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NEWSLETTER

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Financial statistics:

Data as at February 2007	CPIX Inflation (year-on-year) F	Interest (long bond yield) I	Real Rate of Return F-I	RRR 12 mths ago
South Africa	4,6%	8,1%	3,5%	3,7%
United Kingdom	2,8%	4,8%	2,0%	1,1%
Japan	0,3%	1,6%	1,3%	1,4%
United States	2,0%	4,6%	2,6%	0,9%

Real rates of return in many countries are declining in the face of rising inflation. The authorities are nudging up interest rates, but not yet to the very high levels seen in 2000 and 2001. The United Kingdom is an exception and it may be that investors are replacing overspent dollars with holdings in British sterling. South African interest rates remain higher than in first world countries, a factor that has for some time helped to strengthen the Rand and keep down the cost to South Africans of imported goods and services.

Job gradings: The FSA and Peromnes salary surveys are classified according to international job gradings such as C3 or P10. The grading allocated to a particular job must be determined according to the content of the job by way of skills needed and demand for independent decision making. It is particularly important when classifying a job to ignore the rate of pay that is received by the incumbent. The actual rates of pay for a particular job grade can vary widely, which is why there are 10th percentile earnings figures and medians and upper quartiles etc. It is not uncommon to find an employee who, by reason of long service, corporate restructuring, or family ties, is paid far less or far more than the average going rate for his job grade. This important consideration seems to have been forgotten by many industrial psychologists who are called upon to express an opinion as to the likely earnings of an injured claimant. It is surprisingly common for an industrial psychologist to state that at the time of the accident the claimant was earning a certain package and then to conclude from this figure the job grade! Wrong, wrong, wrong! Then to make matters worse there are even those industrial psychologists who will take an earnings package in 2001 and, without making any adjustment for inflation, compare it to a salary survey from 2006 and then conclude that the claimant was working at a job level B2. WRONGER, WRONGER, WRONGER!. It needs to be said, however, that job grading is not an exact science. A good summary of the criteria for establishing job gradings is to be found on the internet in the report by Judge Moseneke on the remuneration of senior State officials (see www.polity.org.za at pages 28 to 32). I express the hope that advocates and judges will take steps to stamp out the unsound practice of determining job gradings by reference to the earnings of the incumbent.

Formal and informal sectors: There has been a proliferation of new industrial psychologists who prepare reports for litigation purposes. Some of these continue to make the error of

prognosticating earning capacity in the sense of "highest and best use" as distinct from "likely use" (see *Quantum Yearbook* 2007 at page 106). Formal sector corporate earnings surveys reflect "highest and best use" of earning capacity. Information as to informal sector earnings, where many can expect to spend their entire working lives, are scant, so it is always easier to cite the formal sector tables. A good earnings report will state the estimated percentage chances of a career in each of these categories. Many industrial psychologist reports state that there was a "possibility" that the victim may have obtained employment in the formal sector. A "possibility" is a chance less than 50% and may be considerably less than that, down to 1% and less for accident victims who already have a lengthy history of employment in the informal sector.

Earnings at date of accident: Some of the most useful information that an industrial psychologist can provide is details of what the claimant was earning at the time of the accident and what has happened since. For never-employed scholars and infants it is helpful to have details of the earnings of parents and siblings. In the days before industrial psychologists became popular there was a strong emphasis on earnings at the time of the accident rolled up for inflation. If allowance was to be made for a promotion, or other form of real increase, then solid evidence was needed, usually by bringing the employer to give evidence in Court. Industrial psychologists seem to make little use of the earnings questionnaires that have been extensively used in the past (see *Quantum Yearbook* 2007 at pages 53 to 58). The response by an employer to such a questionnaire would make a most welcome addendum to a report by an industrial psychologist. It is also extremely helpful to have the employer's estimate of the current notional earnings of a victim. Earnings surveys should only be used when explicit evidence from the employer cannot be obtained, and then with caution.

Obvious errors: Errors happen. For instance the date of birth of a child may be incorrectly entered into an actuary's computer programme. The erroneous date appears large as life in his report, but the plaintiff does not notice the error and the defendant does not say anything. The error leads to a substantially lower settlement for loss of support than should have been. Is the claimant bound by such a settlement, even when the settlement has been made an order of Court? The answer seems to be no. Wille "Principles of SA Law" 8ed at 419 states that:

"... a mistaken party may rescind from the contract (even if the mistake was caused by his own negligence) where the other party ought, as a reasonable man, to have been aware of the mistake".

If the defendant's attorneys were either less than honest in failing to bring the date of birth error to the claimant's attention, or, alternatively if it was a common error where the intention of the parties was to pay according to the correct dates, whatever they may be. In both instances the law allows for a correction of the settlement amounts (concerning mistake in general see *Sonap v Pappadogianis* 1992 3 SA 234 (A)).

Reduced life expectancy: The rule in our law is that if a victim's life expectancy has been reduced by reason of his injuries then the calculation of what he would have earned had he not been injured is calculated using the reduced life expectancy (*Lockhat's Estate v North British & Mercantile Insurance Co Ltd* 1959 3 SA 295 (A)).

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