

NEWSLETTER

(Number 34 - September 1999)

Dear Reader,

Financial statistics:

	Inflation (year-on-year)	Interest (long bond yield)	Real Rate of Return	6 months ago
South Africa	6,9%	15,1%	6,7%	5,4%
United Kingdom	1,6%	4,9%	3,3%	2,1%
Japan	-0,1%	1,6%	1,7%	1,4%
United States	2,3%	6,0%	3,7%	4,0%

The above reflect data available at time of publication (RSA=06/99 for CPI, 08/99 for yield; overseas stats 03/99 for yield; others=04/99). Negative inflation means that prices are falling.

Interest and inflation: Quo vadis?: The Reserve Bank would like to see inflation in South Africa at the same level as for the United States and the United Kingdom, that is to say at 2% per year. The unofficial target level is, however, more realistic at 4% per year. The long-term differential between interest and inflation must at some stage also come down from its present 6,7% to a more modest 2½% to 3% per year. Whether this will be achieved by rising inflation or falling interest rates remains to be seen. Suffice it to say that predictions for future interest and inflation rates are fraught with uncertainty.

Family life in South Africa: Just when I was starting to think that the average family size in South Africa is falling I have been asked to assess (in one month) a claim for loss of support for 27 children of one father, and then one where the deceased left 30 children. The latter claim was interesting in that only six of the claimant children were natural children of the deceased, the rest were adopted. The deceased was a "subsistence farmer" earning an estimated R48000 per year. I have an uncomfortable feeling that adoption here may have been a device for recruiting cheap farm labour. It perhaps deserves mention at this point that adoption according to Bantu customary law (as distinct from civil-law adoption) is sufficient to found a right of action for loss of support (*Kewana v Santam* 1993 (Tk) (unreported 28.02.93 case 112/88)).

Excessive attorney fees: Much is being said in the press these days about the large amounts deducted by attorneys from payouts to claimants. It needs to be recorded, however, that RAF claims handlers are not entirely blameless in this regard. I have seen several instances of demands for further evidence and recalculations which seem wholly unnecessary. Particularly with smaller claims there are many instances where unreasonably low offers by the RAF are accepted by claimant attorneys in order to contain costs rather than incur the

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expense of litigation. A sensible approach to demands for evidence, and a fair and non-opportunistic approach to offers, can go a long way to reducing the work required of a claimant attorney. The onus is on the claimant to prove his damages. This may be good in law, but it does nothing to encourage co-operation by RAF claims handlers towards claimants. However, it has been my pleasure to note that many RAF claims handlers have of late been adopting a claimant-friendly approach.

Claims arising from the death of a single mother: There is a high incidence of claims for loss of support by the dependent children of single mothers. Evidence of support by the father (or fathers) of the children is usually non-existent. In the event that the father of a child was contributing to the child's support the child's dependency on the deceased mother is less than if there were no such contribution. It follows that where there is no evidence of a contribution by the father it is sometimes appropriate to make an increased deduction for general contingencies to allow for the possibility of such a contribution, past or future. When making such a deduction some care needs to be exercised to ensure that it is fair. It needs to be borne in mind that there is a high incidence in South Africa of children whose fathers have vanished without trace. This may be gleaned from the fact that the children are assisted in bringing their claims by their grandparents or an aunt. For such claims the contingency of a contribution by the father of a child seems remote indeed and is thus to be ignored. However, if a child is assisted by the father then it would not be unreasonable to presume a substantial likelihood of some support being provided by the father.

Indigency of parents: It is trite law that a child has no duty of support to a parent who is not indigent. Precisely how little money renders a parent indigent is an issue on which there is little consensus. There are several reported judgments denying indigency. It has been ruled that a mother who owns immovable property is not indigent and must sell her property to support herself (*Volkenborn* 1946 NPD 76). A woman who attains age 60 (65 for a man) is entitled to a State old age pension. This has been R6240 per year since July 1999. It is subject to a means test. This means that it is payable only to persons with little or no income. It has been argued that a parent who receives a State pension is for that reason not indigent. This is false reasoning, however, because the test for indigency has regard to the overall financial standing of the family. Thus if a breadwinner earns R120000 per year net after taxation, his mother who receives only a State pension would still be indigent in the sense that the State pension is very low compared to her son's earnings. A useful calculation in this regard is to add together the deceased's income and the mother's income and then apportion it and then deduct the mother's State pension from her share. Thus suppose the deceased was married with two children and an aged mother who lived with them. If two parts each are allocated to deceased and his wife, one part to each child, and one part to the deceased's mother then the calculation would be $(R120000+R6240)/7-R6240=R11794$, R11794 being the dependency of the deceased's mother. However, if the deceased had been earning R37440 per year or less then his mother's State pension would exceed her one-part share and it can be said that she is not indigent.

Did you know: The average payout by the RAF **per accident** was a shade over R50000 for the year ended April 1999. There is often more than one damages claim per accident so the average payout per claimant must be well below R50000.

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