

2008
The Earnings Analyst's Vol. 1: 13-26

The Standard for Valuing Lost Household Services:
Necessary Life Care Cost, Faux Replacement Cost, or Utility Lost?

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Abstract

Most forensic economists use a faux replacement cost methodology for valuing lost household services that assumes away the critical problems of timing, managing and monitoring replacement workers who will hypothetically replace the services that were lost. This methodology has been accepted by many courts, but has been rejected at the highest appellate level in New York. In *Schultz v. Harrison Radiator Division* (1997), the highest appellate court in New York set forth a standard that treats lost household services as equivalent to life care costs in a life care plan. In this paper, we compare these two concepts with a "utility lost" specification for the value of lost household services based on welfare economics. We finally point out that the *Schultz* standard is less likely to result in double counting between household services and intangible elements of damages such as consortium and loss of enjoyment of life damages.

I. Introduction

In *Schultz v. Harrison Radiator Division* (1997), the highest appellate court in New York set forth a standard that treats lost household services as equivalent to life care costs in a life care plan. This decision effectively disallows the kind of household service testimony that many and probably most economic experts have been providing in other states¹ and requires a quite different approach that may well spread to other states. In this paper, we evaluate basic issues in the assessment of the value of household services. We then use that framework to consider the *Schultz* decision, the traditional methodology of economic experts, what we call the "faux" replacement cost approach, and the true utility meaning of lost household services. We argue

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~~Morris v. American National Can Co., 952 F.2d 200, 57 FEP Cases 946 (8th Cir. 1991).
Naylor v. Georgia-Pacific Corp., 74 FEP Cases 931 (N.D. Iowa 1995).
Patterson v. R.H.P. Healthcare Corp., 90 F.3d927 (5th Cir. 1996), cert. denied 72 FEP Cases 1504 (1977).
Pheaps v. Commonwealth Land Tile Insurance Co., 520 N.W. 2d 748, 3 AD Cases 1007 (Minn. Ct. App. 1194).
Reiley v. Cisneros, 835 F. Supp.96 (W.D.N.Y. 1996).
Signore v. People & Properties, Inc., 73 FEP Cases 289 (S.D.N.Y. 1997).
Taylor v. Central Pennsylvania Drug & Alcohol Services Corp., 890 F. Supp. 360 (M.D. Pa 1995).
Turic v. Holland Hospitality, Inc., 85 F.3d 1211 (6th Cir. 1996).
Weaver v. Casa Gallardo, Inc., 922 F.2d 1515 (11th Cir. 1991).~~

that the true utility meaning of lost household services cannot be reliably measured, as is implied by the *Schultz* decision.

The valuation loss of household services is typically regarded as a "soft" calculation in comparison with "lost earnings" and "lost financial support" calculations by an economic expert. If a worker has an established earnings record for which there is substantial documentary evidence, a projection of lost earnings starts from a foundation that both sides in a litigation must treat as given. Valuations of household services, on the other hand, typically start from an estimate of the replacement cost for time used by a decedent or injured party in providing those services. There is typically no pre-existing record of the time or the specific services the individual had been providing before the death or injury.² However, the injured person's accounts will be based on that person's best recollections and not on specific records that were contemporaneously maintained. There will also be questions about whether the person's best recollections are self-serving rather than objectively realistic. As such, plaintiff attorneys may decide to forego assessments of lost household services to avoid "contaminating" the "harder" calculations of lost earnings with the "speculativeness" of a lost household service calculation. This is particularly the case with male personal injury victims with high earnings rates since the inclusion of a lost household service calculation would only increase total losses by a relatively small percentage of total damages.

In New York and at least anecdotally in other legal venues, the courts have also been concerned about the "softness" of assessments of lost household services, but from a broader perspective. The concern has not only been with the "softness" of the calculations themselves, but with the significant probability of overcompensation of the injured party. For example, assume that an individual has been awarded \$100,000 for lost household services resulting from an injury and that the \$100,000 is somehow an accurate measure of the cost of replacing the services that the individual has lost (an issue that will be considered below). If the individual or family chooses not to spend part or all of the \$100,000 in providing replacement of the pre-injury household services, it follows that the individual's alternative use of part or all of the \$100,000 was more valued (in utility terms) than the replacement of the pre injury household services by that individual or family.

Assume that the cost to replace the household services of a the decedent would be \$90 per week, but the value to the family of replacing those services is only \$60, given that the family can reallocate its own tasks in such a way as to provide the household services for themselves.³ Since the cost is \$90 per week and the benefit is \$60 per week, the surviving family members do not purchase any replacement services. Instead, they provide the replacement

services themselves and use the \$90 per week they were awarded to purchase other goods, services or assets. As a result, none of the \$100,000 awarded to pay for household services will be used for that purpose. Surviving family members will have still suffered a loss, but the loss will take the form of spending more time providing household services.

Based on the \$60 per week value the family placed on services that would have cost \$90 per week, the family would have been willing to pay \$66,667 to purchase replacement for the lost services. In the terms of this paper, \$66,667 is the utility value of the services that were lost. Looked at from a "make whole" perspective, the \$100,000 award for the decedent's lost household service provision was \$33,333 greater than the value of the lost household services. A loss whose replacement would have been worth \$66,667 to the injured family has been replaced by a \$100,000 payment.

It is equally important that none of the household services that were lost were "necessary" in the sense that the family "needed" to acquire them in the commercial marketplace. Surviving family members were able to, and chose to provide the replacement services themselves. In doing so, they suffered an opportunity cost in the form of losing alternative uses of the additional time they spent providing the replacement household services, but they suffered no out-of-pocket financial loss (unless family members gave up compensated labor market activity to provide these services). To be "necessary" in this sense is an important legal criterion in New York, as will be discussed in the next section. In this example, the replacement cost for lost household services was \$100,000. The family suffered a utility loss worth \$66,667. None (\$0) of the lost services were "necessary" in the sense that the family had to turn to the commercial market to obtain them.

This paper will argue that "utility" value, while easy to specify in an example, cannot be determined in an accurate and reliable fashion by any existing methodology. It will argue that the utility value is often lower than the true replacement cost for those services. It will argue that the true replacement cost of lost household services is often much higher than indicated in the "faux" approach taken by many forensic economists. It will argue that New York has set the standard for valuing lost household services as equivalent to the costs of a life care plan, based on the notion of "necessity" illustrated in this example. Finally this paper will argue that one of the chief advantages of the "necessary life care" standard is a reduction in the likelihood of double counting in tort awards for lost household services. Double counting can occur if the value of lost household services is treated as both an economic loss and a loss of consortium or lost enjoyment of life, both of which are "non economic" loss categories not normally addressed by economic experts.⁴

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II. The Necessary Life Care Cost View of Lost Household Services

In *Schulz v. Harrison Radiator Division*, the highest appellate court in New York set out the "necessary life care" standard for assessing loss of household services in New York.⁵ "Necessary life care" is not the term used in the decision, but the language used by the court indicates that the standard is the same as for the provision of life care to an injured person. In *Schulz*, the trial court had awarded the plaintiff \$43,096 for past loss of household services and \$328,265 for future loss of household services. These awards were appealed to the first appellate level and were affirmed, with further appeal to the highest appellate level, which agreed with the defendant's position and reversed these awards. The defendant argued that the Schulz family had not incurred any actual expenditures to replace past household services because the family had relied on the gratuitous assistance of relatives and friends to provide replacement services. The plaintiff had also been awarded lost wages of \$646,900 and future medical expenses of \$240,000, which were not at issue in the decision.

The *Schulz* Court agreed with the defendant that past losses could not be awarded since there were no out of pocket expenses, citing *Coyne v. Campbell* (1962) as a case on point.⁶ In *Coyne*, the plaintiff had been injured in an automobile accident. Since the plaintiff was a practicing physician and surgeon, he had received medical treatment, physiotherapy and care from his colleagues and had no out of pocket expenses. The *Coyne* court had ruled that he was not entitled to be compensated for the cost of his medical treatment because it had been provided by volunteer efforts of his colleagues. The *Schulz* court saw this as the issue at hand with lost household services.

The *Schulz* court went on to say that a damages award for gratuitously provided household services did not serve "a compensatory function" and was improperly made by the trial court. The *Schulz* court also added that: "The jury should also have been instructed that future damages for loss of household services should be awarded only for those services which are reasonably certain to be incurred and necessitated by plaintiff's injuries." It also rejected the argument that such an instruction did not require the plaintiff to become dependent on the charity of others, saying: "Such a charge to the jury merely ensures that any compensatory damages awarded to the plaintiff are truly compensatory." This would seem to suggest that the court was specifically trying to prevent the kind of situation imagined in the example in the first section of this paper. The definition of "compensatory" was "to be used for the purpose of directly paying for replacement services." With its "reasonably certain and necessitated" language with respect to future damages, the Court was acknowledging that a plaintiff might decide not to use moneys awarded for replacing lost future household services for

that purpose. However, the Court required that the trier of fact be "reasonably certain" both that the award for this purpose would be used in that way and that the services being provided were made necessary by the injury.

The logic of both the *Coyne* and *Schulz* decisions is developed in a recent paper on an only apparently different topic by John L. Sly and Parashant K. Khetan [2002]. They propose a "Contract Write-Off Rule" that "Compensatory special damages are recompensed for loss actually sustained." They suggest that the rule should be accompanied by the following explanatory comment:

An expense can be incurred when one has paid or becomes legally obligated to pay it. For the collateral source rule to apply, the injured party must be responsible for making payment, even if a collateral source makes the payment on the injured party's behalf. If, for example, a third party payor negotiates a reduced fee for medical services, the injured party is obligated only to pay the reduced total, not the written-off difference. Because no party is responsible for paying the difference between the original fee and the negotiated reduced fee, the collateral source rule is inapplicable to the difference.

Sly and Khetan provide indication that courts in other states have been moving in this direction, particularly in the area of medical malpractice. They mention Maryland, California, and Delaware as examples. Whether this will also happen with respect to the provision of household services, as in New York, remains to be seen.

III. Problems with Replacement Cost Calculations of Lost Household services

Many forensic economists use a replacement cost methodology for lost household services that starts from a supposed amount of time previously spent in providing household services that is no longer being spent in that way. Typically, this involves specifying an average amount of time spent by persons of the same gender and age that have been lost because of the injury. The pre injury amount of time spent providing household services is taken from the economic expert's preferred time use survey. The amount of time spent on a pre injury basis is then reduced by some amount because of the injury, usually on an ad hoc basis. The lost time is then valued in whole or by specific activity based on labor market costs for replacing the lost services (Ireland, Horner and Rodgers 2002; Martin and Vavoulis 2002).

There are many reasons why such a calculation is imprecise and speculative: (1) Figures from any time use survey are averages that may or

may not apply to the plaintiff in question, even if they were accurate; (2) There is no consensus about which time use surveys are best and different definitions are used for types of household services from one survey to the next; (3) Reductions made by economic experts in the number of hours provided because of an injury are made on a very ad hoc basis that could not be replicated by other researchers; (4) There is no market test for the quality level at which the injured person was providing the services being replaced;⁷ (5) There is no reliable measure of the intensity of time use in the provision of household services;⁸ and (6) Since many household services are provided concurrently (cooking a meal, doing the laundry and child care, for example), any attempt to disaggregate the time spent on the services being provided must be ad hoc and speculative.

In addition to those problems, there are problems dealing with mitigation within families and with ignoring part or all of the management and scheduling problems involved with commercial replacement of lost household services. It is because of those problems, which will be discussed later in the paper, that we have described the standard replacement cost approach as a "faux" approach. The problems addressed in this section are problems that introduce imprecision into replacement cost calculations.

IV. The Lost Utility Value of Lost Household Services

If an injury or death has caused the family to lose services that had previously been provided, there is an economic loss that is quite real and that is not compensated by the approach taken when lost household services are treated as necessary life care costs. Conceptually, it is relatively easy to define the amount of that loss.⁹ It is a sum of money just large enough that the household would accept that payment in lieu of the lost provision of household services. However, while it is easy to define, it is almost impossible to measure that amount in a practical way in a tort award situation. Even the family members themselves would be unable to determine that amount until various combinations of household services are presented to them, and then only in terms of whether or not they would prefer one combination over all others. However, there must be such a "true" value for the loss and that "true value" can be used as a conceptual tool.

V. Economic and Non Economic Household Services

The "necessary life care cost" standard developed in the *Schulz* case must necessarily result in an undervaluation of the economic value lost household services. Under the *Schulz* standard, there would be no award for the

economic value of lost household services in the example introduced at the start of this paper. It would cost \$100,000 to replace the household services. By assumption, the injured person would be willing to pay up to \$66,667 to replace those services, but rationally would choose not to do so because the \$100,000 could purchase more utility if used for other purposes. The fact that the services would not be purchased makes them not "necessitated" even if the loss of the services themselves was reasonably certain to have been caused by the injury. It would be a mistake, however, to assume that it is the intent of the *Schulz* court that no award be made for the losses that were involved. *Schulz* is about the method to be used for determining the amount of losses and not about the amount of the loss itself.

Lost enjoyment of life is a compensable damage in New York and lost utility may be captured by the award for that element of damages. That is where the *Schulz* court would want the utility loss of \$66,667 in the example to be compensated. B as a non economic loss, not as an economic loss. Unlike lost earnings, household services merge into relationship values that are clearly intangible, non economic elements. A part of the value of Mom's Sunday dinner is the fact that Mom prepared the dinner regardless of its culinary attributes. To value the "economic" part of the Sunday dinner, one must ignore the intangible aspects of Mom's dinner and consider only the replacement cost of the culinary attributes. In theory, the "economic value" is the value of the dinner if prepared by a replacement worker, while the consortium value is the value of having the dinner prepared by Mom.

There is no easy way to distinguish between the culinary aspects, which have a market value, and the relational aspects of the fact that the meal was valuable because Mom prepared it, regardless of its culinary aspects. The *Schulz* court would have the jury award the loss of Mom's Sunday dinner with the family be entirely included with lost consortium, with no economic loss being calculated unless the family actually hired or would hire a replacement worker to prepare the Sunday dinner. The *Schulz* method may or may not result in an undervaluation of damages. It simply provides a clear statement of how the damages must be considered. As such, it requires a different kind of assignment of damages than most forensic economists find familiar. Under *Schulz*, if the loss is such that it is reasonably certain that the family unit will need to purchase replacement, the loss involved is to be treated as a part of economic damages. If the loss is utility based and it is not reasonably certain that the family will need to purchase replacement, the loss is to be treated as a part of non economic damages.

Although not explicitly stated, there is a concern in the *Schulz* decision with the danger of inadvertent of double counting. In the way that forensic economists using the faux replacement cost method use it, there is a danger

of double counting part of lost household services as both an economic loss and a consortium losses. If a jury awards the faux cost of replacement and also makes a large award for the lost enjoyment of life of the injured plaintiff, double counting can occur. The jury is making an award based on its understanding of the loss of life enjoyment of the injured person and any fellow family claimants. If that non economic award is sufficient for the loss of enjoyment of life, any award for lost services in excess of those actually needed would constitute over compensation of the injured party. In the first example being used in this paper, suppose that the jury has taken into account all of the ways that the injured claimants have suffered reduced enjoyment of life, including the specialness of Mom's Sunday dinner. Assume that the award found by the jury is reasonable for the utility value of the losses involved. In that example, recall that it would cost \$100,000 to replace the household services that were lost and that the claimants would have been willing to pay \$66,667 for Mom's lost household services, but in fact purchased no household services because the benefit was \$60 per unit while the cost was \$90 per unit. If the jury award for lost enjoyment of life includes \$66,667 for loss of household services Mom would have provided if not injured, another \$66,667 for the lost household services will simply be unnecessarily added to the amount awarded as general damages. The extra \$66,667 will replace nothing and is not needed to compensate the utility loss because that loss is being compensated in the award for lost enjoyment of life. Thus, it will result in double counting.

The economic expert will not have been asked to express opinions about those intangible losses, and indeed will not have heard the evidence the jury will have heard about the nature of the loss of enjoyment of life suffered by the family of the injured person. The economic expert may, in fact, think that household services were left out if he or she does not value them in the traditional way, but the Schultz court is simply choosing to deal with those losses in another way. In a typical court of law, a jury may have a hard time understanding the potential for overlap between lost household services and lost intangible elements. In a court operating under the Schultz rule, the jury is given an easier task: It must only determine whether the lost services for which the plaintiff seeks compensation were reasonably certain to have been caused by the injury and are reasonably certain to have been "necessitated" by the injury. The jury is only to award enough money in this category to pay for those "necessitated" costs, which are effectively equivalent to functional life care costs. Losses of non-economic utility are to be evaluated separately in light of all of the evidence about reduced enjoyment of life.

In this context, it is important to consider two additional factors that are often ignored by most forensic economists who attempt to value household services: Mitigation within the household and the scheduling, monitoring and

management of household services. These are quite important issues that are ignored in the typical replacement cost approach used by many forensic economists, but which pose no problem within the Schultz standard.

Mitigation within Families. If an individual is injured in such a way that only part of that individual's ability to provide pre-injury household services has been lost, it may be possible for the family to reallocate tasks within the family in such a way that the services previously provided can continue to be provided. In that sense, an injured individual may be able to partially mitigate the loss. If an injury has not reduced an individual's life expectancy or increased the time needed for health maintenance, the individual has the same amount of time available to provide household services after the injury as before the injury. What has been changed is that the individual can no longer use that time in the same ways as before the injury. If the individual uses time previously spent on one set of household services to provide another set of household service, the harm is being partly mitigated. The authors of this paper are not aware of any court decisions that speak to the issue of whether there is a limited duty to mitigate losses of household services in the same way that there is a limited duty to mitigate earnings loss damages. However, the logic of a limited duty to mitigate earnings losses by taking employment that utilizes residual earning capacity would seem to imply a limited duty to mitigate household service losses by providing other household services that utilizes residual household service production capacity.

Typically, workers do not have a duty to move to other areas to mitigate earnings losses: The requirement that a new job must be found within a fifty mile radius of the individual's home seems to be common in many jurisdictions. Other limits seem also to exist, such that the duty to mitigate is not absolute. Presumably, if there is a duty to mitigate in the area of household services, that duty is also not absolute. However, it is common for forensic economists to use estimates of the amounts of time spent by an injured person in types of household services that are no longer possible because of the injury. In such calculations, those amount of time are then multiplied by measures of the wage rates for those activities to produce household service loss estimates. This method completely ignores the possibility of mitigation. The injured person's time itself has not been lost and could potentially be used to produce other services that would have some value to the family. To the extent that the family can reallocate tasks, the value of the mitigating services relative to the pre injury services will be increased.

Mitigation does not imply that the loss to the family is not real. The allocation of family tasks before the injury was presumably the allocation

most desirable to the family. Any reallocation must imply that individuals are now using their time in less desirable ways than before the injury and it may be that some of the activities previously provided by the injured person cannot be provided by any other family member in a satisfactory fashion. If so, the family will either do without the services altogether or purchase those services in the commercial market. Purchase in the market would imply, as defined in the *Schultz* decision, that the family deemed those services to be "necessary." Doing without those services altogether would mean that the services were not "necessary" in the *Schultz* sense, but loss of those services would necessarily imply lost utility.

In the example in which Mom's Sunday dinner was lost, suppose that the eldest daughter began preparing the Sunday dinner in Mom's stead. This could come much closer to replacing the intangible aspects of the family's Sunday dinner than could be accomplished by any cook hired in the commercial marketplace. With the eldest daughter fixing the meal, the family is still enjoying the meal as a family. Mom may have to be cared for at the table, but the care itself is family care, not commercial care. How the loss should be determined will fall to a jury that has heard all of the evidence about the Sunday dinner, not from an economic expert who has only heard the evidence of economic losses as filtered through a retaining attorney. Under *Schultz*, if the children were too young for someone else to take over and the family needed to hire an outside cook, it the cost of that cook would be an economic loss of household services. If the family chooses to mitigate the losses by a reallocation of tasks, as with the eldest daughter taking on the apron, the extra utility loss will be considered as a part of non economic losses for reduced enjoyment of life.

The scheduling, management and monitoring issue. The typical calculation of lost household services assumes that the process of scheduling, managing and monitoring the replacement provision of household services is costless to family members.¹⁰ Having someone come into one's home to provide replacement services requires that someone schedule the times for the replacement services to be provided, monitor whether the expected services were provided and whether any household goods have been purloined during the service provision, and manage the financial arrangements under which the replacement services are to be provided. These scheduling, monitoring and management services can be very significant and are a major reason why many households will choose not to replace the lost services if awarded the economic replacement cost for pre-injury services.

For the reasons discussed here and the measurement problems discussed earlier, the replacement cost value calculated by a many economic experts for lost household services is often a meaningless number that has little to do

with the loss that was actually involved. That number starts from a time use survey that is not generally accepted, even by other forensic economists. It is valued on the basis the implicit assumption that the quality of the services provided before the injury is approximated by the quality underlying the market wage rates for that activity. It does not apply to the plaintiff's family's unique circumstances. It has been reduced on an ad hoc basis that does not consider possible mitigation by reallocation within the household. Finally, it ignores scheduling, monitoring and managing costs that may be significant enough that the family will forego market replacement of the lost services to avoid those costs.

By focusing on actual expenditures in the past and future expenditures that are both necessary and reasonably certain to be made, the *Schultz* court provided a standard that is less likely to result in double counting of the same services as both an economic and a non economic loss.

Endnotes

¹Surveys of forensic economists do not address the general approach taken to household services by economic experts, but basic treatments described in Ireland, Horner and Rodgers (2002) and Martin and Yavovlis (2002) are taken in this paper as the conventional form of treatment of household services as a damages category. The *Schultz* case dictates a quite different approach for valuing lost household services than is described in those basic sources.

²To avoid repetition, we will hereafter assume that the litigation in question is a personal injury, but the points that will be made can be extended to survivors in a wrongful death action as well.

³Ed Foster, a reviewer for this paper who identified himself, correctly pointed out that taxes play an important role in the tradeoff between provision of household services by family members versus commercial provision. The value of household services provided by family members is not taxed, while the cost of commercially provided services includes income taxes and payroll taxes paid by or on behalf of the persons providing replacement household services. This provides families with additional incentives not to use commercial providers to replace household services. For simplicity, however, all examples in this paper ignore the impact of taxes. We also ignore the impact of attorneys' fees throughout this paper.

⁴Here, "non-economic loss" refers to a loss which cannot be testified about by a forensic economist. New York classifies earnings losses as "economic" damages and all other damage elements as "non-economic" damages, which is not the definition of "non economic" being used in this paper. Illinois also treats household services as a part of consortium, with different requirements for how calculations are to be made than are required for calculations of lost earnings. The authors have not surveyed other states to see if other examples of this approach exist, but operate from a general impression that household services are more typically treated as a part of "economic" damages, rather than "non economic" damages.

⁵*Schultz v. Harrison Radiator Division*, 90 N.Y.2d 311; 683 N.E.2d 307; 660 N.Y.S.2d 685; 1997 N.Y. Lexis 1364. In New York, the "supreme court" is the trial court level, not the top appellate court. The *Schultz* decision was appealed from the supreme court (trial court) level to the Appellate Division of the Supreme Court in the Fourth Judicial Department, and then ultimately to the top appellate court in New York, which is simply called the Court of Appeals of New York.

⁶*Coyne v. Campbell*, 11 N.Y.2d 372; 183 N.E.2d 891; 230 N.Y.S.2d 1; 1962 N.Y. Lexis 1079.

⁷In a typical forensic economic analysis, "child care" is child care, whether provided by a mother with an 8th grade education or a Ph.D. in psychology. "Cooking" is the same whether provided by a homemaker with no skills or a master cook. Clearly, there are very important quality differences in the services provided by one individual as compared with another. In the commercial labor market, gradients in quality create gradients in pay scales and these differences are captured in the earnings for each individual. In the household, since there are no pay scales, efforts to take gradients in the value of the quality of the services being provided must inherently lack market-based foundation and are thus become speculative in nature.

⁸Some tasks can be done quickly and efficiently in much less time than they actually take in the household. A shopping trip that could be provided in 15 minutes may take an hour if the household service provider is in a relaxed mood. While this can also happen in the commercial labor market, employers have an incentive to monitor the efficiency with which time is being used to complete tasks.

⁹It is not quite as easy as it appears, however. All preferences of a family depend on the income of the family. Thus, the family, having suffered a loss of wealth because of a death or injury, might accept a money payment for the

loss lower than the money payment it would have accepted before the injury. Likewise, the family might accept a money payment for the loss after the injury that it would not accept after having won an award for damages. This is another excellent point suggested by Ed Foster, one of the reviewers for this paper.

¹⁰If the family contracts with an agency to provide household services, the agency will schedule when workers are expected to provide services and will provide some management and monitoring of those workers. However, even with agency provision, some family member will have to monitor whether the provision of services by the agency is adequate, whether any theft of household items is occurring, will have to spend time in communication with the agency, and will have to make payments to the agency. All of these are activities that might not be necessary if the services were being provided by a household member. (Household services by teenagers and even spouses, however, may require monitoring by the homemaker.) It is equally important that the injured family member may have provided household services on an "immediate, as needed" basis. If provision is by an agency, and extra services are needed for special situations, the amount of time from recognition of the problem to provision of a solution is significantly increased, as is the amount of coordination needed to solve the problem.

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Surviving A Daubert Challenge: A Survey Of Attorneys

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Abstract

After the Daubert and Kumho decisions, economic, vocational rehabilitation and life care planning experts face a greater likelihood of their reports being challenged by opposing counsel. A challenge may lead to an expert's trial testimony being limited or excluded. To be successful in this new environment, experts need to have insight into the thought processes of the opposing side. To assist in this area, six law firms specializing in defense work agreed to respond to a survey. Ten questions were asked relating to recent challenges, most common reasons for challenges, and what experts could do to limit the risk of being challenged. This report provides a summary of their responses. Although non-scientific, this report is intended to provide a window into the thinking of attorneys as they review an expert's report.

Article

After the Daubert and Kumho decisions, economic, vocational rehabilitation and life care planning experts face a greater likelihood of their reports being challenged by opposing counsel. A challenge may result in an expert's trial testimony being limited or excluded. To be successful in this new environment, experts need to have insight into the thinking of those who may bring a challenge. In preparation for the American Rehabilitation Economics Association 2002 Annual Meeting, I contacted a group of defense attorneys concerning their opinions on challenging expert reports. Six law firms agreed to respond to a survey on this issue. They were located throughout Texas and in New Orleans, Louisiana. The firms ranged in size from a small defense boutique to one with internationally locations and a large, general practice.

The survey consisted of ten questions. Some questions asked about actual challenges brought in the past 24 months. Others sought the "red flags" that led to immediate challenges or how an expert might work to avoid such

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