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NEWSLETTER

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Financial statistics:

Data as at September 2005	CPIX Inflation (year-on-year) F	Interest (long bond yield) I	Real Rate of Return F-I	RRR 12 mths ago
South Africa	4,4%	8,1%	3,7%	4,8%
United Kingdom	3,1%	4,2%	1,1%	1,6%
Japan	0,0%	1,4%	1,4%	0,9%
United States	3,3%	4,2%	0,9%	1,4%

The notable feature of these figures is the exceptionally low real rates of return in first world economies. The potential for rising inflation and raised interest rates and declining share prices has been evident for several months now. South Africa's long bond yield is down from 9,2% per year a year previously to 8,1% per year at October 2005 (and 7,5% per year at May 2006). Rising interest rates in first world countries and reduced yields in South Africa means that South Africa is decreasingly attractive to overseas investors. It is quite remarkable that against this background the Rand ever got as strong as R6,00 to the US dollar.

Year-on-year growth in the value of house prices has reduced from 32% in 2004 to 20% and dropping in 2005. A house to live in (and rent rooms from) still remains one of the best investments that can be made by an accident victim.

South African inflation remains low at an average 4,4% per year (3,7% CPIX was reported for April 2006). If one assumes an average long term real rate of return of 2½% per year then the long bond yield of 8,1% is discounting a long term average for inflation of about 5,5% per year.

International relative cost of living: Once upon a time South Africa was a very cheap place to live. Not anymore. Another way to look at this is to say that if you are spending rands then the rest of the world has become much cheaper: Relative cost of living indices show: Johannesburg 100; London 134,6; Manchester 138,5; New York 182,2; St Louis Missouri USA 87,8; Mexico City 105,3; Tokyo 178,5; Kyoto Japan 123,8; Sydney 113,9; Auckland 96,4; Maputo 105,3; Harare 110,8; Windhoek 94,3. For New York and Tokyo the cost of living is much higher than in other cities in the same country. The United Kingdom is an exception, the cost of living in London is much the same as for other nearby areas such as Manchester, Croyden, and Dublin Ireland. It follows that if an accident victim claims for loss of earnings from working in the United Kingdom or Ireland, but will remain in South Africa, then the claim for loss of earnings (or loss of support) should be reduced by about 25% to allow for the higher cost of living compared to South Africa. For someone who would have worked in Tokyo or New York the reduction should be 45%. These percentages are applicable to 2005 and change from year to year.

Overlapping rights of action: Some losses can be claimed by more than one person. The most common example is the medical expenses of an injured child. Past expenses must be claimed by the father by reason of his duty of support and are subject to the shorter period of prescription applicable to adults. Future expenses, at least to age 21, however, may be claimed by either the father *eo nomine* or by the child assisted by the father (*Van Gool v Guardian National Insurance* 1992 1 SA 191 (W); 1992 THRHR 480).

The duty of support between parents and children does not terminate at age 21 (*Bursey v Bursey* 1999 3 SA 33 (SCA)). Thus an adult child who is rendered unemployable by a motor vehicle accident is entitled to support from his parents. In theory the parents have a claim against the wrongdoer for what it has cost them to provide the support and the victim's claim for past loss of earnings should be reduced by the saving in living expenses that he has enjoyed. In practice such claims by the parents are never made.

For loss of support claims the fact of alternative rights of support has been expressly ruled *res inter alios acta* (*Groenewald v Snyders* 1966 3 SA 237 (A) at 248A-D).

When a breadwinner is injured his dependants suffer a loss of support. It is settled law, however, that while their breadwinner is still alive the dependants have no right of action (*De Vaal NO v Messing* 1938 TPD 34). A possible exception to this rule arises when the breadwinner's life expectancy is reduced. It is arguable that the dependants should be allowed an immediate right of action for loss of support during the "lost years" and that they should not be compelled to wait until the breadwinner actually dies.

Abolishment of the common-law right of action for damages: This has been a hot topic with the latest amendment Road Accident Fund Amendment Bill and there has been talk of taking the matter to the Constitutional Court. With all the heat what seems to have been forgotten is that the COID Act (Compensation for Occupational Injuries and Diseases Act 130 of 1993) and its predecessors long ago removed the common-law right to sue an employer for work related injuries (s22). The right to compensation under the COID Act is absolute no-fault. However, in the event that fault can be proved on the part of the employer, and certain other related persons, then a claim may be made for increased compensation, but only from the COID Commissioner, not directly from the employer (s56). An appeal against the Commissioner's award of increased compensation may be made to the High Court (s91(5)). Claims for increased compensation are usually based on the common-law damages, if this is greater than the COID measure. In many instances the COID compensation exceeds the common-law damages.

Perhaps the objectors to the abolishment of the common-law right will also take up the COID Act with the Constitutional Court?

Mozambique wheelchairs: In Mozambique one seldom sees the South African style of wheelchair whereby the chair is propelled by pushing the wheels with the hands. In Mozambique they have bicycle pedals mounted at arm level and three wheels. This makes for larger wheelchairs based on readily available bicycle components. This style of wheelchair does well for people who live mostly out-of-doors without space restraints. Such chairs cannot be folded, nor used inside buildings. I am told that the more conventional compact chairs are available, but not wanted. This is a land where the principal form of transport is a bicycle, the old fashioned Raleigh style which we can no longer buy in urban South Africa.

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