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NEWSLETTER

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Vital statistics:

CAP determination 30 April 2022:	R319810
CPI year-on-year to April 2022:	5,9%
RSA long bond yield November 2021:	8,5%
Real rate of return (8,5 less 5,9):	2,6%
Lightstone Property Index March 2022 (y/y real):	-1,3%

A welcome new court case service: Louis Podbielski is now reporting new court cases with excellent summaries. This is a most welcome service at a modest cost. I have signed up. Visit <https://www.louiscaselaw.com/>.

General damages for blindness: A recent milestone judgment has awarded R3 million for blindness (*Pietersen v MEC for Health, Gauteng* (38145/10) [2021] ZAGPJHC 807).

General damages for sexual harassment: Normal practice for claims for misconduct by an employer has been to proceed to the CCMA. Recently action was brought against the employer in a civil court. The Court ruled that this was an acceptable procedure. *In casu* the parties agreed to general damages for sexual harassment of R400000 which was made an order of court. Claimant also received an award for loss of earnings (*PE v Dr Beyers Naude Local Municipality and Another* (828/2011) [2021] ZAECGHC 35; [2021] 2 All SA 839 (ECG); (2021) 42 ILJ 1545 (ECG); 2022 (1) SA 560 (ECG) (13 April 2021)).

Caveat for actuaries, industrial psychologists, and attorneys: “It is unsatisfactory that experts are not provided with accurate information from which to draw their conclusions and it is equally unsatisfactory for experts to express opinions without having the correct facts at their disposal.” *In casu* a series of available payslips had not been provided to the industrial psychologist nor the actuary leading to the need to do fresh reports and calculations (*Els v Road Accident Fund* (442/18) [2022] ZAGPPHC 239 para 57).

Mora interest to double or not: The *in duplum* rule provides that interest stops running when the unpaid interest equals the outstanding capital. As to the appropriation of payments to either capital or interest the court ruled that all the payments fall to be first appropriated to reduce the interest charged by the bank on the sums advanced. It also stated that the *in duplum* rule is suspended during litigation from the time of service of the initiating process until judgment has been granted. Thereafter interest may run until it reaches the double of the capital amount outstanding in terms of the judgment and then accumulates no further

(*Standard Bank v Oneanate Investments (in liq)*, [1997] ZASCA 94 at pp31-36 and pp48-50).

PAYE or company tax?: Company tax will be 27% for the tax year ending February 2023 (it was 28% for earlier tax years). The income of the company net after tax must needs be distributed to shareholders as a dividend which is subject to a 20% dividend tax. Total tax for a one-man shareholder will thus be 47% for the current tax year. The maximum tax rate for an individual is 45% on income in excess of R1750000 per year. For lower incomes the marginal rate is lower and always less than the tax cost of distributing income by way of dividend. It amazes me that so many accountants for small businesses land their clients with dividend tax when the clients are taking a lowly salary of, say, R240000 per year. I see such financial statements in the course of assessing claims. Maybe a case can be made to sue the accountant for tax damages for negligently failing to provide correct advice.

Dangerous dogs, absolute liability (almost): A passer by was savaged in the street by 3 large dogs. His damages claim was R2341000. The Court ruled that damages should be paid, but left the quantum open to further evidence and negotiation. If you are looking for a comprehensive discussion of the *actio de pauperie* and its few exceptions, this is an excellent place to start (*Cloete v Van Meyeren* (731/2017) [2018] ZAECPEHC 72; [2019] 1 All SA 662 (ECP); 2019 (2) SA 490 (ECP)). The largest general damages award listed in the *Quantum Yearbook 2022* is *King v Geldenhuys* 1983 3 QOD 379 (C) which is R903000 in 2022 equivalent to R45000 in 1983. In King's case the dogs chewed away his arm up to the shoulder while he remained fully conscious. In addition there was of course loss of earnings and medical expenses. There is an internet report of a settlement at R4 million total damages including all heads (<https://businesstech.co.za/news/lifestyle/589780/the-legal-cases-all-dog-owners-in-south-africa-should-know-about/>).

The RAF statutory CAP: The CAP was set at R319810 per year from 30 April 2022. For any one claim it becomes fixed at the accident date and is not thereafter escalated for inflation. When originally proposed some 20 years ago the RAF suggested a yearly amount multiplied by the expectation of life. Since then nit-picking actuaries and mean-minded RAF claims handlers have whittled it down to application to the yearly actuarial loss (*Sweatman v RAF* 2015 (6) 186 (SCA)). This very technical actuarial minded approach is not what was originally intended and fails dismally in dealing with large losses over short periods and lump-sum adjustments such as inheritances by dependants and large disability payments. A yearly amount multiplied by expectation of life is something that any judge or attorney or advocate can calculate without technical assistance. This simple approach was not considered when the *Sweatman* ruling was made and remains an open option for a claimant who has the means to press the point.