinois Central Gulf R.R. v Russell*, 551 So.2d 960, 963 (Ala.1989).
- ⁴¹ Albrecht, Gary R. (1997). "The Need to Use Risk Free Discount Rates: A Comment." *Journal of Legal Economics*, 7 (1): 92-95; Gilbert, Roy F. (1991). "Forensic Discount Rates." *Journal of Legal Economics*, 1 (3): 40-53.
- ⁴² Breeden, Charles H., and Brian Brush. (2008). "The Plaintiff as Victim and Investor: Prudent Investing and the Calculation of Economic Damages." *Journal of Legal Economics*, 14 (3): 15-41.
- ⁴³ Rosenberg, Joseph I., and Rick R. Gaskins. (2012). "Damage Awards Using Intermediate Term Government Bond Funds vs. U.S. Treasuries Ladder: Tradeoffs in Theory and Practice." *Journal of Forensic Economics*, 23 (1): 1-31.
- ⁴⁴ Social Security Trustees Report.
- ⁴⁵ *Alphonso v. Esfeller Oil Field Const.*, 2009 WL 857392, *4 (S.D.Ala.2009); *Portis v. Wal-Mart Stores East, L.P.*, 2008 WL 2959879, *6 (S.D.Ala.2008).
- ⁴⁶ Alabama Pattern Jury Instructions, § 11.11.
- ⁴⁷ Attempts to add structure to the process of discounting to present value have been found to be unconstitutional (*Clark v. Container Corp. of America, Inc.*, 589 So.2d 184 (Ala.1991); *Lloyd Noland Hospital v. Durham*, 906 So.2d 157 (Ala.2005)).
- ⁴⁸ Alabama workers' compensation cases are to use a 6 percent discount rate (Code of Alabama § 1975 25-5-83; *Ex parte St. Regis Corp.*, 535 So.2d 160, 162 (Ala.1988); *McAbee Const., Inc. v. Allday*, 135 So.3d 968, 978 (Ala.Civ.App.2013)).

⁴⁹ *Culver v. Slater Boat Co.*, 722 F.2d 114, 118 (5th Cir.1983); *Reusch v. Seaboard Sys. R.R.*, 566 So.2d 489, 491 (Ala.1990); *J.F.P. Offshore, Inc. v. Diamond*, 600 So.2d 1002, 1004 (Ala.1992).

⁵⁰ Ault, David E., and Gilbert L. Rutman. (1999). “The Calculation of Damage Awards: The Issue of ‘Prejudgment Interest’.” *Journal of Forensic Economic*, 12 (2): 97-104; Losey, Robert L., Michael Mass, and Jingsan Li. (2002). “Prejudgment Interest: The Long and the Short of It.” *Journal of Forensic Economics*, 15 (1): 57-70.

⁵¹ *State Farm Mut. Auto. Ins. Co. v. Fox*, 541 S.O.2d 1070, 1072 (Ala.1989).

⁵² *State Farm Mut. Auto. Ins. Co. v. Fox*, 541 S.O.2d 1070, 1072 (Ala.1989).

⁵³ *Drexler v. Seaboard System R.R., Inc.*, 530 So.2d 754, 756 (Ala.1988); *Martinez v. Puerto Rico Marine Management, Inc.*, 755 F.Supp 1001, 1005 (S.D.Ala.1990); *Purdy v. Belcher Refining Co.*, 781 F.Supp. 1559, 1564 (S.D.Ala.1992).

⁵⁴ *Burford v. U.S.*, 642 F.Supp 635 (N.D.Ala.1986).

⁵⁵ *Alphonso v. Esfeller Oil Field Const.*, 2009 WL 857392, *2 (S.D.Ala.2009); *Portis v. Wal-Mart Stores East, L.P.*, 2008 WL 2959879, *5 (S.D.Ala.2008).

⁵⁶ *CSX Transp., Inc. v. Miller*, 46 So.3d 434, 457 (Ala.2010).

⁵⁷ *Illinois Central Gulf R.R. v Russell*, 551 So.2d 960, 963 (Ala.1989).