Forthcoming as letter in the Journal of the Missouri Bar (Nov/Dec. 2013)

Dear Editor:

Figuring out economic damages in personal injury cases is hard, and made harder by the fact that economists often disagree about how to estimate such damages. I wrote about such economic controversy in the January-February 2012 issue of this Journal, briefly covering the majority view (“current rate”) and minority view (“historical rate”). A reader (David Tucek) provided a letter in the March-April 2012 issue, championing the minority view, but did not cite the relevant literature. Lawyers needing such a citation will find in my article the reference: Forensic Econ. 21, 27-29 (2011), also written by me, which supplies specific economic and statistical assumptions under which the minority view is justifiable.[1] The popularity of the majority view lies with its robustness: the requisite logic rests on basic financial economics without recourse to additional assumptions – some of which are themselves controversial.[2] The minority view, which has a long history but fading influence, is not so easily understood but is a sincere attempt to use economics and statistics for damages estimation, and may appeal to some defense lawyers due to the relatively low damage estimates it has tended to produce lately.

Sincerely,
Scott Gilbert
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[1] . The economic assumption is that markets are in “perfect foresight” equilibrium, and the statistical assumption is that net growth rates are random and unpredictable over time.

[2] The logic does require the economist to produce a forecast the earnings the plaintiff would reasonably have been able to earn, absent the injury. But this is not much of a requirement: juries are often tasked with this work, and for economists the job is simplified by use of published economic forecasts. Too, the dollar value attached to economic damages should be money enough to fund future projected losses – and this can only be confirmed if projected losses have been quantified.