



INSTITUTE OF LOSS ADJUSTERS

Newsletter
Winter 2008

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Welcome to Winter

It might be cooling off outside but the insurance industry is definitely 'heating up'. Keeping pace with developments is an art of its own – just this month we saw the numerous proposed changes not only to the short term and long term insurance acts, but also to the FAIS Act. Frantic draftings of comments took place at the offices of SAUMA, the FIA and SAIA and each sent representatives to Cape Town to address Parliament. These changes are radical to say the least and if introduced will affect us all.

Then there is the second hands goods bill. In our last newsletter we said it had been shelved, but here it is again and we have included an article prepared by Oupa Skosona on behalf of SAIA which you will find quite interesting.

The consumer protection Bill is another that will affect us indirectly, particularly adjusters who deal with products liability claims. The third draft was tabled in Parliament on 6 May 2008 and simultaneously the Department of Trade and

Industry (DTI) briefed the Parliamentary Portfolio Committee of Finance on the Bill. By close reading of the definition and industry discussions with the DTI it appears that the short-term industry will be excluded from the application of the Bill. Of concern, however, is the introduction of a section that seeks to make retailers, producers, importers and distributors liable for consequential damages suffered regardless of whether or not they have been negligent. Webber Wentzel has kindly provided permission to reprint an article on this.

Micro Insurance is going to be big in South Africa, so we have included a press release issued by National Treasury which provides a broad outline of what it entails. We have been informed that in all likelihood it will take about three years to draw up separate legislation to regulate it, but that when it does finally arrive we should be prepared to handle claims in a very different way.

In our last newsletter, we reproduced an article on pre-

dictive modelling. We follow up in this issue with an article that has a more South African 'flavour', and it certainly looks like this is an approach that will catch on quickly. The article was written by Tony Boobier which he has labelled "Location Intelligence – The New Insurance DNA?"

Also, we look in-house to our CPD. This has been a contentious issue throughout our membership, with some members welcoming it with open arms, and others refusing to accept it at all. We now publish a list of those members that have fully complied with CPD and we will be actively marketing their names around the industry. Our recommendation to insurers is that they only make use of those that are showing a willingness to keep pace with market developments.

Finally, for those that enjoy reading legal stuff we are including articles prepared by Deneys Reitz, Lindsay Keller and Jean Naude from Associated Loss Adjusters.

Peter Veal—Director ▲

The New Consumer Protection Bill In a Nutshell

Article Supplied by Webber Wentzel

The widely publicised Consumer Protection Bill was published on 6 May 2008. The Bill has been tabled in the National Council of Provinces and simultaneously been referred to the Portfolio Committee on Justice and Constitutional Affairs. If the Parliamentary processes run smoothly, it may still be promulgated into law this year.

Timing for implementation

The Bill will be gradually phased in: the first of its provisions (mainly those dealing with the establishment of the National Consumer Commission and the Minister's powers to make regulations) are scheduled to come into effect one year after the date on which it is signed by the President. All other provisions

will come into effect 18 months after the date of signature by the President, unless the Minister defers such date (which he may do by an additional 6 months).

Conservatively speaking, suppliers of goods and services accordingly have up to 2 years to ensure that their agreements and processes comply with the Bill.

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The New Consumer Protection Bill In a Nutshell

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What does the Bill do?

The Bill will replace the many laws currently regulating consumer protection with a single comprehensive framework for protecting consumer rights in South Africa. It builds on the consumer protection principles contained in the National Credit Act, 34 of 2005 (which came into full effect on 1 June 2007), but extends to all consumer-facing businesses, including the financial services sector.

The Bill governs issues such as unfair contract terms, product liability, disclosure and pricing and will regulate certain marketing practices. Its far-reaching provisions regarding the marketing of goods and services cover almost every imaginable scenario: from consumer loyalty programmes and promotional competitions to referral selling. It will aim to rid the market of unethical trading practices, unsafe products, unfairly discriminatory marketing and seeks to protect confidential consumer information from being released without consent.

The Bill generally applies to any supply of goods or services in the ordinary course of business between suppliers and consumers and also to franchise arrangements. Most of us are therefore likely to be affected by the Bill's provisions in some way. It is worth noting, however, that the Bill will not apply to certain large transactions which exceed a particular value (this threshold will be determined by the Minister from time to time). The Bill furthermore does not apply to the promotion or supply of goods or services to the State. Despite these exceptions, the Bill will apply to goods that are unsafe even if they are the subject of an exempt transaction. Regu-

latory authorities may also apply to the Minister for an industry-wide exemption from one or more provisions of the Bill should those provisions overlap with similar regulations that already apply to a particular industry.

Key provisions of the Bill which may affect your business

As mentioned above, the Bill's provisions are far-reaching and numerous. We have, however, set out below a few of the key provisions of which you should be aware. These include:

- business name registration will be mandatory (instead of voluntary as is currently the case) and a person may only carry on business in his full name as per his identity document or in the registered business name;
- consumers are given the right to return goods to the supplier in certain circumstances;
- consumers may terminate transactions resulting from direct marketing, without reason or penalty, within 5 business days from the later of the date on which the transaction was concluded or the date on which the goods were delivered to the consumer (the so-called "cooling-off" right);
- unjust, unreasonable or unfair contract terms are prohibited (those terms being elaborated upon in the Bill);
- the Bill has a profound effect on the contracting out of liability as the Bill places an obligation on a supplier to draw the fact, nature and effect of the exclusion of liability provision to the attention of the consumer before the conclusion of the transaction. For a more detailed discussion on the pro-

visions of the Bill which impact a supplier's ability to contract out of liability, please see our quarterly Dispute Resolution newsletter which is due to be published shortly;

- a fixed-term agreement may not exceed the time period prescribed by regulation and may be cancelled at any time by the consumer on 20 business days' notice. Although the supplier may impose "reasonable" penalties, the Minister may prescribe the method by which the penalty should be determined;
- unless expressly provided otherwise in an agreement, it is an implied condition of every transaction for the supply of goods or services that the supplier is responsible for delivering the goods or performing the services on the agreed date and time, at the agreed place and at the cost of the supplier, in the case of the delivery of goods, and that risk in the goods remains with the supplier until the consumer accepts delivery;
- unsolicited goods (even if such goods were delivered by mistake) may be retained by the recipient and ownership in such goods passes unconditionally to that person;
- the Minister may prescribe categories of consumer agreements which are required to be in writing;
- every consumer has the right to receive goods that are reasonably suitable for the purposes for which they are generally intended, that are of good quality, in good working order and free of any defects and which will be useable and durable for a reasonable period of time. It is an implied provision in each transaction for the supply of goods that the producer or importer, distributor

and retailer each warrant that the goods comply with the requirements and standards described in the Bill;

- the producer or importer, distributor or retailer of any goods is liable for any harm (including economic loss) occasioned by the supply of unsafe goods, a product failure, defect or hazard in any goods or inadequate instructions or warnings provided to the consumer in respect of any hazard associated with the use of the goods. Previous versions of the Bill imposed a strict liability on producers, importers, distributors and retailers, this has, however, not been repeated in the new Bill and ordinary fault liability will apply.

Enforcement

The Bill's provisions will be enforced by a new National Consumer Commission and in addition, the National Consumer Tribunal (established in terms of the National Credit Act) will have jurisdiction to adjudicate on complaints under the Bill.

The consequences of non-compliance

The Bill creates a limited number of offences for the contravention of its provisions. These include the unauthorised disclosure of consumer confidential information and offences relating to prohibited conduct (which includes a failure to comply with a compliance notice issued by the Commission).

Contravention of the Bill may result, on conviction, in the imposition of a fine or imprisonment for 12 months, or to both (unless the offence relates to the disclosure of confidential information, in which event one is liable for a fine or imprisonment for 10 years, or to both). The Bill further-

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The New Consumer Protection Bill In a Nutshell

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more provides for the imposition of an administrative penalty not exceeding the greater of 10% of the respondent's annual turnover during the preceding financial year, or R1 million.

Since companies will wish to avoid suffering any reputational risk that may result from publicity generated as a result of any non-

compliance, this in itself may encourage compliance with the Bill's provisions.

Where to from here?

Although consumers will welcome the Bill's provisions, the costs of compliance will be high for businesses. In particular, suppliers of goods and services will need to consider how

the Bill's detailed provisions will impact their businesses and may require specialist advice. It would certainly be prudent for such companies to undertake a review of their standard agreements and operational processes to ensure that they do not breach the Bill's provisions.

Should you require more information on the Bill or

specific advice on the application of its provisions to your business, please do not hesitate to get in touch with Eunice van Zyl, Johann Scholtz or your regular contact at Webber Wentzel who will gladly assist you. ▲

ILA Snippets

Claims Conference

Our first claims conference was an enormous success, so we have decided to make it an annual event, the next one being held in May 2009.

We are presently compiling a list of subjects and if you have any ideas or topics that you think we should address, please send your comments to Peter Veal peter@ice-sa.co.za

Call for subject matter experts

Our NQF 5 qualification which will be used for entry to our senior level of membership (Associate), is presently in for registration having successfully passed through the 'out for public comment' stage.

We now have to write the material, and if you believe you are a subject matter expert and would like to help (lots of CPD points will be awarded as well as other benefits), please pass your name to Jan Schubart who will explain exactly what is required. His e-mail address is jwsch@telkomsa.net

RPL

In terms of our Constitution, all Accredited members must obtain an NQF 4 insurance qualification to retain membership.

When the Constitution was changed to incorporate this, a 12 month window of opportunity was provided whereby Accredited members could undertake an RPL assessment to provide evidence of competency.

This window of opportunity has now expired, and those that did not apply for the RPL assessment and who do not have a formal qualification must now register with a training provider to complete one.

In terms of the Constitution, Accredited members have 5 years to do so, and with a start date of April 2007 a full year has now passed. As it is unlikely that a full qualification can be achieved in less than 2 years it is recommended that members begin their studies this year. The Institute will not extend the time frame for qualification completion.

CPD Hong Kong

It is interesting to note that even in Hong Kong, adjusters have to complete CPD. One of our members living in Hong Kong, on receiving our request for CPD record sent the following e-mail to us:

"Peter

As an overseas fee paying member I would like to remain on the ILA.

We have to complete at least 10 hours of CPD every year. This is audited by the Hong

Kong Insurance Authority.

Would the ILA consider this as appropriate CPD?

Mike"

Needless to say that we accept this as CPD

Insurance Gateway offer

Insurance Gateway is an electronic publication which gets to a very large number of insurance practitioners. Mike stoker, the owner and editor has offered Members of our Institute a special facility. This a direct quotation from his e-mail

"Insurance Gateway is a unique independent web based information portal for the South African insurance industry. Established in February 2005, the Gateways offer consumers and insurance professionals free access to market information, papers, articles, events, glossaries and the like.

The heartbeat of the Gateways is the directory listings by type of service provider. For example there is the category in the [Short-term Gateway Professionals Section for Assessors and Loss Adjustors](#), where several Loss Adjustors have already listed.

Insurance Gateway support all initiatives aimed at increasing professionalism

and making the industry more accessible and to this end we offer ILA members a reduced annual rate from the standard rate of R1 500 per annum down to R1 000,00 per annum plus VAT.

Anyone interested in availing themselves of this offer can contact Mike Stoker via the website www.insurancegateway.co.za.

New members

We welcome the following new members:

J Pretorius
G J van der Laak

Members no longer

We say goodbye to the following:

P J van Wyk
RRS Stermin
R G Ross
R de Jager
A M Cotton
Ms. C Milledge
Ms. C van Eekelen
C A Young
C J Nel
R G Walker-Randall
B J Verreyne

ILA Snippets

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Q D C Gibson

K N Brown

R G Bird

W E White

Loss Adjusters wanted in Canada

Thinking of leaving South Africa? We received this e-mail from a head hunter in Canada looking for adjusters. It was headed RECRUITMENT FOR CANADA INSURANCE LOSS ADJUSTING JOBS

Greetings from Toronto, Canada

Interested parties are invited to send their resumes in the attached format to Matrixvisa Inc. Please send it to insurancerecruitment@matrixvisa.com. Please follow the format closely as an incorrect format cannot be used. If you have special adjusting skills please ensure it is mentioned in your resume (not called a CV in North America).

We will only contact eligible candidates and candidates that we believe stand a reasonable chance of being placed successfully.

Interesting links can be found here:

http://www.matrixvisa.com/pages/a_zofimmigration.htm

<http://www.matrixvisa.com/pages/newsletter.htm> - see Nov 2005 newsletter for

cost of living questions.

Regards

Cobus (Jacobus) Kriek

IMIA

The International Association of Engineering Insurers has a fascinating website which will be of interest to engineering adjusters. They list details of interesting claims, and those that would like more information should click on www.imia.com. Then click on 'library' then 'interesting claims'

Effects of load shedding on intruder alarm systems

Although we hope to have seen the last of load shedding, you might be interested in seeing a letter from the South African Intruder Detection Services Association (SAIDSA) sent to Eskom:

The South African Intruder Detection Services Association (SAIDSA) is an Association of service providers of Intruder Detection Systems representing the interests of the industry and the public.

While we accept and understand the current load shedding requirements in South Africa, we wish to voice our concerns and place on record the effects of load shedding on the electronic intruder alarm industry and its clients.

While this practice may be necessary, we request you to note that the effects have the result of a National Security

Risk in as much as all owners of Intruder Alarm Systems are left vulnerable during the scheduled power outages. This poses a danger to life and property.

As all intruder alarm systems depend on rechargeable battery power to operate, they require AC power to keep these batteries charged. As the average battery in a system will offer an operating period of about 3 – 4 hours without power, your proposed load shedding schedules of up to 6 hours poses a threat to the security of the public.

Furthermore, the constant high charge and discharge causes irreversible damage to these batteries in a very short time, adding extra costs to the public.

While the recommendations of generator power and solar power (at a cost to the public) may sound like a solution, it is totally impractical to expect the general public to absorb these high costs.

Furthermore, proposed load shedding on specific days and periods offers the criminal a precise crime planning schedule.

While SAIDSA has embarked on campaigns to educate the industry and the public by way of technical workshops, advertising and websites, among others, we request that you consider the above and reduce ex-

tended load shedding periods to less than 4 hours in order to allow our systems to remain effective, thus offering reasonable protection to the public.

Yours faithfully

Bryan Rudolph

SAIDSA: Chairman Technical Committee

Is steam damage covered under a householder policy?

Statement from Philip Clough, Dec 2007 – "I made a claim due to a broken washing machine. I put a load of washing on before going away for the weekend. On my return I found it to be stuck in a boiling cycle and my whole kitchen was nigh on destroyed by the steam. When I made a claim through my broker to the insurance company it was denied as I was not insured for steam damage! My broker quickly pointed out that water is H₂O and the same chemical compound at steam! They were not having it. The judge, in the small claims court, did not even allow the insurance company's counsel to speak. He took two minutes to read out the case, laughed and said "Water is H₂O as is steam - case for the plaintiff." The claim was swiftly settled by an embarrassed insurance company. (Thanks Philip Clough) ▲

Second Hand Goods Bill

Article Supplied by: SAIA, Oupa Skosona

Just as we thought that the long awaited Second Hand Goods Bill had been shelved and forgotten about, it has been introduced to Parliament and referred to the Portfolio Committee on Safety and Security for consideration and public hearings.

Briefly, the Bill was first published in October 2005 and aims, once enacted, to regulate the business of dealers in second hand goods and pawnbrokers, in order to limit trade in stolen goods, to promote ethical standards in the second hand goods trade and lastly provide matters con-

nected therewith.

Applicability of the Bill in the short-term insurance industry

In insurance business, loss or material damage over movable property more often than not involves the replacement of second

hand goods – motor vehicles, motor cycles, jewellery, communication equipment, household and office equipment and the like. In certain circumstances, insurers and brokers acting with mandate may sell or dispose of salvage (recovered goods) to offset

Second Hand Goods Bill

Article Supplied by: SAIA, Oupa Skosona

claims.

If enacted, the Bill will replace the Second Hand Goods Act of 1955 that the short-term insurance industry had for some time managed to escape, because the Act refers to any person who “*deals in*” second hand goods, in the course of business. The proposed new Bill, however, will apply to any person who *carries on a business as a dealer of second hand goods*. The Bill will, however, not apply in instances where goods are disposed of by way of public auctions authorised warrant of execution under judgment, or court orders or to any dealer who is a member of an accredited association save where

exempted by notice in Gazette by the Minister.

A dealer is defined as any person who carries on a business of *dealing in* second hand goods. The subrogation clause in the now withdrawn Multimark III and some personal lines wording provides that the insurer or any person authorised by it may take, enter or keep possession of any damaged property and *deal with* it in any reasonable manner.

At a glance, when reading the definition of a dealer one will agree that it appears that insurers are excluded from the application of the Bill by reason that insurers are, indeed, not in a business of acquiring or disposing sec-

ond hand goods. However, the definitions of “*deal in*” and “*disposing of*” are very broad and include acquiring and disposing of by any means of goods. To this end, the definition of a dealer, as contained in the Bill, might extend beyond the scope of the original objective of the Bill so far as insurers are concerned. The Bill does not draw a distinction between “*deal in*” and “*deal with*”, hence the definition of “*dealer*” should be made clear; that the Bill is intended for persons whose main/core business is dealing in second hand goods and not persons who incidentally, through their business, may come into possession of and dispose of second hand goods.

Of importance when interpreting whether or not the Bill is applicable to the short-term industry, is the consideration that insurers, in certain instances, do assume ownership of the goods they acquired before disposing them.

Compliance

Notwithstanding that insurers do contract with salvage companies who dispose goods on their behalf insurers should ensure that dealers do comply with the provisions of the Act, once passed, by for instance registering and reporting to the police on stolen goods.▲

Location Intelligence—The New Insurance DNA?

The South African property insurance sector is entering a period of change, mirroring the political and economic dynamics of this complex but exciting nation.

Increased competition, particularly between personal lines insurers, coupled with the emergence of new sales distribution channels such as the internet, is increasingly placing pressure on the level of insurance premium. Often described as being a ‘soft market’, broader experience tells us that this trend usually soon extends to the low end of the commercial sector, typically at SME level.

At the same time, better management information coupled with improved risk management techniques is beginning to provide a real option to major commercial enterprises that, in setting up captives and self insurance schemes, now have a viable alternative to often-expensive commercial pre-

miums.

The South African insurance market is also beginning to open up to the prospect of dealing with high-volume low-value claims, a sector known as ‘micro-insurance’. This will inevitably create new organisational challenges but also, importantly, new opportunity for the most entrepreneurial of organisations.

The Impact of Supply Chain Management on Loss Adjusting

As insurance premiums tumble, the knock-on effect is one of pressure on insurers’ own costs. These costs are both internal and external. Internally, insurers will seek process efficiencies, with debate about in-sourcing versus outsourcing. Decision-making on matters of ‘vertical integration’ is often based on benchmarking of both service and claims performance, including average settlement costs per claims category.

External cost control directs those insurers with appropriate scale towards the world of supply chain management. Professional buyers will increasingly start to procure services such as loss adjusting, and these new experts will increasingly exert organisational influence on the decision-making process.

Experience reminds us of the complexity of stakeholder involvement especially in the difficult area of claims. What has been learned elsewhere is that the model of supply chain *competing* with the claims department for influence does not usually work, and that the most successful outcome arises where claims teams within insurers work in partnership with procurement professionals.

At the heart of many of these developments rests location intelligence. It is increasingly becoming a cornerstone of insurance, impacting on many areas of the business across the entire enterprise. Location impacts on sales



Tony Boobier

and marketing, supply chain management, performance management and operational benchmarking to name but a few areas. It pervades beyond property into life and pension, auto, medical and all other sectors. Is location intelligence the new DNA of the insurance industry?

It is of course impossible to predict the future with absolute certainty. However, what we can be sure of is

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that as insurers change their behaviour, there will be a knock-on effect to the South African loss adjuster profession.

Loss Adjusters also need to become Location Intelligent

It is inevitable that the same tools used by insurers will find their way into the loss adjusting profession. Early adopters will rapidly align themselves to the main insurers, and will be better placed to meet the new demands of the insurance sector.

Where there is supply chain management, there usually follows commoditisation of services. This means a possible, perhaps even probable, movement away from time-based charges, and greater granularity will emerge where fees are based on claims 'value bands'. Because of this, adjusters will need to become increasingly aware of operational efficiency and how best to utilise resources. If not already in existence, operational efficiency will rapidly become a core competence of successful adjusting organisations.

Operational Efficiency

Operational efficiency arises in two principal ways.

Firstly, and at its most basic, the manner in which the adjuster optimises his call route to ensure the most visits in the least time, taking into account traffic. This is a relatively simple process, and the professional adjuster should consider routing technology as being an essential part of his toolbox.

The second area of operational efficiency is in the reporting process, and the need to optimise reporting especially at the low value claims end. Again, technol-

ogy has a part to play in that process with new mobile tools collecting and transmitting key data, allowing earlier decisions, and shorter claims elapsed times.

Capacity Planning

Concerns about adjuster capacity are seldom expressed. After all, isn't the adjusting profession an elastic commodity? More claims simply result in longer hours worked, including weekends. Slippage of service often shows itself in longer claim durations, but most insurers will be more than aware that the longer the claim goes on, the less satisfied the customer, and usually the more expensive the outcome.

The matter is not confined to non-complex claims. A major new incident involving several adjacent properties places huge stress on resource, often to the detriment of other work-in-progress.

For those very practical and financial reasons, the need for adjusters to be able to better understand the stresses on their operations due to increased volumes will increasingly become more critical. Scenario planning is critical to business planning and furthermore becomes an essential component in supplier assessment. Modelling is a proven way of creating 'what if' projections.

Visualisation of Management Information.

The world has moved on from excel spreadsheets and pivot tables. Business Intelligence is key to real time decision-making.

Insurers increasingly demand information in ways that lend themselves to better analysis. European insurers already lay down the law as to how they require data to be presented from their supply chain. South African

insurers will quickly take the same approach.

Mapping is no more than a graphical representation of perhaps 15% of data available, but nevertheless allows managers and insurers to quickly assess issues and take action accordingly. Modern insurers are mostly beyond the point of referring to maps on walls, but are increasingly using advanced graphics to visualise complex data.

Added Value Services

As competition heats up in the adjusting market, for some organisations it will be what extra they can bring to the table which will be the 'deal creator'.

What these additional services could be are best left to the imagination of the entrepreneurial organisation. These added-value services might be in the way that management information is provided, ie high quality visualisations providing reassurance that the business is under control.

Alternatively, perhaps the difference will be in the provision of additional services. However, for example, why should it not be possible for the adjuster, in providing a report following a major theft, to make a recommendation not only for additional security but also to be able to introduce a suitably vetted and qualified organisation that might undertake the work at a discounted rate?

Isn't there a role for location intelligence in identifying, deploying and monitoring the performance of these new organisational capabilities?

A Summary of the Demands of a Dynamic Market

There will always be a role for the loss adjusting expert. However, that role has changed over time, and will continue to change.

Adjusters need to be as aware of technological tools as they need to be aware of new legislation in the subrogation process, or in new rapid drying techniques. Insurance is one of the few truly global industries, and the speed of change is more rapid than ever before, even in a market renowned for relative inertia.

If location intelligence is really the new insurance DNA, and there are few who seem to be disputing this, turning a blind eye is probably not an option for the adjusting profession.

Tony Boobier has a notable track record in change management in the Insurance Sector, operational restructuring and supplier management, including outsourcing. Tony is renowned for his award winning entrepreneurial approach, having led cross-industry teams to national and international industry recognition.

Tony is a regular contributor to the insurance press focussing on property claims (subsidence, flood, technology, hazard modelling, and reinsurance). He can be contacted via Sanet Lombard at ST Group, Johannesburg +27 (0) 861 S T G R O U P o r info@stgroup.co.za.

Article sourced from a recently held series of morning seminars on the topic of "Location Intelligence in the Insurance Sector", hosted by ST Group and reproduced with the kind permission of the author,

Tony Boobier FCILA , Chartered Loss Adjuster, Strategic Industry Manager – Insurance Practice, Pitney Bowes Business Insight ▲

Credits Checks, the National Credit Act (“NCA”) and the Employment Equity Act of 1998

Article Supplied by: Anthony Glazer, GAB Robins

By now, you should all have renewed any contracts that you may have had with any Credit Bureau that you were using. All old contracts with Credit Bureaus needed to be re-signed in compliance with the NCA, once the NCA was promulgated last year. If you have not re-signed your contracts, best you do so now.

Upon re-signing of our contract with the TransUnion Credit Bureau (Previously “TransUnion ITC”), it was represented to us by TransUnion that Loss Adjusters can no longer request credit checks on Insured’s without the Insured’s express written permission. Now its plain to see that in an instance where an Insured has submitted a fraudulent claim due to the existence of some financial problem or other, or if the Insured believes that there are judgments which, if uncovered, may jeopardize what is otherwise a legitimate claim, they will not agree for the Loss Adjuster to perform a Credit Check.

Regulation 18(4) of the NCA was cited by TransUnion as the relevant legislation governing the requirement of written consent. Regulation 18(4) reads as follows:

“The prescribed purposes, other than for purposes contemplated in the Act, for which a report may be issued in terms of [section 70\(2\)\(g\)](#), are:

- a) an investigation into fraud, corruption or theft, provided that the South African Police Service or any other statutory enforcement agency conducts such an investigation;
- b) fraud detection and fraud prevention services;
- c) considering a candidate for employment in a position that requires trust and honesty and entails the handling of cash or finances;
- d) an assessment of the debtors book of a business for the purposes of:
 - i) the sale of the business or debtors book of that business; or
 - ii) any other transaction that is dependant upon

determining the value of the business or debtors book of that business;

e) setting a limit of service provision in respect of any continuous service;

f) assessing an application for insurance;

g) verifying educational qualifications and employment;

h) obtaining consumer information to distribute unclaimed funds, including pension funds and insurance claims;

i) tracing a consumer by a credit provider in respect of a credit agreement entered into between the consumer and the credit provider;

j) developing a credit scoring system by a credit provider or credit bureau”

For the purposes of a Loss Adjuster, it is likely that only Paragraphs (a), (b) and (d) are relevant in respect of the investigation of a claim, and Paragraph (c) is relevant in respect of evaluating a suitable candidate for possible employment.

If one reads the Regula-

tions more closely, it is obvious that Regulation 18(4) needs to be read in conjunction with Regulation 18(5), which reads as follows:

“Should a report be required for a purpose set out in sub-regulation (4)(c) or (e) to (g), the consent of the consumer must be obtained prior to the report being requested.”

It is therefore clear that Loss Adjusters do not have to obtain prior written consent from an Insured before requesting a Credit Check when investigating a claim. However, all companies including Loss Adjusters need to obtain written consent from potential employees or candidates prior to performing a Credit Check when considering employing this person in a position that requires trust and honesty and entails the handling of cash or finances.

Subsequent feedback received from the TransUnion Legal Department has supported this understanding.▲

CPD

Article Supplied by: Peter Veal

All over the world, professional bodies are introducing CPD. Here in South Africa it is no exception, and the Financial Services Board has indicated its desire to introduce compulsory CPD at the end of next year for all those that are registered as key individuals or representatives in terms of the FAIS Act.

The Insurance Institute of South Africa is also planning the introduction of CPD for its Licentiate, Associate and Fellow members, with an effective date as soon as possible.

We took the initiative to take this action more than 2 years ago and our effective date was the beginning of last year, with returns for 2007

having to be lodged by our members during the first quarter of this year. In fact, we have it embodied in our Constitution that membership of our Institute will not be renewed if our requirements are not met.

We are happy to report that the majority of our members have lodged their returns and have accord-

ingly complied with our requirements. However there are a few that have not done so and we are presently taking disciplinary action against them.

Despite the internationally accepted view relating to CPD, we still have members who do not wish to acknowledge the necessity of this, and have blatantly

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admitted that they will not relent. They believe that the market will still support them simply because of the 'old boys club', whether they remain members of our Institute or otherwise.

Our contention is that in this rapidly changing and regulated industry, there is no room for such an approach, and as we fall outside of the regulators net

we have to be seen to be properly self regulated. Indeed the increasing number of complaints that we have to address is indicative of the market's demand for regulation and professionalism.

The true testing time has arrived.

Whilst we cannot be prescriptive, we truly believe that insurers will no longer support adjusters simply be-

cause they are friends of the claims manager. Regulation is the order of the day, and adjusters must adhere to a code of conduct, whether by statute or otherwise. There has to be some channel of redress in the event of unprofessional conduct and in the current environment that channel has to be provided by us.

We have decided to publish

the names of those adjusters who have complied with their CPD obligations and it is our intention to 'market' their names to the industry with a recommendation that these become their preferred adjusters.

The names of those that have complied with CPD requirements are published hereunder.▲

Alborough DJ	Collier MP	Gilau DT	Kirsten J	Merrett JN	Pretorius HL	Teasdale GH
Andrews TL	Cooney MJ	Glover SJ	Kleinschmidt AL	Meyer MJ	Pretorius JP	Terblanche S
Archer TC	Cooper G	Govindasami S	Kleyn M Jnr	Miller DW	Pretorius KP	Thayer M
Arends RJ	Cox MI	Greeff PJ	Kleyn M Snr	Mitchell J Jnr	Pretorius MW	Turner NJ
Arnold SPR	Cubberley KG	Green MD	Kleyn MJ	Mitchell JC	Pridham IB	Van Breda RH
Armfield O	Dawes JH	Griebenauw M	Klingler WE	Mitchell TA	Rautenbach ML	Van De Venter BG
Attwell AL	Dawson PJ	Haasbroek PG	Koekemoer IR	Mittan DF	Reid PT	Van Der Burgh D
Barnard C	De Kock JJ	Haasbroek PM	Kruger A	Mole IM	Riva A	Van Der Merwe RJ
Baker RRH	De Kock MD	Hanzen A	Kruger AP	Moolman PL	Robinson E	Van Der Westhuizen LC
Barker DI	De Meillon CC	Harvard AW	Kuhn PK	Morgan CA	Robinson M	Van Harmelen WJC
Barretto FD	Deacon RB	Harwood GP	Lammers GP	Mounsear-Wilson RC	Rogers JCB	Van Niekerk GJB
Beeby RE	Dedekind C	Hayes MER	Lamprecht L	Morgan CA	Roos DC	Van Rensburg E
Bell DA	Dedekind RK	Hayes MR	Larder GC	Mounsear-Wilson RC	Roos RA	Van Rensburg NJ
Bell TD	Dekker GL	Henning F	Liebenberg AJ	Moyles BJ	Rossouw FK	Van Schalkwyk CJ
Beyers O	Dicks RC	Henry JE	Liebenberg B	Mullins MC	Rowe-Williams JC	Van Schalkwyk MF
Bezuidenhout J	Diko A	Hepple RM	Liebenberg JBH	Naidoo LA	Saaiman JH	Van Tonder AB
Bezuidenhout MC	Dos Santos	Herbet JB	Linder ZJ	Naidu B	Sargent DJ	Van Vliet
Blackstock OC	ADR	Higgs A	Lindstrom CJ	Napier-Jameson E	Schauer HA	Van Zyl BB
Blem AH	Dukie A	Hobson RKW	Lloyd MD	Naude JG	Scheepers ER	Vass MC
Bohme WH	Du Plessis JB	Hogg ARA	Loppnow MA	Naude JJ	Schmidt CJ	Venter JH
Bond WL	Du Plooy PF	Hogg I	Lugt J	Naude WA	Schubart JW	Vincent-Lambert AR
Bornmann ID	Dutton TK	Holder EW	Lups CJ	Ndlela M	Schutz RH	Walsh IH
Botha DE	Eksteen Tm	Human P	Luus J	Nel CG	Senekal A	Warner AM
Botha JC	Engelbrecht I	Hutton NN	Macdonald RN	Nel MW	Shanks RA	Watson-Smith V
Botha KJ	Farr DK	Isenegger SA	Maclean KG	Nkhahle T	Sjoberg IR	Waugh DM
Brackenridge AH	Ferns PJ	Jacks A	Mann KH	North PAD	Skelding GB	Webber MB
Brandt NC	Fischer JFU	Jackson RL	Mann SL	Nortier L	Skelding KR	Weedon RD
Brits EC	Forster ABA	Jafta A	Marais DJ	Oosthuizen GF	Skriker GG	Wessels JvN
Brown AP	Fowlds JM	Jenkinson PW	Maree CK	Oosthuizen S	Smit CJH	White CA
Brown RJG	Fowler N	Jenkinson RD	Marker RJ	Osborn AR	Smith AB	White K
Burger J	Fowler KD	Jonck LE	Marshall KTB	Ossowski KO	Smith GJ	Whiting GP
Byrne GE	Fricke RA	Jooste FJ	McColl MI	Pahl G	Smith RM	Whittingham BD
Campbell R	Froneman NA	Judge RCE	McDonald NR	Palmer BM	Stewart AM	Whittle CL
Cartwright DG	Gardiner MA	Kernahan IMD	McDowell RW	Paulsen AC	Stokes P	Wiid L
Chadee S	Garforth AM	Kettley CF	McIlwrath BK	Paulsen DA	Strydom JDW	Wilding AL
Clark RH	Geffroy JV	Khalema JM	McKay DF	Pearse KE	Strydom M	Williams V
Coetzee AD	Gengadoo C	Khosa GM	McLoughlin JA	Pearson JS	Sutton JG	Witteveen RW▲
Coetzee MTJ	Gerber HB	King MC	Meriton RS	Pearson RJ	Te Brugge T	
	Geyer AvT	Kirkman JD'A		Pepler SA		
				Pienaar S		
				Phillipson C		
				Pohl AG		

Micro Insurance Regulation

A Press Release Issued by National Treasury

The Future of Micro-insurance Regulation in South Africa

National Treasury is releasing for public comment a discussion paper that proposes a new regulatory environment for entities offering insurance products to low-income earners, entitled: "The Future of Micro-insurance Regulation in South Africa".

Micro-insurance as defined in the discussion paper is intended to catalyse the market provision of risk management tools for poor households. However, given the inherent complexity of insurance and the vulnerability of the target market, there are also risks of potential abuse and miss-selling. A balance therefore needs to be struck between market development and consumer protection.

Accordingly, the goal of the paper is to develop a coherent and clear regulatory framework that will encourage and facilitate the provision and distribution of good value, low-cost products that are appropriate to the needs of low-income consumers by a variety of market players, who must treat their policyholders

fairly and manage the risks of providing insurance.

This is in line with the government's objective to increase access to financial services for

the poor and providing a supportive regulatory environment for the implementation of the Financial Sector Charter.

An underlying principle of the paper is that regulation should be tailored to underlying risk. Thus insurers that only offer micro-insurance products as defined will operate under a reduced regulatory environment. This is justified as the risks inherent in this business are limited by the product limitations. The new micro-insurance framework should allow for broad participation in this market and the graduation of entities from small, underwritten entities to

larger more sophisticated options. Although it is technically feasible to give effect to this framework introduced through appropriate amendments to current legislation (the Long-term Insurance Act, the Short-term Insurance Act, the Co-operatives Act and the Friendly Societies Act), it is proposed that specific micro-insurance legisla-

tion should be considered for the sake of simplicity and user-friendly regulation

In short, the discussion paper proposes:

- A dedicated micro-insurance license. This license will be available to existing registered long-term insurers, short-term insurers, friendly societies as well as public companies and co-operatives which comply with the registration requirements;

- Allowing the license holder to write both long-term and short-term policies which comply with the product parameters set for micro-insurance products (including, subject to further actuarial modelling, a proposed benefit cap of R50 000 and a maximum policy term of 12 months);

- Simplified distribution requirements (under FAIS); and

- Special prudential regime commensurate to the risks applicable to micro-insurance policies.

All micro-insurers will fall under the supervision of the Financial Services Board (FSB). In addition to insurers currently registered under the Long-term or Short-term Acts, Friendly societies and

Co-operatives registered under their respective acts will be allowed to obtain a micro-insurance license if they comply with the requirements.

The micro-insurance license will not be the only channel for the provision of market-driven risk mitigation instruments for low income households. This paper also considers the other options that need to be included in an overall regulatory framework for micro-insurance, for example underwriting or the cell captive mechanism.

A consumer awareness strategy will complement the legislative and regulatory reform process.

The micro-insurance regime presented is aligned to the proposed social security reforms and National Treasury will continue to ensure that the two processes are consistent and harmonised.

The deadline for comments is 31 July 2008. Comments are to be submitted to

Ms. Katherine Gibson by email: Katherine.Gibson@treasury.gov.za or fax:

+27 (0)12 3155206.▲

A View of Bouncy Castle

Article Supplied by Deneys Reitz Inc.

Pass the parcel may be safer. Beloved of children's birthday parties, bouncy castles are estimated to have caused between 2 500 and 3 000 injuries each year in the United Kingdom.

In the recent judgment of the High Court of Justice in England the parents of triplets who hired a bouncy castle to celebrate the triplets tenth birthday found themselves held liable for the injuries sustained by a child injured while playing

on the bouncy castle.

The child was brain-damaged when kicked in the head by an older, larger boy performing a somersault on the bouncy castle.

The children involved were not guests at the birthday party but had, on the evidence, been granted permission by one of the triplets parents to use the bouncy castle.

The defendants accepted that if the Court rejected the evidence that the claimant

was refused permission to use the castle, which the Court did do, that they owed a duty of care to him.

The claimants case of breach of a duty was three-fold:

- Failure to maintain continuous supervision of those using the castle;
- Failure to forbid children using the castle from doing flips and somersaults;

- Failure to ensure that only children of a similar size and weight played on the bouncy castle at the same time.

The terms of the hire contract of the castle contained recommendations for safety *inter alia* that:

- The equipment should be supervised at all times by a responsible person and boisterous behaviour stopped.

A View of Bouncy Castle

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- Not to exceed the maximum of children recommended by the manufacturer.

- Not to mix children of different sizes or with adults on equipment unless it is specifically designed so.

There were two other documents on the company's website, although not seen by the defendants, which the Courts considered instructive.

A health and safety information sheet which included the following:

- Operator and attendant should watch the activity on the inflatable constantly and take action at the first sign of any misbehaviour.

- Somersaults and rough play should not be allowed.

- It is the operator's responsibility to ensure that equipment is not overloaded with users.

Standard terms and conditions of hire containing clauses to the effect that:

- A responsible adult must supervise inflatable at all times.

- Ensure the inflatable is not over crowded and limit numbers depending on age and size of children.

- Avoid large children and small children from using the inflatable at the same time – some require strict supervision.

There were also safety cartoons stressing:

- Similar size children only.

- No somersaults, back or front flips.

- An adult must supervise the children at all times.

The Court accepted that the use of the equipment manifestly brought risks in its train. Supervision was needed to ensure that any new users removed shoes otherwise there would be a danger to the users and the equipment, and continuous supervision was also necessary to police the way in which the equipment was used.

While one of the defendants was in attendance throughout she was also supervising another piece of equipment hired for the birthday party. Both pieces of equipment in fact needed uninterrupted supervision which was not given.

Largely as a consequence of insufficient allowance being made for the demands of operating two items of equipment the Court concluded that the level of supervision of the bouncy castle was inadequate. The standard of supervision needed to be all the greater given that the users were not of an age to appreciate the significant risks involved.

The absence of a continuous watch was also causative of the accident. While it was clear that the events

happened quickly no-one was in a position to intervene to stop the activity as soon as the offending child tried to somersault, the evidence of the offending child being that even if he had been merely told to be careful he would have refrained. The offending child was also three or four years older than the other children using the castle and is described as a "gentle giant".

The Court found that the risks of a damaging collision are manifestly enhanced by mixing children of different sizes on a bouncy castle and avoidance of such a situation is at the forefront of all the various recommendations for safe use. The offending child should not have been allowed to use the bouncy castle at the same time as the younger and smaller children and that too was causative of the accident.

Under the circumstances the defending parents were found to have been causatively negligent of the claimant's injuries.

The legal principles applied are in essence identical to those which would be applied by South African Courts, and on the same facts South African Courts would have come to no different conclusion. The general principles of negligence are applicable to other pieces of children's play equipment used both at parties and as found at various restaurant chains throughout the Republic.

Insured's who produce or supply children's play equip-

ment would be mindful to ensure that appropriate safety instructions and instructions in respect of use are provided to users and that attention is appropriately drawn to the safe use and proper supervision provisions is appropriately drawn in the relevant contract. Likewise users who make equipment available for use by children should have regard for the nature of each particular piece of equipment and the age of the children using the equipment to ensure appropriate supervision and proper maintenance of the equipment to ensure that it is safe for use.

The use of disclaimer and indemnity notices may be beneficial subject to the appropriate wording of the notices, size of the notices and lettering and position of display bearing in mind that most users of the equipment contemplated would not be of an age or mental competence to contract, let alone waive their rights.

Looking ahead, the proposed provisions of the Consumer Protection Bill in dealing with disclaimer and indemnity notices and competency to contract whilst not expressly forbidding the use *inter alia* of disclaimer notices and indemnities in respect of negligence (other than gross negligence) would make successful reliance on disclaimer notices and indemnities in many instances more difficult than the current common law position. ▲

The Application of the National Veld and Forest Fires Act of 1998 to spread of Fire Insurance Claims

Article Supplied by Associated Loss Adjustors

It is that time of the year when loss adjusters are required to dust off their boots to conduct in loco inspections of damage caused to insured or Third Party property as a result of

the spread of fire to or from insured/Third Party property.

Fire is defined by *wikipedia.org* as "...a rapid oxidation process that creates light, heat, and smoke, and

varies in intensity. It is commonly used to describe either a fuel in a state of combustion (e.g., a campfire, or a lit fireplace or stove) or a violent, destructive and uncontrolled burning (e.g. in build-

ings, grassland, plantations etc.)"

The author in this article focuses on the latter occurrence, an insurable peril from both the perspective of

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The Application of the National Veld and Forest Fires Act of 1998 to spread of Fire Insurance Claims

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the person / entity affected by the consequences of fire and party from whose property it had spread and/or started.

In order to succeed with an Aquilian claim for damages against a party perceived to have caused such patrimonial damage, a claimant is required to allege and prove the five elements of a delict vis-a-vis conduct, wrongfulness, fault (negligence or intent), causation and damage.

According to Neethling Potgieter and Visser, *Law of Delict*,

“An act which causes harm to another is in itself insufficient to give rise to delictual liability. For liability to follow, prejudice must be caused in a wrongful, that is, a legally reprehensible or unreasonable manner.”

To determine whether or not the act of a wrongdoer was in fact wrongful, the law of delict has been developed to include a breach of a recognised legal duty not to cause harm owed towards another. The aforementioned authors confirm on page 57 of the noted publication that it is a trite principle of the law of delict that –

“As a general rule a person does not act wrongfully ... where he fails to act positively to prevent harm to another. Thus the point of departure is that a person is generally not liable where his omission ... gives rise to an actual infringement of the interests of another. Liability follows only if the omission was in fact wrongful; and this will be the case only if in the particular circumstances a legal duty rested on the defendant to act positively to prevent harm from occurring, and failed to comply (fully) with that duty. The question whether such a duty existed, is answered with ref-

erence to the legal convictions of the community...”

Over the years, and with the development of this branch of the law, a number of scenarios / factors have crystallised to indicate the existence of such legal duty to act positively to prevent harm to another, and relevant to the current article is control of a dangerous object.

Control over a potentially dangerous object such as a campfire, long grass on the road verge/railway reserve acts as an instrument in determining whether or not a legal duty rested on the defendant, in circumstances where actual control over the dangerous object and breach of a legal duty that rests on such defendant to take positive steps to prevent harm are key in resolving this objective test.

Insofar as the control aspect is concerned, the promulgation of the National Veld and Forest Fire Act of 1998 [as amended] (“the Act”) in the author’s view erased any doubt as to the duties of owners and/or occupiers of immovable property to take preventative steps to avoid damage to other caused by runaway fires.

According to the preamble to the Act, this piece of legislation was necessary to reform the law on veld and forest fires, amend certain provisions of its predecessor, the Forest Act of 1984, and according to Section 191), to prevent and combat veld, forest and mountain fires throughout the Republic.

Without purporting to provide in this article a comprehensive synopsis of all sections of the Act applicable to an investigation relating to the start and spread of veld, forest and mountain fires, the author accordingly quotes the undernoted Sections insofar as the creation of legal duties on the part of owners or occupiers of land

is concerned –

Section 12 of the National Veld and Forest Fire Act, 1998, requires an owner of land on which a veld fire may start or spread to prepare a firebreak on the boundary between his/her land and that of any adjoining land.

In terms of Section 13 of the Act, an owner who is obliged to prepare and maintain a firebreak must ensure that with due regard to the weather, climate, terrain and vegetation of the area –

(a) it is wide enough and long enough to have a reasonable chance of preventing a veld-fire from spreading to or from neighbouring land;

(b) it does not cause soil erosion; and

© it is reasonably free from flammable material capable of carrying a veldfire across it.

In compliance of the Act, firebreaks are usually prepared by owners or occupiers of land annually, before the end of July or after the first frost, and whilst the Act does not contain any specifications with which the perimeter firebreaks must comply, the average width of firebreaks prepared by claims investigated by the author usually exceed 9 m, a standard stipulated in the Forest Act referred to above.

Furthermore, in terms of Section 17(1) of the Act –

“Every owner on whose land a veldfire may start or burn or from whose land it may spread must –

(a) have such equipment, protective clothing and trained personnel for extinguishing fires as are –

(i) described; or

(ii) in the absence of prescribed requirements, rea-

sonably required in the circumstances

(b) ensure that in his or her absence responsible persons are present on or near his or her land who, in the event of a fire, will –

(i) extinguish the fire or assist in doing so; and

(ii) take all reasonable steps to alert the owners of adjoining land and the relevant fire protection associations, if any.”

Again, no guideline is provided by the Act as to the minimum equipment, protective clothing and trained personnel required for extinguishing fires.

Sections 3 & 4 of the Act makes provision for the formation and registration of fire protection associations in South Africa, the benefit of membership to which being apparent from Section 34 which states as undernoted:

“If a person who brings a civil action proves that he or she suffered loss from a veldfire which –

(a) the defendant caused; or

(b) started on or spread from land owned by the defendant, the defendant is presumed to have been negligent in relation to the veldfire until the contrary is proved, unless the defendant is a member of a fire protection association in the area in which the fire occurred.”

This Section alters the common law situation somewhat as in the instance that a defendant is not a member of a fire protection association, a reversed onus applies, the defendant therefore being required to prove that the fire had not been caused or started/spread due to his / her negligence.

Section 3 of the State Liability Act Unconstitutional

Article Supplied by Donald Dinnie of Deneys Reitz Inc.

On the 2 June 2008 the Constitutional Court confirmed that of Section 3 of the State Liability Act 1957 is inconsistent with the Constitution. That Section prohibits execution against, or attachment of State property to satisfy judgment debts of the State. The matter related to a medical malpractice claim. The plaintiff suffered injuries while undergoing treatment at the Pretoria Academic

Hospital. An order was made by the court for interim payment to cover the plaintiff's medical and legal expenses. Notwithstanding the grant of the order the MEC failed to comply and the plaintiff sought an order directing the MEC to comply with the interim order for a declaration of Section 3 of the State Liability Act as unconstitutional.

The majority of the Constitu-

tional Court found that the Section unjustifiably limits the right to equal protection of the law and is inconsistent with the Constitutional protection of dignity and the right of access to Courts. It also violates the principles of judicial authority and the principle that public administration be accountable. The Court suspended the order for 12 months to allow Parliament to pass legislation to provide an effective means of en-

forcement of money judgments against the State.

The Court was also critical of the fact that the State has not settled approximately 200 judgment debts outstanding and ordered the State to provide details of all outstanding judgment debts and a plan for speedy settlement thereof. ▲

The Law, Truth and Reality

Article Supplied by Lize-Marie Joubert of Lindsay Keller Attorneys

It is often a cited saying that "the law is an ass", a figure of speech originating from Charles Dickens' *Oliver Twist*. The character Mr Bumble is informed that "the law supposes that your wife acts under your direction" to which Mr Bumble replies:

"If the law supposes that... the law is an ass - an idiot. If that's the eye of the law, the law is a bachelor; and the worst I wish the law is that his eye may be opened by experience - by experience."

The commentary on the institution of marriage apart, many a litigant will agree with the overall assessment that the law is, indeed, and ass. Dissatisfied litigants should remember though, that in law it is of no consequence what may (or may not) **actually** have hap-

pened in any specific instance - but rather that is of vital importance what the disputant **can prove** to have happened.

It probably also does not help that the concept of proof is somewhat less obsolete than might at first glance be assumed. Proof does not require incontrovertible evidence, but rather evidence that is sufficient to establish a fact. And *sufficiently* is a fluid concept.

Take the recent decision of *Prinsloo v The RAF (WLD case number A5022/2007)*. The Plaintiff's minor daughter, Corne, was injured in a motor vehicle collision and, tragically, suffered brain injuries that left her unemployable. The question the Court was asked to adjudicate on was the quantum of the total loss of Corne's future earnings.

The Court of first instance had awarded the Plaintiff an amount of R5.525 m in damages in respect of the Corne's loss of future earnings. The Plaintiff, on the other hand was seeking an amount of R15,307,461.00. The latter amount was based on a number of assumptions, including that Corne would have studied medicine, specialised in ophthalmology, gone into private practice and retired at the age of 70 years.

How can a Court possibly determine the future incapacity of a nine-year-old child?

The Plaintiff relied on evidence about the character of his daughter that would have made to continue her academic studies, and that would have made her choose a career in medicine and private practice.

The Court, on the other

hand, found that the argumentation of the Plaintiff was based on a whole host of faulty premises, the exact details of which are not of relevance here. What is important is that Corne's compensation was being assessed on potential which may or may not have actualised.

In the view of the Court, the Appellant had failed to present any satisfactory evidence to justify the actual quantum claimed by him for Corne or that he was entitled to anything more than was awarded in the trial Court.

In Court, the law is not about some mythical objective truth or reality (whatever that may be), but about the reality that litigants are able to establish in the mind of the Court. ▲

National Scientific Professions Act—A Further Update

Article Supplied by Jan Schubart

Members who have followed the discussion regarding the implications of the Natural Scientific Professions Act on the use of forensic witnesses will be interested to hear about the

latest development. Following, we are sure, our counsel's opinion previously published, there has been a material change. The South African Council for Natural Scientific Professions has

decided to place a moratorium on any further registrations in the field of practice called Forensic Science. The need for registering such professionals is being reviewed entirely and

the moratorium will stay in place till a decision is made. In the meantime members can carry on as we all did before the Act was passed ▲