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NEWSLETTER

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Financial statistics:

Data as at October 2003	CPIX Inflation (year-on-year) F	Interest (long bond yield) I	Real Rate of Return F-I	RRR 12 mnths ago
South Africa	4,5%	9,1%	4,6%	0,2%
United Kingdom	2,6%	4,9%	2,3%	3,3%
Japan	0,0%	1,1%	1,1%	2,2%
United States	2,0%	5,0%	3,0%	3,7%

Nominal interest rates have remained relatively unchanged over the last 12 months. Real rates have, however, increased as stagnating economies have dictated lower price increases. These increases in real rates have been accompanied by pressure on the authorities to reduce interest rates. The ABSA index indicates that house prices have escalated a massive 19% during the last 12 months. For most small investors that will be a tax free gain. The strong rand coupled with low overseas inflation bodes well for low inflation in South Africa, particularly on imported medical goods. Unsold stocks acquired when the rand was weak have led some traders to resist price decreases, but at risk that alternative suppliers may enter their market with recently imported goods.

Informal sector opinions: The Cape Times 12 February 2004 reported that: "More than 36% of hawkers and street vendors viewed their businesses as permanent career paths. A study conducted by the Bureau for Market Research at UNISA also revealed that 76,8% of township general dealers and 57,2% of spaza shop owners indicated that they would not accept a job in the formal sector".

Dependency to age 21: The RAF generally insists on using age 18 when making offers of settlement for claims for loss of support. The correct age to be used is a question of fact, not a rule of law, something that needs to be explained to some claims handlers. The facts are, however, not always easy to interpret. Affidavits by surviving parents and teachers often reflect unrealistically optimistic expectations regarding tertiary education. The conventional wisdom is that a child who performs well academically, and whose parents have the financial wherewithall, is a candidate for extended dependency to age 21, and perhaps older. However, the reality is that children who underperform will often extend their stay at school due to repeated grades, or in the hope of improving their grades. Some 65% of school leavers do not find a job and thus remain dependent on their parents for one, two, and more years. Of those who do gain admission to technikon or university many do not complete the course in the minimum time. It is not uncommon for a graduate to start working in his late 20's.

State disability grants and Apportionment of Damages: State disability grants are benefits received by a claimant in terms of welfare legislation. They are deductible when assessing

compensation (*Zysset v Santam* 1996 1 SA 273 (C); *Indrani v African Guarantee* 1968 4 SA 606 (D)); *Van Wyk v Santam* 1998 4 SA 731 (C); contra *Nxele v President* 1993 C&B 4 C4-1 (W) at C4-6)). The monthly paid benefits are subject to a means test and will usually terminate when compensation is paid. It follows that the deduction is normally only made from past loss of earnings. However, for awards (including general damages) of less than R266000 the benefit will not be terminated. A deduction from future loss is then appropriate. RAF claims handlers have observed that it is arguable that the State grant should be deducted AFTER apportionment of damages as is done with COID awards (*Ngcobo Santam* 1994 2 SA 478 (T); *Mphiri v RAF* 2002 6 SA 383 (W)) and making their deductions accordingly. The COID Act expressly describes the COID award as "compensation". The Court is enjoined to "have regard to" the award made in terms of the COID Act. State grant legislation is of a wholly different nature, being directed at all persons in need due to a disability arising from accident or illness. However, one of the main arguments for deducting State disability grants is that these are paid from the same public funds as road accident compensation. This "public funds" line of reasoning supports a view that State disability grants should be deducted AFTER apportionment. The same line of reasoning could be extended to other Government paid disability benefits such as civil pensions paid from the Public Service Pension Fund (*vide Dippenaar v Shield Insurance* 1979 2 SA 904 (A)), but only to the extent that the benefit exceeded the claimant's accumulated savings in the fund (see Koch "Reduced utility of a life plan" at 183- to 185).

Reducing overtime: Some actuaries make the assumption that overtime earnings will automatically decrease evenly to nil over the last 10 years of the claimant's working life. This is seldom, if ever, a valid assumption, but it does reduce the value of the claim. The proper reaction to a calculation done this way is to consult the employer and obtain his opinion as to the pattern of overtime. Most overtime is worked due to business demands. It is not a voluntary matter, particularly these days where the total overtime that may be worked is restricted by legislation.

Unemployed husbands: There has been an increasing incidence of claims for loss of support where the husband is reported as unemployed at the time of his wife's death. In most instances he is merely between jobs so evidence is needed as to what he earned in his last employment. Sometimes this evidence indicates that he has been unemployed for a very long time and there is good argument for assuming continuing unemployment. In other instances one assumes a 50%, or maybe 75%, chance that he will find employment in the near future. Alternatively one might allocate to him just one part of the family income. The crucial question to ask is "If it had been the husband who had died or been injured what would the claim have been?".

Stepchildren and customary law: It is not uncommon that a breadwinner dies leaving a widow and one or two children of their own, plus one or more children of the widow from a previous relationship. In *Thibela v Minister van Wet en Orde* 1995 3 SA 147 (T) evidence was led that under customary law the deceased, by reason of the customary marriage, had had a duty to support his stepchildren. It was ruled that the stepchildren were entitled to compensation for loss of support. In *Kewana* 1993 4 SA 771 (TkAD) evidence was led that the deceased had adopted her nephew following the tribal traditions for adoption. There had been no statutory adoption. The Court ruled that the child was entitled to compensation for loss of support.