

Corporate Financial Group, Ltd.

Economics / Finance

MEMORANDUM

DATE: January 6, 1991

TO: File

FROM: Stan V. Smith

RE: Kip Viscusi

At the 1989 year end meeting of the American Economic Association and the National Association of Forensic Economics, Kip Viscusi, Ted Miller, Bill Dickens and I presented papers on Hedonic Damages. These have been published in the Fall 1990 issue of the Journal of Forensic Economics.

In his paper and presentation at the meeting, Viscusi maintained that the whole life costs, in the \$5,000,000 dimension, should be used for deterrence value purposes, not for compensation in wrongful death cases.

Attached is a Response to Interrogatories, dated 8/21/89, in Anderson v. Hensley-Schmidt, wherein Viscusi is on the defense against Robert Johnson. In the Response, the defense attorney states that "Dr. Viscusi's principal conclusion is that the willingness-to-pay measure of the value of life is not an appropriate basis for compensation." This is the basic position iterated in the JFE article.

However, at that meeting, during the discussion period, I pressed Viscusi to respond as to what values he would provide a jury whose task it was to award compensation for the lost value of life. Dr. Michael M. Brookshire has recorded his recollection of that public exchange in a separate memo. My recollection is that Viscusi stated, when pressed, that while reluctant to do so, he too would provide these same whole life costs.

Moreover, in Brenda Huncovske v. Gates Rubber Company in a deposition on behalf of a deceased plaintiff, Viscusi provided several estimates of the loss of the value of life based on the whole life costs he had published. Additionally, he stated in the deposition, that he has similarly represented plaintiff attorneys in wrongful death cases and provided such deposition testimony numerous times in the past.

This deposition, wherein he provided value of life estimates on behalf of the plaintiff for compensation purposes in wrongful death, and his statements about his similar position in several prior depositions, appears to be 180 degrees at odds with position in Anderson and in the JFE article. It is, however, completely consistent with what he stated publicly at the AEA/NAFE Annual Meeting discussion. When I called Viscusi in mid 1990, he stated that he would soon publish an article resolving the contradiction.



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VIA FACSIMILE

M E M O R A N D U M

TO: Stan Smith
FROM: Michael L. Brookshire *MLB/lsk*
SUBJECT: Atlanta NAFE Meeting and Dr. Viscusi's Comments
DATE: May 6, 1992

At the Annual Meeting of the National Association of Forensic Economists in Atlanta in December, 1989 one of the three section meetings was devoted to the loss of enjoyment of life damages. The four panelists presenting papers included Kip Viscusi, Ted Miller, Bill Dickens and Stan Smith. A compendium of these was published in the Fall, 1990 issue of the Journal of Forensic Economics.

In the paper handed out at the meeting, and in his presentation, Viscusi maintained that whole life costs, in the dimension of \$5,000,000 should be used as the basis for valuing life. Smith presented loss of enjoyment of life figures netting out lost earnings, amounting to approximately 2.3 million dollars for a statistically average person. Miller and Dickens also made presentations. A general discussion by the panelists followed.

Viscusi maintained that he believed these estimates of the value of life should be used only in product liability cases. When pressed by Smith as to what figures Viscusi would provide to a jury if and when a jury was allowed to award for the value of life in non-product cases, Viscusi replied: "Well then I would provide your figures, Stan."

MLB/lsk



January 3, 2006
Professor W. Kip Viscusi
1575 Mass. Ave.
Harvard Law School
Cambridge, MA 02138

Professor Thomas Ireland
Dept. of Economics, 408 SSB
University of Missouri at St. Louis
One University Boulevard
St. Louis, MO 63121

Re: Brookshire Memo

Dear Professor Ireland:

I am writing to you regarding the Michael Brookshire memo dated May 6, 1992. I believe this memo is being submitted in connection with expert reports in *Reyes v. Last Chance Liquors*, Case No. CV 2005-353-1 in the Circuit Court of Benton Co., Arkansas. I have several brief comments to make.

First, it strikes me as odd that about three years after the NAFE conference that Michael Brookshire is reconstructing supposed verbatim comments that I made in response to some undefined question regarding my conference presentation. I know I never said those exact words as an answer to any question so that this reconstructed quote is not actually a quote. More important, the memo does not provide the text of the question that was being asked. Without the question text, it is impossible to interpret the response.

Second, the memo claims that I discussed "whole life costs" at the conference. I have never used that terminology in any article or conference presentation.

Third, the memo claims that I support the use of value of life figures in products cases but not non-products cases. My general position is that these numbers are good guides to how much of an investment a firm should make in safety, whether a products case or some other kind of case. However, they are not an appropriate guide to appropriate insurance compensation levels, which is the usual objective of wrongful death awards.

Finally, I have written extensively on the value of life concept, including publications that came out of the 1989 conference. These writings provide a more

appropriate guide to my views than memos attempting to reconstruct oral comments at a conference.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Kip Viscusi". The signature is fluid and cursive, with the first name "W. Kip" and the last name "Viscusi" clearly distinguishable.

W. Kip Viscusi

From: Viscusi, Kip [mailto:kip.viscusi@Law.Vanderbilt.Edu]
Sent: Tuesday, June 04, 2019 4:15 PM
To: Ireland, Thomas R. <ireland@umsl.edu>
Subject: RE: Stan Smith's Posts Today on Hedonics on the NAFE-L

Hi Tom-I have finally surfaced from dealing with end of semester matters and shifting our summer locale to Colorado. Your article is terrific and very much on point. I have a few comments.

1. In Huncovsky I noted that I had testified numerous times, but this was the only time I have ever testified in a wrongful death case and discussed possible approaches to nonmonetary loss components such as pain and suffering and loss of enjoyment of life. I have consistently opposed hedonic damages. VSL could come up if the case was in terms of valuing the risk of death as opposed to the death outcome, but that is not what is the norm in wrongful death cases. Also, as I mention in my book and in an article in Journal of Health Economics, I have also estimated the value of the morbidity risk component of VSL but once again that is the value of preventing the risk.
2. VSL is actually a lower bound on how much you would have to pay people to be compensated for being dead, which is pertinent to how I viewed the Stan Smith question. As the Brookshire memo attests, I said it should only be used in product liability cases. Why would that statement make any sense? He left out the purpose for which it should be used in product liability cases, which is assessing negligence not assessing damages. That same theme shows up in my articles in that the VSL sets a reference point for how much companies should be required to spend on safety, not how great damages should be.
3. I do support use of the VSL in setting punitive damages.

Please keep me posted as the article progresses since I would like to cite it when I draft a written version of my conference remarks. Best, KIP