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NEWSLETTER

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Newsletters by "snailmail": Take note that this is the last time I will be posting newsletters. From June 2009 it will be email only. There has been an excellent response to my appeal for your email addresses. Some unplanned accidents with loading these did occur and it is possible that one or two addresses did not get onto the email address list. Please forgive me and send your email address again, ideally by way of logging onto my website *www.robertjkoch.net*. Sorry, I suppose that reads a bit Irish like "If you don't receive this please write and let me know".

Robert J Koch website: There have been problems with accessing *www.robertjkoch.com* the last few months. These problems have now been resolved and the web pages are accessible using that address or *www.robertjkoch.net*.

The website includes all old newsletters, a free download of the publication "Reduced utility of a life plan" Koch 1993, and "Guidelines for experts".

Dates for medico-legal reports: A substantial number of experts are failing to put the date of preparation anywhere on their reports. This creates problems: firstly, as an actuary I am expected to adjust the listed expenses for inflation from date of report to date of calculation; secondly there are often multiple reports by the same expert which are only distinguishable by the date of preparation. A further complication is that attorneys and RAF claims handlers often telefax only 2 or 3 pages from a report. **It is thus desirable that the name of the expert and the date of preparation of the report appear on each and every page.**

State old age pensions & disability grants: The State disability grant will be R12120 per year from April 2009. The State old age pension will also become R12120 per year. The child support grant will increase to R2880 per year and, as from January 2009, is payable until the child attains age 15 (previously age 14). All these benefits are subject to a means test (see the *Quantum Yearbook 2009* at page 101 for details).

COID pension capitalisation: Pensions payable by the COID Commissioner (Commissioner for Occupational Injuries and Diseases) are increased in April each year. Past increase percentages are listed at page 96 of the *Quantum Yearbook 2009*. One may note that there was a 2% increase from April 2006, 3,4% from April 2007, and 7,1% from April 2008 (but see below), that is to say increases averaging well below the rate of inflation of 9% per year over the period. Such pensions are thus correctly capitalised at 4,5% per year, as is required by the Commissioner (see capitalisation tables at page 97 of the *Quantum Yearbook 2009*), instead of the 2,5% to 2,73% per year used by actuaries. These pensions do not terminate at age 65 but continue for the whole of life. This means that for older claimants close to retirement the COID deduction will exceed the value of future earnings capitalised to retirement age. Widow's claiming loss of support will experience similar problems.

COID increases April 2008: The COID pension increase percentage for April 2008 was a whole range of percentages dependent on when the pension commenced payment: For pensions that started payment before 2002 the percentage was 6,1%;

the percentage then increases on a curve that peaks at 10,8% for pensions that started 2004 and 2005 and then declines back to 6,1% for pensions that started 2007 and later. This complication should further slow down responses from an already sluggish COID office.

Interest on general damages: The Prescribed Rate of Interest Amendment Act 7 of 1997 provides for the payment of interest at the prescribed rate (15½% per year simple) on past losses of earnings and medical expenses. The Act expressly states that no interest is payable on future losses. Interest runs from the "date of demand" which is the date of service of a written demand (not necessarily a summons) which provides sufficient detail for the debtor to reasonably assess the quantum. A Court has the discretion to deviate from the rate and the period to such extent as it deems fit.

The Act says nothing of general damages for pain and suffering and loss of the amenities of life, so can interest be claimed on general damages? Is an award of general damages past loss or future loss? In truth it is neither, it is *sui generis*, a compensation oddity that has come down to us from the mediaeval ages, the Germanic *wergilt*. Can general damages be described as a debt? In its narrow sense the word "debt" implies patrimonial loss and thus excludes general damages. It also needs to be born in mind that general damages are assessed using currency values at the time of making the award, that is to say with allowance for inflation to date of assessment. There is no loss of buying power as happens with past loss of earnings. This means that general damages have more the character of future loss than past loss. In England the courts have responded to these anomalies by awarding only a real rate of return of 2% per year on general damages and not the full prescribed rate (see *Pickett v British Rail Engineering* [1979] 1 All ER 774 (HL) 799-800; *Birkett v Hayes* [1982] 2 All ER 710 (CA) 715a 716a 717a). In South Africa there is no case law on this issue nor, so far as I am aware, any established practice.

General contingencies and long delays: It is not uncommon for a claim for loss of earnings or support to drag on for 10 years and more. Conventional wisdom is that by reason of unfolded reality such past losses can be determined with far greater accuracy than future loss. That is particularly true of *damnum emergens* such as past medical expenses. For *lucrum cessans*, such as loss of earnings or support, there may be some increased certainty as regards inflation rates, and sometimes the employer can provide guidance as to current rates of pay. However, in many instances unfolding reality merely reveals that the employer has ceased trading and that the victim would have been unemployed. Even where there is an existing employer there is no certainty that the victim would have remained in that employment. Where unemployment would have supervened there are usually grounds for a substantial increase in past contingencies from the usual 5% to as much as 35% or more (see, for example, *AA Mutual Insurance Association Ltd v Maqula* 1978 1 SA 805 (A)). Even when loss of employment is not proven a long past period justifies increasing past contingencies to 10% or 12% and even more than that when there are volatile uncertain earnings such as overtime or commissions.

The contingency for future loss is usually larger than that for past loss and has regard to the widening funnel of doubt that attaches to projections far into the future. A long period of delay, and the benefit of better information, will often justify reducing a general contingency deduction for future loss from 20%, say, to 15% or from 15% to 12%.

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