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RE: Pre-Injury Wage Documentation

Perhaps the most fundamental component of earning capacity assessments is the estimation of the pre-injury wage base. Before any projection of what an individual would have earned had the injury not occurred, the base annual wage earnings must be determined. For individuals with established employment histories, a review of historical documentation of past earnings is necessary. Sufficient earnings documentation may consist of individual income tax returns, W2 wage and tax statements, and even payroll documents, such as pay stubs and payroll printouts obtained from the individual's employer.

Historically, forensic economists have been limited in the ability to acquire a complete earnings history for a particular individual due to the limiting nature of the available records. For example, personal income tax returns may be filed "jointly" with a spouse. Without the corresponding W2 statements or payroll documentation, separation of the spouse's wages from the plaintiff's earnings is not possible. Additionally, most individuals will maintain individual income tax returns for a maximum of seven years. If an injury occurred several years prior to the filing of an earnings loss claim, then an insufficient number of years may be a critical issue. Of course, it is possible to acquire a transcript of earnings from the Internal Revenue Service; however, such requests are not generally processed for several months. Given that such information is often needed in a timely fashion, this option presents its own problem.

W-2 statements themselves are not without problems as the collection of all W2 documents for an individual in a given year may not be possible. For example, an individual who is employed with multiple employers in a given year may only provide a W2 issued by a single employer. This would mean that earnings accrued through additional employers may be overlooked, therefore under reporting the annual earnings. Payroll documentation for a specific employer often results in similar problems as an individual may have only been employed with this company for a short period of time. However, wage documentation collected by the Social Security Administration may be quite beneficial in solving the problems of acquiring earnings data over a sufficient historical time period in a timely manner.

Social Security earnings data for an individual contains the historical record of reported wages for the time period beginning with first employment and continues through the last reported calendar quarter. Such documentation is an ideal data source for the forensic economist as this record will contain an annual summary of all wages. The literature, and good common sense, suggests that there is no better method by which to determine an individual's annual pre-injury capacity to earn than the demonstrated wage history. These data describe both the specific labor force experience of the individual, which is necessary to ascertain the level of earnings that would be likely to occur, had the person not been injured. The advantage of the Social Security wage data is that this source contains all annual wages over the course of an individual's working life. In most instances, such documentation is quite useful in that annual fluctuations of earnings can be studied to best determine what the pre-injury annual wage level would have likely been throughout the remainder of working life.

Within the last decade, the Social Security Administration made an effort to transmit an annual statement of summarized earnings to all account holders. These statements, transmitted by mail, were generally sent approximately two months prior to each individual's birth date. The statements provided the account holder with a complete history of the annual earnings reported, on a year-by-year basis. For forensic economists, this statement was found to be quite helpful. However, a problem often existed in which the individual had misplaced or discarded this annual statement. When requested, it was not possible to acquire from the plaintiff. Adding to this issue was the recent decision of the Social Security Administration to discontinue the routine transmission of this statement to all account holders.

Recognizing that the information contained in these annual reports was useful to account holders, it was apparently decided that an effort to take full advantage of digital technology would provide a more efficient method to distribute these reports. Recently, the Social Security Administration developed a user friendly internet website to enable account holders the ability to view and print these same annual statements upon request. The reports are easily accessible and only require the input of basic information.

To obtain an annual summary earnings statement, the plaintiff must first open the Social Security Administration main website ([www.ssa.gov](http://www.ssa.gov)). Upon opening this website, a list of "Top Services" menu will appear on the left side of the page. By clicking on the "Get your Social Security Statement online" tab, a new page is opened which explains the annual statement and provides the user with the opportunity to create an online account so that this statement may be reviewed. At the bottom of this web page, the user may click on the "Sign in or Create an Account" button which will then open a page which contains a button for creating an account. By clicking on the "Create An Account" button, the user is then taken to a page explaining the account creation process and agreement to the terms of service. The user must first click the "I agree to the Terms of Service" button to proceed. The terms of service may be reviewed prior to agreement but it is necessary to agree prior to proceeding to the next step. At this point, it is worth reminding potential users that knowingly providing false information to the Social Security Administration is illegal. Given that the terms of agreement are acceptable, the user can then click the "Next" button.

The following screen asks for basic information regarding the user. It is necessary to complete each area of this page by providing the first, middle initial, and last name of the user. The social security number is then entered, as is the date of birth and home address. A home phone number is also requested, which is apparently needed to assist with identity verification. Once completed, the user will then click the "Next" button to proceed to a page which requests some additional financial information specific to the individual. These questions are presented regarding specific financial behavior demonstrated by the user. For example, he/she may be asked the term (duration) of a current auto loan/lease. Specifying a lending institution from which the user recently borrowed funds may be asked. This page may even request the identification of the current automobile make (Chevrolet, Ford, etc.) owned by the user. The responses to all of these questions are a series of multiple choice answers, so it should be relatively easy for the user to recognize the correct response. Although these questions appear to be rather personal, the Social Security Administration maintains that this information is already known (hence the multiple choice responses) and is simply used to assist in the prevention of identity theft and improper use of the website. Upon completion of this section, the user will then click the "Next" button to proceed to the creation of a username and password page.

Simple instructions are provided on this page to guide users through the process of establishing a user name and password. Appropriate user names will be any combination of letters and numbers which is at least 8 and no more than 20 characters in length. An additional rule is that the username cannot be the social security number and cannot be the user's name. The password must be at least 8 characters in length and contain at least one uppercase letter (A-Z), at least one lowercase letter (a-z), at least one number (0-9), and at least one symbol (!,@,#,\$,% , etc). It is then necessary to provide a valid email address. For additional security purposes, the user is then asked for responses to a series of three questions on a range of personal topics. For example, a question may be "What is your maternal grandmother's maiden name?" Responses to these questions will be maintained and utilized to verify the identity of anyone seeking to change the account password. This is necessary in case the user forgets the password and will then need to change it.

Once a username and password are created, it is then possible for the user to login to their account. After successful login, the user can click the "Print/Save Your Full Statement" button which

will open a .pdf of the statement which can then be printed. Once printed, the user should be reminded to click the “Sign Out” button, which is located at the top of the page.

Many individuals may be concerned of the possibility of identity theft when using an online platform to obtain this information. Such concern is genuine. However, the Social Security Administration appears to be knowledgeable of this and has undertaken efforts to insure that confidentiality is maintained. Nevertheless, it is not advised that individuals create accounts or log onto existing accounts through computer terminals shared with other individuals, such as public libraries or internet cafes. Instead, users are encouraged to proceed through the account creation process and review statements on secure computers, which may be at their home or in their attorney’s office.

It is hoped that the information provided in this newsletter assists you in obtaining wage documentation which can then be disclosed to the relevant parties involved in the litigation. Although it may appear to be a complex task, the steps needed to create an online account with the Social Security Administration and obtain the full earning statement are straightforward and require less than 15 minutes to complete.

As always, we extend an invitation for you to contact either of us directly regarding any issue pertaining to the data and methods relevant to the calculation of economic damages. Such consultations are appreciated on an individual basis or in a group setting at your firm. We very much enjoy providing continuing education services to our clients and ask that you contact us with any questions you may have. In our two newsletters later this year, we will describe the results of the 2012 survey of forensic economists by Mike, Dr. Frank Slesnick, and Dr. Mike Luthy. These results were in a paper delivered by Mike and Frank at the recent meetings of the Western Economic Association and will be submitted as an article for the peer-reviewed *Journal of Forensic Economics*.

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