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## **NEWSLETTER**

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### **Vital statistics:**

CAP determination May 2013:	R207528
CPI year-on-year April 2013	5,9%
RSA long bond yield May 2012:	7,0%
Real rate of return (8,4 less 6,1):	1,1%
ABSA Property Index May 2012	8,2%
Houses less than 140 square meters	13,9%

**Absconded webmaster:** My apologies for failing to send newsletters for December and March. My webmaster disappeared, the website got hacked. It has taken some time to get all the pieces back together again. The last newsletter sent out was number 87 September 2012. This is newsletter number 88.

**Reinforcements:** Michelle Barnard, actuary, has joined the Robert J Koch team as a subcontractor subject to our methods and standards and using our letterhead and backed up by our administration. She has a BSc (Actuarial Science) and is a fully qualified Associate of the Actuarial Society of South Africa. She had 10 years of general actuarial experience up to 2002. Since 2003 she has been doing damages assessments.

**AIDS mortality:** The latest medical opinion is that life expectancy for victims of AIDS is close to normal PROVIDED they make regular use of antiretrovirals as prescribed, AND the treatment was started before their CD4 count drops below 200. Unfortunately in certain sectors the taking of the medication is irregular and undisciplined. Some victims discontinue the pills when they start feeling better. See web thread: <http://www.plosmedicine.org/article/info%3Adoi%2F10.1371%2Fjournal.pmed.1001418>.

**The R160000 CAP:** There are several different versions of what is considered to be the correct way to apply the CAP. At one extreme is the strictly legal interpretation which has draconian implications which substantially reduces even fairly modest claims (supported by *Nhambe v RAF* unreported case 70721/2009 (NGP)). Its implementation requires highly technical calculations requiring the use of an actuary. Not the least objection to this draconian approach is that the CAP applied is fixed at the date of accident and may not be thereafter adjusted for inflation. The alternative, more equitable approach (supported by *Sil v RAF* unreported case 2011/18773 (SGH)), assesses the damages as though there is no CAP and then spreads the uncapped lump sum over the expectation of life of the claimant to obtain an “annual loss” which is then compared to the relevant CAP. If the “annual loss” exceeds the CAP then there is a pro-rata reduction to the capital damages. This can be applied by any legal practitioner

without the need for engaging an actuary and resolves the problem of how to deal with one-time lump sums. I express the hope that the SCA will resolve this issue in the same equitable way that previous RAF instalment compensation legislation was liberated from its choking strict legal interpretation (*Marine & Trade v Katz* 1979 4 SA 961 (A) at 975).

**Misdirected industrial psychologists:** Many industrial psychologists (IP's) mistakenly see their task as being to express an opinion as to the earning "potential" of the victim. Their true purpose is, however, to provide sufficient information **to enable an actuary to calculate past and future loss of likely earnings**. This means that full details should be provided as to past earnings. It means that a clearly defined future career path needs to be stated, along with associated rates of pay and the rand values of fringe benefits. A summary table at the end of the IP report is strongly recommended. Whenever circumstances permit the IP should attempt to get an earnings certificate from the employer (see [www.robertjkoch.com](http://www.robertjkoch.com) for suitable pro-forma questionnaires).

**Claims settlements by minors:** In 1989 there were settlements of damages claims by two minor children who had been injured in a motor vehicle accident. The injuries were quite severe and the settlement amounts somewhat low. Relying on Voet 4.4.20 an application was brought to have these settlements set aside because "a clear right of minor had been foregone in a compromise". The Court ordered that the settlements be set aside and the minors be allowed to submit their claims *de novo* (*Myhill NO v RAF* 2012 (SGHC) (unreported 05/03/2012 case 2009/30430). There must be thousands of old settled claims by minors which would qualify for setting aside. The modern approach to use an industrial psychologist to prove earnings has only been around for a few years. There is little doubt that industrial psychologists have substantially inflated the average level of settlements for loss of earnings.

**Retirement ages:** The Sanlam Employee Benchmark survey (2010) found the average retirement age for pension fund members to be between 63 and 65 years of age. This survey found that 30% of retirement fund members prefer to defer retirement and that 54% continue working after retirement age. Notwithstanding that the Government Employees Pension Fund (GEPF) provides for retirement at age 60, the latest Government discussion papers indicate that they wish to encourage later retirement. The GEPF age 60 probably has more to do with the actuarial funding, and the high extra cost of age 65 benefits, than the Government's preferred retirement age.

**Pre-existing child support grant:** In *RAF v Timis* 2010 (SCA) (unreported 26.03.2010 case 29/2009) it was ruled that child support grants are deductible. There is an *obiter dictum* which suggests that if the benefit was not payable as a result of the death then the benefit is not deductible. There is a very high incidence of child support grants payable prior to the death. These are of the same nature as earnings of a widow and reduce the dependency of the child on the deceased. It is submitted such benefits are deductible in the same way as widow's earnings.