



TRIAL BRIEFS

The newsletter of the Illinois State Bar Association's Section on Civil Practice & Procedure

Compensation for household services

By Mark Rouleau ©, Rouleau Law, Rockford

Each home has been reduced to the bare essentials – to barer essentials than most primitive people would consider possible. Only one woman's hands to feed the baby, answer the telephone, turn off the gas under the pot that is boiling over, soothe the older child who has broken a toy, and open both doors at once. She is a nutritionist, a child psychologist, an engineer, a production manager, an expert buyer, all in one. Her husband sees her as free to plan her own time, and envies her; she sees him as having regular hours and envies him.

—Margaret Mead, *Male and Female*:

A Study of the Sexes in a Changing World
(William Morrow & Co., 1949).

The lost value of time is compensable not merely lost wages, but also for everyday chores known as household services.

Philip Sanders, Jr., a Ph.D. in Economics, says: "Whether or not these losses are admitted into evidence in any specific case, the value of Lost Household Services may, nevertheless, account for a significant proportion of total economic losses. This proportion can range from little or nothing to most or all of the damages in a given

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Developments in piercing the corporate veil

By George Bellas and Misty Cygan, Bellas & Wachowski, Park Ridge

Piercing the corporate veil's swath has broadened as the lack of shareholder, officer, director, or even employee status does not preclude veil-piercing

In *Buckley v. Abuzir*, 2014 IL App (1st) 130469, the appellate court clarified a somewhat confusing area of law—veil-piercing—in its reversal of the trial court's dismissal of plaintiff's amended complaint.

When the plaintiffs were unable to collect a default judgment against Silver Fox Pastries, Inc., they turned to the individual defendant in an action seeking to pierce the corporate veil of Silver Fox. The defendant filed a motion to dismiss under section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615), arguing that because the individual defendant was never a director, officer, shareholder, or employee of Silver Fox and had

limited involvement with the corporation, there was an insufficient basis for piercing the corporate veil. The trial court agreed and granted the defendant's motion to dismiss with prejudice.

Veil-piercing is not usually an action that can stand on its own given that it is an equitable means to an end to impose liability in an underlying cause of action. However, a stand-alone action can be brought where the plaintiff has already obtained a judgment against a corporation, as was the case in this action.

Piercing the corporate veil has earned the top spot for the most litigated issue in corporate law. While Illinois courts claim to be reluctant to pierce the corporate veil, they are on par with the rest of the country because they do so in about 50% of the cases. The veil is pierced almost exclu-

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Compensation for household services

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law suit.” Jurisdictional variations: income taxes and household services, at: <<http://www.philipsaunders.com/TheFirm/Publications/EconomicDamages/tabid/98/Default.aspx>>.

Wages are merely one way to value a person’s time. We have all heard the familiar expression that “time is money.” In Illinois our jury instructions allow us to recover not only for the lost income that a person suffers as a result of the defendant’s negligence but also for the *value of their time* lost.

IPI Civil, No. 30.07 – Measure of Damages--Loss of Earnings or Profits--Past and Future--Adult Plaintiff, Emancipated Minor, or Minor Whose Parent Has Assigned Claim to Minor

[The value of (time) (earnings) (profits) (salaries) (benefits) lost] [.] [and] [(T)he present cash value of the (time) (earnings) (profits) (salaries) (benefits) reasonably certain to be lost in the future].

Emphasis added.

Illinois allows for the recovery of the loss incurred by unemployed plaintiff who provided services in the home (*Jerrell v. Harrisburg Fair & Park Ass’n*, 215 Ill.App.273, 280 (4th Dist. 1919)), and recognizes that the value of a homemaker’s lost services are a proper element of damages if the loss is established; *McManus v. Feist*, 76 Ill.App.2d 99, 106-07; 221 N.E.2d 418, 421-22 (4th Dist.1966).

Anytime that a person is unable to perform their ordinary job duties causing them to suffer a loss of income it is very likely that they also suffer a loss of the household services that they would have ordinarily provided to themselves or their spouses. This element of damages is frequently overlooked even though it is very easily calculated.

One court has described the loss of household services as the “impairment of ability to do necessary household work”. *McNeely v. Henry*, 100 N.M. 794, 676 P.2d 1359 (1984); see 22 Am. Jur. 2d Damages § 101.

In *Rhodes v. United States*, 967 F.Supp.2d 246 (D.D.C. 2013), the court awarded “loss of household services” in a medical malpractice action against the United States, pursuant to the Federal Tort Claims Act (“FTCA”).

Where a plaintiff is unemployed, he or she

can still recover for the value of the lost time that he or she suffered due to the negligence of the defendant. *Long v. Friesland*, 178 Ill. App.3d 42, 55, 127 Ill.Dec. 85, 532 N.E.2d 914, 922 (5th Dist. 1988), *appeal denied* 125 Ill.2d 566; *Martin v. Cain*, 219 Ill.App.3d 110, 161 Ill. Dec. 515, 578 N.E.2d 1161 (5th Dist. 1991), *appeal denied* 143 Ill. 2d 639.

Every employee trades his time for a paycheck. Therefore when someone chooses not to work they have made a choice that their time is worth more to them than they would get paid if they were working. This economic phenomena is clearly demonstrated by the well known backward bending supply of labor curve (http://en.wikipedia.org/wiki/Backward_bending_supply_curve_of_labour) in which, at a certain amount of wages, instead of working (supplying) more hours for more pay, workers choose not to work.

A corollary to the rule of labor supply and demand arises where a home worker is injured. It is clear that his or her time is worth money, because they could work outside the home and trade their time for dollars or they could use their money to hire someone (at market rates) to perform the chores that they are performing for their families and themselves. With the assistance of a skilled economist the value of these services may easily be established. The value for the lost time and not lost wages is what is compensated the wages are merely one-way to value the time.

My Second Favorite Household Chore Is Ironing. My First Being Hitting My Head on the Top Bunk Bed Until I Faint.

—Erma Bombeck,
Syndicated Columnist

In the article “Measuring time spent in unpaid household work: results from the American Time Use Survey,” appearing in the *Monthly Labor Review*, July 2009 (www.bls.gov/opub/mlr/2009/07/art3full.pdf), published by the United States Bureau of Labor Statistics (BLS), the author, Rachel Krantz-Kent, states:

Individuals often perform services for themselves or their households rather than purchasing those services.

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For example, they fix leaky faucets rather than hiring plumbers, grocery shop instead of using a grocery delivery service, and prepare meals rather than eating at restaurants. Such unpaid services that are produced for immediate consumption by one's own household, and for which market substitutes exist, are referred to as unpaid household work. Unlike work that is done for pay, about which there are a number of timely statistical measures—persons employed, hours worked, earnings generated, and others—the resources involved in doing unpaid household work are less frequently quantified.

In addition to identifying the concept, the article provides the basis (governmental statistical tables) for calculating the number of hours involved in those losses. If one takes the time to calculate these losses, they will realize that it adds a further substantial element to the economic damages in their cases.

If those tables are combined with further governmental statistical information regarding the average hourly wage for performing those tasks (see Average hourly and weekly earnings of production and nonsupervisory employees on private nonfarm payrolls by industry sector, seasonally adjusted for example, Table B-8 from the BLS (<http://www.bls.gov/news.release/empstat.t24.htm>)) one can place a dollar figure on the value of those losses.

The BLS regularly publishes such information by state (e.g., May 2013 for Illinois, http://www.bls.gov/oes/current/oes_il.htm), and by metropolitan region (i.e., Chicago, Rockford, Peoria, Bloomington-Normal, Champaign-Urbana, Danville, Springfield, Kankakee, etc. http://www.bls.gov/oes/current/oes_il.htm#otherlinks).

ExpectancyData, Inc. of Shawnee Mission, Kansas, publishes *The Dollar Value of a Day*, combining “the 2003 to 2012 samples of the U.S. Census Bureau’s American Time Use Survey (Publisher@ExpectancyData.com) with hourly wage information from the BLS’ Occupational Employment Statistics. The result is a daily valuation of activities for 200 demographic groupings of persons in the United States.” This is another publication that will establish the value of those services to oneself and family.

Collateral Source Rule

Frequently, defendants and some courts make the argument that the economic value of services provided to other family members is not a compensable economic damage or loss because it is a required part of a family relationship. See *In Lewark v. Parkinson*, 73 Kan. 553, 85 P. 601 (1906), where the defendant “argued that the sons’ time should be disallowed because they were duty bound to care for” their mother. The court rejected that argument applying the collateral source rule.

The law in New York is at odds with the collateral source rule and denies damages for household services unless money is actually spent to replace those services. “[S]ince plaintiff did not incur actual expenditures on household services between the accident and the date of verdict, having relied on the gratuitous assistance of relations and friends, the jury improperly awarded” damages for loss of household services because it did compensate the plaintiff for a loss they suffered. *Schultz v. Harrison Radiator Div. GMC*, 683 N.E.2d 307 (N.Y. 1997).

The rationale adopted by the New York Courts is that the duty to repay another’s generosity is a “moral obligation” to act for them in a similar manner should his services ever be required and that such a moral obligation is not an injury.”

Lest one think that this is an outdated argument, they should read the dissent from denying leave to appeal in *Thorn v. Mercy Memorial Hospital*, 483 Mich. 1122, 767 N.W.2d 431 (2009), where one justice asserted in part that, by allowing household services to be separately valued as “economic damages” avoiding the statutory cap on “non-economic damage,” the court devalued the relationship that family members share with one another by objectifying consortium. In other words, if the defendant is not economically responsible for these damages, then relations within the family of the injured parent is strengthened because they are not “objectified.”

The simple fact that we ask juries to place a dollar value on any damages including “pain and suffering” by its nature objectifies those damages. Where there is a clear quantifiable market place for those services, it seems foolish that the courts would prevent such market based evidence from being used to help the jury determine the value of those damages.

To some it may seem that this argument

succeeded with respect to claims for “loss of means of support” under the Illinois Dram Shop Act. It has been held that voluntary household services by a minor do not fall within the definition of “means of support” under the Illinois Dram Shop Statute.

It does not include routine domestic chores and services. (See *Stevens v. B & L Package Liquors, Inc.*, 66 Ill.App.3d 120, 22 Ill.Dec. 868, 383 N.E.2d 676 (5th Dist. 1978), citing to Illinois Pattern Jury Instruction 150.14, which defines “means of support”; *McMahon v. Sankkey*, 133 Ill. 636, 24 N.E. 1027 (1890); *Edenburn v. Riggins*, 13 Ill.App.3d 830, 301 N.E.2d 132 (3rd Dist. 1973); *Pearson v. Renfro*, 320 Ill.App. 202, 50 N.E.2d 598 (2nd Dist. 1943).) *Martin v. American Legion Post # 784*, 66 Ill.App.3d 116, 22 Ill.Dec. 864, 383 N.E.2d 672 (5th Dist. 1978).

See also, *Farmers State Bank and Trust Co. v. Lahey’s Lounge, Inc.*, 165 Ill.App.3d 473, 116 Ill.Dec. 531, 519 N.E.2d 121 (4th Dist. 1988) (no recovery for maternal and domestic services); *Wilberton v. Freddie’s Pepper Box, Inc.*, 148 Ill.App.3d 319, 102 Ill.Dec. 58, 499 N.E.2d 615 (1st Dist. 1986) (no recovery for maternal and domestic services); *Robertson v. White*, 11 Ill.App.2d 177, 136 N.E.2d 550 (1st Dist. 1956) (potential earnings of minor child not contemplated in “means of support.”); *Stevens v. Lou’s Lemon Tree, Ltd.*, 187 Ill.App.3d 458, 135 Ill.Dec. 58, 543 N.E.2d 293 (1st Dist. 1989).

This position is grounded in the meaning of the statutory term “loss of means of support” as relating solely to a party’s wage-earning potential and not include maternal duties and domestic chores. (*Farmers State Bank and Trust Co. v. Lahey’s Lounge, Inc.*, 165 Ill.App.3d 473, 519 N.E.2d 121 (4th Dist. 1988), and not in a belief that these damages have not been suffered or that they are not compensable in tort actions.

The idea that the loss of household services is not part of the compensatory damages recoverable in tort undermines the clear economic value of homemakers, turning them in to the legal equivalent of bondservants. It also begs the fact that the only one who benefits from this theory of free household services is the defendant who negligently or willfully caused the loss and harm in the first place, violating the very principle of the “collateral source rule” as enunciated in *Wills v. Foster*, 229 Ill. 2d 393, 892 N.E.2d 1018, 323 Ill.Dec. 26 (2008). Furthermore, it unreasonably places the uncompensated expense of any such replacement services on those who

have suffered the loss of the services.

Taxation

Under Illinois law “gross earnings, not net, is the proper figure to use in computing earning capacity.” *Van Holt v. National Railroad Passenger Corp.*, 283 Ill.App.3d 62, 218 Ill.Dec. 762, 669 N.E.2d 1288 (1st Dist. 1996).

Hearsay: Illinois Rule of Evidence 803(8) and Federal Rule of Evidence 803(8)(c)

Illinois Rule of Evidence 803(8), Public records and reports, provides (underlining added):

Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, police accident reports and in criminal cases medical records and matters observed by police officers and other law enforcement personnel, unless the sources of information or other circumstances indicate lack of trustworthiness.

Under Federal Rule of Evidence 803(8)(c), in tort actions, parties may seek to introduce government records or documents, nonfederal or federal, to prove one or more of the elements in their case. Under the federal rule, plaintiffs seek to rely on letters and reports written by government agencies.

Illinois Rule of Evidence 803 expressly excludes the admission of police reports. It would seem that the BLS statistics in both the American Time Use Survey (ATUS) and the Average Hourly & Weekly earnings reports should be admissible under this rule as an exception to the hearsay rule.

In *Hunt v. State*, 252 N.W.2d 715 (Iowa 1977), the court found that the BLS Consumer Price Index (CPI) was admissible. See also, *F.T.C. v. Medical Billers Network, Inc.*, 543 F.Supp.2d 283 (S.D.N.Y. 2008), footnote #25, for a discussion on the admissibility of BLS statistics regarding average wages for a specific industry.

This was similarly discussed in footnote 43 in *Culver v. Slater Boat Co.*, 688 F.2d 280 (5th Cir. (La.) 1982), without holding whether such tables and statistics were admissible.

The Missouri Appellate Court in *Cole v. Cole*, 532 S.W.2d 508 (Mo. App. 1975) stated:

The Consumer Price Index, pre-

pared by the Bureau of Labor Statistics from extensive data collected on a national basis, systematized and published for general distribution, and kept as records of the bureau, is prima facie evidence of the facts stated therein and properly admissible in evidence as an exception to the hearsay rule, the same as copies of the United States census reports, *Priddy v. Boice*, 201 Mo. 309, 99 S.W. 1055 (1906), and records of the United States Weather Bureau, *Wheeler v. Fidelity & Casualty Co.*, 298 Mo. 619, 251 S.W. 924 (banc 1923).

Courts in attorney fee litigation have frequently cited to the BLS tables for attorney fees. *DKN Holdings LLC v. Faerber*, 2014 Cal. App. Unpub. LEXIS 2493, *30-*31 (Cal. App., Apr. 9, 2014), *Rego v. Comm’r of Soc. Sec.*, 2014 U.S. Dist. LEXIS 26792, *9; 200 Soc. Sec. Rep. Service 5 (N.D. Ohio, Mar. 3, 2014); *Baldwin v. Comm’r of Soc. Sec.*, 2014 U.S. Dist. LEXIS 14900, *5 (S.D. Ohio, Feb. 6, 2014); *Williams v. Comm’r of Soc. Sec.* (N.D. Ohio, 2013); *Montanez v. Comm’r of Soc. Sec.*, 2013 U.S. Dist. LEXIS 166273, *7, 197 Soc. Sec. Rep. Service 24 (N.D. Ohio, Nov. 22, 2013); prevailing wage litigation, *Jiwani v. United Cellular*, 2014 U.S. Dist. LEXIS 30396, *7 (N.D. Tex., Mar. 10, 2014); child support litigation considering reasonableness of staying at home versus seeking employment as a certified medical assistant, *Finerfrock v. Hicks*, 2013 N.J. Super. Unpub. LEXIS 2891, *8 (N.J. Super. App. Div., Dec. 9, 2013); bartenders income, *Norcia v. Dieber’s Castle Tavern, Ltd.*, 2013 U.S. Dist. LEXIS 155121, *25 (S.D.N.Y., Oct. 29, 2013); average wages for employees in advertising and consulting services, *Varela v. Gonzales*, 2013 U.S. Dist. LEXIS 149207, *33 (N.D. Tex., Oct. 17, 2013).

Admission and Authentication

Where an “expert witness” uses the statistical material the information can be referenced in the opinion testimony. *Sharbono v. Hilborn*, 2014 IL App (3d) 120597, ¶ 33, citing to Michael H. Graham, *Graham’s Handbook of Illinois Evidence*:

[A]n expert may testify about facts or data upon which he or she has based his opinion if those facts or data are of the type reasonably relied upon by experts in the particular field in forming opinions on the subject, even if those facts or data are not admissible

in evidence); Ill. R. Evid. 703 (eff. Jan. 1, 2011); Graham, *supra* § 703.1.

Several Illinois Courts have had the opportunity to consider the use of statistical information published by the BLS, and have cited to the statistical information regarding the CPI. *Tiongco v. Bachrach*, 2013 IL App (2d) 120491, ¶ 30; *Easley v. Apollo Detective Agency, Inc.*, 69 Ill.App.3d 920, 387 N.E.2d 1241, 1254, fn. 3 (1st Dist. 1979); *Island Lake Water Co. v. Illinois Commerce Commission*, 65 Ill.App.3d 853, 22 Ill.Dec. 445, 450, 382 N.E.2d 835, 840 (2nd Dist., 1978) (ruling regarding ICC rate setting). Judicial Cost of Living Adjustments (COLAs) are linked to statistics produced and reported by the BLS. *Jorgensen v. Blagojevich*, 211 Ill.2d 286, 285 Ill.Dec. 165, 811 N.E.2d 652, 655 (2004).

In *Pontiac Nat’l Bank v. Vales*, 2013 IL App (4th) 111088, ¶125, 373 Ill.Dec. 157, 993 N.E.2d 463, the court found that BLS statistics were improperly used to impeach plaintiff’s expert regarding the amount of money he made from his medical legal testimony work; they also raised the issue of lack of authentication of the publication and found that the proponent failed to lay the foundation for “judicial notice” of facts, citing to *Weekly v. Solomon*, 156 Ill.App.3d 1011, 109 Ill.Dec. 531, 510 N.E.2d 152 (2nd Dist. 1987), and the rule that “[j]udicial notice may be taken of facts which are commonly known or of facts which, while not generally known, are readily verifiable from sources of indisputable accuracy. (*Murdy v. Edgar* (1984), 103 Ill.2d 384, 394, 83 Ill.Dec. 151, 469 N.E.2d 1085.)”

In *H & M Commercial Driver Leas. Inc. v. Fox Valley Cont., Inc.*, 209 Ill.2d 52, 282 Ill.Dec. 160, 805 N.E.2d 1177 (2004), the dissent cited to the BLS statistics for compensation of truck drivers in support of its argument that the liquidated damages of a contract served as a penalty and not compensation.

The BLS statistics have been used to support expert testimony in workers compensation cases regarding value of income in a particular industry. *Birdsley Trucking Co. v. Industrial Com’n of Illinois*, 192 Ill.App.3d 39, 139 Ill.Dec. 387, 548 N.E.2d 772 (3rd Dist. 1989); *Mahin v. Baltis*, 34 Ill.2d 413, 216 N.E.2d 132 (1966) (prevailing wage litigation).

ATUS has been specifically cited to in several cases. In *Reed v. Ohio Dep’t of Transp.*, 2013 Ohio 1515 (Ohio Ct. Cl. 2013), footnote 5 used the ATUS to determine the average number of hours per day of household ser-

vices.

In *Thorn v. Mercy Memorial Hospital*, 483 Mich. 1122, 767 N.W.2d 431 (2009), one of the Justices of the Michigan Supreme Court dissented from the decision of the Court to deny leave to appeal from the Appellate Court. The Appellate Court had reversed the trial court holding that under the Michigan Wrongful Death Statute household services were “economic damages” and therefore were not subject to the statutory cap on such damages in spite of the affidavit of an expert economist explaining that he used the ATUS and the hourly rate of a live-in aide to estimate that the loss of household services was valued at \$225 a day.

In *Pierce v. New York Central Railroad Co.*, 304 F.Supp. 44 (W.D. Mich., 1969), the court found that it could “take judicial notice of the publications of the Bureau of Labor Statistics of the United States.”

In *Norcia v. Dieber's Castle Tavern, Ltd.* 2013 U.S. Dist. LEXIS 155121, *25 (S.D.N.Y., Oct. 29, 2013), the court found testimony to be credible comparing the claimed income loss to the BLS statistics showing that the annual mean wage for New Jersey's 15,000 or so bartenders, expressly citing to the U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment and Wages, May 2012: 35-3011 Bartenders, available at <http://www.bls.gov/oes/current/oes353011.htm>. (See fn. 2)

Many Illinois statutes rely upon the statistics published by the BLS. See, 35 ILCS 200/23–20, Procedures And Adjudication For Tax Objections; 15 ILCS 505/16.5, College Savings Pool; 25 ILCS 115/4, General Assembly Compensation Act; 30 ILCS 570/1, Employment Of Illinois Workers On Public Works Act; 35 ILCS 200/10-600, Wind Energy Property Assessment; Illinois Pension Code: 40 ILCS 5/1-160, Provisions applicable to new hires; 40 ILCS 5/2-108.1, Highest salary for annuity purposes; 40 ILCS 5/3-111.1, Increase in pension; 40 ILCS 5/3-112, Pension to survivors; 40 ILCS 5/4-109.1, Increase in pension; 40 ILCS 5/4-114, Pension to survivors; 40 ILCS 5/5-167.1, Automatic increase in annuity; 40 ILCS 5/5-238, Provisions applicable to new hires; 40 ILCS 5/6-164, Automatic annual increase; 40 ILCS 5/7-142.1, Sheriff's law enforcement employees; 40 ILCS 5/15-111; 40 ILCS 5/18-125; 55 ILCS 5/4-2001, State's attorney salaries; 55 ILCS 5/4-3001, State's attorney; assistants; 65 ILCS Sec. 5/11-74.4-3, Definitions; 65 ILCS 5/11-74.6-10, Definitions;

70 ILCS 2605/8c, Leases; manner of negotiation, creation and execution; 105 ILCS 5/3-2.5, Salaries; 110 ILCS Sec. 140/5, Definitions; 205 ILCS 305/13, General powers; 205 ILCS 670/17.2, Small consumer loans; charges permitted; 215 ILCS 5/445, Surplus line; 220 ILCS 5/9-220, Rate changes based on changes in fuel costs; 225 ILCS 515/1, Licenses; fees; application; schedule of fees and charges; 235 ILCS 5/6-6, Liquor Control Act; 235 ILCS 5/6-21, Dram Shop Act; 305 ILCS Sec. 5/12-4.11, Public Aid Code; 705 ILCS 70/8, Courts; 735 ILCS 5/8-2006, Copying fees; adjustment for inflation; 815 ILCS 375/11.1, Documentary fee; 820 ILCS 305/8.2, Workers Compensation Fee schedule; 820 ILCS 315/3, Duty death benefit; 820 ILCS 405/1900.2, Economic Data Task Force.

Illinois Rules of Evidence 901 and 902

Illinois Rule of Evidence 901(7) provides for the authentication or identification as a condition precedent to admissibility where there is “[e]vidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.”

Illinois Rule of Evidence 902(5) dispenses with extrinsic evidence of authenticity as a condition precedent to admissibility of “Official Publications, Books, pamphlets, or other publications purporting to be issued by public authority”

Public Records

Illinois Rule of Evidence 1005 provides:

[t]he contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

The author is unable locate any cases regarding the use of BLS wage statistics without expert testimony. However, in smaller cases it seems possible that one could seek to admit the ATUS and BLS average wage statistical information without the need for an economist to establish evidence of these

losses.

In *Anderson v. Cornejo*, 284 F.Supp.2d 1008 (N.D. Ill. 2003), the court allowed the admission of statistics, however noting that where the significance of the statistics are in issue, expert testimony is necessary. In *Stratton v. Department For Aging City Of New York*, 922 F.Supp. 857 (S.D.N.Y. 1996), the court thoughtfully addressed the defendant's objection to the use of statistics showing the change in the average age of high-ranking employees in the defendant's department. The court stated:

Defendants point to several cases in which courts have declined to admit statistical evidence without explanation from expert witnesses. See, e.g., *Carter v. Ball*, 33 F.3d 450, 456-57 (4th Cir.1994) (a judge may be justified in choosing to exclude statistical evidence offered without expert testimony concerning methodology or relevance); *Wingfield v. United Technologies Corp.*, 678 F.Supp. 973, 983 (D.Conn.1988) (precluding introduction of raw statistics without expert testimony to explain standard deviation). None of these cases, however, establishes that expert testimony is an absolute prerequisite to the admission of statistical evidence. Naturally, the usefulness of statistics depends largely on the surrounding facts and circumstances. See *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 340, 97 S.Ct. 1843 1857, 52 L.Ed.2d 396 (1977). In the instant action, where the proffered evidence was easily understandable, and the jury was carefully instructed as to its consideration of such evidence, the admission of this evidence was not error. Accordingly, Defendants' motion for a new trial based on this alleged error is denied.

Some courts have held that the admission of raw statistics without expert testimony to explain their significance could lead the limited probative value of the evidence to plainly outweigh by the possibility it might mislead or confuse the jury. *Williams v. Cerberonics, Inc.*, 871 F.2d 452 (4th Cir. (Md.), 1989). Thus the decision to admit the BLS wage and hour information without expert testimony hinges on whether the court believes that jury is capable of following the logic of the raw statistics showing the average amount of time an individual spends on household services

and the average value of such services.

This evidence is circumstantial by its very nature of the actual losses that an individual suffered because it does not calculate the injured party's actual hours of such services nor does it prove whether they used their time as productively as the average worker. The information, however, is helpful to provide a trier of fact with a measuring stick or guide rule to fairly value these losses depending upon the other testimony of the witnesses in the case.

Furthermore, in smaller cases where the cost of retaining an economist to testify is not warranted, counsel might consider hiring the local high school economics teacher to explain the statistics and concepts. It would be difficult for a judge to exclude the teacher's testimony, as it would be a tacit statement that they were not qualified to teach the subject.

Plaintiffs should always consider the value of this loss where an individual has suffered substantial impairment and if the initial evaluation of these losses are significant it is very strongly suggested that an expert be employed to avoid the court excluding the sta-

tistics on grounds that the probative value.

Conclusion

As can be seen from the cases cited the value of household services to self can amount to a substantial amount of economic damages in any given case and should not be overlooked when computing special or economic damages. ■

Bibliography:

Thomas R. Ireland. 2011. Uses of the American Time Use Survey to Measure Household Services: What Works and Does Not Work. *Journal of Legal Economics* 18(1): pp. 61-7; cited in *Ashford v. Wal-Mart Stores, LP* (S.D. Miss., 2013).
 Assessing Economic Damages in Personal Injury and Wrongful Death Litigation: The State of Illinois, Gary R. Skoog and James E. Ciecka, *Journal of Forensic Economics*, Apr 2009, Vol. 20, No. 3 (April 2009) pp. 271-314
 10 Sydney L. Rev. 528 (1983-85) Compensation for Loss of Capacity to Work in the Home; Graycar, Regina
 The Social Security and Medicare Related Economic Losses of the Estate in the Wrongful Death of a Social Security Pensioner, Gregory K. Faulk, *Journal of Forensic Economics* 2004 17:3, 289-311

Journal of Family and Economic Issues: September 2009, Volume 30, Issue 3, pp. 293-304; *Time Spent in Household Management: Evidence and Implications*, Anne E. Winkler, Thomas R. Ireland
 Hedonic Damages in the Courtroom Setting—A Bridge Over Troubled Waters, Stan V. Smith, *Journal of Forensic Economics* 1990 3:3, 41-49
 23 Women's Rts. L. Rep. 219 (2001-2002), *Valuing Women: A Case Study*; Davis, Martha F.
 Assessing Economic Damages in Personal Injury and Wrongful Death Litigation: The State of Mississippi, Carl G. Brooking, Blakely Fox Fender, and Harvey L. Fiser, *Journal of Forensic Economics* 2004 17:1, 95-111
 Assessing Economics Damage in Personal Injury and Wrongful Death Litigation: The State of New York, Lawrence M. Spizman and Frank D. Tinari, *Journal of Forensic Economics* 2011 22:1, 75-100
 Assessing Economic Damages in Personal Injury and Wrongful Death Litigation: The State of Michigan, William D. King and Michael S. Mahoney, *Journal of Forensic Economics* 2012 23:1, 63-89
 Papers presented at the December 2005 ATUS Early Results Conference: <http://atususers.umd.edu/papers/>
 The Chore Wars: Household Bargaining And Leisure Time, Leora Friedberg, Anthony Webb, <http://atususers.umd.edu/papers/friedberg.pdf>



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Developments in piercing the corporate veil

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sively in closely held corporations.

One of the main attractions and purposes of a corporation is that it is an entity separate and apart from its shareholders, directors, and officers, which serves to protect the stockholders from unlimited liability. Veil-piercing occurs when a corporation is essentially a dummy or sham corporation being controlled by another entity.

Illinois courts utilize a two-prong test for piercing the corporate veil: (1) the line between interest and ownership is so blurred that it blends together and there is no longer separation between the corporation and, (2) the parties who compose it and to hold the corporation as a separate entity would promote injustice or inequitable circumstances. *Tower Investors, LLC v. 111 East Chestnut Consultants, Inc.*, 371 Ill.App.3d 1019, 1033 (1st Dist. 2007).

Courts across the nation are split as to whether the corporate veil may be pierced to reach non-shareholders. In New York,

courts require only equitable ownership as opposed to actual ownership. *Freeman v. Complex Computing Co.*, 119 F.3d 1044 (2d Cir. 1997). Similarly, courts in Connecticut, Indiana, Colorado and Louisiana allow non-shareholders to be reached by veil-piercing. *Angelo Tomasso, Inc. v. Armor Construction & Paving, Inc.*, 447 A.2d 406 (Conn. 1982); *Fairfield Development, Inc. v. Georgetown Woods Senior Apartments Ltd. Partnership*, 768 N.E.2d 463 (Ind. Ct. App. 2002); *McCallum Family LLC v. Winger*, 221 P.3d 69 (Colo. App. 2009); *Middleton v. Parish of Jefferson*, 707 So.2d 454 (La. Ct. App. 1998).

Other states, such as California and Florida, have conflicting opinions. *Firstmark Capital Corp. v. Hempel Financial Corp.*, 859 F.2d 92 (9th Cir. 1988); *In re Schwarzkopf*, 626 F.3d 1032 (9th Cir. 2010); *Walton v. Tomax Corp.*, 632 So.2d 178 (Fla. Dist. Ct. App. 1994); *Molinos Valle Del Cibao v. Lama*, 633 F.3d 1330 (11th Cir. 2011). Meanwhile, Texas has frequently held that shareholder status is a

prerequisite to piercing of the corporate veil. *Bollore S.A. v. Import Warehouse, Inc.*, 448 F.3d 317 (5th Cir. 2006).

Buckley v. Abuzir solidifies that, like the majority of state, Illinois will allow equitable ownership to satisfy the first prong of the test. Thus, the lack of shareholder, officer, director, or employee status will not preclude veil-piercing. Shareholder status is simply a factor to be considered by the courts and not a prerequisite to veil-piercing.

This is a common-sense conclusion when you stop and consider that, when a party is seeking to pierce the corporate veil, they are asking the court to disregard the corporate entity altogether. It therefore makes little to no sense to allow the status of a shareholder of a nonexistent corporation to somehow be shielded from liability for their wrongdoing simply by resuscitating stock ownership records, or to avoid liability altogether if a corporation fails to issue any stock at all. ■