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NEWSLETTER

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Vital statistics:

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| CAP determination Jan 2011: | R183830 |
| CPI year-on-year Dec 2010 | 3,7% |
| RSA long bond yield: | 8,5% |
| Real rate of return: | 4,8% |
| State disability grant | R1140 pm from April 2011 |
| State old age pension from 60 | R1140 pm from April 2011 |
| State old age pension from 75 | R1160 pm from April 2011 |
| Child support grant | R260 pm from April 2011 |

Quantum Yearbook 2011 corrigenda:

* At pages 90 and 91 of the *Quantum Yearbook* 2011 the earnings range for life table 3 should read R300001 to R500000; and

* At pages 92 and 93 of the *Quantum Yearbook* 2011 the earnings range for life table 4 should read R160001 to R300000.

Application of the CAP: The CAP is adjusted quarterly for inflation by RAF Board notice published in the Government Gazette and on www.raf.co.za. The amount applicable to a claim shall be that set out in the last notice issued prior to the date on which the cause of action arose, which is usually the date of accident.

The CAP applies to the total yearly loss, net of notional income tax and general contingencies and apportionment between dependants. This means that despite substantial earnings by a victim the CAP will frequently not be applicable. It does also mean that an actuary cannot apply the CAP until after the deduction for general contingencies has been decided. For dependants the CAP applies to the total losses in any one year for all dependants, and not separately for each dependant.

There is no provision for the CAP to be adjusted for inflation for the period after the date of the accident. This means that for long past periods alone the escalation of yearly losses for inflation can bring the CAP into play despite there being constant real income. This unfortunate result seems to be a drafting oversight. It is to be hoped that the Courts will rescue this legislation as was done for previous bad RAF drafting in *Katz v Marine & Trade Insurance* 1979 4 SA 961 (A) at pages 974/975.

It is common that lump-sum benefits need to be added or deducted, such as disability lump-sums for injured claimants, and inheritances for the dependants of a deceased victim. The CAP legislation is silent as to how to deal with this type of problem. An elegant solution would be to determine the lump sum damages payable had there been

no CAP legislation and then to spread this amount as a series of equivalent level payments over the lifetime of the claimant. The CAP is then applied to this notional yearly loss. The same can be done with death claims, the total loss for all dependants being spread over the lifetime of the surviving parent, or the longest period of dependency when there are only child claimants.

Some deductions, notably COID and apportionment in terms of the Apportionment of Damages Act 34 of 1956 will be applied after application of the CAP.

50% reduction of industrial psychologist fees: “I find it totally unacceptable that the plaintiff’s experts, particularly . . . omitted to contact the plaintiff’s employers post-accident, to corroborate their opinions. . . . Clearly their opinions are merely based on the say-so of the plaintiff. To show the court’s displeasure in the manner in which these experts conducted their investigations, I have decided that they should not be entitled to their full qualifying fees. . . . (the experts) are only entitled to 50% of their qualifying fees” (*Donough v RAF* 2010 (SG)(unreported 05.11.2010 case 8962/06).

Fraud charges against widows: I was recently served with a subpoena to appear in Court in Windhoek to testify in the prosecution of several widows and their attorney who had submitted claims for loss of support against the Namibian Motor Vehicle Accident Fund, but did not disclose that they were working wives, thereby inflating their claims.

Reduced life expectancy: In *Singh v Ebrahim* 2010 (SCA) (unreported 26.11.2010 case 413/09) the Supreme Court of Appeal reaffirmed the continuing applicability of the old ruling in *Lockhat's Estate v North British & Mercantile Insurance Company Limited* 1959 (3) SA 295 (A) that when the life expectancy of the claimant has been reduced by his injuries the calculation of what he would have earned had he not been injured must be based on his reduced life expectancy now injured.

Corporal punishment by a teacher: In *Mohamed v Silanda* 1993 1 SA 59 (Z) Z\$3000 was awarded as damages following excessive corporal punishment by a teacher. In the *Quantum Yearbook Zimbabwe* awards are converted at a rate of Z\$1,00 = R1,00. This criterion gives a 2011 value for the award of R12000.

Lump-sum maintenance from deceased estate: It is an unfortunate actuarial fact that a lump sum cannot be used by consuming interest and capital to reproduce the lost income. At the end of the day the lump sum awarded will usually prove to be too much or too little. This consideration persuaded a trial court to rule that the payment of maintenance from a deceased estate has to be by instalments. In *Oshry v Feldman* 2010 (SCA) (unreported 19.08.2010 case 401/09) the trial Court was overruled. It was held that notwithstanding the actuarial imperfections of a lump sum it remained a legitimate method by which to award maintenance from a deceased estate.