KOCH Consulting Actuaries cc

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NEWSLETTER

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Vital statistics:

CAP determination January 2015:	R227810
CPI year-on-year March 2015	4,0%
RSA long bond yield May 2015:	8,1%
Real rate of return (8,1 less 4,0):	4,1%
ABSA Property Index December 2014	7,6%
Houses less than 140 square meters	9,8%

Koch Consulting Actuaries cc: Since 1983 Robert J Koch has been operating on his own. In the last 2 years he has been assisted by 4 young actuaries, not as employees but as independent subcontractors. To give recognition to these changed circumstances the name of this business has been changed to Koch Consulting Actuaries cc. Robert Koch will continue to exercise overall supervision of the joint effort. In August Robert Koch attains age 70. We thank you for the ongoing support over the many years.

Road Accident Fund "CAP": In *RAF v Sweatman* (162/2014) [2015] ZASCA 22 (20 March 2015) the approach of actuary Morris was preferred to that of actuary Munro. The Court also ruled that the yearly CAP applicable at the date of the accident should not be adjusted for inflation. The approach of actuary Morris calculated a yearly "actuarial" capitalised loss for each year separately, past and future; what is described in my publication "Reduced Utility of a Life Plan" (1994) as the "year-by-year" approach. These amounts were then reduced for general contingencies before application of the yearly CAP. This approach does not cater for the deduction of large lump-sum compensating advantages, such as an inheritance or a large disability payout. A simpler, and equally equitable approach, which avoids this problem, is to calculate lump-sum damages as was done before there was a CAP, deduct general contingencies and lump sums as needed, and then divide the resulting lump sum damages by the expectation of life of the claimant, or the widow (or years of dependency of the child). The resulting annual loss can then be compared to Gazetted CAP and the necessary adjustment made. This approach has the advantage that it can be applied by a court without need for actuarial assistance. It is entirely within the spirit of the CAP legislation. The *Sweatman* Court merely chose between the two methods before it. It did not preclude other methods of calculation. The original legislated CAP amount of R160000 per year was determined by the RAF by just such a rough and ready calculation. Thus for a claimant injured August 2008 with a life expectancy of 35 years the maximum award would be **R160000 x 35 = R5,6 million**, after general contingencies. The CAP is not a precise science, just a safeguard for the RAF against excessively large claims.

State welfare benefits for children: For many years now the damages payable to a child for loss of support have been reduced by the child welfare grant payments that

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have been received between date of death and date of payment. In *Coughlan NO v Road Accident Fund* 2015 ZACC 10 it was ruled that child support grants and foster care grants should not be deducted. The Court did not discuss State disability grants nor State pensions, but the general reasoning was such that it seems likely if called upon to express an opinion it would have ruled that all State welfare benefits should be ignored when assessing damages for loss of support.

This largesse by the Highest Court is not in the best interests of an economy beset by numerous social demands on a shrinking cash flow, matters like job creation, housing, and elimination of violence. The Government is urged to take speedy steps to legislate for the deduction of State welfare benefits when assessing claims for damages. This affects not only the Road Accident Fund, but also claims for medical and other negligence against Government and semi-Government bodies funded by public money.

***Dippenaar v Shield* revisited**: In *Dippenaar v Shield Insurance* 1979 2 SA 904 (A) the claimant had been severely injured and claimed for loss of earnings. His employer had paid out substantial disability benefits by way of pension and lump sum. The Court was called upon to decide the deductibility of these amounts. It ruled that they were deductible. Central to its reasoning was that membership of the pension fund was a condition of employment for Mr Dippenaar and that the terms of employment that determined his loss of earnings should be read as a whole, the salary benefits to be added and the inherent compensation to be deducted. Had membership of the pension fund been an option then the disability benefits would not have been deductible.

An oddity that reaches court now and again is the Commuting Journeys Policy (CJP) issued by Rand Mutual Assurance (RMA). RMA was created by the mining industry to provide insurance cover for their employees as required by the Compensation for Occupational Injuries and Diseases Act (COIDA). The existence of RMA enabled the mines to contract out from the Government body providing the same cover and thus to ensure premium rates appropriate to the mining industry. COIDA does not cover employees travelling to and from work. For that reason the Commuting Journeys Policy (CJP) was introduced. Benefits payable under the CJP are not COIDA benefits. If the taking of CJP cover was a condition of employment then the benefits are, in theory, deductible following *Dippenaar v Shield*. However, some insurers, notably RMA (mining) and Federated Employers (building) include a term in their policies allowing them to recover from the insured should the insured be successful with a claim against the RAF. It is for this reason that the CJP are not deductible (*Erasmus Ferreira & Ackerman* v 2010 2 SA 288 (SCA)).

Once upon a time many years ago the COIDA officer at the SAPS agreed to continuing payments of salary and benefits to an accident victim subject to a refund to SAPS in the event of a successful claim against the RAF. This condition did not become known to his attorney, nor myself, until after the matter had been settled with deduction of all those past refundable earnings. The unfortunate claimant was subjected to a double deduction. I have only once seen such a diabolical situation. The past earnings should not have been deducted.

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