

Assessing Lost Wages and Loss of Wage Earning Capacity for Attorneys with Disabilities

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While attorneys, alongside insurance adjusters, most often make referrals themselves, on an occasional basis Rehabilitation Counselors may be required to evaluate lost wages and loss of wage earning capacity for attorneys that have been injured in the scope of a motor vehicle accident, chemical exposure, product liability, or other circumstances. While traditional evaluations offer the opportunity to evaluate pre-accident and post-accident wages using set wages, attorneys do not offer the same allowance, considering attorney salaries are based on a variety of contingencies, such as settlement amounts, alongside bonuses. Additionally, attorneys work in a sedentary capacity, as opposed to medium or heavy duty capacity, typified of many plaintiffs. As such, novel approaches must be utilized to evaluate lost wages for attorneys. This article addresses the need to evaluate probable wages; consider work life expectancy with identified modifiers; evaluate probable loss of earnings, with the supposition that a client would lose variable years of work life expectancy, as a result of the noted accident or circumstance; and address a proposal that work life may be expected decrease with injury or disability, through referenced literature.

Keywords: Attorney, Lost Wages, Wage Earning Capacity

The occupational field of law has a longstanding and diverse history, with the type of duties performed and the range of salaries understandably diverse. As such, when Rehabilitation Counselors are assigned or required to evaluate lost wages for attorneys, multiple strategies must be employed to evaluate prospective lost wages or loss of wage earning capacity. This article will address methods to evaluate vocational planning and evaluation of wages for attorneys that have been injured in the scope of various accidents or circumstances, in which physical or mental capacities may be diminished.

Recommended Steps in Establishing Lost Wages or Loss of Wage Earning Capacity for Attorneys

In the scope of offering an opinion related to diminished earning capacity and pending wage losses, the following steps are recommended, with the order of steps depending on individual case circumstances.

Review Applicable Records

Alongside a traditional evaluation, various records should be reviewed including medical, legal, imaging, and other records. Depending on case needs, a total recapitulation of records may be required, or, alternatively, a rudimentary review may be needed to simply offer a historical framework. Applicable records to be reviewed may include orthopedic and psychological records, hospital reports, pharmacy billing, imaging reports and films, accident reports, and completed depositions. Other records to be reviewed may include insurance policies and photographs of accidents. Alternatively, particularly with chemical exposure or product liability, one may review exposure reports and product specificities.

Evaluate Prospective Loss of Worklife Expectancy According to a Specified Disability

From a very simple standpoint, establishment of lost wages is based on a simple process: establish wage opportunities prior to an accident and then recalculate

wages as a result of cognitive and physical reduction in capacity. However, concerning an attorney, two factors interplay with this assessment: wages with attorneys are not often set, but rather are contingent upon a variety of factors, and, also the work duties of attorney are most often sedentary in nature, further limiting decrease in earning capacity based on reduction in solely physical capabilities. As such, it would be alternatively recommended to evaluate prospective loss of wages based on reduction of work life expectancy. Similarly, if a reduction in work life expectancy is recommended, a listing of applicable references should be presented or reviewed, to adequately document an applicable relationship between work life expectancy and disability.

Furthermore, when discounting wages based on work life expectancy, it is recommended that work life be considered in the context of type of physical disability (orthopedic, neurological) and also feature of life affected by disability (social, mobility). An argument may be presented that disability may be associated with not only body part affected, but also the physical and cognitive residuals associated with the applicable body part. Nationally standardized databases, when available, should be utilized to complete these modifications, as opposed to solely objective speculation. (See Tables 1-5).

Acknowledge Role of Education on Probable Worklife Expectancy

While work life expectancy may offer one avenue towards assessment of probable wage losses for attorneys, it is also vital to recognize that research has consistently shown that work life expectancy is related to education, specifically work life expectancy increases as educational increases. It may be suggested that workers with higher education work in less physically demanding occupations, enhancing their ability to work longer and greater productive years. Alongside the acknowledgment of prospective decreases in work life expectancy due to accident or specified injury, it must be similarly acknowledged that work life expectancy increases as education increases. However, a Rehabilitation Counselor must consider work life expectancy in the context of not just a generalized workforce, but specifically from the framework of work life expectancy for specifically an attorney.

From a simplistic standpoint, one may propose that reduction of work life expectancy for an attorney associated with an injury would be canceled by acknowledged increase work life for a person with advanced age. This argument would be supported by this calculation, proposing a 55-year-old attorney had 15 work years remaining.

Table 1

Example of Declaratory Statements Regarding Reduction of Wage Earning Capacity using Gamboa Gibson Worklife Expectancy Tables

Assuming that Mr. Broussard would continue to work an additional 15 years, he most reasonable would expect to incur a diminished earning capacity of **\$351,205**.

Assuming that Mr. Broussard would continue to work an additional 20 years, he most reasonable would expect to incur a diminished earning capacity of **\$462,207**.

Alternatively, he most reasonably would expect to incur a diminished earning capacity of **\$604,624** if he worked an additional 30 years.

Table 2

Example of Declaratory Statements of Diminished Earning Capacity: Comparing Probable Wages and 3, 5 Year Wage Losses

As noted previously, vocational research was completed to evaluate prospective wages for attorneys in the Louisiana geographic area. If a 2.5% increase in salary could occur for Mr. Broussard, across 30 years for Mr. Broussard, he would reasonable expect an increase in wages, as outlined in Appendix C. Using an alternative method by offering a standard 2.5% increase and wages and assuming that Mr. Broussard would incur a three-year loss of work life expectancy, Mr. Broussard would incur and approximate loss of **\$460,535.57** in wages.

Note. A reflected 2.5% increase in annual salary is based on the present Consumer Price Index (March, 2016) for "All Items Less Food and Energy." The Consumer Price Index for All Items, including Food and Energy is less stable, representing a less consistent measure.

Table 3*Example "Conclusions and Opinions" Report Narrative*

1. Mr. Broussard was involved in a motor vehicle accident on February 22, 2012.
2. At present surgical interventions are recommended, but surgery is not presently schedule. Also, Mr. Broussard is not definitive regarding whether or not he will proceed with surgical intervention.
3. Mr. Broussard graduated from law school. He has the essential skills and training to work as an attorney, but he did have a past history of substance, drug abuse, preventing him from working in this capacity.
4. Mr. Broussard has completed a substance, drug abuse program and has a history of being clean for over one year.
5. Assuming continued sobriety, it is most probable that Mr. Broussard will return to work as an attorney once approved by the Louisiana Bar.
6. Since Mr. Broussard has not been able to work as an attorney he has been working as a stocker at a local retail establishment.
7. The presence of a disability based on the research supports the opinion that it ultimately decreases earning capacity due to decreased employment and work life expectancy.
8. It is unclear if there is a relationship between level of education and work life expectancy.
9. There is presently a projection that the need for attorneys in Louisiana will increase, representing an ongoing need for this occupation in the community.
10. Assuming that Mr. Broussard would continue to work an additional 15 years, he would expect to incur a diminished earning capacity of \$351,205; 20 years, \$462,207, or 30 years, \$604,624.
11. If Mr. Broussard earned \$75,000 annually with a 2.5% annual increase in earnings, and then he had a 3-year reduction in work life, he would incur approximately a loss of \$460,535.57 in wages.

Table 4*Literature Documenting Attorney Salaries*

Vocational research was conducted to investigate what current salaries for attorneys are within the market. The following represents the results of this applicable research.

Reference: Payscale.com

Data: Range of \$46,517 to \$152,887 and median of \$78,242 in the United States.

Retrieved from: http://www.payscale.com/research/US/Job=Attorney_%2F_Lawyer/Salary

Reference: U.S. News & World Report

Data: Average annual salary of \$133,470 in 2014, lowest figure made \$55,400

Retrieved from: <http://money.usnews.com/careers/best-jobs/lawyer/salary>

Reference: New York Times

Data: The national median first-year salary at any sized firm was \$135,000 and for large firms its often \$160,000

Retrieved from: http://www.nytimes.com/2015/04/17/business/dealbook/welcome-to-your-first-year-as-a-lawyer-your-salary-is-160000-a-year.html?_r=0

Reference: Cable News Network (CNN)

Data: Starting salary of \$62,000 or less, lots of debt usually due to student loans

Retrieved from: <http://money.cnn.com/2014/07/15/pf/jobs/lawyer-salaries/>

Reference: American Bar Association Journal

Data: US survey broken down by area and what lawyer's salaries are. New Orleans and surrounding: total law firm payroll is \$607,957,000; Metro area is \$1,168,547; Employees are paid \$8,340. Map indicates LA within salary range of \$40,820 - \$125,000.

Retrieved from: http://www.abajournal.com/magazine/article/what_americas_lawyers_earn

Table 4 (Continued)*Literature Documenting Attorney Salaries*

Reference: Salary.com

Data: Lafayette, LA median salary for Attorney I was \$72,679

Retrieved from: <http://swz.salary.com/SalaryWizard/Attorney-I-Salary-Details-Lafayette-LA.aspx>

Reference: Salary.com

Data: Various types of attorney descriptions and salaries ranging from Attorney I to Attorney III and Judge/Magistrates with a salary range of \$86,978 to \$155,274

Retrieved from: <http://www1.salary.com/Lawyer-Salary.html>

Reference: Indeed.com

Data: Various types of attorney salary profiles based on indeed.com listings for attorneys in Louisiana. The average is \$44,000. Different types of attorneys listed have a salary ranging from \$37,000 to \$185,000.

Retrieved from: <http://www.indeed.com/salary/q-Attorney-I-Louisiana.html>

Reference: SalaryGenius.com

Data: In-depth payment statistics for Lafayette, LA area. Attorney starting salary listed as \$83,984 and average yearly salary at \$101,981.

Retrieved from: <http://salarygenius.com/la/lafayette/salary/lawyer-salary>

Reference: LawyerEdu.org

Data: Louisiana statistics for lawyer salaries broken down by city/regions. Lafayette had an annual mean wage figure of \$92,580

Retrieved from: <http://www.lawyeredu.org/lawyer-salary.html#louisiana>

Reference: CareerBliss.com

Data: LSU attorney salaries earn \$43,000 annually (61% lower than national average)

Retrieved from: <http://www.careerbliss.com/lsu/salaries/attorney/>

Reference: Louisiana State Civil Service website

Data: Civil service attorney jobs and salary chart with a range of salaries from \$36,275 to \$131,186

Retrieved from: <http://www.civilservice.louisiana.gov/asp/OneStopJobInfo/View2Sorting.aspx>

Reference: U.S. News & World Report

Data: Tulane Law School median private sector starting salary \$100,000 and public sector \$58,000

Retrieved from: <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/tulane-university-03068>

Reference: U.S. News & World Report

Data: Loyola University Law School median private sector starting salary is \$77,000 and public sector is \$57,000

Retrieved from: <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/loyola-university-new-orleans-03066>

Reference: U.S. News & World Report

Data: Southern University Law Center median private sector starting salary \$56,000 and public sector \$43,000

Retrieved from: <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/southern-university-law-center-03067>

Reference: Louisiana State University Law Center

Data: LSU Law Center 2014 graduates' salary chart and statistics with range of \$30,000 to \$160,000

Retrieved from: <https://www.law.lsu.edu/careerservices/employmentstatistics/employmentstatistics14/>

Table 5*O*Net Based Wages for Attorney Related Occupations*

Identified Occupation	Low Wages	Median Wages	High Wages
Lawyer	\$ 46,780.00	\$ 92,170.00	\$ 187,200.00
Equal Opportunity Rep	\$ 32,960.00	\$ 56,120.00	\$ 90,360.00
Admin. Law Judges	\$ 17,120.00	\$ 53,360.00	\$ 156,730.00
Arbitrators and Mediators	\$ 39,570.00	\$ 49,400.00	\$ 61,600.00
Judges, Magistrates	\$ 18,980.00	\$ 76,790.00	\$ 187,200.00
Sales Agents, Financial	\$ 28,100.00	\$ 52,170.00	\$ 187,200.00

Assuming that 1) Probable Work Years Remaining is 15 years and 2) A modification of 3 years reduction in work life expectancy), work years remaining is reduced by 3 years. Applying an addition modification of an increase in work life expectancy due to advanced education produces an increase in work years remaining of 3 years. Adjusted work life expectancy remains at 15 years.

As such, this formula would suggest that an attorney with an injury would not have any reduction in work life expectancy, considering the reduction associated with the injury and then the increase in work life linked to advanced education essentially canceled each other out. However, it is proposed that work life must be considered in the context of the profession itself, not solely from the framework of all professions. Within this context, the following formula would be more appropriate; again, utilizing the 55 year-old attorney with 15 work years remaining.

Assuming that 1) Probable Work Years Remaining is 15 years and 2) A modification of 3 years reduction in work life expectancy), work years remaining is reduced by 3 years. With no further modification increase in work life expectancy due to advanced education, as comparing an attorney against other attorneys, adjusted work life expectancy life expectancy is reduced to 12 years.

Identify Transferable Skills for an Attorney, with Emphasis on Type of Duties Performed

An attorney, similar to any occupation, will most probably have transferable skills following an accident or another event affecting their employability. Transferable skills will fall along the spectrum of manipulating data, people, or things. Based on both physical and cognitive capacities, a Rehabilitation Counselor will be able to compare and contrast pre- and post- skills, and then identify or modify recommendations for post-injury employment options. When considering these options, the vocational hierarchy must be considered, such as the following depiction:

- Return to Work in Same Position
- Return to Work in Alternate Position with Same Employer
- Return to Work in Open Labor Market According to Transferable Skills
- Retraining
- Self-Employment

If an attorney is able to return to work in the same position, then most probably salary or compensation will not vary post-injury unless as addressed previously an attorney would expect to have a reduction in work life expectancy. With cognitive deficits, an attorney

Table 6*Example of Declaratory Statement Regarding Attorney Salary Research*

According to the compiled research, lawyers have a wide range of salaries depending on the type of lawyer, the geographic area of practice, and the amount of experience in the field. The research indicates that the basic annual salary range for attorneys is between \$36,275 and \$185,000. Research was also conducted to see what the salaries of lawyers who graduated from Louisiana law school programs. The results were comparable to the general salary levels within the nation. Based upon a summation of these records, it is reasonable to assess that \$75,000 would represent a reasonable salary for an attorney in a private law practice. Reference from U.S. News & World Report indicate graduates from Southern Law School would begin approximately at \$56,000. Louisiana State Civil Service website indicates range of salaries from \$36,275 to \$131,186, or an average of \$83,731. Again, in order to not under or over-estimate applicable wages, I will use \$75,000 as a base wage.

Table 7*Example of Worklife Probability Table Using Gamboa-Gibson Worklife Expectancy Table (Part 1)*

Worklife Probability Scott Smith											
			Pre-Injury			Post-Injury			Value/Diff		
Birth Year									1976		
Injury Date											
Analysis Date									4/13/2016		
Base Wage				75,000			75,000		0.0%		
Fringe Rates				27.7%			27.7%				
Education Level				Professional Degree			Professional Degree				
Gender Life/Emp.									Male		
Disab. Status				Not Disabled			Mobility Nonsevere				
Growth/Discount									Pure Offset		
Future Worklife				27.1			20.0		26.4%		
Total Earnings				2,599,526			1,913,589		685,937		

			Pre-Injury					Post-Injury				
Mo/Yr	Age	Years	Prob. Life	Prob. Empl.	Prob. Work	Base Earning	Adjusted Earnings	Prob. Empl.	Prob. Work	Base Earning	Adjusted Earnings	
1/2017	40.52	0.48	0.996	0.966	0.462	75,000	44,248	0.706	0.338	75,000	32,372	
6/2017	41.00	1.00	0.994	0.966	0.960	75,000	91,944	0.706	0.702	75,000	67,234	
6/2018	42.00	1.00	0.991	0.966	0.957	75,000	91,657	0.706	0.700	75,000	67,043	
6/2019	43.00	1.00	0.989	0.966	0.955	75,000	91,465	0.706	0.698	75,000	66,851	

Table 8*Example of Documenting Prospective Breakdown of Pre- and Post- Adjusted Earnings at 30, 20, 15 Years. Using Gamboa-Gibson Worklife Expectancy Tables*

Worklife	Pre-Injury	Post-Injury	Difference
30 Years	\$ 2,358,745.00	\$ 1,754,121.00	\$ 604,624.00
20 Years	\$ 1,840,699.00	\$ 1,378,492.00	\$ 462,207.00
10 Years	\$ 1,458,174.00	\$ 1,106,969.00	\$ 351,205.00

Table 9*Example of Breakdown of Wages, with Base \$75,000 and 2.5% Annual Increase*

Year 1	\$ 76,875.00	Year 24	\$135,654.45
Year 2	\$ 78,796.88	Year 25	\$139,045.81
Year 3	\$ 80,766.80	Year 26	\$142,521.95
Year 4	\$ 82,785.97	Year 27	\$146,085.00
Year 5	\$ 84,855.62	Year 28	\$149,737.13
Year 6	\$ 86,977.01	Year 29	\$153,480.56
Year 7	\$ 89,151.43	Year 30	\$157,317.57
	continued...		

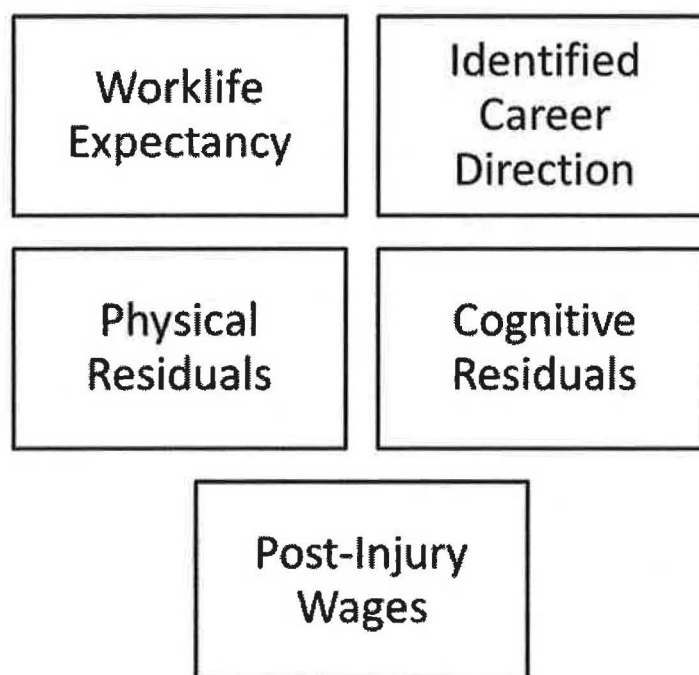


Figure 1. Factors Contributing to Wage Earning Capacity for Attorneys

Table 10

Example of Narrative for Vocational Research Regarding Examination of Attorney Recovery Programs

Research was conducted in order to reveal possible addiction recovery programs for attorneys in the surrounding area. It is acknowledged that Mr. Broussard has a prior history of substance abuse. This research was completed to evaluate the availability and applicable process for participating in Attorney Recovery Programs.

Research revealed that a confidential, nonprofit recovery program, called the Judges and Lawyers Assistance Program (JLAP), is available to attorneys in Louisiana free of charge. Professional intervention services may be provided free of charge for substance abuse if deemed necessary, which would typically be a \$2,500 to \$5,000 cost. If a participant needs a formal Recovery Monitoring contract, a monthly fee of \$50 is required, unless otherwise stipulated. The program is set up with three basic phases including 1) assessment for accurate diagnosis, 2) treatments to address diagnoses at a licensed professional level of care, and 3) structured recovery monitoring. Studies show that a five year period of such monitoring shows increased odds for continual recovery success. There are also 12-Step meetings available for attendance throughout the program.

Alternatively, Palmetto Addiction Recovery Center, located in Rayville, LA, offers a recovery program specifically for impaired professionals, such as attorneys. The center uses both 12-Step methods, as well as tailored approaches involving medication and counseling as seen fit. It incorporates therapy, education, life-style balance, attending weekly Caduceus Meetings to receive advice and support from other sober professionals. The appropriate monitoring or licensing agencies and referral sources will receive weekly progress updates. Upon program completion these entities are provided with documentation of such and contacted to answer any questions they may have. The program typically merits an average of a three-month stay at the facility, with discharge planning, monitoring practices, etc., clearly outlined upon program completion. Research suggests that Palmetto incurs an average cost of about \$2,225 towards the family. Most insurances are accepted.

Opinion: An attorney assistance program is available. An identified program is available through Palmetto Addiction Recovery Center. Mr. Broussard has participated in an applicable program. He has been clean for over one year. Based on drug addiction as an isolated factor, this feature will not exclude him from the field of law.

Table 11

Vocational Research: Examination of the Relationship Between Worklife Expectancy and Disability

Gibson, D. S., & Tierney, J. P. (2000). Disability and work life expectancy tables: A response. *Journal of Forensic Economics*, 13(3), 309-318. [full article]

States that individuals with a work disability have increased likelihood to become unemployed and are subsequently less likely to regain employment than someone without a work disability. This worsens with age.

Gibson, D. S. (2001). Daubert, disability, and work-life expectancies. *Circulated to VEI subscribers*, 1-33. [full article]

States that work-life expectancies for people labeled Severely Disabled are very low, sometimes set to a zero level of expectancy. Also explains that institutionalized individuals often have chronic disabilities and are likely to have no earning capacity. This group is excluded from the Current Population Survey.

Ho, J. J., Hwang, J. S., & Wang, J. D. (2006). Life-expectancy estimations and the determinants of survival after 15 years of follow-up for 81 249 workers with permanent occupational disabilities. *Scandinavian Journal of Work, Environment & Health*, 32(2), 91-98. [abstract]

Permanent occupational disabilities resulted in loss of life expectancy of 5-19 years. Lower insured wages were also evident and was associated with shorter survival among other factors.

Murray, C. J., & Lopez, A. D. (1997). Regional patterns of disability-free life expectancy and disability-adjusted life expectancy: Global burden of disease study. *The Lancet*, 349(9062), 1347-1352. [full article]

Found that the definition of disability used as a threshold affects the disability-free life expectancy.

The scholarly research listed provides some understanding of the relationship disability has with work life expectancy. Based on this research, the following statements are supported by the applicable studies:

- Presence of a disability has shown to decrease likelihood of stable employment compared to individuals without a disability
- Worklife expectancy may be lower for individuals with a disability
- Life expectancy is lower for individuals with certain disabilities

Opinion: The presence of a disability appears to ultimately decrease earning capacity due to decreased employment and work life expectancy. Life expectancy, in general, can be decreased for individuals with disabilities, which again, ultimately lowers worklife expectancy, as well.

may reasonably work in an alternative position with the same employer, perhaps working in the capacity as a "research attorney" in contrast to a "trial attorney," particularly if fatigue or verbal communication skills may be impaired post-accident. Considering social and occupational status, it is most probable that an attorney would not work in the capacity as a Paralegal or Legal Secretary, but rather would seek short-term or long-term disability compensation. In the open labor market, an attorney may be able to seek employment as a "consultant" or another consulting capacity; however, these opportunities would be based on both skills of the attorney and also actual opportunities in the open labor market. Alternatively, retraining may be sought, particularly if some features of the skills of an attorney may be lost post-accident, such as verbal communication, but other components, such as critical thinking skills, are still intact. Similarly, retraining options and post-training employment would be based on skills of the attorney and duties of the job and applicable compensation. Whether plaintiff or defense-oriented, job placement must be considered in the context of the vocational hi-

erarchy, as opposed to simply indicating that an attorney has limited employment as solely an attorney without other job placement options outside of the singular occupation.

Examine Attorney Salary and Differentiate According to Type of Duties Performed

Analogous to other occupations attorney salaries will vary greatly according to region, tenure of the attorney, and type of law performed. Attorney salaries may range from less than \$100,000 annually to literally millions. Available databases tend to clearly document salaries for starting attorneys, but most often fail to account for differentiations across attorneys with various tenure levels, different regions of the country, or across specializations. A Rehabilitation Counselor most probably will use clinical judgment to account for wage variations across these dimensions. However, careful consideration must be taken to avoid over or under-projecting wages to avoid a bias, and subsequently a *Daubert* challenge. A listing of ref-

Table 12*Literature Examination of Lifework Expectancy (LWE) and Education*

Research was conducted in order to determine the effects of education levels on Lifework Expectancy. The following sources were found and a brief descriptive note can be found accompanying each source.

Phang, H. (2002). Work-Life Profiles of Korean Workers: A Life-Table Analysis. *KLIPS Working Paper Series 2002-5*, KLI. [full article]

Out of the 600 months' life span age, 15-65 men with high school education spend about total 346 months working whereas women with high school education spend about 84 months working. For both sex, the higher educated, the larger the proportion. Low-educated individuals tend to spend more life-time working regardless of sex and the majority of their working life-time is spent as self-employed.

Brugiavini, A., & Peracchi, F. (2005). The length of working lives in Europe. *Journal of the European Economic Association*, 3(2-3), 477-486. [full article]

Working lives shorter in Europe for people with higher education. Higher schooling levels imply higher levels of human capital, higher earnings and, possibly, higher growth rates of aggregate income.

Foster, E., & Krueger, K. V. (2010, November). *The effect of education on life expectancy and work life expectancy*. Paper presented at Southern Economic Association annual conference, Sheraton Atlanta, Atlanta, GA. [full article]

Meara et al. study cited saying education does prolong WLE. Present study claims gaps in education difference and WLE diminish as age increases.

Julian, T. (2012). Work-life earnings by field of degree and occupation for people with a bachelor's degree: 2011. *American Community Survey Briefs*. ACSBR/11-04. US Census Bureau. [full article]

The scholarly research listed provides some understanding of the effect educational levels of individuals have on work life expectancy. Based on this research, the following statements are supported by the applicable studies:

- Individuals with higher education levels often show an increase in work-life earnings.
- Some studies suggest increased education reduces work life commensurately. However, other studies do not duplicate these findings.
- WLE in relation to education may be affected by age.

It is unclear if there is a relationship between level of education and work life expectancy. However, increased education often results in higher work-life earnings compared to low levels of education.

ences has been presented to guide the Rehabilitation Counselor with the present literature regarding this topic.

Recognize that Secondary Features may Affect Attorney Performance

Attorney performance, specifically wages, is dependent upon many factors: local and national economies, attainment of specified cases with variable values, alongside personal variables. Personal variables may include fatigue, attentional limitations, and customer relationships, among others. Additionally, it may be probable that chemical addiction and abuse may follow or precede an injury. For attorneys, presence of an abuse problem not only will affect their ability to perform the actual work but also may limit their actual practice based on state licensing and credentialing guidelines. It would be recommended for a Rehabilitation Counselor to inquire about both community-based and client-based features that may affect

employability. As a feature of the evaluation, such features must be addressed and adequately documented to determine if secondary features affect employability and wages.

Evaluate Future Loss Considering Potential Modifiers

Otherwise, a Rehabilitation Counselor may evaluate wages in the context of potential modifier. That is, wages may be considered in the milieu of probability of life, alongside both probability of both employment and workforce participation. Offerings may subsequently be compared against pre-injury and post-injury baselines. As an example, use of the Gamboa-Gibson tables may offer a viable method, based on personal objectives. Examples are offered in Tables 8 and 9. The Tables offer an example of a method to account for potential losses using applicable modifiers. If modifiers are used it is recommended that national databases be utilized, as opposed to purely subjective

Table 13*Vocational Research: Examination of Transferrable Skills for Attorney*

This section contains a job analysis for Mr. Broussard's intended occupation as a **Lawyer**, in accordance with his completion of a law school, based on the Occupational Information Network (O*NET).

The essential tasks of a **Lawyer** are:

- Represent clients in court or before government agencies.
- Present evidence to defend clients or prosecute defendants in criminal or civil litigation.
- Select jurors, argue motions, meet with judges, and question witnesses during the course of a trial.
- Study Constitution, statutes, decisions, regulations, and ordinances of quasi-judicial bodies to determine ramifications for cases.
- Interpret laws, rulings and regulations for individuals and businesses.

Essential skills are active listening, speaking, reading comprehension, complex problem solving, and critical thinking. Essential knowledge of the profession includes law and government, English language, clerical, customer and personal service, and administration and management. Applicable abilities furthermore include oral expression and comprehension, written comprehension and expression, and speech clarity.

General education requirements are typically a Doctoral degree with presence of a few instances showing a Professional or Master's degree to be sufficient.

The expected growth rate in Louisiana for **Lawyers** is predicted to have a 13% change from 2012, documented as annually employing 9,310, to 2022 predicted to employ 10,490 individuals. Furthermore, in Louisiana, it is predicted on an annual basis, that there will be 270 job openings.

A most probable salary range in Louisiana is from \$46,780 to \$187,200 or more. The median salary in Louisiana is \$92,170. For the United States, a probable salary range is from \$55,400 to \$187,200 or more. The median salary in the United States is \$114,970.

Reference: ONET Online. (n.d.) Summary Report for 23-1011.00 – Lawyers. Retrieved on April 8, 2016, from <http://www.onetonline.org/link/summary/23-1011.010>.

This analysis provides an understanding of what Mr. Broussard's occupational responsibilities would be as a **Lawyer**. This offers a foundation for examination of transferable skills for this position. There is a wide range for attorney salaries in Louisiana. There is presently a projection that the need for attorneys in Louisiana will increase, representing an ongoing need for this occupation in the community.

modifiers, which would assist in avoidance of *Daubert* challenges.

Evaluate Future Losses Under Consideration Reduction Wage Earning Capacity on Post-End of Worklife

A Rehabilitation Counselor may consider the prospect that an attorney, particularly if an attorney returns to work shortly after an accident, may not witness an immediate loss of wages. However, a particular wage loss may occur as a result of a reduction of wage earning capacity that occurs not at the current time period, but rather at the end of proposed worklife expectancy. As an example, an attorney, earning \$100,000 annually, may return to work shortly after an accident. However, as a result of an injury and later surgery or impaired capacity, an attorney may have a reduction of work years at the end of their worklife. With this projection, a Rehabilitation Counselor must both evaluate the number of work years that may be lost, and also a base wage. Frequency intervals are typically

placed at 2, 3, 5, or intervals divisible by 5. As such, based on a statistical foundation, it would be recommended that the number of work years be based on a 2, 3, or 5 interval size, unless a physician outlines an alternative interval size may be used. Regarding base wage, a Rehabilitation Counselor may use present wage; however, most likely, the wage will be represent an underestimated bias. Alternatively, the Counselor may use a baseline wage and then consider a graduated wage up to the proposed time of wage earning capacity termination. An example of this process is presented in Table 10.

Utilization of Gross Versus Net Wages

Very simply, many arguments may be made regarding the utilization of gross, as opposed to net wages, when calculating prospective wage losses and loss of wage earning capacity. In the scope of doing business, an individual, alongside a business, has applicable costs associated with doing that business. However, discussions may be made regarding two sides of the

coin. First, as Rehabilitation Counselors, our skills are focused on understanding the capacity for someone to earn wages, and, similarly, the skills of a Forensic Economist or Accountant is based on considering wages in the context of economic gains and losses based on the economy (Forensic Economist), or from the framework of tax law and regulations (Forensic Accountant). As such, Rehabilitation Counselors should solely focus on strictly gross wages and then defer to others for any applicable value tables or deductions. Second, another argument may be presented that wages must only be considered in the context of attained profit, or what a person was capable of earning as a result of work activity. As such, this second proposal posits that wages reflect only earnings obtained after all expenses have been deducted.

It is proposed that gross wages represent wages associated with performance of work activity. And, in contrast, net wages represent wages attributable to business costs, an area attributable to the skills of a Forensic Economist or Accountant, not a Rehabilitation Counselor. Individual states offer frameworks for whether Rehabilitation Counselors should use gross or net wages. (Considering the current author is from Louisiana, focus will be on Louisiana-based *juris prudence*.) Considering *juris prudence*, it is recommended that Rehabilitation Counselors use gross wages, not net wages.

Pertaining specifically to wages for attorneys, gross wages should be used, based on the aforementioned *juris prudence*. Obviously, costs will be associated with daily costs associated with being an attorney, such as office space and clerical help. However, *juris prudence* suggests that business-related expenses should be deferred to Forensic Economists or Accountants, rather than Rehabilitation Counselors discounting wages to solely net wages. (See Table 14)

Summary and Conclusions

Infrequency

Rehabilitation Counselors often will incur a frequent number of repeated cases, such as Heavy Truck Drivers, Cashiers, Nurses, and other professions. On the other hand, other professions are infrequently evaluated, such as physicians and attorneys. Considering the infrequency of these evaluations, there is subsequently few literature or peer-reviewed articles documenting applicable procedures to evaluate lost wages or loss of wage earning capacity for these infrequent evaluations. As such, articles such as the present must be initiated to establish processes to evaluate wages for applicable skilled workers.

Acceptance of Great Wage Range

Many occupations offer little variance in their applicable wages. As an example, cashiers generally make minimum wage, with the variance across cashiers limited to ten-percent differences or less. As vocational preparation increases, salaries may similarly expect to vary within a profession. Regarding attorney, a Rehabilitation Counselor can expect the prospect for a great variance across attorneys. New attorneys may expect to earn less than \$100,000 following graduation, but an advanced attorney 10-15 years into their career can earn greater than a million dollars annually. Moreover, a new attorney that successfully negotiates a successful decision or settlement early in their careers may be a multi-millionaire. Alternatively, an attorney with a focus on research or with few clients may expect to earn less than \$100,000 annually. Placement of a salary range for an attorney must be made with consideration of many factors. It is recommended that conservative assessments be made

Table 14

Gross Versus Net Wages as per Louisiana Statutes

As an example, Louisiana's appellate courts have indicated that gross wages, not net wages, should be considered by the jury in attainment of any determination for damages, particularly pertaining to loss of employment and accompanying wages. In *Marcel v. Tenneco Oil Co.*, 11 F.3d 563, 571 (5th Cir.1994) it is quoted that "The majority rule in Louisiana is that the remedy for past and future wage loss in personal injury actions is gross, pre-tax wages." Furthermore, in *Harris v. Tenneco Oil Co.*, 563 So.2d 317, 325 (La.App. 4th Cir.1990) it is additionally outlined, "We are satisfied that the more equitable rule is to use gross wages [in calculating lost wages]." Similar opinions that gross wages, not net wages should be used in attainment of any determination for damages are further offered in *Schwamb v. Delta Air Lines, Inc.*, 516 So.2d 452 (La.App. 1st Cir.1988); *LeBleu v. Dynamic Industry Constructors, Inc.*, 526 So.2d 1184 (La.App. 3d Cir.1988); *Riley v. Winn-Dixie Louisiana, Inc.*, 489 So. 2d 931 (La.App. 5th Cir. 1986). Based upon a review of similar cases, it is shown that the only state circuit decision which does not exclusively use gross wages, but nonetheless does find that using gross wages is acceptable is *Green v. Farmers Ins. Co.*, 412 So.2d 1136, 1142 (La.App.2d Cir.1982). In this last decision, it is quoted, "[T]here is no 'right' formula for establishing past and future lost earning capacity, while net wages are sometimes used, the use of gross income is also appropriate."

regarding wages and wage earning capacity, particularly when an attorney does not have an established earnings history.

Publicity May Incur with Testimony

Attorneys by nature of both their knowledge and earning power most often represent high respect in the community. When an attorney is injured, most often the recovery and subsequent rehabilitation will gain publicity within the community. Subsequently, a Rehabilitation Counselor will expect publicity to accompany their applicable testimony.

Conclusory Remarks

Attorneys offer a great contribution to society. Occasionally, attorneys, similar to the general populace, may become injured and subsequently seek applicable compensation. Although Rehabilitation Counselors may not frequently evaluate wage losses for attorneys, the present article offers an initial framework. It is hopeful that additional efforts will be taken by rehabilitation professionals, including Economists and Nurses, to establish protocols for these processes.