NEWSLETTER

(Number 14 - September 1994)

Dear Reader,

Long Bond Yields and Future inflation: A statistic worth watching is the JSE-Actuaries long-bond yield index which is published daily in the financial press. In January this year the long yield index for 25-year investments was just below 12% per year. The same index has now risen to just over 17% per year. If one bears in mind that investors in long dated stock generally expect to achieve about 2,5% per year above the rate of inflation then it becomes evident that the financial gnomes who buy and sell long dated fixed interest securities are expecting inflation to climb above 14% per year in the not too distant future. The latest year-on-year figure for inflation is 8,7% (based on a running 12-month average for the Consumer Price Index for all classes).

Stepchildren and the Duty of Support: As a general rule a stepfather does not have a direct duty to support his stepchildren. But what of the situation where the father of the children has died or disappeared and their mother has no employment? The mother of the children does have a duty of support to her children and her own need for support is thereby increased. In *Oosthuizen v Stanley* 1938 AD 322 at 331 it was said that:

> `in my judgment the fact that an indigent child might have a separate claim for support from a brother is not sufficient reason for testing a father's need for support by the amount that he needs for himself alone. The father has a duty to sustain his wife and children and it would be wholly artificial to consider the question on the footing that the father is entitled to provide for himself in priority to his wife and children under his roof'.

It is submitted that this same principle holds good for stepchildren. It follows that the claim by their mother may include what she needs for their support. In practice this would mean allocating one part of the deceased's earnings to each stepchild. Because it is a claim by the widow and not the child it is appropriate to make a deduction for remarriage prospects.

The above analysis holds good regardless of whether the marriage is in or out of community of property.

Contributory Negligence of a Deceased Breadwinner: The Apportionment of Damages Act 34 of 1956 (ss 2(1B) & 2(6)(a)) provides for a right of recourse by a defendant if the deceased breadwinner was contributorily negligent in bringing about his own death. The claim for a contribution lies against the estate of the deceased **but only against assets which were not brought into account when assessing the damages of the dependants**. This generally means that all life insurances **paid into the estate** are available to satisfy this right of recourse because these are otherwise left out of account by reason of the Assessment of Damages Act 9 of 1969. By the time a damages claim is settled the estate has usually been

page 2....

distributed. This means that the right of recourse is usually effected by making a deduction from the widow's claim, if she is the sole heir. Recovery from other heirs can be effected by way of the *condictio indebiti*.

Accelerated Benefits and Children: The analysis of accelerated benefits is characterised by much muddle and confusion and the absence of clear guidance from the courts. Actuarial views are diverse and contradictory and many actuaries still discount to date of delict when calculating the deduction for acceleration. The most lucid statement on the subject is to be found in *Groenewald v Snyders* 1966 3 SA 237 (A) at 248E where the court emphasises two components of the deduction: (a) the amount received, and (b) the present value of the expectation of receiving the benefit later. The court unfortunately fails to mention the third component, the present value of the future use of the assets by the family **had the deceased still been alive**. The benefit of the use of the assets would have accrued to both the wife and the children. The use aspect was emphasised in *Maasberg v Hunt Leuchars and Hepburn* 1944 WLD 2 at 13 but in so loose and intuitive a sense that the judgment has served more to confuse than to shed light on the subject. The *Maasberg* case was concerned with a childless widow. Where there are children they should be allocated part of the use of the family assets on a similar basis to the allocation of the deceased's income. Such an allocation can substantially increase a child's claim for damages. The child would be entitled to such increased damages **even if he had inherited nothing at all**.

The action by a child for damages for loss of support is for what the child has lost by way of maintenance that the deceased would have provided. The action is not confined to the support which would have been claimable by court action but extends to the `comforts, conveniences and advantages' that would have attached to the provision of support. A question in this regard that has not been properly answered by the courts is the extent to which a child may claim for `comforts, conveniences and advantages' that would only have accrued after the child became self-supporting. Of particular importance in this regard is the value of the chance of inheriting from the deceased. Suppose a child is 10 years old and the father had an expectation of life of 30 years. The child's expectation of inheritance is a capital sum in 30 years' time. Even if the child remains dependent to age 25 he will still have to wait, on average, another 15 years to come into his inheritance. In general one thinks that such a benefit will be ignored. If the 10-year old child has actually inherited then there arises the question of placing a value on the deduction for acceleration. For a widow this is calculated as the excess of what has been inherited over the expectation of receiving the benefit later (I assume that proper allowance has otherwise been made for the use of the assets). For a child, however, it would not be correct to have regard to an inheritance long after the child has become self-supporting. What is more a child's inheritance is normally placed into trust or the Guardian's Fund. The child then has no immediate benefit from the capital so should the capital too not be ignored? However, the capital is available if all other resources fail. If the capital is left intact then the only financial benefit that would accrue is the income from the capital which would be available to offset the child's loss of support. In *Heyns v President Insurance* 1988 (T) (unreported 6.7.88 case 20704/86) it was ruled that a deduction should be made from a child's claim for a lump-sum benefit accruing from the estate. The court did not specify how the deduction was to be assessed.

finis