

NEWSLETTER

(Number 32 - March 1999)

Dear Reader,

Financial statistics:

	Inflation (year-on-year)	Interest (long bond yield)	Real Rate of Return	6 months ago
South Africa	8,5%	14,4%	5,4%	12,6%
United Kingdom	3,4%	5,5%	2,1%	2,2%
Japan	-0,3%	1,1%	1,4%	-0,8%
United States	1,6%	5,7%	4,0%	4,1%

The above reflect data available at time of publication (RSA=01/99 for CPI, 03/99 for yield; others=09/98). Negative inflation means that prices are falling.

Cost-of-living international comparisons: Given that the cost of living in New York as 100 then the relative cost of living index for South Africa is 60, with Zimbabwe at 53, and India the lowest of all countries at 45. On the expensive side try Japan at 171, Norway at 140, Switzerland at 133, Russia at 120, and United Kingdom at 105. Australia is 100 (taken from "Pocket World in Figures 1998" published by the Economist).

The remarried widow: In *Ongevallekommissaris v Santam* 1999 1 SA 251 (SCA) it was ruled that if a widow or widower remarries then the compensation payable must have regard to the earnings, age etc of the new spouse. This means that the dependency calculation is not terminated at the date of remarriage as has been the usual approach hitherto. Thus if the widow had been married to a successful surgeon or attorney and remarries to a game warden or teacher the deduction for remarriage will have regard to the very much lower earnings of the new husband and the lower level of support that will now be provided. This may include the effect of sharing that income with children that the new husband or wife has brought into the marriage.

The remarriage calculation does not affect the claims of the children of the deceased (*Groenewald v Snyders* 1966 3 SA 237 (A) at 247A-D).

In many families both husband and wife are working. If the husband's earnings are the same as those of his wife then he is not dependent on her and if she is wrongfully killed then he has no claim for loss of support. However, if he then remarries to a woman with nil earning capacity, or an earning capacity very much less than that of the deceased, he may then argue that he has suffered a loss being the difference between the two-parts share of **total** family income consumed by the deceased and fully paid for out of her own earnings, and the lower earnings of the new wife. This capitalised over the joint lifetime of the husband and his new

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wife can be a substantial amount of money. The widower needs this in order to maintain the pre-accident standard of living and, most importantly, so that he can continue to contribute to the support of the children at the same level as was assumed when assessing their compensation. The same reasoning applies, *mutatis mutandis*, when a working wife loses her husband and then remarries.

The Corbett & Buchanan/Honey case reports: Jutas no longer sells the old volume I with judgments from 1948 to 1968. The "new" volume I runs from 1969 and shop attendants are too young to remember the old series. Wildly confusing. Bearing in mind that the old volume I (1948 to 1968) is still quite useful those who have copies probably have an appreciating asset.

Sick leave entitlement in the civil service: 120 days on full pay plus 90 days on half pay in each 3-year cycle. Pretty generous. The Basic Conditions of Employment Act prescribes a minimum of 6 weeks' fully paid sick leave in each 3-year cycle. Civil servants have sufficient sick leave entitlement to cover most absences for future major surgery such as hip replacements and back surgery. It can be argued that such persons are then short on sick leave entitlement should they get the flu and other such ailments that account for normal office absenteeism on sick pay. The value of the chance of running short of normal sick leave is, however, extremely small and will generally be ignored (see *Bosch v Parity Insurance* 1964 2 SA 449 (W) at 452D/E). In the event of injury in a motor vehicle accident a civil servant is entitled to continue on full pay after expiry of the 120 days subject to repaying his employer once the damages claim has been finalised. It is essential, in such circumstances, that the value of the amount to be repaid is added to the claim for loss of earnings. If this is not done the claimant may find himself out of pocket and possibly running a professional negligence action against his attorney.

Epilepsy: Persons who suffer a severe head injury are usually at risk for epileptic attacks. For most victims the chances of becoming epileptic drop rapidly over the first 2 years to below 10%. In the event that epilepsy does manifest it will often disappear of its own accord after 5 to 10 years. It follows that if the costs of treating epilepsy (roughly R5000 per year) have been actuarially discounted over the whole of life then a contingency deduction of the order of 50% is appropriate. Some medical experts, however, only allow the expense for 5 or 10 years. This fails to allow for the chance that epilepsy may continue lifelong and a contingency **addition** becomes appropriate. Epilepsy manifests in many different forms. In its mildest the victim may just become dazed and glassy eyed. In its severest form the victim goes into severe muscle spasm and froths at the mouth. Such attacks can be deadly. A victim who, despite medication, suffers 2 or 3 such "grand mal" attacks each year is subject to a substantial reduction in life expectancy. A person who suffers from epilepsy should not be driving a car and a case can thus be made for the costs of hiring a driver or taxi.

Actuarial calculations by the RAF: The RAF claims handlers have at their disposal a very good actuarial program for calculating loss of support claims. The big problem is that very few claims handlers have been properly trained in how to use the programme. It is a case of GIGO (garbage in garbage out). The "cowboy calculation" results that then get presented to claimants by way of offers have very low credibility and are correctly rejected. Now that new management is in place at the RAF perhaps some proper training can be introduced.

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