A joint publication of the Attorneys Fidelity Fund and the Attorneys Insurance Indemnity Fund NPC
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RISKALERT

SPECIAL POLICY EDITION – JULY 2014 NO 3/2014

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Our contact details will be changing in or about September 2014. Please consult our website or Prescription Alert for changes.

AIIF: Ann Bertelsmann, Risk Manager, Aon, Risk Solutions, The Place, 1 Sandton Drive, Sandton • PO Box 1847, Parklands, Johannesburg 2121 • Docex 34, Randburg • Tel: 011 944 7966 / 8127 Fax: 011 944 8065 • Website: www.aiif.co.za
Twitter handle: @AIIFZA

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

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

Attorneys Fidelity Fund South Africa
Your Champion in the Legal Profession Since 1941

RISK MANAGER'S COLUMN

The new scheme policy for 2014/2015 appears on page 5. The limits of indemnity and deductibles remain at the same levels as those in the 2013/2014 policy.

The only noteworthy change to the wording of the policy is the addition of two new exception clauses (5.1.12 and 5.1.13).

Practitioners therefore please note: The insurance does not provide indemnity for your practice, where there is misappropriation or negligent payment of money held in trust, in the situation where there is not an underlying transaction/mandate performed *in the conduct of the profession.*

An example of this might be where your client has entered into contracts with various third parties, without your involvement, and instructs you to accept payments on his behalf, from these third parties.

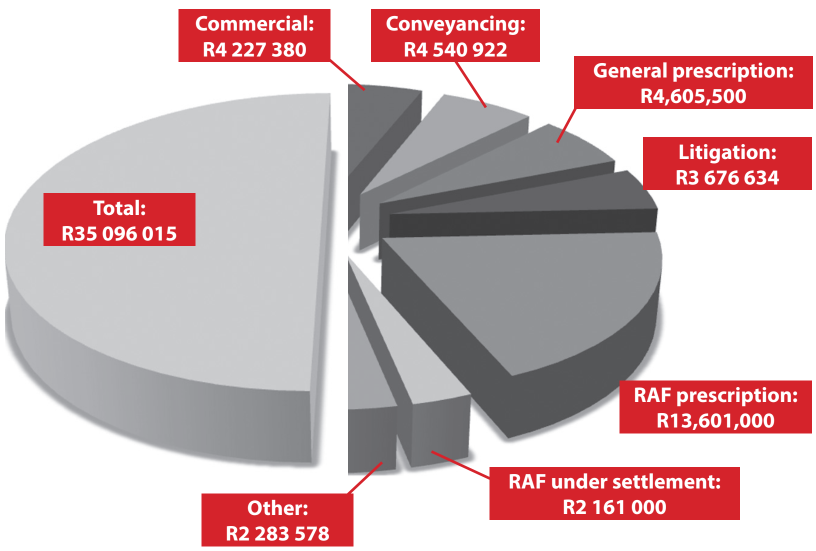
CLAIMS TRENDS

For some time now, **prescription** has been the single biggest cause of claims against practitioners.

122 out of a total of **376** (**32%**) of claims notified in the 2013 insurance year – as at 31 March 2014 – are **prescribed matters** (**86** *RAF* and **36** *general prescription*).

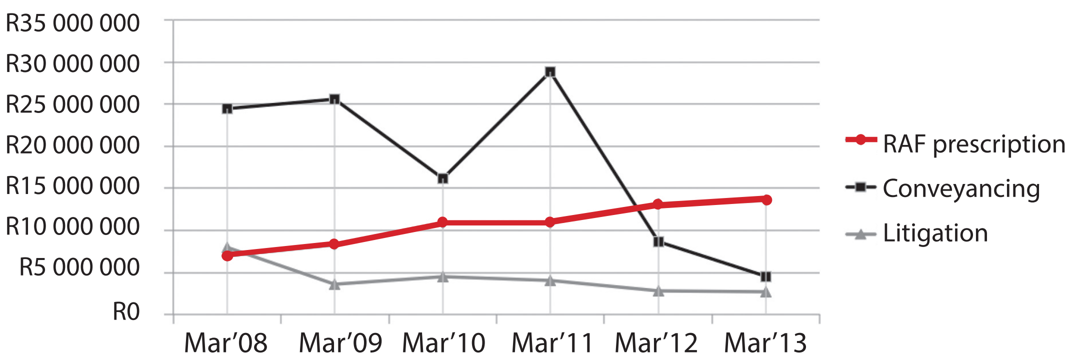
52% of the total-incurred value of all claims notified in the 2013 insurance year – as at 31 March 2014 – is made up of **prescribed matters.**

GRAPH 1: TOTAL INCURRED VALUES BY CLAIM TYPE FOR THE 2013 INSURANCE YEAR AS AT 31 MARCH 2014 (Q1, 2 AND 3)



RISK MANAGER'S COLUMN continued...

GRAPH 2: DEVELOPMENT OVER 6 INSURANCE YEARS: TOTAL-INCURRED VALUES AT 9 MONTHS



Graph 2 shows that the values of *litigation* claims have remained constant over the past six years, while those of *prescribed RAF* claims have steadily increased. The values of claims arising out of *conveyancing* have been volatile since 2008, with a strong downward trend over the past two years.

MESSAGE FROM THE ATTORNEYS FIDELITY FUND

The principal purpose of the Fund, as set out in Section 26 of the Attorneys Act 53 of 1979, is to protect members of the public against loss suffered as a result of theft of money entrusted to an attorney in the course of his/her practice. The purpose of the Fund, therefore, is very simple – it reimburses loss consequent upon the theft of trust money or property. Fraud or negligence is not covered.

The Fund is a fund of last resort. If it is apparent that stolen money or property can be recovered from another source, the Fund will require a claimant to first exhaust all available legal remedies against all persons liable in law.

COMPARATIVE ANALYSIS: NUMBERS AND VALUES OF CLAIMS NOTIFIED

Note 1: The claims type "Other" is made up of Administrations, Collections, Criminal, Matrimonial and Sequestrations/ Liquidations.

Table 1

Type	#	**2011**	#	**2012**	#	**2013**	#	**2014**
Unclassified	22	R7 713 142	0	R0	0	R0	0	R0
Other	70	R6 356 653	103	R26 214 511	64	R3 178 877	31	R1 650 526
Bridging Finance	14	R14 073 477	16	R20 652 487	21	R20 115 040	3	R1 033 782
Commercial	17	R179 021 296	8	R14 565 787	15	R24 192 916	5	R25 829 186.73
Conveyancing	**577**	**R176 149 057**	**555**	**R173 085 213**	**249**	**R71 392 382**	**87**	**R27 886 297**
Estates	70	R28 617 476	54	R16 752 186	66	R26 770 821	29	R12 618 589
Investments	13	R41 016 162	7	R7 742 122	9	R5 005 622	5	R3 224 116
Litigation	60	R5 745 094	66	R20 170 206	56	R8 338 098	17	R1 811 414
RAF	414	R17 738 240	224	R18 861 816	149	R27 066 965	37	R10 273 959
Total	**1257**	**R476 430 598**	**1033**	**R298 044 329**	**629**	**R186 060 722**	**214**	**R84 327 870**

Table 1 above is a comparison between the number and value of claims notified by area of practice. As can be seen from the table, **conveyancing** related claims remain the biggest area of risk for the Fund, both in terms of numbers and values, followed by **RAF** matters in terms of numbers. Claims that emanate from **commercial** related transactions take second place in terms of their value and **estates** third. For the first four (4) months of 2014, the Fund received 214 claims worth R84 327 870. The Fund is looking into ways to increase the oversight in relation to these transactions and the accounts associated with such transactions.

MESSAGE FROM THE ATTORNEYS FIDELITY FUND continued...

CLASSIFICATION OF CONTINGENT CLAIMS (CLAIMS AS YET UNPAID)

Note 2: The claims type **"Other"** is made up of Administrations, Collections, Criminal, Matrimonial and Sequestrations / Liquidations claims

Figure 1

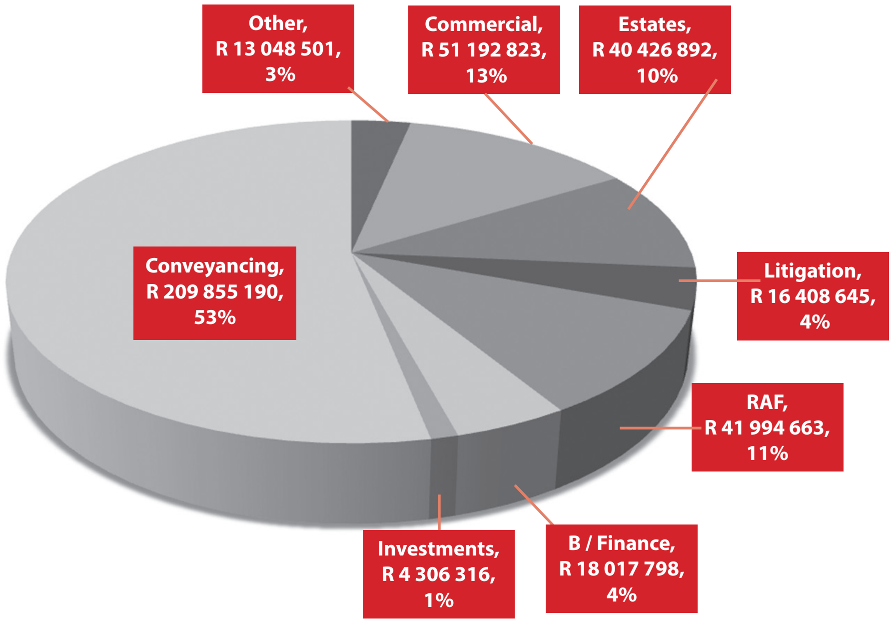


Figure 1 is a graphic illustration of the contingent claims on record. At 31 April 2014, there were 914 claims on record, with a combined value of R395 250 824. The bulk of the claims still contingent (53%) is in respect of **conveyancing** related matters, followed by **commercial** (13%), and **RAF** (11%).

Contact details on how to lodge a claim:

The Claims Executive, Attorneys Fidelity Fund
P.O. Box 3062
Cape Town 8000
Docex 154 Cape Town
Tel: 021 – 424 5351
Fax: 086 549 2050
Email: attorneys@fidfund.co.za
Website :www.fidfund.co.za

GENERAL PRESCRIPTION MATTERS

Attorney Marius Swart has alerted us to the fact that the prescription timetable published on our website, may be misleading or confusing. He referred us to the interpretation of s13 (1)(a) of the Prescription Act 68 of 1969, set out in ***Jonker v Rondalia*** **1976 (2) SA 375 (E).**

From this judgment it appears that;

If the minor attains majority after the 3 year prescription period has elapsed, then he has 1 year from date of majority, within which to bring the action.

o Should prescription be completed after the lapse of one year of his attaining majority, he will be afforded no further protection and his claim will lapse as from the date prescription was completed.

NB: There is, however, a further complicating factor relating to the change in the age of majority from 21 to 18 in 2007. In this regard one needs to consider the judgments in *Apdol v RAF* 2013 (2) SA 287 GNP (see *RAB* 5/2013) **and *Malcolm v Premier Western Cape* (207/2013) [2014] ZASCA 9 (14 March 2014)** (see *RAB* 2/2014).

Ann Bertelsmann
Risk Manager

CONVEYANCING MATTERS

Royal Anthem Investments 129 (Pty) Ltd v Yuen Fan Lau and Shun Cheng Liang **(941/2012 [2014] ZASCA 19 (26 March 2014)**

Facts

On 1 June 2009 Yuen Fan Lau and Shun Cheng Liang (**the Purchasers**) entered into an agreement to purchase a property from Royal Anthem Investments 129 (Pty) Ltd (**the Seller**). The Purchasers paid a deposit of R720 000 into the conveyancer's trust account. In accordance with the terms of the sale agreement, the deposit was invested on behalf of the Purchasers in an interest-bearing account in terms of S78(2)(A) of the Attorneys Act 53 of 1979 (**the Act**), pending registration.

The sale was conditional on the Purchasers' ability to raise the necessary finance. The Purchasers unsuccessfully applied to ABSA for finance (because of a default judgment against one of the Purchasers) and thereafter failed to provide a guarantee within the prescribed 45 days from acceptance of the offer. However, their attorney's request for a further 14 days' extension was granted by the Seller. A month later, Standard Bank approved the financing but the Purchasers were unhappy with the applicable interest rate, and sought alternative funding. Subsequently the Seller threatened to cancel the sale and the Purchasers provided a guarantee from Standard Bank and paid over the transfer duty of R264 723.

The Seller thereafter threatened that the property would not be transferred until the Purchasers had paid interest in respect of their delays. The Purchasers' attorney responded by refusing to pay the interest and demanding repayment of the deposit and transfer duty, alleging that the sale had lapsed on 31 July 2009 through non-fulfilment of the suspensive condition. The Seller denied that the sale had lapsed and contended that the suspensive condition was deemed to have been fulfilled.

The sale fell through and the property was sold to a third party. The deposit was held in trust by the conveyancer, pending the resolution of a dispute between the parties as to whether the sale agreement had lapsed or the suspensive condition should be deemed to have been fulfilled. This in turn would determine whether the deposit would be repaid to the Purchasers or forfeited to the Seller in terms of a *rouwkoop* clause in the agreement.

The Purchasers instituted action against both the Seller and the conveyancer, seeking to recover the deposit and the R264 723 paid for transfer duty. **The Purchasers subsequently withdrew the action against the conveyancer and only proceeded against the Seller.**

Judgment

The Court *a quo* found in favour of the Purchasers and ordered the Seller to pay R984 723 plus *mora* interest. The Seller filed this appeal to the Supreme Court of Appeal.

The SCA rejected the Seller's argument that the Purchasers had breached the terms of the sale agreement in failing to 'immediately' apply for a loan as stipulated in the sale agreement and held that the object of this stipulation had been achieved. The Court also rejected the Seller's further argument that the Purchasers' application to ABSA was not *bona fide* as they knew at that time that it would not be granted because of a default judgment having been taken against one of the Purchasers.

The *rouwkoop* clause that the Seller relied on reads *inter alia* as follows:

…cancel the agreement and ***to keep any other amounts payable,*** *as rouwkoop or by means of any pending decision by a court of the real damages suffered…*[my emphasis]

According to the Court the words 'to keep' connote an amount received and held by the **Seller**. It found that the deposit had been paid to the conveyancer - to be held in trust pending the registration of transfer - and as the transfer had never taken place, the funds had never been paid to the Seller. It found accordingly that the deposit was not an amount envisaged by the *rouwkoop* clause.

Referring to the conflicting judgments in *Minister of Agriculture and Land Affairs v De Klerk* 2014 (1) SA 212 (SCA) [*see a discussion of this judgment in the February Risk Alert Bulletin 1 of 2014*] the Court also rejected the Seller's argument that the conveyancer had received the deposit as the Seller's agent and the payment to the conveyancer was effectively payment to the Seller.

After considering the relevant clauses in the sale agreement the Court found that the deposit and the transfer duty, which was subsequently refunded by SARS, were not the 'other amounts' envisaged by the *rouwkoop* clause. It rejected the Seller's contention that the *rouwkoop* clause should be interpreted to mean that it was entitled to keep 'all amounts'.

The appeal accordingly failed and the SCA upheld the decision of Court a quo, that the Seller was not entitled to the disputed amounts. These amounts were held in the trust account of the conveyancer and invested for the benefit of the Purchasers at a substantially lower rate than the prescribed rate of 15.5%. The Court amended the court *a quo's* order as follows:

- The conveyancer (**who was not a party to the proceedings**) was ordered to pay the Purchasers
  - o The sum of R720 000;
  - o The sum of whatever interest had accrued on the said sum of R720 000 pursuant to its investment in an interest bearing account calculated up to and including the day of demand;
  - o **Interest on the sum of R720 000 calculated at the legal rate of 15.5% per annum from the date of demand to date of final payment;**
  - o The sum of R264 723 **together with interest thereon calculated at the legal rate of 15.5% per annum from the date the amount was refunded by SARS until date of payment**.

It is interesting to note that the SCA made an order against a party that was no longer before the Court. The conveyancer is approaching the Constitutional Court for leave to appeal this judgment insofar as it makes him liable to pay interest at the legal rate on the amounts stipulated in the order above. He contends that the Court should have ordered that this interest be payable by the Seller.

Zelda Olivier
Legal Adviser AIIF
Zelda.olivier@aon.co.za

THE ATTORNEYS FIDELITY FUND PROFESSIONAL INDEMNITY INSURANCE SCHEME 1 JULY 2014 TO 30 JUNE 2015

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

1.1 the indemnity granted in this policy is in respect of:
1.1.1 the insured's legal liability to pay compensation:
- to any third party;
- arising out of the conduct of the profession by the insured; and
- which 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) or its successor in title;

2.2 "the Attorneys Fidelity Fund"- the Attorneys Fidelity Fund referred to in Section 25 of the Act or its successor in title;

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;

2.7. "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;

2.8. "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.

5.1.12 arising out of or in connection with a breach of contract unless such breach is a breach of professional duty by the insured.

5.1.13 arising out of or in connection with the receipt or payment of funds, whether into or from trust or otherwise, where that receipt or payment is unrelated to or unconnected with a particular matter or transaction which is already in existence, or about to come into existence, at the time of the receipt or payment and in respect of which the insured has received a mandate.

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;

5.2.3.1 any legal liability of whatsoever nature;

5.2.3.2any 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

OUR CONTACT DETAILS WILL BE CHANGING IN OR ABOUT SEPTEMBER 2014. PLEASE CONSULT OUR WEBSITE AT www.aiif.co.za OR PRESCRIPTION ALERT FOR CHANGES (021 422 2830).

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) insured shall first be reimbursed for the amount by which its liability in respect of such claim exceeded the amount of indemnity provided by this policy or any other policy;
ii) the insurers shall then be reimbursed for the amount of their liability under this 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/06/14

8.2 Period of Insurance: 1 July 2014 - 30 June 2015 (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 & Conveyancing 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.

RAF MATTERS

ROAD ACCIDENT FUND ACT 56 OF 1996: Adjustment of statutory limit in respect of claims for loss of income and loss of support to **R219 820.00 (Two Hundred and Nineteen Thousand Eight Hundred and Twenty Rand)** with effect from 30 April 2014.

Government Gazette 37563 of 25 April 2014, Board Notice 49 of 2014.

(Draft) Road Accident Benefit Scheme (RABS) Bill (GN337 published for comment in GG37612)

This replaces the draft RABS Bill published on 8 February 2013.

The aims and objectives of the Act are stated to be *inter alia,* to;

- provide a social security benefit scheme for victims of road accidents
- **exclude drivers** responsible for road accidents at common law (or their employers) **from civil liability ;**
- provide a set of **defined benefits** on a **no-fault basis**
- establish the RABS administrator and procedures for assessment and determination of claims and disputes;
- provide for transitional arrangements in respect of the Road Accident Fund.

Some of the relevant provisions are as follows:

- If the injured/deceased person was **not legally present in the Republic** at the time of the road accident, compensation is limited to payment for **emergency health services only. (No other damages can be recovered).**
- Benefits include certain health care services, income support benefits, family support benefits and funeral benefits. **No provision whatsoever is made for compensation for general damages** or **cost contributions to claimants**.
- The health care services must be reasonably required and a reasonable tariff must be prescribed. Reasonableness to be determined by the Administrator. Prior approval must be obtained from the Administrator for non-emergency health care services. He may provide for an individual treatment/rehabilitation plan and payment for health care services will be limited to those in the plan.
- Temporary and long term income support benefits are catered for.
  - Payment may not exceed the pre-accident cap and may not be less than the average annual national income. (Interestingly, in the absence of proof of income or in the case of economically inactive persons, the injured person must be deemed to earn the average annual national income.)
  - Periods excluded: the first 60 days after the accident, any period commencing two years after the date of accident, before the injured person reached the age of 18 or after the age of 60.
  - Long term – board may make rules for assessment of post-accident vocational ability, training and accreditation criteria for assessors and can make continuing benefits conditional upon the claimant's participation.
- Family support benefits are only payable where the dependant is ordinarily resident in the Republic.
- Time periods:
  - Claim to be submitted within three years from date claim arose. (Claim arises when qualifying person has knowledge of facts from which claim arose – deemed to have knowledge if could have acquired it by exercising reasonable care.)
  - People with the usual impediments – minor, insane, under curatorship, deceased – three-year period deemed not to be completed before one year after impediment ceases.
  - Claim to be accepted/rejected within 180 days after submission – **failing which deemed to be rejected.** If accepted – payment within 30 days. If rejected claimant has right of appeal. Must be done within 30 days of notification of rejection or expiry of the 180 day period. Appeals dealt with by officers employed by Administrator. Appeal to be determined within 180 days.
- The RAF Act 56 of 1996 (RAF Act) continues to apply to all claims where the cause of action arose prior to commencement of this Act. Administrator must ring-fence the administration of the system of compensation provided for in the RAF Act.

Ann Bertelsmann
Risk Manager
ann.bertelsmann@aon.co.za