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NEWSLETTER

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Vital statistics:

CAP determination 31 July 2021:	R307074
CPI year-on-year to October 2021:	5,0%
RSA long bond yield November 2021:	8,0%
Real rate of return (8,0 less 5,0):	3,0%
FNB Property Index September 2021 (y/y real):	-2,4%

Medical negligence instalment payments: In *MEC, Health and Social Development, Gauteng* v *DZ* [2017] ZACC 37 it was argued that payment of medical and attendant services by Government should, under common law, be by way of instalments. The CC ruled in favour of lump sum settlements. The real cause of numerous damages claims is inadequate management and staffing of public medical services. The general mismanagement of public funds is a matter of national concern. Damages claims would be less if management and staffing were better. To tackle damages claims is to treat a symptom, not the disease. It is an attempt to take attention away from how badly the hospitals are being managed. This is a political problem. Sadly it is the taxpayer who must meet the cost of the bungling. Tito Mboweni is on record for saying that we do not need NHI. All we need is to better administer the existing system. The SA Law Reform Commission is addressing the issue and on 11 November 2021 issued a discussion paper 154 for project 141.

These lump-sum awards are often R15 million or more and are usually placed into trust for the benefit of the child. The fund is calculated using a life expectancy that assumes optimal care. In the event of early death the money remaining in the trust will go to the parents of the child. There is a report https://www.sentinelinternational.co.za/2021/07/21/grandchildren-inheriting-from-grandchildren-2/
of a wayward father being denied paternity rights and the money going to the mother and grandmother of the child.

Trust management fees: In *Molete v MEC for Health, Free State* (2155/09) [2012] ZAFSHC 126 the Court expressed its concern at the high level of management fees that would be charged by a bank to administer the trust. This seems a misplaced concern since there is good authority for adding to the award the cost of protecting the funds **(**7½% for *curator bonis* was added in *Carstens v Southern Insurance* 1985 3 SA 1010 (C) 1029); in *Webster v Commercial Union*

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1994 4 C&B A4-154 (C)) a further amount of 10,9% was added for the costs of providing security). The Guardian's Fund may charge no fees but it also has no discretion to invest other than by way of fixed interest. There have also been reports of administrative difficulties with the release of funds for use by the victim.

Duty of support between siblings: In *Langa v RAF* (2014/67644) [2016] ZAGPPHC 876 it was ruled that there is a duty of support between siblings. The Court cited *Amod v MMVF* 1994 (4) SA 1319 (SCA) where Mahomed CJ stated:

> "The precise scope of the dependant's action is unclear from the writings of the old Roman Dutch jurists. De Groot extends it to those whom the deceased was accustomed to aliment ex officio, for example his parents, his widows, his children ... this and other passages in De Groot's writings perhaps support his suggestion that the action was competent at the instance of any dependant within his broad family who he in fact supported whether he was obliged to do so or not but this is unclear. The same uncertainty but tendency to extend the dependant's action to any dependant enjoying a *de facto* close familial relationship with the breadwinner is also manifest in Voet 9.2.11 who seeks to accord the dependant's action to the breadwinner's wife, children and the like.....".

In the *Langa* matter it was agreed that dependency should extend to age 18, the current statutory age for majority. The Roman-Dutch authorities allowed the duty between able-bodied siblings to age 21, the common-law age for majority (Boberg `Persons & family' at 276; *Seatle v Protea Assurance* 1983 (C) (unreported 6.5.83 case I.77/81)).

For compensation purposes a duty of support has been accepted between an uncle and his nephews (*Meteso v Padongeluksfonds* 2001 (3) SA 1142 (T)); a father who had given his child away for adoption (*Taljaard v RAF* 2014 JDR 2078); between unmarried heterosexual couples (*Paxiao v RAF* 2001 (3) SA 1142 (T)); adoption by Black customary law (*Kewana* v Santam 1993 (4) SA 771 (TkAD)); an Islamic customary marriage (*Amod v MMVF* 1999 4 SA 1319 (SCA)); and a divorce maintenance order (*RAF v Henery* 1999 3 SA 421 (SCA)). In *Thibela v Minister van Wet en Orde* 1995 3 SA 147 (T) it was ruled that stepchildren to a Black customary union acquire a right to support from their new step-parent. The widow of an unmarried couple is entitled to loss of support (*Verheem v RAF* 2012 2 SA 409 (GNP); *Jacobs v RAF* 2019 (2) SA 275 (GP)).

Death claims and Industrial Psychologists (IP's): It is now common to use IP reports to support claims for loss of support. The advent of IP reports for injury claims gave rise to a 5 fold increase in injury payments by the RAF. Many death claims are still assessed the old-fashioned way using payslips and earnings certificates from the employer. Once upon a time it was arguable that an actuary should not be used to assess a claim by a child for loss of earnings (*Southern Insurance v Bailey NO* 1984 (1) SA 98 (A)). Times have changed.

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