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NEWSLETTER

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Financial statistics:

Data as at Aug/Mar 2009	CPI Inflation (year-on-year) F	Interest (long bond yield) I	Real Rate of Return F-I	RRR 12 mnths ago
South Africa	6,7%	8,7%	2,0%	1,1%
United Kingdom	2,9%	3,4%	0,5%	2,0%
Japan	-0,3%	1,3%	1,6%	1,1%
United States	-0,4%	2,9%	3,3%	-0,4%

With the exception of the United Kingdom real rates of return have increased over the last 12 months as the relevant economies revert towards normal pricing structures after the banking crisis upheaval. The low real rate of return in England is probably a temporary phenomenon prompted by exceptionally low interest rates designed to boost the faltering economy. The advanced progress of the USA economy towards recovery is a matter of extreme bitterness with other nations considering that it was USA financial irresponsibility that caused the problem in the first place.

House prices are still dropping. The ABSA index has dropped to a **minus** 3½% from the **plus** 2,2% increase of a year ago. A house to live in (and rooms to rent) has always been one of the best investments that can be made by an accident victim, and the time to buy has seldom been so good.

Linear vs compound real salary increases: With claims for loss of earnings the industrial psychologist reports usually prognosticate notional real salary increases for the victim had he not been injured. This is usually expressed in terms of a starting package and a career ceiling package in 10 to 20 years' time. Some experts suggest even real compound increases between the lower and upper levels. And others suggest even "linear" increases. The "linear" approach means larger real increases in early years and smaller real increases in later years, which, they observe, is more in line with the reality of the remuneration progression of an individual. It also means a slightly larger capital value for the same starting and ending salaries. Consider an individual who would have started working from January 2012 earning R83000 per year (B1 LQ) and progressed over 20 years to a career ceiling of R228000 per year (C1 MED). Assuming retirement at age 65 the present value of this career path is **R3195118** if one assumes even compound real increases and **R3319030** if one assumes even linear increases over the 20-year period.

"Earning capacity": It is well established that compensation for personal injury may be claimed for "loss of earning capacity" with the caveat that "earning capacity" has regard to "likely earnings" and not "highest and best possible earnings" (*Minister van Veiligheid v Geldenhuys* 2004 1 SA 515 (SCA)). The word "likely" means that the chance of earning above that level is roughly equal to the chance of earning below that level, it is the 50/50

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middle way. For persons who already have an employment track record what they have actually achieved is the best possible guide to what they are likely to achieve in the future. For child claimants the achievements of their siblings can be most relevant.

"Earning capacity" is normally expressed as an earnings career path. Sometimes so simple as R18000 per year escalated in line with inflation to age 65. Sometimes in a far more complex form with allowance for real increases and more such as: "Claimant would have started working from January 2012 earning R83000 per year (B1 LQ) and progressed over 20 years to a career ceiling of R228000 per year (C1 MED) followed by inflation increases only to age 65."

However, "earning capacity" can also be a reference to present capital value of the relevant income flow. For the real increase scenario above that is **R3195118** after discounts for interest, inflation, mortality and notional income tax.

Many medical experts will express the opinion that a victim has a permant percentage disability, or "impairment" if one is to use the correct terminology of the new RAF legislation. There are different ways of applying such a percentage. Thus if there is a 20% permanent impairment then one might say that for the injured condition the reduced earning capacity is 80% of R3195118, that is to say **R2556094**.

However, one might alternatively apply the percentage impairment to the yearly income before taxation, and then capitalise the reduced income to get a value of **R2662071** which is a larger sum. In other words it is to claimant's advantage to deduct the 20% before capitalising the earnings.

It is common practice to allow for reduced mobility in job market by deducting a larger percentage contingency from the capital value of injured earnings than from the capital value for earnings uninjured. Thus if the "spread" is to be 20%, that is to say 15% contingencies uninjured and 35% injured then the claimant is better off negotiating that the 20% comes off the injured earnings before capitalisation and the accepting a 15% contingency deduction both injured and uninjured.

Then, of course, there is that actuarial nicety that the proper formula to calculate a 20% spread deduction is (1-0,85x0.80) = 32% and not 15+20 = 35%.

Foster-care grants are res inter alios acta: In *Makhuvela v RAF* 2009 (W) (unreported 28.05.2009 case 2007/19277) it was ruled that the foster care grant is paid to the foster parent and not to the child so the payments may not be deducted from the child's claim when assessing damages for loss of support.

Government pension fund retirement age: Up until 1 May 1996 the normal retirement age for Government employees was 65 (60 for uniformed services). The Goverment Employees Pension Law 1996 reduced the age for non-uniformed services from age 65 to age 60. However, employees who were members of the Government Employees Pension Fund (GEPF) prior to 1 May 1996 are entitled to continue in service until age 65. See (*www.gepf.gov.za/policies.html*) for a pdf copy of amending regulations (section 19 read with definition of "pension retirement date".

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