

EARNING CAPACITY

- Front lost earning capacity measure the ongoing economic harm, continuing after the final day of trial, which may be experienced by a plaintiff who has been injured.
- Future lost earning capacity represent the injured person's reduced earning capacity from the injury date to the end of his expected work life.
- There are three critical factors in measuring lost earnings:

1) Pre-Collision Earning Capacity

- ◆ What was the injured person's earning capacity prior to the injuries?
- ◆ Had the person not been injured, how much could he/she have earned from the date of the injuries to the end of his work life?

2) Post-Collision Earning Capacity

- ◆ What is the injured person's earning capacity after the injuries?
- ◆ How much can the injured person earn from post-collision employment that he/she is physically and mentally able to perform?
- ◆ As an injured person, how much will he/she have earned from the date of the Collision to the end of his work life?

3) Work Life Expectancy

- ◆ Had the person not been injured, how long would he/she have worked?
- ◆ Post-Collision, how long will the person work?

Lost Earning Capacity

- Loss of future earning capacity refers to the economic harm that a plaintiff suffers in an injury or death which results in a diminished capacity to earn wages.

- The definition of earning capacity in Black’s Law Dictionary is as follows:

“Earning Capacity. Term refers to capability of worker to sell his labor or services in any market reasonably accessible to him, taking into consideration his general physical functional impairment resulting from his accident, any previous disability, his occupation, age at the time of injury, nature of injury and his wages prior to and after the injury. Sims v. Industrial Commission, 10 Ariz. App. 574, 460 P.2D.d 1003, 1006. Term does not necessarily mean the actual earnings that one who suffers an injury was making at the time of the injuries were sustained, but refers to that which, by virtue of the training, the experience, and the business acumen possessed, an individual is capable of earning.”

- Lost wages are measured by comparing pre-accident earning capacity and post-accident actual and projected earnings. Lost earning capacity is not necessarily determined by comparing actual pre-accident earning and post-accident actual earnings.
- *“Loss of earning capacity is not the same as lost wages. Rather, earning capacity refers to a person’s potential. Earning capacity is not necessarily determined by actual loss.¹ While the earnings at the time of the accident may be relevant, such figures are not necessarily indicative of past and future lost earning capacity.”²*
- *The focal point of the inquiry is not what the plaintiff actually would have earned, but the difference in his capacity to earn – before and after the injury”³*
- Pre-injury earning capacity for a person with an established career path or work history can be measured based on their actual pre-injury earnings. The injured person’s expected, pre-injury earning capacity would have been in their established pre-injury occupation.
- In a situation where an injured person is or will likely qualify to work in various occupations, the injured person’s earning capacity can be based on realistically viable occupations.

¹ The loss of earning capacity does not require employment at the time of the injury. Martin, Gerald D. *Determining Economic Damages*. James Publishing: Costa Mesa, CA. 2011, section 3-10

² Corbett v. Seamons dba Big O Tire, 904 P.2d 232, N.2 (Ut. App. 1995, page 233)

³ Clawson v. Walgreen Drug, 1045 Utah Supreme Court

- For example, a student who graduates with a degree in civil engineering and is injured prior to obtaining a job could be reasonably expected to have an earning capacity similar to the average career earnings for a civil engineer.
- Another example would be a pre-injury unemployed carpenter. Even though the injured person may have no pre-injury earnings in the year of the accident, he/she would have had the pre-injury capacity to earn as a carpenter.
- I assume that a student who invested time and money to pursue a degree for a specific occupation intended to work in that occupation. Or, that a person who performed an occupation prior to the accident, could have continued to perform that occupation but for the injury.
- In a personal injury case, post-injury mitigating earnings are based on the injured person's actual earning performance or their most likely future earning profile based on the severity of the injury, long-term work limitations, transferrable skills, and retraining.
- Depending on the severity of the injury and the length of time since the accident, the injured person may have established a stable post-injury earning pattern that may be projected as a post-injury earning capacity.
- If an injury is severe enough, an injured person might have been determined to be disabled and unable to continue working.
- In some cases, the injured person has defined the type and quantity of work that can be tolerated based on their pain parameters, or self-assessed physical and mental limitations.
- In some cases, a vocational or rehabilitation expert might opine concerning an injured person's post-injury earning capacity.
- As a forensic accountant, I do not offer a vocational or rehabilitation opinion as to a person's mental or physical ability to perform an occupation. In cases where a vocational work capacity assessment is not available, I rely on the injured person's actual post-injury earning profile and their self-assessment of pain parameters and mental and physical limitations to project the person's future earnings.