NEWSLETTER

(Number 21 - June 1996)

Dear Reader,

THE ROAD ACCIDENT WHITE PAPER

The Government proposals for reforming statutory cover for victims of motor vehicle accidents was released to the public on Monday 3 June 1996. The public has been given until 31 July 1996 to submit comments to the Minister of Transport. **Concerned persons who wish to combine skills to oppose this development as a united body should telefax their name, telephone and telefax numbers to 021-4624109.** A copy of the White Paper is obtainable from the Government Printer in Cape Town and Pretoria.

The White Paper: It is proposed to replace the present system of fault-based unlimited cover with a system of formula based no-fault cover. The paper has been poorly researched. Undue emphasis is placed on the system in Victoria Australia. There is not even a survey of systems in place in the other 5 states of Australia, let alone in the rest of the world. The paper is also notable for an undue emphasis on the author's pet hates, notably: lawyers, the agency system, and the pay-as-you-go system of funding. The paper is more in the nature of a crusade than a research document. Nonetheless, there are real problems which need to be addressed and there are no grounds for complacently continuing with the existing system:

* No-fault is needed to pay for early medical costs to ensure full and proper treatment of victims at an early stage. At present many victims defer essential treatment (such as a hip replacement costing R40000) merely because disputes over fault are delaying the payment of compensation.
* Income for needy victims at as early a stage after injury or death as is possible. The state disability and welfare grants play an important role at present in this regard. But should such benefits not be paid by the Road Accident Fund on a no-fault basis?
* Protection against massive claims, particularly by foreign visitors. It is quite conceivable that an injury to a wealthy American top executive could run to R250 million. That is to say 25% of the Fund's annual budget. **It is essential that some form of capping be introduced.** Those requiring substantial cover will be well able to afford to pay for this from their own resources.
* Passenger claims presently limited to R25000 each should be placed on the same footing as other claims.
* Maintenance of adequate capital reserves to ensure ongoing payment of claims despite unexpected fluctuations in claims experience. The Malamet Commission recommended that one full years' outgo be reserved. Full funding of the full actuarial value of outstanding claims as proposed by the White Paper is a nice ideal, not a necessity.

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No-fault insurance: The White Paper proposes to replace the existing fault compensation system for road accidents with a no-fault system. A major unknown in this regard is the effect of no-fault on the number of claims. Quite apart from an exceptionally high accident rate South Africa has high unemployment and this may well lead to additional problems. Thus, for instance, statutory compensation for accidents in the workplace is provided on a no-fault basis, but potential claimants have to be employed if they are to enjoy cover. On the other hand with MVA cover an unemployed person is entitled to compensation for loss of notional earnings, albeit at a reduced level. The moral risk is thus much higher than for workmen's compensation. **In order to give time to assess the magnitude of the moral risk it is advisable that partial no-fault cover be introduced at a fairly low level, possibly as low as the State disability grant of R4920 per year. Further compensation on a fault basis should then be available in addition to the no-fault benefits.** Reformers should also remember that the interpretation of the reforming statute will be in the hands of the Courts who may not see things quite as the reformers intended.

Formula basis: The White Paper proposes to limit claims for loss of earnings to R2500 per month to be capitalised according to a statutory table. Reliance is to be placed on American percentage disability tables which have no regard to actual re-employment opportunities in South Africa. Loss of support claims are to be limited to R1750 per month over the joint expectation of life of the widow and the deceased. But what if there is more than one wife? What of claims by aged parents of the deceased? What of claims by illegitimate children and children of a previous marriage? The gradual introduction of a formula basis concurrently with the old common-law damages basis will ensure that overlooked classes are not inadvertently deprived of their right to compensation.

Rehabilitation centres: It is proposed that the Fund rehabilitation centres. This move is to be welcomed. The legislators might do well also to permit involvement by the Fund in the supply of commonly used medications and the recruiting and training of attendants.

Reducing costs: There are ways by which costs can be reduced: No-fault cover will probably reduce legal costs for handling small claims. The range of deductible collateral benefits should be extended by statute (inter alia by repealing the Assessment of Damages Act 9 of 1969). Larger claims should be capped. The White Paper proposes a sensible sliding scale for future medical expenses which varies with the age of the claimant.

Civil Service Pension Fund: The benefits provided by this fund have been reduced. The contribution rate by an employee is now 7,5% for both men and women. The normal retirement age remains unchanged at 65 for both men and women (save for army, police and prison services where an age of 60 applies). The pension eventually payable is calculated as 2% for each year of service (+25% for service in excess of 10 years for army, prison services and police) applied to the average earnings over the last 2 years (previously final salary was used). There continues to be a lump-sum payable calculated as 360% of the yearly pension. A civil servant who loses employment due to disablement after 10 years or more service is entitled to take a pension and lump sum calculated according to the normal retirement formula but with 5 years' additional service (but not beyond age 65).

R J Koch 25% discounts: My fees as billed may be reduced by 25% if payment is made within 90 days **of the relevant debit**. Only debits dated within 90 days may be reduced. Older debits are payable at the full amount.

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