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NEWSLETTER

(Number 1 - February 1992)

Dear Reader,

This newsletter: It is our intention in this and future issues (every second month) to provide a brief commentary on interesting and current topics affecting the assessment of damages; claims for support from deceased estates, and divorce calculations.

Who are we: *Once upon a time Robert Koch started compiling MVA reports for attorneys. This practice expanded and by 1985 he was able to concentrate full-time on no work other than damages assessments, claims for support from deceased estates, and divorce calculations. The practice has since expanded further and now employs 6 staff:*

Diana Parkes - bookkeeper and new business controller

Debbie Hall - audits the evidence used for the calculations

Marion Fourie - collector of missing evidence

Yvonne Boswell - computer hit lady

Lorraine Carroll - editor and librarian

John Melville - final year actuarial student

Did you know that?:

Workmens' Compensation: WCA benefits are a compensating advantage which has to be deducted when assessing the damages. If there is an apportionment of damages in terms of the Apportionment of Damages Act 34 of 1956 should one deduct WCA before or after apportionment? Mr Honey has suggested that the deduction should be made *after* apportionment. However, apportionment normally applies to the net damages due after deduction of compensating advantages. It follows that WCA should be deducted *first* and then the damages apportioned. For more details see 1987 *THRHR* 475-80, 1990 *De Rebus* 343-6.

Medical inflation: Much is said about the high rates of medical inflation at present. This is, however, merely a catching up after many years of falling behind inflation. For the period 1970 to 1991 medical inflation according to the Department of Statistics was an average 12,2% per year compared to the CPI of 12,6% per year. Over the period 1981 to 1991 medical inflation was 16,5% per year compared to a CPI of 14,6% per year. We believe that the present bout of high medical inflation is a temporary phenomenon which should not be given much weight for long-term future projections.

General damages and medical expenses: If a future expense is desirable but not essential (eg plastic surgery, penile prostheses, psychotherapy) then the damages should be limited to the lesser of the general damages and the cost of rectification (*Light v Conroy* 1948 1 C&B 444 (T)). Alternatively the general damages should be assessed as the value of the chance that the expenditure will be incurred having regard to the character and circumstances of the claimant. In this sense general damages become patrimonial.

General contingencies: It is common practice that actuaries make a provisional adjustment for general contingencies. In cases such as *Brink v The MVA Fund* 1991 (C) (unreported - but see the next edition of Corbett Buchanan & Honey) much of the actuarial testimony was concerned with general contingencies. Although there is no scientific basis for general contingencies actuaries who handle many claims are well able to comment meaningfully in this regard - not because they are actuaries but because they have been involved in a wide variety of disputed claims. Properly formulated instructions to an actuary should include a directive as regards general contingencies.

Support from deceased estate: A child has a right to claim support from the estate of the breadwinner. In general this right must be ignored when assessing damages for loss of support (*Lockhat's Estate v North British* 1959 3 SA 295 (A) 306A; *Groenewald v Snyders* 1966 3 SA 237 (A) 247A-D). In *Heyns v SA Eagle* 1988 (T) (unreported 6/7/88 case 13468/86) the executor had made awards to the children for support from the estate prior to the finalization of the loss of support claim. The court ordered that the awards by the estate be deducted when assessing the loss of support. Muddle piled upon muddle! The child's claim against a deceased estate presumes that the child is in need of support. The claim against the estate should not be finalized until after the damages claim has been finalized. The payment of support from an estate is payment of a debt, it is not an inheritance and is not deductible as an accelerated benefit. It is extremely doubtful that the court's ruling would have survived exposure to the Appellate Division. The executor for his part should have been sued *ex bonis propriis* for paying out money which was not due.

Readers are invited to keep us informed of unreported judgements and other interesting developments and also suggestions as to topics for comment.

Yearbook: We had planned to issue a Compensation Yearbook at the beginning of this year. However, due to the delayed publication of the next volume of Corbett Buchanan & Honey we have decided to hold back for two months.