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NEWSLETTER

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Dear Reader,

The Quantum Yearbook: We attach herewith for your use a free sample copy of our yearbook. Should you require further copies please send your order to

The Quantum Yearbook
PO Box 15613
Vlaeberg, 8018

The price of R22 per copy includes postage within the Republic of South Africa and the TBVC states. Orders from outside this area should please include a further R3 per copy for postage.

Workmens' Compensation: In the last edition of this newsletter we expressed the opinion that WCA benefits should be deducted before making an apportionment of damages in terms of Act 34 of 1956. A number of readers have contacted us to say that in *Klaas v Union & SWA Insurance* 1981 4 SA 562 (A) it was held that the full WCA amount should be deducted. We wish to emphasise that *Klaas*'s case was concerned with the interpretation of a special statutory provision limiting the liability of the MVA Fund (now the MMF) as regards passengers. It in no way lays down a general rule that the full amount of WCA benefits must be deducted (see *Senator Versekeringsmpy v Bezuidenhout* 1987 2 SA 361 (A) at 367E-F). We form the impression that the instruction by the MMF to its agents that WCA benefits be deducted after apportionment is without a sound legal basis.

The Advocates' Devil: We have received a complaint that some readers do not have access to law journals and that we should cite more copiously in the newsletter. We are anxious to confine the newsletter to its present size. Those who require copies of any material, particularly hard-to-get journals and text books are referred to Tommy Prins in Cape Town - telephone 021-4482704 - telefax 021-479308. Tommy will arrange copies by post or telefax of any material you require, both local and overseas. He charges a modest fee for a most useful service.

Koch 'Damages for Lost Income': In *Dhlamini v MMF* 1992 1 SA 802 (T) the court awarded compensation for the **value of the chance** of legality. We were pleased to see Koch 'Damages for Lost Income' cited as authority by the court.

Travelling costs: Although our offices are in Cape Town we do work countrywide including places as far afield as Pietersburg and Nelspruit. For Transvaal work we debit fees **as though we kept offices in Johannesburg**. It is cheaper for us to pay air fares than to maintain offices in Johannesburg.

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Trial management: It is our experience that trials seldom start running on the appointed day, either because of a postponement or because there is no judge available. This means that all the experts who have assembled for the trial will be charging a qualifying fee and an attendance fee. All for just sitting around waiting. We have been involved in numerous trials where all the necessary actuarial input is obtained by telefax and telephone. We have also seen a high incidence of trials where we are retained by both claimant and defendant, with separate calculations for each party.

Recusal of a judge?: In *Glass v Santam Insurance* 1992 1 SA 901 (W) at 904E-F the court makes a somewhat derogatory statement about the role of actuaries in the litigation process. The statement suggests on the part of the presiding officer a strong deep-seated personal antipathy to the use of actuaries for assessing damages, a view which we believe to be out of line with the general views of the judiciary in South Africa. We have difficulty believing that an actuary who appears before such a court would be given a fair hearing, with consequent potential prejudice to any claimant or defendant who sought to rely on such evidence. We also doubt that actuarial issues debated even in the absence of an actuary would be given even-handed treatment. In *Kotwane v UNSBIC* 1982 4 SA 458 (O) at 461-2 an unopposed request for the court to stand down to obtain actuarial evidence was refused. Does our law require that such a judge recuse himself in future such matters?

Deduction for remarriage: In *Glass v Santam Insurance* 1992 1 SA 901 (W) the court expressed the opinion that if a widow has remarried by the time of the trial then the earnings of the new husband must be ignored when assessing the damages. We have some difficulty with this ruling. Firstly we have had to deal with several death claims where the second marriage has terminated in divorce by the time of the trial. Secondly if the earnings of the second husband are not relevant then why do we have regard to the earnings of the first husband? The ruling in *Roberts v London Assurance (3)* 1948 2 SA 841 (W) at 850 is dismissed (at 903-4 of the *Glass* case) because no principles were discussed, but then it was undoubtedly self-evident to the judge in the *Roberts* case that earnings of the second husband are relevant for the same reason that the earnings of the deceased breadwinner are relevant. The ruling in *Legal Insurance v Botes* 1963 1 SA 901 (A) is then dismissed as a mere reminder of the excessive complexities introduced by actuaries. We have read the *Botes* judgment with care and find that it states quite the reverse. In the *Botes* case the actuary had proposed that a deduction for remarriage be made in accordance with the census statistics. The trial court and the appeal court then emphasised that this was too simple an approach because it ignored a variety of factors which were known to the court. In other words the complicating factors were proposed by the judges, not the actuary.

Value of a right to support: We believe that in *Glass v Santam Insurance* 1992 1 SA 901 (W) the court failed to distinguish between the right to support and the value of that right to support. Suppose, for example, that my brand new 1992 mercedes benz sport car is wrecked by wrongdoer. The principle enunciated in *Glass*'s case is that if by the time of the trial I have replaced it with a volkswagen golf then I have suffered no loss because I now own a replacement car.

Value of the chance: The deduction for remarriage is generally based on the census statistics (see 1988 *De Rebus* 70). Those statistics show the proportion of widows who remarry. For a white female aged 45 the rate is 20%, that is to say that one fifth of widows aged 45 are expected to remarry. Most widows will not remarry but the court does not know which widow it has before it. It is not judicial policy to ignore possibilities when assessing damages (see *Blyth v Van den Heever* 1980 1 SA 191 (A) at 225-6).