A joint publication of the Attorneys Fidelity Fund and the Attorneys Insurance Indemnity Fund
(A Non Profit Company, Registration No. 93/03588/08)

RISKALERT

SPECIAL POLICY EDITION JULY 2012 NO 3/2012

IN THIS EDITION

Attorneys Fidelity Fund, 5th Floor, Waalburg Building,
28 Wale Street, Cape Town 8001.
PO Box 3062, Cape Town, 8000,South Africa, Docex 154.
Tel: (021) 424 5351 Fax: (021) 423 4819
E-mail: attorneys@fidfund.co.za Website: www.fidfund.co.za

Prescription Alert, 2nd Floor, Waalburg Building, 28 Wale Street, Cape Town 8001.
PO Box 3062, Cape Town, 8000, South Africa, Docex 149.
Tel: (021) 422 2830 Fax: (021) 422 2990
E-mail: info@aiif.co.za Website: www.aiif.co.za

This special edition of the Bulletin contains your professional indemnity policy for the new insurance year which begins on **1 July 2012** and ends on **30 June 2013**.

RISK MANAGER'S COLUMN

NEWS FLASH

FRAUD
URGENT NOTICE TO ALL CONVEYANCING STAFF

We have had a large number of notifications about a SCAM which could result in the payment of the proceeds of a property sale to the incorrect party, because of fraud by a person posing as the correct payee/seller.

An imposter directs the conveyancer to change the details of the bank account into which the proceeds are to be paid (usually just before registration). Sometimes the instruction is telephonic and other times it is sent or confirmed by e-mail.

This seems to be a growing trend. Please see the details of some recent matters of which we have been advised, on our website at http://www.aiif.co.za/red-flag-areas-in-conveyancing (or contact me for a copy). Please take note of the suggestions to avoid falling for this scam, in particular:

- Insist on proof that the bank account in fact belongs to the correct payee.
- Insist on written instructions (from an e-mail address that you already have on record).
- Insist on instructions from both spouses (where applicable).
- Telephone the parties at the numbers on record to confirm.
- Insist that the payee attend at your offices with ID, to sign a new Authority for Payment, if there is any doubt.
- Comply with all FICA requirements before making any payment.

RISK MANAGER'S COLUMN continued...

CHANGES TO THE POLICY

THERE ARE NO CHANGES TO THE LIMITS OF INDEMNITY AND DEDUCTIBLES FOR 2012/2013 *(except for the change in clause 8, referred to in column 3).*

The only notable changes to the policy are the following:

5. Exceptions
Clause 5.1.4 has been expanded by the addition of sub-clauses (i) (ii) and (iii) to clarify certain circumstances that this exclusion encompasses.

Clause 5.1.9 has been expanded to include (in additon to claims arising out of the award of costs *de bonis propriis* against the insured) claims arising out of or in connection with any fine or penalty or punitive, exemplary or like damages levied or awarded against the insured.

6. Conditions
Clause 6.1.2 introduces the requirement that a **risk management self-assessment questionnaire** be completed by a practice before indemnity will be provided (see more below).

Clause 6.10 has been updated to reflect the **change of address and contact details** for any notice to be given in terms of the policy.

8. Schedule A
Clause 8.6 has been removed because the options to reduce limits of indemnity and deductibles are no longer offered to the profession.

RISK MANAGEMENT SELF-ASSESSMENT QUESTIONNAIRE

(see policy clause 6.1.2)

Please carefully read the *important notes* below in order to gain an understanding of:
a) what is required from your practice and
b) the reasons for our introduction of this compulsory requirement.

IMPORTANT NOTES

NB: If you have already completed one of these questionnaires in the two years prior to notifying us of a claim/circumstance, you may submit that document and need not complete a new one.

WHERE DO I GET A COPY OF THE QUESTIONNAIRE?

You can obtain a copy from the AIIF or its Managers (*see contact details in clause 6.10 of the policy*) or off our website (www.aiif.co.za). *It may be completed at any time, even if your firm does not have any claims pending.* This is highly recommended as a risk management exercise! (We are in the process of creating a facility on our website that will eventually enable you to complete this questionnaire online).

WHAT IS EXPECTED OF MY FIRM?

1. Every practice needs to properly complete this assessment and submit it together with the claim form to the AIIF/its Managers (Aon) before indemnity can be provided.

2. It must be completed by a SENIOR PARTNER/SOLE PRACTITIONER/RISK and/or COMPLIANCE OFFICER or MANAGER/CHAIR OF THE RISK COMMITTEE.

3. When answering certain questions, you will come across the following request:
"If no, see Risk Management Tips on Website www.aiif.co.za." If you do not have access to the internet and would like a copy of these tips, we can send you one by e-mail/fax, on request.
Please read the following before the self-assessment is done:

WHY DO WE WANT THE INFORMATION?

The information which we ask for in this assessment will be treated as strictly confidential. It will not be disclosed to any other person, without your practice's **WRITTEN permission**. It will also not be used by the AIIF or Aon in any way to affect your practice's claims records or indi-

RISK MANAGER'S COLUMN continued...

vidual cover. An analysis of information and trends revealed by your answers may be used by the AIIF for **GENERAL** underwriting and risk management purposes. I elaborate below:

- **To assist the insurer when setting and structuring deductibles and limits of indemnity for the profession as a whole, deciding on policy exclusions, conditions and possible premium setting.**
- **To raise awareness about risk management and to get practitioners thinking about risk management tools/procedures for their practices.**
- To obtain relevant and usable general information and statistics about workloads, staff numbers, types of matters dealt with, stress levels, risk management/practice management and claims history.
- To gain insight into which risk management/practice management procedures are in place/need to be in place in practices.
- To assist in the selection and formulation of the most effective risk management interventions.
- **To assist in formulating a strategy to improve risk management/practice management at all levels.**
- To possibly feed into materials for CPD (continuing professional development), PLT (practical legal training) and PMT (practice management training) courses.

Ann Bertelsmann
Risk Manager, Attorneys Insurance Indemnity Fund (AIIF)
(011) 944 7185
Ann.bertelsmann@aon.co.za

LETTERS TO THE EDITOR

I would like to comment on the article "Why you should be talking to your actuary" by Rowan Haarhoff. In paragraph 3 he states that according to the Act the CAP is still R 160 000 per year. Section 17 (4) (c) of the Road Accident Fund Amendment Act, 2005 limits the amount payable to R 160 000 per year.

Then Section 17 (4A) (a) states that the amount of R 160 000 must be adjusted to allow for inflation. The CAP applicable to any one claimant will therefore be subject to the increased CAP from time to time. This makes logical sense as, if the RAF is expected to increase losses each year to allow for inflation, the CAP should be increased accordingly.

Section 17 (4A) (b) states that instead of R 160 000 per year, one has to use the latest adjusted amount (according to subsection (4A) (a)) in force at the time of the accident. In other words, if an accident occurred on 1.6.2011, the CAP in force at that time was R 185 289 per year, and this will be the CAP applicable at the commencement of this claim.

However some actuaries interpret this to mean that the CAP in force at the date of the accident should be applicable thereafter throughout the period of loss. This is not correct as Subsection (4A) (b) merely states that the commencing CAP should be that in force at the date of the accident. The CAP has still to be increased in terms of (4A) (a).
Yours sincerely

GW Jacobson

This letter refers to an article which appeared in the May Bulletin 2/2012. We are awaiting a response to this letter from Rowan Haarhoff. We will publish the response in the August edition of the Bulletin, together with any other comments that we receive on the issue from our other readers. (Ed.)

RISKALERT

THE ATTORNEYS FIDELITY FUND PROFESSIONAL INDEMNITY INSURANCE SCHEME 1 JULY 2012 TO 30 JUNE 2013

PROFESSIONAL INDEMNITY INSURANCE

In consideration of the **Attorneys Fidelity Fund**, for and on behalf of every insured (as defined in this Policy), having paid or agreed to pay the insurer named in the schedule the premium stated in the Master Policy:

The insurer agrees to provide an indemnity in the manner and to the extent stipulated subject to the terms contained in this policy and the schedules hereto.

1. INDEMNITY

The indemnity granted in this policy is in respect of:

1.1 the insured's legal liability to any third party arising out of the conduct of the profession by the insured which legal liability is the subject of a claim first made on the insured during the period of insurance irrespective of when or where such liability arose.

1.2 approved costs in connection with any claim under 1.1.

1.3 approved costs of investigating and of being represented at any professional or judicial inquiry into any event or occurrence that may have given rise to or may reasonably be expected to give rise to a claim under 1.1.

2. DEFINITIONS

2.1 "the Act" - the Attorneys Act No. 53 of 1979 (as amended);

2.2 "the Attorneys Fidelity Fund"- the Attorneys Fidelity Fund referred to in Section 25 of the Act;

2.3 "practitioner" - any attorney notary or conveyancer as further defined in the Act;

2.3.1 "senior practitioner" – a practitioner of not less than 15 years standing in the profession;

2.4 "approved costs" - all legal and similar costs and expenses which the insured may incur with the insurer's written consent which shall not be unreasonably withheld;

2.5 "the insured"-

2.5.1 (a) every individual practitioner and (b) every firm, partnership or incorporated practice consisting of one or more practitioners who, on the date on which the claim is made:

2.5.1.1 is practising as such in the Republic of South Africa, and

2.5.1.2 is in possession of or would have been obliged to apply for a current Fidelity Fund Certificate in terms of Section 42 of the Act;

2.5.2 any former sole practitioner and any former principal, partner, director or consultant of the firm, partnership or incorporated practice referred to in 2.5.1, who is no longer a practising practitioner when the claim is made against him provided that the claim arises out of the conduct of the profession by such person or such firm, partnership or incorporated practice at a time when he was:

2.5.2.1 practising as such in the Republic of South Africa and

2.5.2.2 in possession of or obliged to apply for a current Fidelity Fund Certificate in terms of Section 42 of the Act;

2.5.3 in the event of the death, incapacity, insolvency or dissolution of any person or entity referred to in 2.5.1, 2.5.2 and 7, his or her estate, legal representative, heir or successor in title in respect of any claim arising out of the conduct of the profession;

2.6 "partner or director" includes any person who is

2.6.1 *de facto* a partner or director of the insured or

2.6.2 who is publicly held out to be a partner or director of the insured;

1.7 "conduct of the profession"- the activities of the insured acting as a practitioner and such activities which are legitimately conducted as part of a legal practice. In the event of a dispute as to whether a particular act or activity is conducted as aforesaid the matter shall be referred to the president of the statutory law society having jurisdiction over the insured whose decision shall be binding on the parties to this policy;

1.8 "conveyancing transaction" – a transaction which :

- involves the transfer of legal title to immovable property from a legal or natural person to another;

- involves the registration of any mortgage bond over immovable property;
- is required to be registered in any Deeds Registry in the Republic of South Africa, in terms of any relevant legislation;

2.9. "bridging finance" – the provision of short term finance to a party to a conveyancing transaction prior to the registration of the conveyancing transaction in the Deeds Registry;

3. LIMIT OF INDEMNITY

3.1 The liability of the insurer in respect of all claims and claimants' costs and expenses and approved costs shall not exceed the limit of indemnity specified in Schedule A, 8.4.1.

3.2 All claims arising out of one act or omission or out of the dishonesty of any one person or any number of persons together or in collusion shall be deemed to arise out of one event or occurrence.

4. THE DEDUCTIBLE

The insured shall be responsible for the first amount of any claim and claimant's costs and expenses arising out of one event or occurrence, but not exceeding the deductibles specified in Schedule A 8.5.1. The deductibles shall only apply in respect of claims for breach of professional duty, but shall not be applied to approved costs.

5. EXCEPTIONS

5.1 Unless specifically stated to the contrary this policy does not cover any loss, destruction or damage whatsoever or any legal liability of whatever nature:

5.1.1 directly or indirectly caused by or arising from or in consequence of or contributed to by nuclear weapons materials or by ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. Combustion shall include any self-sustaining process of nuclear fission.

5.1.2 which is insured or would but for the existence of this policy be insured by any other policy or policies or guarantees except in respect of any excess beyond the amount which would be payable under such policy or policies or guarantees had this insurance not been effected.

5.1.3 arising from any event or occurrence, which has been notified under any insurance in force prior to the inception of this policy.

5.1.4 arising out of or in connection with any trading losses or trading liabilities incurred by the insured or by any practice or business managed by or carried on by the insured. This exception includes (but is not limited to) the following:

(i)a refund of any fee or disbursement charged by the insured to a client;

(ii) damages or compensation or payment calculated by reference to any fee or disbursement charged by the insured to a client;

(iii) payment of costs relating to a dispute about fees or disbursements charged by the insured to a client.

For the purposes of this paragraph 5.1.4, 'disbursement' does not include any amount paid to counsel or an expert.

5.1.5 arising from theft by any principal, partner, director, professional assistant, associate, candidate attorney, employee, "in-house" consultant or agent of the insured or of the insured's predecessors in practice of any money or other property referred to in Section 26 of the Act.

5.1.6 arising from or in terms of any judgment delivered or obtained in the first instance otherwise than by a court of competent jurisdiction within the Republic of South Africa.

5.1.7 arising out of or in connection with the provision of investment advice or the administration of any funds in contravention of the Banks Act 94 of 1990 (as amended), or as a liquidator in terms of the Agricultural Credit Act No.28 of 1996 (as amended)

5.1.8 arising out of or in consequence of an instruction to the insured to invest money on behalf of any person other than an instruction to pay money into an account contemplated in Section 78 2(A) of the Act, if such payment is for the purpose of investing such money in such account on a temporary or interim basis only, pending the conclusion or implementation of a particular matter or transaction which is already in existence or about to come in to existence at the time the investment is made. This exclusion does not apply to money which the insured is authorised to invest in his or her capacity as executor, trustee or curator or in any other similar capacity.

5.1.9 arising out of or in connection with any fine or penalty or punitive, exemplary or like damages levied or awarded against the insured or any order made against the insured to pay costs *de bonis propriis* in circumstances where the insured is acting in the capacity as attorney for one of the parties before the court which makes such order.

5.1.10 arising out of or in connection with any work done on behalf of an entity defined in the Housing Act 107 of 1997 or its representative, with respect to the National Housing Programme provided for in the Housing Act 1997.

5.1.11 arising (whether directly or indirectly) out of, in connection with or as a consequence of the provision of bridging finance in respect of a conveyancing transaction where the insured is acting or it is intended that he should act as conveyancing attorney. This exclusion does not apply where bridging finance has been provided for the payment of:

- transfer duty and costs;
- municipal or other rates and taxes relating to the immovable property which is to be transferred;
- levies payable to the body corporate or homeowners association relating to the immovable property which is to be transferred.

5.2 Unless specifically stated to the contrary this policy also does not cover:

5.2.1 any person who was in any way and at any time dishonest in relation to or in connection with any claim under this policy.

5.2.2 costs and expenses of litigation recovered by any claimant from the insured which are not incurred in and recoverable in the Republic of South Africa.

5.2.3 loss or destruction of or damage to any property whatsoever (including a computer) or any loss or expense whatsoever resulting or arising therefrom;

5.1.1.1 any legal liability of whatsoever nature;

5.2.3.2 any consequential loss; directly or indirectly caused by or contributed to or consisting of or arising from the incapacity or failure of any computer

i. to treat any date before, during or after the year 2000 as the correct date or true calendar date, or correctly or appropriately to recognise, manipulate, interpret, process, store, receive or to respond to any data or information, or to carry out any command or instruction, in regard to or in connection with any such date; or

ii. to capture, save, retain or correctly to process any data as a result of the operation of any command which has been programmed into any computer, being a command which causes the loss of data or the inability to capture, save, retain or correctly to process such data in regard to or in connection with any such date.

A computer includes any computer, data processing equipment, micro-chip, integrated circuit or

- similar device or any computer software tools operating system or any computer hardware or
- peripherals and the information or data stored in or on any of the above, whether the property of the insured or not.

6. CONDITIONS

6.1 The insured shall give immediate written notice to the insurer of any claim or intimation of a claim.

6.1.1 Once the insured has notified the insurer in terms of this clause the insurer may submit to the insured a claim form requiring the insured to provide all further information reasonably required by the insurer in respect of the claim or intimation of a claim. The insured shall not be entitled to the indemnity afforded by this policy until the insurer's claim form has been properly completed by the insured and returned to the insurer, unless the insurer has expressly waived such requirement in writing.

6.1.2 The insurer may also require the insured to complete a risk management self-assessment questionnaire. The insured shall not be entitled to the indemnity afforded by this policy until the insurer's questionnaire has been properly completed by the insured and returned to the insurer, unless the insurer has expressly waived such requirement in writing.

6.1.3 Every letter, claim, summons or process received by the insured, which evidences a claim or an intention to claim, shall be forwarded to the insurer immediately.

6.1.4 If the insured gives notice of any event or occurrence of which the insured becomes aware during the period of insurance which may give rise to a claim, then any claim in respect of that event or occurrence which is subsequently notified against the insured after the expiry of the period of insurance shall for the purpose of this policy be treated as having been made during the period of insurance.

6.2 The insurer waives any right of subrogation against any partner or director of the insured, unless such person has committed a dishonest or criminal act in relation to matters, which are the subject of a claim under this policy.

6.3 In the event of a claim arising out of any dishonest act or omission of any partner, director or employee of the insured, the insured shall take all possible action to sue for and obtain reimbursement from any such person or from the estate or legal representatives of such person and any monies which but for such dishonesty would be due to such person from the insured or any monies of such person held by the insured, shall to the extent allowable by law be deducted from the insured's loss.

6.4 Any dispute or disagreement between the insured and the insurer as to any right to indemnity in terms of this policy or as to any matter arising out of or in connection with this policy, shall be referred for a final decision to a senior counsel or senior practitioner agreed upon between the insured and the insurer or failing such agreement, nominated by the president of the statutory law society having jurisdiction over the insured and the costs incurred in so referring the matter shall be borne by the unsuccessful party.

6.5. Subject to the exceptions, the deductible and 6.1, 6.7.2 and 6.9 hereof, the insurer shall not seek to avoid, repudiate or rescind this insurance upon any ground whatsoever, including in particular non-disclosure or misrepresentation;

6.5.1 Where the breach of or non-compliance with any term of this policy by the insured other than 6.1, 6.7.1 and 6.9 has resulted in substantial prejudice to the handling or settlement of any claim against the insured, the insured shall reimburse to the insurer the difference between the sum payable by the insurer in respect of that claim and the sum which would have been payable in the absence of such prejudice. Provided always that it shall be a condition precedent of the right of the insurer to seek reimbursement that they shall have fully indemnified the insured in accordance with the terms of this policy.

6.6 The insured shall not without the written consent of the insurer repudiate liability, negotiate or make any admission, offer, promise or payment in connection with any claim and the insurer shall be entitled, if it so desires, to take over the conduct in the name of the insured of the defence of any claim or to prosecute in the name of the insured at its own expense and for its own benefit any claim for indemnity or damages or otherwise against any person and shall have full discretion in the conduct of any proceedings and in the settlement of any claim.

6.7 The insured shall render at his or her own cost such assistance as the insurer may reasonably require and shall arrange to be available at his or her own cost for such interviews as may reasonably be required by the insurer or the legal advisers of the insurer.

6.7.1 Notwithstanding anything else contained in this policy, should the insured fail or refuse to provide assistance or to attend interviews stipulated in 6.7 and remain in breach of such clause for the period of ten (10) days after receiving written notice from the insurer to remedy such breach, all benefits afforded by this policy may be withdrawn by the insurer.

6.8 Unless otherwise expressly stated nothing contained in this policy shall give any rights against the insurer to any person other than the insured.

6.9 If any claim by the insured be in any respect fraudulent or any fraudulent means or devices be used by the insured or anyone acting on his or her behalf with his or her knowledge or authority to obtain benefits in respect of that claim all benefit under this policy shall be forfeited.

6.10 Whenever this policy provides for notice to be given to the insurer, such notice shall be given to:
Aon Professional Risks
PO Box 1874
Parklands, 2121
Docex 34 Randburg
Telephone No. (011) 944 7966/8127
Fax No. (011) 944 8065/086 6392893

6.11 The insurer may in its sole discretion, in the case of any claim for indemnity, pay to the insured or to the claimant, the limit of indemnity (but deducting in such case any sum or sums already paid as indemnity) or any lesser sum for which the claim or claims arising from such claim for indemnity can be settled and the insurer shall thereafter be under no further liability in respect of such claims for indemnity, except for the payment of costs and expenses of litigation incurred prior to the date of payment of such limit of indemnity or such lesser sum.

6.12 If the insured reasonably so requires he or she shall not be obliged to contest or prosecute any legal proceedings unless a senior counsel or senior practitioner shall advise that there are reasonable grounds for contesting or prosecuting such proceedings, such senior counsel to be agreed upon between the insured and the insurer or failing such agreement, nominated by the president of the statutory law society having jurisdiction over the insured and the costs incurred in so referring the matter shall be borne by the unsuccessful party.

6.13 All recoveries made in respect of any claim under this policy shall be applied (after deduction of the costs, fees and expenses incurred in obtaining such recovery) in the following order of priority:

i) the insured shall first be reimbursed for the amount by which its liability in respect of such claim exceeded the amount of indemnity provided by the policy or any other policy;

ii) the insurers shall then be reimbursed for the amount of their liability under the policy in respect of such claim;

iii) any remaining amount shall be applied towards the amount of the deductible borne by the insured in respect of such claim

7. SPECIAL EXTENSIONS

7.1 Indemnity under this policy shall be extended to any candidate attorney, professional assistant, associate or other person employed by the insured in an employer/employee relationship in the conduct of the profession by the insured, and such person shall be deemed to be an insured for the purposes of indemnity in terms of this policy subject to the terms, limits and conditions thereof.

8. SCHEDULE A

Insurer: Attorneys Insurance Indemnity Fund (Non-profit company) (Reg. No. 93/03588/08)

8.1 Master Policy: No. AIIF/MP/06/12

8.2 Period of Insurance: 1 July 2012
30 June 2013 (both days inclusive)

8.3 Situation risk: World-wide (subject to exceptions 5.1.6 and 5.2.2)

8.4 Limit of Indemnity:

8.4.1 The limit of indemnity in respect of 1.1 and 1.2 is determined by the number of partners or directors of the firm, partnership or incorporated practice referred to in 2.5.1 (b) on the date on which the event or occurrence occurred which gives rise to a claim against the insured in accordance with the following schedule:

No. of partners/ directors	Limit of indemnity per period of insurance
1 (Sole practitioner)	R1 562 500
2	R1 562 500
3	R1 562 500
4	R1 562 500
5	R1 562 500
6	R1 562 500
7	R1 640 625
8	R1 875 000
9	R2 109 375
10	R2 343 750
11	R2 578 125
12	R2 812 500
13	R3 046 875
14 and above	R3 125 000

8.4.2 Approved costs as set out in 1.3 cannot exceed 25% of the limit of indemnity specified in clause 8.4.1. above.

8.5 The deductible:

8.5.1 The deductible is determined by the number of partners or directors of the firm, partnership or incorporated practice referred to in 2.5.1(b) on the date on which the event or occurrence which gives rise to a claim against the insured and the type of matter which gave rise to the claim in accordance with the following schedule:

No. of partners/ directors	Column A Prescribed MVA claims Deductible	Column B Other claims Deductible
1 (Sole practitioner)	R35 000	R20 000
2	R63 000	R36 000
3	R84 000	R48 000
4	R105 000	R60 000
5	R126 000	R72 000
6	R147 000	R84 000
7	R168 000	R96 000
8	R189 000	R108 000
9	R210 000	R120 000
10	R231 000	R132 000
11	R252 000	R144 000
12	R273 000	R156 000
13	R294 000	R168 000
14 and above	R315 000	R180 000

8.5.2 In the case of a claim for loss or damage in respect of bodily injury or death caused by, arising from or in any way connected with the driving of a motor vehicle (being a motor vehicle as defined in the Road Accident Fund Act 56 of 1996 or any predecessor or successor of the aforementioned Act) at any place within the Republic of South Africa, which has become prescribed in the hands of the insured, the deductible set out in 8.5.1 (Column A) will apply. Provided that if **Prescription Alert** a computerised diary system available to the insured has not been utilised or adhered to by the insured, the deductible as specified in 8.5.1 (Column A) will be increased by an additional 15%.

8.5.3 If a claim arises for reasons other than those set out in 8.5.2 the deductible set out in 8.5.1 (Column B) will apply.