



INSTITUTE OF LOSS ADJUSTERS

Newsletter
Autumn 2008

Another Bountiful Issue

Special points of interest:

- Our April Conference
- Insurance Crime Bureau
- Case Law Update Law of Delict
- Microdots Technology
- Fidelity
- Upgrading the claims process through Predictive Modeling
- Natural Scientific Professions Act— Senior Council Opinion
- ILA Education Update

The speed that our last newsletter circulated the market was amazing. On 10 December we informed our members that the newsletter was on our website, and by 13 December we had already received a number of responses, and not just from our members. We have often wondered how many people actually read our newsletters, and now we know.

This issue is similar in that it also contains some really interesting material. We have

Senior Council opinion on the Natural Scientific Professions Act, an entertaining article by Peter Haasbroek relating to Fidelity insurance and a thought-provoking article supplied by Deneys Reitz. Barry Scott provides an update as to what the insurance industry is doing about insurance fraud and crime, and Business Against Crime provides an updated Q & A on the new microdot technology to help with recognition of stolen cars.

Predictive modelling has been around for more than 20 years, but we have sourced an interesting article as to how it can be used in claims management, so with permission from the authors we have reproduced it for the benefit of interested members.

We hope you read this issue with as much interest as our Summer publication.

Peter Veal - Director ▲

Our April Conference

Article Supplied by Peter Veal

Our conference will be different in that we have chosen subjects that are not only topical and in some cases politically sensitive, but for which there is presently no solution.

The load shedding problems have been well publicised, but we have managed to persuade Eskom to present their plans to us face-to-face. We will all have an opportunity to have our questions answered. Moreover, following Eskom's presentation, Rod Pearson will be presenting his own views as to how he believes the insurance market should respond to the power outages, and will discuss possible subrogation rights emanating therefrom. We expect some lively discussion on this topic and we are hoping that all delegates will participate.

We will be enlightened as to

whether or not our fire fighting services are adequate to cope with the growing economy and whether the insurance industry should intervene. Will this be a classic case of history repeating itself perhaps?

And with natural disasters taking place on an unprecedented scale all over the world, are we really ready to tackle one? During the conference we will learn from Paul May, presently Deputy President IFAA and past president CILA and FUEDI how the adjuster must play a central role when such a catastrophe occurs. Paul has adjusted claims and has advised insurers/reinsurers on catastrophe claims management around the world including the Asian tsunami, floods in UK and Mumbai, hurricanes, and other natural disasters so he is ideally placed to make this presentation to

us.

On top of all this, Brian Martin, the short term ombudsman will be providing an opinion as to how the numbers of claims complaints received from the public can be reduced and we will learn how claims can be used as a marketing tool to assist insurers to grow their books, which will help us to achieve our ultimate aim – to bring claims back as the shop window of our industry.

Our conference will take place on 14 April and will be held at the Indaba Hotel, in Fourways at a cost of R995 per person excluding VAT. A registration application form can be accessed from our website.

Please note that there is limited seating, and as this is open to the entire insurance industry, it will be on a first-

ILA 'Snippets'

Article Supplied by Peter Veal

CPD Update

As previously publicised, we have randomly selected 17 names of members whereby we will carry out a CPD audit. When we have finalised the audit, we shall publish our findings. Where necessary, disciplinary action will be taken.

Mandy

Sadly, we have to announce that Mandy has decided to part ways with us and we wish her well in her new job. We are trying our best to fill the vacancy in as fast a time as possible, and as soon as we have done so her replacement's details will be sent to you. Please note that in the meantime the telephone may not be answered so please direct your enquiries to one of the committee members. You will find their contact details on our website.

Subscriptions

If you haven't yet paid your subscriptions and completed your renewal forms, we would urge you to do so as soon as possible.

Survey Response

Unfortunately at the time of publication, less than half our members had returned the survey forms that were included in the renewal pack. Based on the results received more than 90% say that we are providing all the services that are needed, 70% believe that we do need regional offices, 90% say that our entry requirements are adequate, 65% say that we do not need additional categories of membership, 70% say we should not introduce grading and 80% say that we should provide formal education. When all survey forms are completed we shall do a 'recount' and let you know if there is any change.

Service Level Agreements

In signing service level agreements, make sure that your PI insurance is suitably worded. We have heard of instances where in terms of an SLA, adjusters are acting outside the scope of their PI coverage.

Recognition of Prior Learning

To retain membership at accredited level, it will be necessary to have completed a qualification at NQF 4 or to have obtained a minimum of 120 credits at NQF 4 quality assured by INSETA.

Our internal RPL was developed to make the task easier, but in terms of our Constitution the facility to do so will only remain open for a few more months.

It is recommended that those who wish to make use of this facility do so without further delay.

Time barring

Following comments made by Constitutional Court judges in the Napier vs. Barkhuizen matter, the Financial Services Board is looking to make amendments to the Policyholder Protection Rules.

The proposed changes would compel insurers to allow policyholders 180 days in which to challenge claim repudiations before the matter becomes time barred. Although this is already common practice in the in-

dustry, there are some policies currently in place which limit the period to 90 days.

Second Hand Goods Bill

This Bill has been shelved for a period.

The Bill had been tabled in Parliament and referred to the Portfolio Committee of Safety and Security for consideration. The Portfolio Committee has issued a note stating that it intends to hold public hearings on the Bill and invites all interested people and/or organisations to make written submission to it. The deadline date for the submission was Friday, 29 February 2008.

Briefly, the Bill seeks to regulate the business of dealers of second hand goods and deals with the requirements relating to the acquisition and disposal of second hand goods. To this end, the Bill will have an influence on insurers with regards to the way the industry disposes of claims salvage.▲

Insurance Crime Bureau

Article Supplied by Barry Scott

After a long process of investigation, the SAIA on behalf of the SAIA Fraud Committee and Fraud Task Team is recommending that an Insurance Crime Bureau (ICB) be established for the industry.

The ICB will not replace existing investigative units in member companies. The ICB investigative unit will become involved only when:

- More than one company is involved. In such cases, they will co-opt investigators from the relevant companies as well.
- Serial offenders are identified.
- The involvement of

organized crime is identified.

The investigative units of individual companies will remain in place to investigate member specific fraud and crime.

The services to be offered by the ICB to members include:

- Sending out alerts when patterns are identified within a specific company, for investigation by that company.
- Identifying patterns across companies, and the industry, and investigating these with the involvement of relevant member companies.
- Identifying, and communicating, modus operandi to members.

- Communicating with the authorities and other relevant role players in order to facilitate investigations across industry.

Creating public awareness about insurance fraud and crime.

- Managing the industry Fraudline.
- Hiring out its investigators to companies that do not have investigative units.

The technology to be used is the key to the success of the ICB. The technology partner selected after a vigorous process of inviting and receiving proposals, is Mexem.

The business case was

presented to the bigger role players in the industry through an ICB Road Show in January and several more members will be visited before the next SAIA Board meeting on 19 February 2008.

To date, the SAIA has received the verbal or written expression of intent to participate in the ICB from 6 members, including most of the major insurers. More members are expected to come on board before the SAIA Board meeting.

An MD Circular was sent to all member companies on 24 January 2008 to invite them to participate in this initiative. The concept was presented to the SAIA Board on 19 February 2008 and was adopted.▲

Microdot Technology - Addressing the Issues: A South African Perspective

Article Supplied by Fouche Burgers

The key challenge facing law enforcement remains the need to improve the identification of motor vehicles. Investigations have proved that in almost all serious vehicle-related crimes and in many road traffic offences, primary and secondary identifiers (licence number, vehicle identification number (VIN), engine number and covert identifiers) have been altered or removed in order to conceal the crime and identity of the vehicle.

The high percentage of unrecovered, stolen and hijacked vehicles and the high percentage of unidentified recovered vehicles (unidentified by police and by staff of the Original Equipment Manufacturers (OEMs) prove the inadequacy of the current vehicle identification methods.

The improvement of the identification of motor vehicles is a priority of Business Against Crime South Africa and its partners. Many alternatives have been assessed. The most significant and promising alternatives were the marking of the vehicle in multiple places (multiple parts marking or 'whole of vehicle marking') by means of laser etching or by using barcode labels. However, most of these alternatives were seen as expensive, impractical, inaccessible and ineffective. In addition, there were concerns that the fitment could damage the motor vehicles. History in South Africa has proved that criminals only need a short period of time (less than 2 years) to acquire the necessary knowledge to be able to remove all covert markings (especially barcode labels).

During the assessments done by Business Against Crime South Africa, micro-

dot technology has emerged as being head and shoulders above the rest in securing (preserving) the identity of the vehicle. However, many manufacturers, importers and builders of vehicles (also referred to as OEMs) have indicated that they do not agree that microdot technology is the answer to the vehicle identification problem while others have taken the initiative and embraced the technology in one form or another.

A number of issues against the use of microdots are frequently raised. Business Against Crime South Africa is of the opinion that many of these reasons raised are not correct and are based on the misunderstanding of the concept of the microdot technology as an additional vehicle identifier.

The objective of this document is to address all pertinent issues regarding microdot technology.

Concept of microdot technology as an additional vehicle identifier

The concept of microdot technology as an additional vehicle identifier which enables whole of vehicle marking (WOVM) rests on the following important factors:

- The main function of microdots is *securing the identity of the vehicle* through marking the vehicle, and its parts, in multiple places with a unique identification number that will make it easier to identify recovered vehicles where the primary and secondary identifiers have been removed.
- The strength of microdots as an identification tool is in the *number of dots* (approximately 10 000) and the fact that dots are applied in overt

and covert places (88 different positions).

- Microdots are mainly used as a *forensic tool* by police services to give an indication of the identity of the vehicle.
- The *investigation process* followed by the police when using microdots to determine the identity of a vehicle or part does not differ from the process followed when using the current VIN, engine number or covert markings.
- A motor vehicle and its parts can be marked with microdots indicating a *different unique identification number other than the VIN number* (i.e. can be microdotted more than once).
- Microdots do not replace the need for other security measurers (e.g. vehicle tracking, locks, alarm systems and immobiliser systems).

Issues raised:

Issue:

The application of microdots delays the manufacturing process.

Response:

- The application of microdots in the OEM environment does not have to form part of the manufacturing process. It is acceptable that Vehicle Identification Number (VIN) based microdots can be applied before distribution to the dealer network (e.g. distribution centres).
- The off-line manual process can be done at less than 4 minutes per vehicle.
- The use of robotics to apply microdots can speed up the process to below 3 minutes per application.
- Robotics have been developed for both on

and off-line

application

Issue:

It is expensive to mark replacement parts.

Response:

- It will not be a requirement in South Africa to mark replacement or crash parts and the decision will be left to either the owner or the insurer of the vehicle. (There will be enough of the original dots left on the vehicle to identify the vehicle.)
- If the replacement parts are marked, it will be marked with a unique PIN (not VIN or same PIN). The required database will point to the vehicle that was fitted with the replacement part.

Issue:

Problems will be experienced with the use of used parts that are microdotted. Illegitimate prosecutions will take place when a part with a different microdot is found on the vehicle.

Response:

- To the contrary, the use of microdots might even protect the owner of the used part from being inconvenienced by unnecessary investigations as currently caused by the duplication of engine and part numbers.
- Microdots are a forensic tool. Further investigation will be required if microdots are found on a replacement part. If the part belongs to a stolen vehicle, the police will take action.
- The above-mentioned investigation process does not differ from the current processes followed by the police to determine the legitimacy of parts by using part or engine numbers.

Issue:

Microdots can be removed

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with solvents, grinding it off, painting over it, etc.

Response:

- The sheer number of dots and the fact that dots are applied in overt and covert places makes it impossible to remove all dots. Examples in South Africa exist where criminals have gone to extra lengths in attempting to remove the dots. In all cases undamaged dots were found without major effort.
- The fact that a micro-dotted vehicle is entered into a database will lead an investigator to look for dots, even if they are sprayed over. If a model range is known to be marked by the OEM, it is fair to assume that any vehicle in that range from a cut-off date was marked.

Issue:

Dots can be forged.

Response:

- Forgery is almost impossible due to the fact that it is a requirement in South Africa that a certified microdot supplier must add covert features to the microdot and to the adhesive, linking it to a specific dot manufacturer.
- The equipment to manufacture microdots is extremely expensive and not readily available.
- Counterfeited dots have never been found in South Africa to date.

Issue:

Microdots can easily be detected and can therefore be removed and/or forged.

Response:

- The easy detection of the microdots with cheap and readily available equipment is an advantage and not a disadvantage. Again, the strength of microdots is in the number of

dots sprayed in covert and overt places.

Issue:

Dots can be replaced or over sprayed by other dots.

Response:

- The over-spraying of the dots will not remove the original dots. The original dot can still be found and the original identity can still be determined.
- The adding of alternative dots to a vehicle will only increase the probability that the original identity of the vehicle can be determined (i.e. leaving a fingerprint).
- Microdot suppliers in South Africa must comply with the BAC Protocols that prescribes the rules for issuing and manufacturing of dots prior to endorsement. For example, records must be kept of all dots manufactured and issued; microdots displaying a specific number (i.e. VIN or PIN) may never be reproduced. This is controlled by the databases and system used in the manufacturing process.

Issue:

Police need equipment and training to be able to use the dots.

Response:

- The reading of the dots only comes into effect if the original identifiers (i.e. VIN, Engine number) has been removed or altered and form part of the forensic investigation. Thus, it will mostly be used in the vehicle safeguarding sections.
- Equipment to read dots is very cheap, readily available and easy to use.
- Alternative forensic equipment to read altered VIN and Engine Numbers, imported from Europe, is 2000 times more expensive and specialised training is required.

- Many covert markings can only be interpreted by OEMs and not by the police.

- The cost of acquiring the service of the vehicle identification specialists from the OEMs is in most cases more expensive than the cost for one microdot reading kit.

Issue:

Microdots are not effective in reducing motor vehicle thefts and hijackings.

Response:

- The main purpose of microdots is to secure the identity of vehicles and not to reduce vehicle thefts and hijackings. Microdots should never replace other security measurers (e.g. vehicle tracking, locks, alarm systems and immobiliser systems).
- Microdots - although a passive deterrent - act as an audit trail for police services that lead back to the criminal's delivery channel. Criminals understand this and therefore prefer not to engage with the product as it increases the chances of damaging their businesses. This is therefore a proactive approach.
- An analysis that was done by Business Against Crime South Africa on the 0 to 2 year old Minibuses and Midi buses (i.e. 2005 and 2006 year models) indicated that it does have an effect in South Africa. During the analysis of the 2006 vehicle theft and hijacking information, a specific model which is 100% microdotted (i.e. Toyota Quantum) was compared with other models in this class which are not microdotted. The analysis indicated a decrease of 87% for

the dotted model compared with its nearest competitor (according to number of vehicles registered) and 79% compared with the national average for this class.

- The recovery rate of microdotted stolen vehicles is much higher than vehicles not marked and act therefore as a deterring factor for theft syndicates.

Issue:

Microdots are not effective in improving the recovery rate of vehicles.

Response:

- In South Africa, vehicle tracking systems are still the most effective in recovering vehicles and should never be replaced by microdots. However, these systems are relatively expensive and not everyone can afford it.
- Furthermore, the above-mentioned analysis done by Business Against Crime South Africa indicated that the recovery rate for the 100% microdotted model was a remarkable 91% compared to the 52% of other models in this class which are not microdotted.

Issue:

Microdots are not effective in identifying motor vehicles.

Response:

- Microdots have proven to be highly successful in identifying motor vehicles in South Africa.
- Police records in South Africa confirm that all recovered vehicle of the models that are 100% microdotted (i.e. all Nissan's manufactured after October 2006 and all Toyota Quantum's) have been identified.
- It is accepted that the

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success of identifying vehicles will depend heavily on the frequency of the vehicles dotted (i.e. if not all vehicles of a model are dotted, the police might not look for the dots).

Issue:

The cost of microdotting all new vehicles will be high and will increase the price of the vehicles.

Response:

- In South Africa, the cost of microdotting vehicles is between R200 and R250 (i.e. +/- €20) if fitted by OEMs and if volumes are big enough. On an aver-

age vehicle, it represents less than 0.1% of the price of the vehicle. Robotic application and high volumes, could see prices reduced further.

- The microdotting of vehicles is used as a marketing tool in South Africa and the profit margin on it is healthy. To keep the microdotting sustainable, it is important that OEMs "sells" the microdots at a profit.
- There are a growing number of microdot suppliers in SA so manufacturers will be able to freely negotiate on both product and cost.

Issue:

Microdot Fitment Centres might not adhere to the protocol of fitment.

Response:

- It is important that all involved parties (Microdot manufacturers, Vehicle Manufacturers or Importers, Applicators, Authorities etc) adhere to the Standard that has been developed. Without strict adherence to all requirements of a common standard, the process will be flawed.
- Enforcement by law to an if-fitted application of microdots and all

associated activities is a prerequisite to successful and secure systems operation.

Conclusion

Business Against Crime South Africa have assessed many available options and solutions to the vehicle identity problem, spreading the net both locally and internationally, and have evaluated these relative to the needs of the local environment. Microdot technology has emerged as being head and shoulders above the rest in securing the identity of vehicles. ▲

Fidelity

Article supplied by Peter Haasbroek

I left my car in the parking area in front of Polsmoor Prison, made sure it was locked, and strolled in the direction of the prison gates which were manned by a couple of thick-necked sentries who mumbled something at me which sounded like "*whad ye wan?*".

Much as I would have liked to retort in kind, the sensible side of me warned against antagonising these low I.Q. characters. As nicely as I could, I introduced myself and stated the reason for my visit. I had an appointment to interview one of the female inmates. The meeting had been cleared with the Captain in charge of the ladies' section, I said. Having verified this, I was allowed to enter and was pointed towards the fenced-in women's area of the prison.

On my way towards the women's block, and as far as I could see were six-meter-high security fences entwined with razor-wire and electrified cabling, sur-

rounding heavily barred and gated buildings. I was heading for the one nearest the entrance to the grounds.

The walkways were well maintained. Nicely landscaped gardens, manicured lawns, well-kept buildings. A picture of tidiness, all with the compliments of the inmates, I thought.

At the right cell-block and dormitory I was buzzed inside and led through a maze of opening and closing clanging steel gates until I eventually reached a reception area, also neat and tidy. Again, stating the reason for my visit, I was shown to what was known as a lawyers' interviewing room, one of several private dingy holes with heavily barred windows and open doors through which the over-seeing female-warder could do her observing. The room was furnished with a small square table and two opposing chairs. There was no one to be seen outside in the visitors' garden. It was a weekday. Pedestrian traffic picked up over weekends when

friends and relatives normally visited.

Spreading my morning paper across the table I tried to catch up on the latest news while waiting for the arrival of the inmate I had come to see. But, I was not really reading, my thoughts straying to the events that had led me to Polsmoor.

It all started when a local Insurer had appointed our firm on a claim concerning a large sum of money that had been embezzled by the bookkeeper of a local chain store. At the time of our appointment, the bookkeeper had already appeared in court, had been found guilty and sentenced to eighteen months imprisonment.

The case was delegated to me and I duly called on the owner of the chain store to discuss the circumstances of his loss.

The bookkeeper, a young mother of two, had been



Peter G. Haasbroek

with the store for some years. She was a trustworthy, conscientious worker, she handled large amounts of cash, mainly money brought in by the store's collectors. She would issue receipts to the collectors for the money so entrusted to her. She also did the banking.

At home the bookkeeper had problems though. A loafer of a husband who could not hold down a job. Who spent his days at the racetrack chasing elusive certainties. A boozier who fancied himself as a ladies

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man. A loser.

In desperation to keep home and hearth together, the bookkeeper resorted to doing what so many other women finding themselves in similar situations did, she started "rolling" money. Rolling is a method whereby an amount of cash-inwards is purposely held back by the recipient. Such money is then "paid back" when a next cash inward payment comes along. But the problem though, arises when there is too long a gap between cash collections, when an earlier "take" had already been spent, and the embezzler has no ready money with which to plug an ever-growing balance.

In an earlier "rolling" incident, which I had investigated, a clerk employed at a travel agency had helped herself to fairly regular large cash deposits, being payments made by clients towards travel tickets and overseas accommodation for whole families at a time. Hot money, it was whispered around the offices of the agency; the hidden cash-takings at small food outlets. Cash, which the Receiver of Revenue had not been told about.

In this particular case, one of the clerks concerned with the handling of big wads of money had spotted the poor system of check in operation at the agency. Reconciliation had not been done for a year, receipt books were not being checked which caused the clerk's method of using receipts from the back of a book, to go unnoticed. Until, one day, a belated audit exposed the clerk and she too ended up in Polsmoor.

In yet another earlier case, a bright young woman ap-

plied for and was appointed to the job of salaries and wages clerk at a popular sports club near her home. She was also to balance the books, write up the cashbook, post to the ledger and draw a trial balance. In addition, she was delegated the duty to follow up on outstanding fees and any other moneys overdue for payment. Plus, she was to ensure that PAYE deductions were paid over to the Receiver of Revenue in accordance with the prescribed tax guides. She did the lot. A lazy bunch of managers sat back and did very little. They were seldom in office. She soon became a star amongst the other office workers; enthusiastic, punctual, good at what she was doing, workaholic, needed no supervision, never took leave and if obliged to do so, it was not for long stretches at a time. This should have sent warning signals to management had they been the hands-on kind and had there been in force a system of check, which there was not.

Smart as she was, it did not take the clerk long to spot the slack supervision. She had pressing problems at home, problems that only money could solve. Easy extras were winking, and she was not going to miss out.

Two own-salary cash cheques a month, plus deductions from employees' salaries which were not passed on to the rightful institutions, were channeled to a private account. A lucrative beginning to ease things at home. Then one day, the Receiver of Revenue started to ask after PAYE payments not received for certain months – two or three months' payments would be skipped, followed by one or two belated payments during the ensuing couple of months; then again, certain payments would be skipped,

and so on. The Receiver eventually carried out a spot audit and that was the undoing of the clerk's little party. She, like so many others having been caught in the web of temptation, soon headed for Polsmoor.

My thinking was interrupted by the arrival of the ex-bookkeeper inmate. She was escorted by a female warder who seated herself immediately outside the open door where she could overhear what was being said and also keep the occupants under surveillance.

For a few seconds I stared at the ex bookkeeper. She was about 28 years old, slim and, even though dressed in drab prison garb, with no make-up and hair pointing in any-old-which-way (no clips allowed in prison) she was quite attractive. She sat down, looking rather brow-beaten and stared back at me.

I introduced myself, thanked her for seeing me and explained that I needed to briefly run through the circumstances of her embezzlement. There was a particular aspect of her case about which I required her input. It entailed the exact amount of money she had taken. Her employer, I said, was insured for events of dishonesty on the part of all his staff. Her misdemeanor was catered for in terms of her employer's policy and so too would be the amount embezzled. But, I said, her ex-employer was claiming an amount three times greater than that we had initially been told she had taken. Could she help us?

Her immediate reaction was one of surprise. She had been tried and found guilty of having taken an audited amount of money, she said. It was all in the court re-

ords. Where did this extra alleged loss come from. It certainly was not of her doing, she said. And, of course, she was right.

I had already taken a peak at the court records, chatted to the bookkeeper's colleagues at work, had already interviewed her boss and had also flipped through the books of account. But, I had to be sure, I needed to hear from her and note her reaction. Having accomplished this final chapter, I was ready to again confront the Insured, the bookkeeper's boss.

She certainly had no connection with the extra money being claimed. Her boss, an arrogant, pompous, know-all was obviously not satisfied with being reimbursed for only that which his bookkeeper had taken. He was greedy. He wanted more.

I again thanked the bookkeeper and made a mental note to send her a parcel of fruit and some reading material. I left behind a lonely, crestfallen person, a sad figure being led back to her cell. Watching her depart I decided to come down hard on the Insured. He would be lucky not to join his ex-bookkeeper for accommodation at Polsmoor.

Shortly after my visit to Polsmoor, I met with the Insured. There was no time for any niceties. The gloves were off. How could he, I asked, claim for an inflated loss three times greater than the real amount acknowledged to have been taken by the embezzler, audited, and confirmed in the court papers?

For a moment the smart Alec stared at me and then he let fly with the usual grandstanding and finger

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Fidelity

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pointing, determined to drive home terror. He threatened to consult his attorney and, on that note, I left him to stew.

Having reported back to his Insurers, they summarily repudiated the claim on the grounds of the Insured having tried to defraud them by claiming more than he was entitled to. In the end, he got nothing.

As to whether or not the Insurers afterwards took the matter of intention to defraud further, I do not know and did not care. But, quietly, I was hoping that they had and that the Insured had got his just deserts as an inmate at Polsmoor.

The sad part of these three cases and the other similar ones I had handled, is that none of the transgressors really needed to end up in prison. Had there been in force an approved and supervised system of check at their respective places of work, a system as detailed in the proposal form, the submission of which customarily precedes the issue of a Fidelity Guarantee insurance policy, a document which has been carefully and specifically constructed to cover commercial losses due to the dishonesty of employees, the chances are that the easy temptations put before the convicted, would probably never have arisen.

The fact that proposal forms had not been elicited from the Insured's, the employers, in the decided cases recapped above, resulted in slack management, management not needing to spot-check on their cash and stock control. The employees concerned were left to sort things out at best.

This being so, the specific condition in the policy which stipulates the institution of systems of check and control, would fall away and have no force or effect.

Here is an extract from that particular condition forming part of the printed wording of a Fidelity Guarantee policy. This condition deals with the all-important system of check and accounting-control expected to be in operation at any insured risk.

"Specific Condition

The Insured shall institute and/or maintain and continue to employ in every material manner all such systems of check and control, accounting and clerical procedures and methods of conducting his business as has been represented to the company but the Insured may:

change the remuneration and conditions of service of any employee;

in respect of any employee who is described in the schedule by name, change his duties and position;

in respect of any employee who is described in the schedule only by the position held by him, remove such employee and place in his position any other person who falls within the definition of employee."

The words of this extract now before our eyes date back to antiquity and has over the years served as a reminder to many a business to ensure that it conformed to the systems of check it had relayed to Insurers. Such systems keep all concerned on their toes, knowing that any deviation could prejudice an Insured's chances of a successful claim following upon the dishonest act on the part of an employee.

So why is this Special Condition, which has for so long stood the business world in good stead, now so seldom brought into force? Why? Because the proposal form, expected to be completed by an insured business and which would relay to an Insurer a clear picture of a business' accounting operation, in particular its system of check, is often dispensed with. Why? Because without it, the special condition referred to above and to which it is linked, can then not be brought into action by an Insurer.

This leads to yet a further question. Why dispense with this all-important proposal form? Why? Because, it is argued by certain intermediaries, that the relevant policy condition is too onerous, too inhibiting, too disciplinary for an Insured to comply with. It therefore constitutes a restriction, if not rendered null and void, it could expose the holding Insurer as well the holding intermediary of a lucrative premium portfolio being attacked by an unscrupulous underwriter quite willing to forego the requirement of a Fidelity Guarantee proposal form.

So this fear on the one hand and greed on the other has had the effect of that once ever-so-rigid form of insurance, having lost its teeth. Well this is all very nice, but what about that particular employee experiencing a financial problem at home, who spots the lack of accounting control and is thus tempted to steal.

Who does one blame? Sure, the employee has a choice between good and evil, sure he or she can turn his or her back and walk away. But, why plant the temptation in the first place. Why be instrumental to such a shameful end of a human being ending up in prison.

Shame on you the intermediary, shame on you the underwriter for being party to such a loathsome act.

And now I conclude all with a few points on practical application. I want the subject of this paper to be turned to good use.

To every Fidelity Guarantee policyholder I would advise:

- enforce a system of check in your business. Ask your broker for a detailed proposal form.
- request your auditor to examine it
- block the chances of temptation, be they avenues of cash, be they stock control

To the Insurer I would say:

- never forego the requirement of a proposal form.
- insist on a system of check being in force at an Insured's business.
- ensure that such a system is known to you.
- study it and offer advice if the system needs tightening up.
- follow up on every renewal.

Do this. Do everything that would keep temptation away from employees holding positions of trust. Do this and help curtail the imprisonment of the breadwinner parent. Do this and grow in grace. ▲

Upgrading the Claims Process through Predictive Modeling

Article supplied by Roosevelt C. Mosley with approval from NAMIC Weekly

The claims process presents critical opportunities for insurers to positively interact with customers and ensure claims are being handled appropriately. Insurers can improve that process by turning to predictive modelling to improve effectiveness and efficiency.

Predictive modelling enables insurers to more effectively analyze the claims process, ensure reasonable payouts, honour contract terms, and improve customer satisfaction. As a result, insurers can see real and immediate improvements in their bottom-line results.

Unlike traditional approaches to analyzing the claims process, predictive modelling enhances the process by applying advanced statistical techniques to reveal events that affect claim outcomes. Predictive modelling gathers all information known about the claim and develops models using historical data to determine which characteristics are important and to what degree.

The ultimate goal of predictive modelling is to gain new information to support better decision-making. This process will both confirm already understood characteristics concerning how claims develop and challenge conventional wisdom.

Processing claims

Every step in the process – from filing a claim to its resolution – provides an opportunity for improvement. The claims

process begins when an insured files a claim for a loss. The insurer then determines claim legitimacy and actions necessary to fulfil the contract and satisfy the insured. Depending on the claim's complexity, the process may involve several parties, such as claims adjusters, automobile repair shops, doctors, and attorneys. Once the claim is investigated and adjusted, payments are made. When all parties are satisfied, the claim is closed.

Applying predictive modelling

The first step in applying predictive modelling to the claims process is to define the objective. This leads to a question or questions the insurer is trying to answer. After identifying and analyzing data appropriate to the objective, the results of the model are put into action. To develop a predictive model, the defined question or problem becomes a dependent variable. Example questions could be: What characteristics are more likely to lead to larger ultimate claim settlements? Which Chicago-area doctors best address soft tissue back injuries? Or, what factors impact lost time from work for an injured worker?

Once the question is framed, the next step is to determine possible answers. Known as independent variables, they might include location, cause of injury, number of treatments, and total payments.

Identifying and capturing data is one of the largest challenges in any predictive modelling application. While a lot of useful claim information is typically

collected, it is important to determine if the data is part of the electronic claim record or part of a claim adjuster's claim file notes. There are many types of data elements – from insured characteristics to geography – that can be used to support claims modelling.

Unleashing the power of predictive modelling

There are a variety of claims predictive modelling applications. While it would be great to achieve the benefit of all applications at once, it is often more effective to focus on a limited number of applications, implement them well, and then define and implement additional applications. Three initial areas to focus on are: claim payments, service providers, and procedures.

The ultimate settlement value of a claim is a logical place to start because there is generally a large amount of historical data concerning how different characteristics impact claims payments. This data can be used to develop a claim settlement value estimation process. This analysis uses a database of ultimate claim amounts, associated claim characteristics at the time of the report, subsequent development periods, and the time to closure. The results of the analysis can be used to develop an estimate of the ultimate claims settlement value. This initial estimate is based on the known characteristics of the claim and alters as the characteristics change. For example, even after other claim characteristics have been accounted for in a multi-

variate analysis, the cost of a claim nearly doubles when an attorney is involved. Predictive modelling, therefore, can be used to identify the likelihood of attorney involvement and handle the claim appropriately to ensure complete customer satisfaction.

Besides claim settlement value estimates, claim characteristics can also reveal if there is a greater-than-average likelihood that the claim will develop into a large loss. Based on this analysis, such claims could be handled with more attention early on to mitigate the amount of the loss. For example, the longer a claim has been open, the more likely it is to settle for a large value, even when adjusted for other factors such as injury type.

Therefore, if a claim has been open for an extended period of time, an insurer may implement special handling procedures to resolve the claim. The effectiveness of claims service providers can also be evaluated through data analysis. There are two types of providers. Internal providers include claim processors and claim adjusters. External providers include medical networks, auto repair shops, preferred glass shops, preferred contractors, and attorney networks. Since service providers will have an impact on the ultimate settlement value of a claim, they should be evaluated to determine the value added to or subtracted from the claims settlement process. To perform this type of analysis, an identifier

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for the service provider needs to be added to the data. The providers can then be evaluated in a fashion similar to other influences in the claims settlement process. This should reveal if certain providers are adding or subtracting value from the claims process.

Claims procedures – including managing lag time, understanding the change in the nature of a claim, and detecting claims fraud – can also be analyzed to show their ultimate impact on claims settlement.

In general, the longer it takes to start the next step in the claims process, the larger the ultimate settlement. Once a claim has been reported, there can be a lag between the time the incident occurs and when it was reported. The time it takes the insurer to contact the insured to settle the claim represents another possible lag

Predictive modelling can also help identify the triggers that affect a claim. The process has

the flexibility to allow a more-complicated-than-normal claim to be sent to the appropriate claims personnel as soon as possible, which significantly reduces duration and unnecessary expenses. For example, in jurisdictions that have personal injury protection auto coverage, there may be limitations on filing a bodily injury claim so the liability claim can be filed only if certain thresholds are met.

Considering the claim's characteristics can help establish if a claim has a higher likelihood of actually becoming a liability claim. If so, measures can be put into place to handle the claim more appropriately.

Predictive modelling can point to measures insurers can use to detect fraud. This is especially important because claim fraud represents a unique challenge to insurers due to the lack of available historical data and cross-insurer fraud information.

There are types of claims that have historically been referred to special investi-

gation units and/or have been determined to be fraudulent. These claims, along with their characteristics, could be analyzed. The results can then be applied to future claims to identify potentially fraudulent claims. This process, however, has potential problems.

Determining a suspicious claim is usually subjective. Some fraudulent claims are not obviously suspicious while others could be legitimate but have padded severities. Also, this assumes that the past will be like the future. Chances are that individuals attempting to defraud an insurer will constantly adapt their techniques.

Companies can employ different techniques that seek to identify unusual data patterns and flag them for further investigation. For example, a particular claim type has an average severity associated with the claim and a reasonable range around the average claim severity. If there is a claim that looks like it might settle for an amount that is significantly outside what is rea-

sonable (either too high or low), it deserves extra attention. Another technique looks for claim anomalies or unusual patterns. For example, a claimant that uses a repair shop that is significantly outside his or her immediate vicinity could trigger additional review and investigation.

Conclusion

Just as insurers have reaped rewards by using predictive modelling for rating and underwriting, those who apply predictive modelling to the often complicated claims process can also see better results. Predictive modelling allows insurers to identify areas of concern and to examine every step of the claims process. Improving this often complicated process allows insurers to better serve their customers while realizing better bottom-line results. ▲

Natural Scientific Professions Act - Senior Counsel Opinion

Article supplied by Jan Schubart

Respected Senior Counsel Mr. Chris Loxton, has looked at the "somewhat muddled" and "unclear" provisions of the Natural Scientific Professions Act of 2003 and concluded: -

"On a proper construction of section 20 of the Act, read with section 27 thereof, it seems that the legislature contemplated that although persons could apply to be registered as a

professional registered scientist, candidate natural scientist, or certified natural scientist in one or more of the fields of practice listed in Schedule 1 upon the coming into force of the act on 16 February 2004, the prohibition against performing natural scientific work would only become effective once the types of natural scientific work had been determined by the Director-General in terms of section 27(2).

On that interpretation of the Act, which I believe to be the only one which gives effect to the dual requirements of section 20 and 27, members of my Consultant are free to engage the services of scientists in the fields of practice identified in Schedule 1 to the Act despite the fact that they are not registered in terms of section 20, until such time as the Director-General has determined



Jan Schubart

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the type of natural scientific work which may be performed by registered persons. Once those types of work have been determined, it will be an offence for any person to perform such work unless he or she is registered under section 20 of the Act.

Once such determination has taken place, it would be prudent for members of my Consultants to satisfy them-

selves that the persons engaged to do scientific work are registered in the appropriate field. Whilst the engagement of a person to do scientific work which he or she is prohibited from doing by section 27(3) of the Act will not necessarily render the person engaging such scientist guilty of any offence, the opinion of such scientist is unlikely to be accepted by a Court and it is doubtful whether any opinion ex-

pressed by such a person would carry much weight. In short, it would be inadvisable, for a number of reasons, to engage the services of any unregistered natural scientist to perform any kind of work determined by the Director-General in terms of section 27(2)."

C.D.A. LOXTON SC

Sandown Chambers

5 February 2008.

We will monitor amendments to the Act and remain in touch with the Council [established per section (2) of the Act] so that as soon as we become aware of the Director-General's determination of the types of natural scientific work, we can issue a Special Newsletter to all members in keeping with Counsels opinion. ▲

Case Law Update: Law of Delict

Article Supplied by Deneys Reitz Attorneys

Stewart and Another v Botha and Another - 2007(6) SA 247 (C)

"Wrongful birth ; wrongful life

Facts:

BS was born with severe physical disabilities. His parents sued the general medical practitioner and specialist obstetrician who treated and advised BS's mother during the pregnancy. The claim was for past and future expenses, special schooling and maintenance of BS for the rest of his life, estimated to be 50 years, in the parents' personal capacity, and on behalf of BS. As to the claim on BS's behalf, the doctors contended that such a claim (also called a "wrongful life" claim) is not recognised in South African law. No objection was taken to the claim in the parents' own name (also known as "wrongful birth" claim).

Court Ruling:

The unlawfulness of the defendants' negligent omission is that it prevented

BS's mother from making an informed decision on whether or not to abort the foetus. The doctors owed BS a duty to properly advise his mother. The only remedy available today to prevent a child being born with a severe congenital deformity is a legally sanctioned abortion. It is irrational and fruitless to attempt to compare BS's disabled state with him not being born. In view of the current state of medical science, the only life possible to BS was a life in a handicapped state. It was inevitable that BS would be born in a disabled state. The negligent conduct of the defendants is thus currently legally irrelevant to the state in which BS was born. The court dismissed the "wrongful life" claim.

Comment:

"Wrongful life" claims have mostly failed in the USA and have not succeeded in England, Australia or Canada.

Roy v Basson - 2007 (5) SA 84 (C)

"Liability of Innkeeper - fire"

Facts:

The appellant stored some of

her possessions at an inn (an "inn" can be a hotel or other paid accommodation establishment) owned by D while she travelled in other parts of South Africa. A veld fire consumed the inn, and her belongings. D died some time after this and the appellant put in a claim against the deceased estate. When the executor refused to admit the claim, she issued summons based on a Roman Law principle known as the Praetor's edict, which imposes strict liability on innkeepers.

Court Ruling:

Exceptions to the strict liability imposed by the edict are *major casus fortuitus* (irresistible fortuitous event) and *damnum fatale* (inevitable accident). The borders between these two concepts have become blurred. What is connoted by these terms is some force, power or agency which cannot be resisted by the ordinary individual; or something exceptional, extraordinary or unforeseen which human foresight cannot be expected to anticipate, or, if it can be fore-

seen, cannot be avoided by the exercise of reasonable caution. To consider whether such an event occurred, the court must look at the particular circumstances in which the goods were lost and then consider whether those were circumstances which resulted from some power or agency which cannot be resisted by an ordinary individual. On the available evidence, the fire started on another property and spread to the defendant's property. A strong wind fanned the flames in the property's direction and a flying burning object from the fire caused the thatched roof of the inn to catch fire. This event could not be resisted or avoided. Somewhat puzzlingly, the court then proceeded to consider whether a claim based on negligence would succeed. On the facts, the court dismissed this claim as well.

Comment:

Events which would usually be regarded as beyond human control would include earthquakes, piracy in severely abnormal weather conditions. ▲

ILA Education Update

Article supplied by Jan Schubart

This report deal with past, present and future aspects in Education as incorporated in educational levels and constitutional requirements within the various levels of ILA membership.

The Constitution, under various clauses, requires that adjusters at different levels of Membership show competence or have achieved: -

1. A Grade 12 school leaving certificate (broadly speaking an NQF 4 qualification).
2. (FETC) Risk Management - Loss Adjusting at NQF level 4
3. A Certificate, Diploma or Academic Degree appropriate to his field of operation as a loss adjuster at NQF level 5 or above
4. Publication of a paper specifically related to insurance and which is beneficial to loss adjusters or to the short term market

In terms of Recognition of Prior Learning, any member who already holds a qualification that is accredited at a minimum of 120 credits at NQF level 4 or level 5 or above such qualification, as registered by SAQA and quality assured by INSQA, will be deemed to have met the requirements in points 2 and 3 respectively.

In the first instance, the Grade 12 qualification falls outside the ambit of this discussion as it is a qualification the prospective applicant for membership needs to have attained whilst at school or via some other form of tertiary learning programme.

In terms of point 2 above, the Institute has already put into place a qualification as required and which can be

achieved through a number of accredited service providers and training bodies.

The qualification was in the first instance created by the short term insurance market in general and later modified by the incorporation of a number of elective unit standards to better meet the needs of loss adjusters. A loss adjuster seeking to achieve this qualification must successfully complete the elective standards related to adjusting in order to be awarded the appropriate qualification.

This qualification is revisited every 3 years after inception so that it can be revised to suit current working principles and needs over time as the qualifications are workplace based.

Having completed a qualification it is recorded on a national data base which means it cannot be removed from you, no matter how the content changes.

It is my view that the basic qualification be left as is and that any future renewal or amendment or replacement of the qualification be monitored and appropriate action taken to maintain the status quo as required at that time.

The requirement in point 3 is a factual aspect in so far as any adjuster holding a Diploma or Academic degree is concerned and needs no further qualification at this time, other than CPD.

In the past there has been no "certificate" that is really appropriate to loss adjusters at this level.

It is with some pride that I am able to report that on 22 February 2008, a "National Certificate Loss Adjusting Level 5" was signed off by the drafting subject matter ex-

perts and has been submitted to SAQA for discussion and hopefully acceptance and ratification.

This will be the first truly accredited qualification aimed at loss adjusting rather than the generalised short term insurance qualifications that are available. If all goes well, and I have no reason to believe anything to the contrary, this qualification will be a reality by June 2008.

I must pause here and note my special thanks and appreciation to the senior practitioners in our institute who gave many hours of their time and their expertise in order to support me in achieving this milestone in our history and for which the Institute owes them a sincere vote of gratitude. Those who scoped the initial concept and those who read the draft standards offering their comments must also not go without our thanks.

Last but not least we owe a vote of sincere thanks to Penny Mackrory our SAQA facilitator who had to endure hours of listening to the ramblings and technical jargon produced by the team of scoping and standard experts and who ultimately made the utmost sense and logic out of the often incoherent and disjointed proceedings to actually write the completed standards despite our best endeavours to continuously confuse her.

This then deals with the past which must in my view be noted as an unmitigated success story that will go down and be recorded in the annals of the Institutes as such.

This achievement will be difficult to follow, but hard work and dedication still lies ahead to cement these past achievements firmly in place.

Part of the investigation that must be done before a National Certificate such as this can be submitted to SAQA for approval is an International Compatibility survey. In this process, it became evident that as there are no comparable qualification internationally, this specialist qualification will be in demand certainly throughout Africa and very probably serve as a basis for international qualification standards in Australasia very shortly after its promulgation.

We can and shall claim yet another feather in our cap which will in time be tantamount to a headdress!!

Unit standards are by their nature fairly broadly worded. It is the outcome of these standards that must be measured, and here a set of outcome criteria must be considered and of equal importance, the learning material that will support the ultimate qualification.

Firstly it will be necessary to set the criteria against which any one standard's outcome will be assessed (note that where the word "assess or assessor" is used, this is within the context of an independently qualified educational assessor and not a loss adjuster).

Each of the unit standards will, after approval and ratification, have to have a schedule of assessment criteria or "tools" set against them to ensure the expected outcomes against each part of that standard is achieved by the learner.

It is here that the finer detail that a loss adjuster is expected to know, understand and demonstrate will be enumerated i.e. the criteria of knowledge and skill a learner will have to demonstrate to an assessor in

ILA Education Update

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order to show he is competent and has achieved the required standard set against each specific outcome in respect of any given unit standard.

This will require yet many more hours of dedication and input by our subject matter experts.

I believe however that it is the duty of every member of the Institute to read the assessment criteria as they are written and circulated and to constructively comment on the work of the select SME's and ensure that the criteria is the very best we can expect to achieve.

Apathy and inane excuses that have been forthcoming from some members for them to wriggle out of their obligations and the mere silence of others does not sit well with me. Let those members clearly and unequivocally understand that their negativity and continuance of sitting on their hands will not stop the process and the criteria will still be achieved, for better or worse despite their attitude.

Once done, no amount of crying, argument or representation will alter this situation.

The Institute is set on a sound path of enforcing its

constitution and membership requirements as they are evolved, ratified and entrenched and members thus have only themselves to blame for their own ineptitude.

After the assessment criteria have been set the learning material to allow a learner to achieve the required criteria, to achieve the outcome against any standard and to be successfully assessed lies ahead.

I have no doubt that we will rise to the occasion and achieve the above future short term objectives with distinction as is becoming of our profession.

To this end the first draft of the abridged assessment criteria are being compiled for later circulation and comment. It is my hope that this phase of the programme will be completed by September 2008.

It must be the aim to complete this stage of proceedings by year end at the latest.

The learning material follows as a longer term objective, although there is no reason why the drafting of such material cannot run in tandem with the finalisation of the assessment criteria.

If this is achieved, we may look to March 2009 for the entire process to be com-

plete.

It is my further vision that the Institute will not falter and rest on its laurels after these objectives have been completed.

The ultimate goal must be that the standards, criteria and learning material are applied in a fair and correct manner to ensure continuity and the maintenance of standards as we would like to see them.

This may be coupled to the last point set out on page 1 and is that for the presentation of a paper to achieve elevation to Fellowship status.

We have already set a criteria or "assessment standard" against which a paper or dissertation to be posh, shall be measured. This encompasses, inter alia, the outline, presentation, length and standard of content of such a tome.

The Institute must now, in my view, apply for registration as a service provider and purveyor of this specific qualification with its standards and the dissertation required for Fellowship.

It is our duty to provide our members and any other interested person for that matter with the highest level of skill, knowledge, expertise

and tuition in order to allow them to achieve the standards we have demanded in achieving the standards required in these qualifications and requirements.

Of equal importance is that we maintain such standards well into the future, whether we broaden our scope of learnership tuition or not. This may include presentations, seminars, workshops and the like on selected subjects all still aimed at the improvement of our member's skills and standards.

This will maintain an acceptable standard and assist the Institute in its ongoing quest for universal recognition and in remaining a leader in the short term market as a body with sound and high ethics that is not deterred from enforcing such standards in order to secure the best service and expertise within the field of adjusting the market has come to and may expect in the future.

There is no reason why an application for registration and perhaps even the registration as a service provider cannot be achieved before the end of the 2009 calendar year and that the Institute can then take up a defining role in the market and maintain its status of excellence.▲

Operative Clause - Public Liability Section

Article supplied by Jean Naude

As part of the broad spectrum of insurance classes available to the South African populous, proposers may opt to effect cover in respect of their potential liability towards third parties.

This article is aimed at providing a general guide when interpreting the cover provided by the General Liability Section of the Multimark III policy wording, and may also be useful when dealing with tailor made liability policies issued by liability underwrit-

ing agencies.

In accordance with the operative clause of Multimark III policy wording;-

1. an insured is indemnified in respect of *damages*;
2. which it shall become

legally liable to pay;

3. *consequent* upon the happening of an event;
4. giving rise to *injury or damage*;
5. occurring within the *territorial limits*;

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6. results in a *claim* or *claims*; and
7. first being made against the insured in *writing during the period of insurance* [in the case of a policy underwritten on a claims made basis] or *occurring during the period of insurance* [in the case of a losses occurring policy].

From the foregoing requirements, the undernoted terms require interpretation so as to understand the nature and extent of the cover provided:

The term “*damages*” should not be confused with “*damage*”, the former referring to payment of compensation aimed at, in the case of Aquilian damages (actions based in delict), placing the claimant / plaintiff in the same position he or she would have been had the delict not been committed, thereby redressing the diminution of the value of the claimant / plaintiff’s estate which the insured allegedly caused, and the latter, the actual consequence of, in the case of Aquilian actions, the wrongful act or omission of the insured (refer to comments infra under “*injury or damage*”).

“*Damages*” therefore refer to payment made by the insurer of a monetary sum either to the insured or on behalf of the insured to a claimant / plaintiff after it had been established that (next requirement), the insured is legally liable for such payment, the cover provided having been extended to include claimant/plaintiff’s costs and expenses.

Legal liability, as a require-

ment for policy cover, may arise from, inter alia, delict or a breach of contract, the former referring to the act of a person who in a wrongful and culpable way causes harm to another, and the latter, a breach by one of the contracting parties in respect of its contractual obligation(s) (such as supplying a product free of latent defects) - one of the remedies the innocent party becomes entitled to being damages.

The requirements to succeed with a claim or legal action instituted against an insured in delict are as undernoted –

- Conduct;
- Wrongfulness;
- Fault;
- Causation; and
- Damage,

and in contract, a material breach of the agreed terms and/or conditions.

From the foregoing, it is evident that the mere fact that a claim has been intimated against the insured does not entitle him/her to the indemnity provided by the policy, but rather, an investigation will be launched by the insurer insofar as the merits of the claim are concerned, and if warranted, the claim will either be entertained, or liability declined on the insured’s behalf.

It is a requirement of the policy that the actions or omissions of the insured give rise to harm to another, the nature of such harm as a consequence of the insured’s infringement of the claimant / plaintiff’s legally protected rights being specified as either *injury* or *damage*.

The term “*injury*” is defined

in some liability insurance policies to have a broad meaning and extends to include bodily and emotional harm, as well as death, the Multimark III policy wording however being restrictive in nature, and only includes bodily injury and death.

“*Damage*” is defined in the Multimark III policy to mean “...accidental loss of or physical damage to tangible property...”, the latter requirement being the cause of action in a multitude of decided court cases, it being commonly accepted that unless the claimant / plaintiff’s action or omission alters the physical properties of a tangible item, insurers have a just ground to reject an intimated claim for indemnity based on the fact that there is no “*damage*” as contemplated by the policy.

Compare for example the scenario where –

1. an insured building contractor during excavating activities impacts (positive action) and severs (physical damage) an underground electrical cable (tangible property) owned by another;
2. a claim is intimated against an insured by a neighbour who alleges that as a result of the continuous release of gaseous substances in the atmosphere, (positive action), the gas had entered the claimant’s dwelling and has caused the fixtures and fittings (tangible property) to absorb (intangible damage) the foul smell.

While the neighbour in the second example may have grounds to succeed with a delictual claim against the

insured, the latter’s policy may not entertain the claim on the basis that the insured’s actions have not resulted in physical damage to tangible property.

Insofar as the *territorial limits* requirement is concerned, only claims occurring within a clearly defined territory as depicted in the policy schedule falls for consideration.

Finally, whilst most policies require a claim to be intimated against the insured to “*trigger*” or “*activate*” the operative clause, the Multimark III wording requires the intimated claim to be *in writing*.

Once all of the aforementioned requirements have been met the claim will be considered under the General / Public Liability Section of the policy, subject of course to a number of general and Section specific exceptions and conditions, the details of which are too vast to cover in an article of this nature.

The cover provided may also at the option of the insured and subject to payment of additional premium, be extended to include, amongst others:

- Security firms
- Tool of trade
- Liability by prior agreement
- Tenant’s liability
- Products liability
- Defective workmanship▲