



Insurance Law Alert

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Weekly Insurance Law Alert: 28 February 2023

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Persons and Family Law Infopack 2022

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2022 Infopack on Persons and Family Law

A handy research tool providing an overview of legal information on persons and family law published during 2022.

View [here](#).



Highlights

LONG-TERM INSURANCE

Government Gazette

- Long-Term Insurance Act 52 of 1998. Penalty for failure to furnish authority with returns etc. – [GN3078 GG 48104 p19 24Feb2023](#)

Law Firm Article

- Dinnie, Donald. Life insurance and material non-disclosure [*Maharaj NO and Others v Discovery Life Ltd* (8713/2015) [2022] ZAKZDHC 52 (2 December 2022)]. – [2023 Feb 23 Norton Rose Fulbright: Financial Institutions Legal Snapshot](#)

PENSION FUNDS

Case

- [Ndwandwe v Trustees of Transnet Retirement Fund and Others \(D7381/2020; D3438/2020\) \[2023\] ZAKZDHC 8 \(22 February 2023\)](#)

Financial Services Tribunal Rulings

- [Shaw in re Estate Late Glenn Darry Shaw v Lifestyle Retirement Annuity Fund; Liberty Group Limited; Pension Fund Adjudicator. \(Case no. PFA86/2020\)\(23 February 2023\)](#)
- [Stemela v Old Mutual Life Assurance Company \(Pty\) Ltd; South African Retirement Annuity Fund; The Pension Funds Adjudicator \(Case no. PFA63/2022\)\(24 February 2023\)](#)

Law Firm Article

- Yuda, Amina. The tussle between non-payment of contributions and the application of prescription [*Private Security Sector Provident Fund v Isidingo Security Services (t/a Unitrade (Pty) Ltd)* (3048/2021P) [2022] ZAKZPHC 67 (14 June 2022)]. – [2023 Feb 21 Norton Rose Fulbright: Financial Institutions Legal Snapshot](#)

Media Comment

- Venter, Zelda. Trustees of retirement fund not bound by client's final wishes, court confirms. – [2023 Feb 27 IOL News](#)

SHORT-TERM INSURANCE

Government Gazette

- Short-Term Insurance Act 53 of 1998. Penalty for failure to furnish authority with returns etc. – [GN3079 GG 48104 p20 24Feb2023](#)

ADVERTISING

Media Comment

Hesse, Martin. Know when financial marketing crosses the line.

2023 Feb 23 IOL News

“The Advertising Regulatory Board recently introduced a section in its Code of Advertising Practice on the marketing of crypto assets. Strangely, the code does not have much to say on the marketing of regular financial products, but the section on crypto is quite detailed. It reflects another, broader, code, which marketers of all financial products need to take far more seriously, in my view, and which you, as a consumer of financial products, should be aware of: the General Code of Conduct for financial services providers under the Financial Advisory and Intermediary Services (Fais) Act. If consumers were more active in complaining about misleading advertising, product providers would be far more circumspect about crossing the line, which, in my opinion, they do frequently.”

<https://www.iol.co.za/personal-finance/investments/know-when-financial-marketing-crosses-the-line-d6023d04-f698-485e-bfd5-62d1f71dc195>

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BUILDERS' INSURANCE

Internet Article

What builders' insurance does and doesn't cover.

2023 Feb 25 Cape Town Etc.



“Builders’ insurance, also called builders’ risk insurance or business contractors’ insurance, is specialised insurance that financially protects a contractor working on a renovation or new construction project. Additionally, it protects against the loss suffered due to damage or loss of construction materials. It’s not unusual for project owners and main contractors to opt for all-risk builders’ insurance. This insurance covers the loss or damage to a construction or renovation and includes third-party liability... If you’re a subcontractor on a construction site, ensure you’re named as the insured in the builder’s insurance policy. Otherwise, you might face a severe financial loss if you’re legally liable for property damages during construction.”

<https://www.capetownetc.com/sponsored/what-builders-insurance-does-and-doesnt-cover/>

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COLLECTIVE INVESTMENT SCHEMES (CIS)

Internet Article

Association for Savings and Investment South Africa (ASISA). Local CIS assets under management recover to previous highs.

2023 Feb 27 FA News

“The local Collective Investment Schemes (CIS) industry recorded net inflows* of R108 billion in 2022, ending the year with R3.14 trillion in assets under management. “Returning assets under management to above the R3 trillion mark was quite an achievement given the strong headwinds that our industry faced in the past year,” says Sunette Mulder, senior policy adviser at the Association for Savings and Investment South Africa (ASISA)...Foreign currency unit trust portfolios are denominated in currencies such as the dollar, pound, euro and yen and are offered by foreign unit trust companies. These portfolios can only be actively marketed to South African investors if registered with the Financial Sector Conduct Authority (FSCA). Local investors wanting to invest in these portfolios must comply with Reserve Bank regulations and will be using their foreign capital allowance.

<https://www.fanews.co.za/article/compliance-regulatory/2/association-for-savings-investment-sa-asisa/1276/local-cis-assets-under-management-recover-to-previous-highs/36490>

Media Comment

Matshoba, Ahkona. CIS industry restores assets to above R3TRN, hedge funds boom.

2023 Feb 27 Moneyweb

“As the ongoing energy crisis and the country’s recent greylisting leave the future of the investment industry uncertain...The Association for Savings and Investment South Africa (Asisa) reports that the local collective investment schemes (CIS) industry received net inflows of R108 billion in 2022, raising the industry’s total assets under management (AuM) to R3.14 trillion. The last time the industry was above the R3-trillion threshold was in the fourth quarter of 2021, after which it battled turbulent stock markets, with AuM falling to R2.98 trillion. It only recovered in the fourth quarter of 2022.”

<https://www.moneyweb.co.za/news/south-africa/cis-industry-restores-assets-to-above-r3trn-hedge-funds-boom/>

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CRYPTOCURRENCIES / ASSETS

Internet Article

Knoesen, Myra. Financial advisers readiness to offer crypto products.

2023 Feb 22 FA News

“Jaltech recently ran a survey focused on financial advisers in order to obtain their views and approach to cryptocurrency investing. FAnews spoke to Jonty Sacks, Partner at Jaltech about the findings, what the survey revealed about financial advisers’ readiness to offer crypto products and what intermediaries who are looking to offer their clients a diversified basket of cryptocurrencies should be looking for and what do they need to be aware of... Unsurprisingly, 84% of financial advisers indicated that the unregulated nature of cryptocurrencies is the reason for them not advising clients on cryptocurrency investing. “This is about to change as the Reserve Bank announced they are aiming to introduce cryptocurrency regulations within the next 12 to 18 months. As a result, financial advisers with the relevant license will be permitted to provide clients with advice on cryptocurrency investments,” said Sacks.”

<https://www.fanews.co.za/article/cryptocurrencies-blockchain/1407/general/1408/financial-advisers-readiness-to-offer-crypto-products/36456>



Media Comment

Ombud warns of scams as global digitisation increases.

2023 Feb 26 IOL News

“The Financial Advisory and Intermediary Services (FAIS) ombud is urging consumers to exercise caution when investing in cryptocurrency. With the increasing digitisation of the world and the growing popularity of these innovative financial instruments in South Africa and worldwide, consumers may be at risk of falling victim to scams and fraud. Since the Financial Sector Conduct Authority (FSCA) announced its regulation of cryptocurrency, the FAIS ombud has seen a slight increase in complaints lodged with its office.”

<https://www.iol.co.za/business-report/investments/ombud-warns-of-scams-as-global-digitisation-increases-da59b107-3a04-47c5-85e1-f9215b2dd5e2>

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FINANCIAL ADVISORS/INTERMEDIARIES

FAIS Notice

Financial Sector Conduct Authority. FSCA FAIS Notice 10 of 2023. Financial Advisory and Intermediary Services Act, 2002. Exemption of Particular Persons from Competence and Fee Requirements, No. 4 of 2023. 23 February 2023.

[https://www.fsc.co.za/Notices/FSCA FAIS Notice 10 of 2023.pdf](https://www.fsc.co.za/Notices/FSCA%20FAIS%20Notice%2010%20of%202023.pdf)

FSCA Media Statement

Financial Sector Conduct Authority. The FSCA debarred Mr Keenan Ebden (Ebden) and imposed an administrative penalty on Ebden for contravening financial sector laws. 20 February 2023.

[https://www.fsc.co.za/News Documents/FSCA Press Release - The FSCA debarred Mr Keenan Ebden \(Ebden\) and imposed an administrative penalty on Ebden for contravening financial sector laws.pdf](https://www.fsc.co.za/News%20Documents/FSCA%20Press%20Release%20-%20The%20FSCA%20debarred%20Mr%20Keenan%20Ebden%20(Ebden)%20and%20imposed%20an%20administrative%20penalty%20on%20Ebden%20for%20contravening%20financial%20sector%20laws.pdf)

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FINANCIAL MARKETS

Internet Articles

Hendrickse, Reza. Investment perspectives – Opportunities amidst volatile conditions.

2023 Feb 21 FA News

“Equity markets rebounded in the fourth quarter of 2022, ending a particularly volatile year. Global markets became relatively upbeat heading towards year-end after China relaxed its pandemic restrictions, alongside peaking global inflation. Falling gas prices in Europe also improved the outlook in the region, while US economic growth proved resilient. In South Africa, the JSE rallied despite persistent severe loadshedding, which weighed on sentiment. Eskom CEO, Andre de Ruyter, resigning was a further indictment of the institution’s formidable challenges. On a positive note, President Cyril Ramaphosa was re-elected as leader of the ANC, after being on the verge of stepping down in the wake of the “farmgate” scandal.”

<https://www.fanews.co.za/article/investments/8/general/1133/investment-perspectives-opportunities-amidst-volatile-conditions/36446>

Nel, Carmen. 2023 Budget: markets breathe a (small) sigh of relief.

2023 Feb 23 FA News

“Markets received Budget 2023 positively, evident in a near-20 basis point (bp) rally in the benchmark 10-year yield and the 20c rally in the rand versus the dollar. While these are not exceptionally large moves, they do signal a positive stance or at least relief that the government has not changed tack on its fiscal strategy. Finance Minister Godongwana tabled the FY23/24 Budget in parliament amid heightened uncertainty about the fiscal trajectory, Eskom’s sustainability, and the pending Financial Action Task Force (FATF) Grey-listing.”

<https://www.fanews.co.za/article/economy/43/budget-2023/1448/2023-budget-markets-breathe-a-small-sigh-of-relief/36467>

Media Comments

Child, Katharine. Deloitte to pay Tongaat Hulett R261m to settle accounting claim.

2023 Feb 23 Business Live



Auditing and financial services firm Deloitte will pay struggling Tongaat Hulett R260m, as it was the sugar producer's auditor in the years before huge fraud at the company was revealed. The payment will be made without Deloitte admitting any liability for the financial misstatements at Tongaat. In 2018 it came to light that its financial position was inflated by R12bn thanks to backdated land deals, overvalued sugar-cane inventory and hidden expenses..."

<https://www.businesslive.co.za/bd/companies/land-and-agriculture/2023-02-23-breaking-news-tonga-at-and-deloitte-come-to-r260m-settlement/>

Financial markets concerned about development at Eskom: Economist.

2023 Feb 23 SABC News

"Chief Economist at Econometrix Dr Azar Jammie says former Eskom Chief Executive Officer Andre De Ruyter's allegations about criminal activities at Eskom have not been well received by the financial markets. De Ruyter made allegations that a senior African National Congress (ANC) minister is involved in criminal activities at the power utility with the knowledge of other senior party leaders."

<https://www.sabcnews.com/sabcnews/financial-markets-not-pleased-with-development-at-eskom-economist/>

White, Natasha. JPMorgan Chase units drop ESG funds of fraud-accused Adani.

2023 Feb 27 Business Live

"For many fund managers, Adani stocks are now too toxic to hold after the Hindenburg Research report accused Adani of market manipulation. The asset management unit of JPMorgan Chase has wiped its environmental, social and governance (ESG) portfolios clean of their exposure to the Adani empire. The move, captured by an analysis of data compiled by Bloomberg, comes as a number of major investment firms such as BlackRock and the fund management unit of Deutsche Bank, DWS Group, continue to sit on Adani stakes in ESG funds that track indices offered by MSCI..."

<https://www.businesslive.co.za/bloomberg/news/2023-02-27-jpmorgan-chase-units-drop-esg-funds-of-fraud-accused-adani/> (Subscription Needed)
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FINANCIAL SERVICES

Media Comment

Theunissen, Garth. Financial sector plans for grid collapse.

2023 Feb 21 Business Live

"SA's financial services sector is panicking over the impact that a potential collapse of the national electricity grid could have on the country's financial and monetary system. Business Day understands that companies in the asset management, insurance and banking sector have been scenario planning how an Eskom grid collapse could disrupt everything from the execution and settlement of trades on the JSE to money transfers and salary payments. The main fears appear to centre on potential social unrest and a likely plunge in financial market asset prices due to panic selling once the power grid is up and running again after the failure..."

<https://www.businesslive.co.za/bd/national/2023-02-21-financial-sector-plans-for-grid-collapse/> (Subscription Needed)

Opinion

Mokoena, Bonga. Financial services sector 'must leave no stone unturned to ensure its integrity'.

2023 Feb 27 Business Live

"The 2023 national budget has come and gone and many people, including the business sector, are digesting the range of measures and proposals finance minister Enoch Godongwana tabled in parliament on February 22. His core message was that, despite our economic challenges, there is hope for the country. He had the unenviable task of ensuring optimum budgetary allocations to government departments and state-owned enterprises, while addressing the energy crisis through taking over Eskom's debt and offering tax rebates for renewable energy investments."

<https://www.businesslive.co.za/fm/opinion/2023-02-27-native-financial-services-sector-must-leave-no-stone-unturned-to-ensure-its-integrity/>

Rickard, Carmel. 'Stopping the rot' in the financial services sector.

2023 Feb 23 Business Live

"The Financial Services Tribunal, a body whose decisions are more interesting than you might expect, has delivered 18 rulings so far this year. Matters that reach the tribunal are mostly requests for it to reconsider decisions by another body, such as the Financial Sector Conduct Authority (FSCA) and the pension funds adjudicator..."

<https://www.businesslive.co.za/fm/opinion/in-good-faith/2023-02-23-carmel-rickard-stopping-the-rot-in-the-financial-services-sector/>

(Subscription Needed)

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GREYLISTING

Internet Article

Old Mutual. Old Mutual addressing South Africa's Greylisting.

2023 Feb 27 FA News

“Despite the South African government making huge strides in addressing the concerns raised by the Financial Action Task Force (FATF) in its review report published in October 2021, South Africa has been placed on the official list of countries and jurisdictions that are identified as having strategic deficiencies in their regimes to counter money laundering, proliferation, and terrorist financing. FATF acknowledged that South Africa has a solid legal framework for combating money laundering and terrorist financing but is of the view that the country must improve in its efforts to combat money laundering and terrorist financing transgressions, detect, and seize illicit cash flows, and improve the availability of beneficial ownership information.”

<https://www.fanews.co.za/article/company-news-results/1/old-mutual/1049/old-mutual-addressing-south-africa-s-greylisting/36488>

Law Firm Article

South Africa has been grey listed; what are the implications for the country going forward?

2023 Feb 24 Webber Wentzel

“South Africa’s grey listing by the Financial Action Task Force (FATF) has significant implications for its economic growth and global competitiveness, but moves are already being taken to satisfy the FATF.”

<https://www.webberwentzel.com/News/Pages/south-africa-has-been-grey-listed-what-are-the-implications-for-the-country-going-forward.aspx>

Media Comments

Dludla, Siphile. Rand weakens, stocks take a knock after South Africa is put on grey listing.

2023 Feb 26 IOL News

“South Africa felt the ramifications of being grey-listed immediately as stocks and the rand ended the week in turmoil after the Financial Action Task Force, an international financial crime watchdog, added the country to its grey list owing to concerns about its capacity to fight financial crime.”

<https://www.iol.co.za/business-report/economy/rand-weakens-stocks-take-a-knock-after-south-africa-is-put-on-grey-listing-8b4e3409-db28-48c1-ae59-109afef97348>

FATF grey lists South Africa over money laundering and terrorism funding concerns.

2023 Feb 27 Defence Web

<https://www.defenceweb.co.za/featured/fatf-grey-lists-south-africa-over-money-laundering-and-terrorism-funding-concerns/>

Lechman, Ashley. National Treasury says ‘greylisting’ will have limited impact on financial stability and costs of doing business with SA.

2023 Feb 24 IOL News

“South Africa’s National Treasury said on Friday that it expected increased monitoring by the [Financial Action Task Force \(FATF\)](#), a global financial crime watchdog, to have a limited impact on financial stability and costs of doing business with South Africa. This comes as the FATF labelled South Africa and Nigeria under its greylist, which puts the countries under special scrutiny to implement standards to prevent money laundering and terrorism financing.”

<https://www.iol.co.za/business-report/economy/national-treasury-says-greylisting-will-have-limited-impact-on-financial-stability-and-costs-of-doing-business-with-sa-8f7d3c70-717d-42e1-804d-9f275f929a9d>

Theunissen, Garth. SA faces three-year slog to get off terror finance greylist.

2023 Feb 24 Business Live

<https://www.businesslive.co.za/bd/national/2023-02-24-sa-faces-three-year-slog-to-get-off-terror-finance-greylist/> (Subscription Needed)

Visser, Amanda. SA must fix holes in terrorism financing, money laundering legislation by 2025.

2023 Feb 27 Moneyweb

“Some international financial institutions have policies that prevent them from doing business with greylisted countries or at least, limit the scope of business that can be conducted. Such restrictions will further impede business and foreign investment,” the Webber Wentzel team notes. They also expect trading revenue to decline... National Treasury seems rather unconcerned about the impact. In its response to the greylisting announcement it said that there are no items on the action plan that relate directly to the preventive measures in respect of the financial sector.”

<https://www.moneyweb.co.za/news/south-africa/sa-must-fix-holes-in-terrorism-financing-money-laundering-legislation-by-2025/>



Media Statements

Financial Sector Conduct Authority. The FSCA affirms tougher stance to combat money laundering and terrorist financing. 24 February 2023.

<https://www.fsc.co.za/News Documents/FSCA Press Release - The FSCA affirms tougher stance to combat money laundering and terrorist financing.pdf>

National Treasury. Listing of South Africa by the Financial Action Task Force as a “jurisdiction under increased monitoring”. 24 February 2023.

“Government notes the Financial Action Task Force’s (FATF’s) decision to list South Africa as a “jurisdiction under increased monitoring”, or more commonly referred to as FATF’s “grey list”. The FATF made its decision at the FATF Plenary meeting which took place in Paris, France earlier today, 24 February 2023.”

<http://fic.gov.za/Documents/Media%20statement%20-%20Response%20to%20FATF.pdf>

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INSOLVENCY

Cases – Law Report

Lebashe Financial Services (Pty) Ltd v Prudential Authority and Others [2023] 1 All SA 318 (SCA)

Practice – Standing on appeal – Depends on directness and sufficiency of interest in relief claimed on appeal – Creditor and shareholder of holding company of insolvent insurer has no *locus standi* to seek curatorship of insurer under Insurance Act 18 of 2017, s 54 instead of liquidation – Interpretation of s 54(5) – Precludes commencement of business rescue or winding-up by resolution or court order – Proceedings as such not prohibited and not void – Nature of powers of curator under s 54(2) – To hold, investigate and report – No duty to seek rescue or recapitalisation of insurer.

Judgment: <http://www.saflii.org/za/cases/ZASCA/2022/141.pdf>. All South African Law Reports available from [LexisNexis](#).

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INSURANCE

Internet Article

Abrahams, Yushaa. Solving insurance's sizable data problem.

2023 Feb 22 IT Web

“The recent scramble to get ready for [IFRS 17](#) underlies a systemic issue that insurers need to address, not only to position themselves for the next regulatory requirement but also to improve their processes. IFRS 17, the latest regulation from the International Accounting Standards Board, came into effect on 1 January. IFRS 17 sets out to improve how insurers report to stakeholders. It's a complex regulation, but it basically requires insurers to report on their book with a greater degree of granularity, with a new emphasis on understanding how it impacts the profit and loss statement instead of just the balance sheet.”

<https://www.itweb.co.za/content/5yONP7ErmK4MXWrB>

Law Firm Article

Dinnie, Donald. The Big Read Book series Volume 11: Norton Rose Fulbright South Africa’s review of South African insurance judgments of 2022.

2023 Feb Norton Rose Fulbright

<https://www.nortonrosefulbright.com/-/media/files/nrf/nrfweb/knowledge-pdfs/big-read-book-11.pdf?revision=5fe47f7e-c4f2-44af-9509-28c741a31c59&revision=5249813511647387904>

Magazine Article

Vivian, Robert W.; Mushai, Albert and Spentzouris, Penny. Aspects of economic theory of insurance.

2023 Feb FAnews p36

“The recent court case of [Zurich Insurance Company of South Africa v Gauteng Provincial Government](#) raises some interesting issues arising out of the construction of the Gautrain. In this article, we discuss some aspects of the economic theory of insurance which we will apply in a subsequent article when we discuss the case.”



https://www.fanews.co.za/publication/pdf_287_fanewsfebruary_2023

Media Comment

US judge rules 9/11 victims cannot seize Afghan central bank funds.

2023 Feb 22 IOL News

“The families of victims of the September 11, 2001, terror attacks cannot seize \$3.5 billion (about R64bn) in funds belonging to Afghanistan's central bank, a New York federal judge ruled on Tuesday... But Judge George Daniels of the Southern District of New York said on Tuesday that the federal courts lack the jurisdiction to seize the funds from Afghanistan's central bank... Daniels' ruling, which aligns with a recommendation by another judge last year, deals a blow to the families of the victims of 9/11, as well as insurance companies that made payments because of the attacks.”

<https://www.iol.co.za/news/world/us-judge-rules-911-victims-cannot-seize-afghan-central-bank-funds-0f9693e2-50f7-4956-9ccc-cc20c77097d3>

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LEGAL PRIVILEGE

Case

White Oak Trade and Specialty Finance Cayman LLC v Santam Structured Insurance Ltd and Others (13311/2020) [2023] ZAGPJHC 148 (22 February 2023)

Discovery – Privilege – Professional legal privilege claimed – Insurance documents not privileged – Instructions made from time to time to attorneys – Cannot be protected by legal privilege as they were not made in contemplation of this litigation, nor were they at time covered by any mandate – Plaintiff's application to compel better discovery granted.

<http://www.saflii.org/za/cases/ZAGPJHC/2023/148.pdf>

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LONG-TERM INSURANCE

Government Gazette

Long-Term Insurance Act 52 of 1998

Penalty for Failure to Furnish Authority with Returns Etc.

GN3078 GG 48104 p19 24Feb2023

<https://bit.ly/3Y2vPcq>

Law Firm Article

Dinnie, Donald. Life insurance and material non-disclosure [[Maharaj NO and Others v Discovery Life Ltd \(8713/2015\) \[2022\] ZAKZDHC 52 \(2 December 2022\)](#)].

2023 Feb 23 Norton Rose Fulbright: Financial Institutions Legal Snapshot

“In this judgment, the insured had two life policies with the insurer, which included life cover, severe illness benefits, and income continuation benefits. The insured amended the policies a number of times, but on none of these occasions did the insured disclose that he had been diagnosed with and treated for clinical depression. The court found that the depression diagnosis and treatment was material to a life insurance policy and should have been disclosed, in order for the insurer to form its own view as to the effect of the diagnosis on the risk.”

<https://www.financialinstitutionslegalsnapshot.com/2023/02/life-insurance-and-material-non-disclosure/>

Media Comments

Kubheka, Anelisa. Durban's alleged killer wives set to appear in court.

2023 Feb 24 IOL News

“The Durban High Court will this year be dealing with separate cases of three women all alleged to have conspired with others to have their husbands killed... Charmaine Margaret Khumalo, Teagan Allison Brown and Analidia Dias Bella Dosantos are alleged to have hatched and executed a plan to kill Dosantos's husband, Mark Buttle, five years ago. An insurance policy is alleged to be the motive behind the murder, coupled with information that Dosantos, 41, was alleged to have been having an affair with Brown, 25.”

<https://www.iol.co.za/dailynews/news/durbans-alleged-killer-wives-set-to-appear-in-court-bc730943-abf8-4892-86ed-c51cf8f7fb00>



Marriah-Maharaj, Jolene. KZN doctor, 84, arrested for allegedly issuing fraudulent death certificates for R6.5m insurance claim.

2023 Feb 24 IOL News

“The Hawks have arrested a KwaZulu-Natal doctor this week allegedly linked to fraudulent life insurance claims amounting to millions. The 84-year-old doctor was arrested on Thursday, released on a warning and ordered to appear in court next month. He is not being named as he has yet to appear in court. The doctor is among four people who allegedly committed R6.5million fraud in May 2020.”

<https://www.iol.co.za/news/crime-and-courts/kzn-doctor-84-arrested-for-allegedly-issuing-fraudulent-death-certificates-for-r65m-insurance-claim-b3661d00-d734-4914-8685-e81106461ad6>

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MEDICAL AID / INSURANCE

12-Month Condition-Specific Waiting Period

Media Comment

Luckhoff, Paula. A newborn automatically gets onto your medical scheme, IF you do things right.

2023 Feb 21 Cape Talk News

“Knowler relates the tale of a Cape Town father who did make a mistake when registering his third child with Discovery Health Medical Scheme. That administrative error, along with his disclosure that the baby had slight breathing difficulties at birth, triggered an underwriting process. The result was that the Scheme imposed a 3-month general waiting period from date of acceptance and a 12-month condition-specific waiting period on respiratory conditions.”

<https://www.capetalk.co.za/articles/467491/a-newborn-automatically-gets-onto-your-medical-scheme-if-you-do-things-right>

Digital Vibes

Media Comment

Mitchley, Alex. The writing's on the wall: Signatures in the spotlight in Digital Vibes bribery trial.

2023 Feb 21 News24

<https://www.news24.com/news24/southafrica/news/the-writings-on-the-wall-signatures-in-the-spotlight-in-digital-vibes-bribery-trial-20230221>
(Subscription Needed)

Fees Payable to Brokers

Government Gazette

Medical Schemes Act 131 of 1998

Adjustment to fees payable to Brokers.
GenN1629 GG 48104 p101 24Feb2023

<https://bit.ly/3Y2vPcq>

Insurance Informers

Law Firm Article

Malherbe, Justin and Maregele, Isaac. Insurance informer: The common law on claims against public health institutions takes a step forward.

2023 Feb 20 Webber Wentzel

“In a landmark judgment, *TN obo BN v Member of the Executive Council for Health, Eastern Cape (36/2017) [2023] ZAECBHC 3*, handed down by the Eastern Cape Division of the High Court (Bhisho) on 7 February 2023, the Court developed the common law of damages relating to claims for negligence against public healthcare providers and institutions.”

<https://www.webberwentzel.com/News/Pages/insurance-informer-the-common-law-on-claims-against-public-health-institutions-takes-a-step-forward.aspx>



Medical Negligence Cases

Journal Article

Swart, Marno and Carstens, P.A. Revisiting the application of the doctrine of *res ipsa loquitur* to cases of medical negligence: Could a Belgian judgment prompt a rethink of *Goliath?* – *Amlin Insurance, KUL/V en NVSM (k B1E3), Court of Appeal, Antwerp (22 November 2021).*

2023 86(1) Tydskrif vir Hedendaagse Romeins-Hollandse Reg p124

“This case note revisits the application of the doctrine of *res ipsa loquitur* in the context of a recent judgment by the Belgian Court of Appeal in Antwerp, following a 2019 amendment to the Belgian Civil Code... After having canvassed this decision, the application of the doctrine in South African medical law is assessed with reference to the integrated approach through which the multiple layers of regulating instruments in medical law (the Constitution, legislation, common law, jurisprudence, and the rules of medical ethics) are harmonised and viewed holistically... to indicate the constitutionality and importance of this doctrine.”

National Health Insurance (NHI)

Media Comment

Brandt, Kevin. Govt intensifying efforts to implement NHI, says Ramaphosa.

2023 Feb 17 EWN

<https://ewn.co.za/2023/02/17/govt-intensifying-efforts-to-implement-nhi-says-ramaphosa>

Video

Singh, Prelisha. Seminar discussion about the National Health Insurance.

2023 Feb 24 Webber Wentzel

“On Friday, 17 February 2023, Webber Wentzel's healthcare sector, in collaboration with industry experts, hosted a robust panel discussion about the National Health Insurance.”

<https://www.webberwentzel.com/News/Pages/seminar-discussion-about-the-national-health-insurance.aspx>

South African Post Office (SAPO)

Media Comments

Maeko, Thando. SAA and SA Post Office receive combined R3.4bn bailout.

2023 Feb 22 Business Live

“State-owned airline SAA and the technically insolvent SA Post Office have been allocated a combined R3.4bn in bailouts in this year's budget while the government has prioritised stabilising Eskom and the worsening energy crisis by embarking on a R254bn debt relief programme for the embattled power utility over the next three years... “The department of communications and Digital Technologies should ensure that a clear plan is developed and implemented to address the issue of 6,000 Post Office workers who are about to lose their jobs; and that the issue of statutory payments, such as to the Unemployment Insurance Fund (UIF), medical aid schemes and pension funds, is also addressed,” the treasury says in the budget documents.”

<https://www.businesslive.co.za/bd/national/2023-02-22-saa-and-sa-post-office-receive-combined-r34bn-bailout/>

Zulu, Nompilo. DA wants Sapo's R2.4bn bailout used for benefit of staff.

2023 Feb 27 Sunday World

“The DA wants Finance Minister Enoch Godongwana to provide a detailed report explaining how the R2.4-billion financial aid allocated to SA Post Offices (Sapo) should be apportioned... She said the DA was informed recently that a probe by the Hawks is at an advanced stage. “This relates to the Sapo management taking medical aid, pension and other ‘contributions’ paid by staff and pensioners and not handing them over to the medical aid, or pension, but rather using that money elsewhere. “The consequences for staff and pensioners have been catastrophic.”

<https://sundayworld.co.za/news/politics/da-wants-sapos-r2-4bn-bailout-used-for-benefit-of-staff/>

South Korea

Media Comment



South Korean court grants legal status for same-sex couple in landmark ruling.

2023 Feb 21 Daily Maverick

“The Seoul High Court ruled on Tuesday that the state's health insurer should provide spousal coverage to a same-sex couple, in a decision that lawyers and advocates said marked the first legal recognition of same-sex union in South Korea.”

<https://www.dailymaverick.co.za/article/2023-02-21-south-korean-court-grants-legal-status-for-same-sex-couple-in-landmark-ruling/>

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PENSION LAW

Arrear Contributions / No-Payment

See also [PENSION LAW: Prescription](#)

Case – Law Reports

Gradwell v Consolidated Retirement Fund for Local Government and another [2023] 1 BPLR 5 (PFA)

Failure of employer to pay contributions to fund on behalf of complainant – Employer to pay arrear contributions plus late payment interest to fund on behalf of complainant.

Butterworths Pension Law Reports available from [LexisNexis](#).

Maritz v Consolidated Retirement Fund for Local Government and another [2023] 1 BPLR 11 (PFA)

Pension Funds Act 24 of 1956, s 30M – Failure to pay all provident fund contributions to fund on behalf of complainant – Appropriate remedy is for employer to pay arrear contributions plus late payment interest to fund on behalf of complainant.

Butterworths Pension Law Reports available from [LexisNexis](#).

Beneficiary Nominations

Case

Ndwandwe v Trustees of Transnet Retirement Fund and Others (D7381/2020; D3438/2020) [2023] ZAKZDHC 8 (22 February 2023)

Pension – Death benefit – Nomination form – Fund not following allocations of deceased – Rule 10.4(iii) of Fund Rules – Fund permitted to make any distribution to nominees or dependents that it deems equitable – Deceased effectively had two spouses – Conducting detailed investigation – Given competing financial demands of deceased's dependents, Fund's decision was one that reasonable decision-maker could have reached.

<http://www.saflii.org/za/cases/ZAKZDHC/2023/8.pdf>

Media Comment

Venter, Zelda. Trustees of retirement fund not bound by client's final wishes, court confirms.

2023 Feb 27 IOL News

“The trustees of a retirement fund are not bound by the wishes of the holder as to who should receive the money – even if the holder stipulated those wishes on the beneficiary nomination form prior to death. This was once again confirmed by the high court in Durban when the customary law wife of a deceased complained that she and her husband's common law wife each received 40% of the pension payout of the deceased.”

<https://www.iol.co.za/pretoria-news/news/trustees-of-retirement-fund-not-bound-by-clients-final-wishes-court-confirms-fa29ecf5-f749-4bdb-9b58-e838a9234d98>

Death Benefits

Case

Ndwandwe v Trustees of Transnet Retirement Fund and Others (D7381/2020; D3438/2020) [2023] ZAKZDHC 8 (22 February 2023)

Pension – Death benefit – Nomination form – Fund not following allocations of deceased – Rule 10.4(iii) of Fund Rules – Fund permitted to make any distribution to nominees or dependents that it deems equitable – Deceased effectively



had two spouses – Conducting detailed investigation – Given competing financial demands of deceased's dependents, Fund's decision was one that reasonable decision-maker could have reached.

<http://www.saflii.org/za/cases/ZAKZDHC/2023/8.pdf>

Case – Law Report

Meyer v Metal Industries Provident Fund and others [2023] 1 BPLR 13 (PFA)

Pension Funds Act 24 of 1956, s 30M, 37C – Distribution of death benefit by fund – Decision of board in relation to entire distribution of deceased's death benefit set aside – Fund ordered to conduct proper investigation and specifically investigate beneficiaries' relationship with deceased and extent of dependency on deceased.

Butterworths Pension Law Reports available from [LexisNexis](#).

Disability Benefits

Case – Law Report

Kitzler v Edupen Umbrella Pension Fund and another [2023] 1 BPLR 7 (PFA)

Pension Funds Act 24 of 1956, 30M – Non-payment of disability benefit – Appropriate remedy is for complainant to be assessed for ill-health early retirement.

Butterworths Pension Law Reports available from [LexisNexis](#).

Divorce

Case

GJV v MV (48308/2011) [2023] ZAGPPHC 78 (14 February 2023)

Divorce – Forfeiture of benefits – Living apart for 11 years – Wife having pension of R2.9 million after 41 years of employment – Husband's conduct of assaults, being absent father and financially selfish – Would be unduly benefitted if forfeiture of wife's pension benefits not ordered – Divorce Act 70 of 1979, s 9.

<http://www.saflii.org/za/cases/ZAGPPHC/2023/78.pdf>

Media Comment

Venter, Zelda. Husband who was 'absent father, financially selfish' loses out on half of wife's pension.

2023 Feb 22 IOL News

"A husband got less than he bargained for when he turned to the Gauteng High Court, Pretoria, to divorce his wife with whom he was married in community of property. The court ordered a forfeiture of the patrimonial benefits, resulting in him not receiving half of her pension benefits. Judge Brenda Neukircher found that the husband would have unduly benefitted if an order for forfeiture of his wife's pension benefits was not ordered. This was because the husband was an absent father; was financially selfish and that, on a balance of probabilities, assaulted his wife."

<https://www.iol.co.za/pretoria-news/news/husband-who-was-absent-father-financially-selfish-loses-out-on-half-of-wifes-pension-4e120fc1-9037-465c-b205-6f656652d619>

Error in Quotations

Case – Law Reports

Mcbride v Momentum Retirement Annuity Fund [2023] 1 BPLR 12 (PFA)

Pension Funds Act 24 of 1956, s 30M – Retirement annuity fund – Early termination of membership – Difference between retirement booster amount quoted and amount paid to complainant – Complaint dismissed.

Butterworths Pension Law Reports available from [LexisNexis](#).

Fraud

Media Comment

Singh, Karen. Ex-electricity department foreman at Msunduzi Municipality convicted for overtime fraud.

2023 Feb 27 IOL News



“Municipal spokesperson Ntobeko Mkhize said Wiseman Mthembu, also a foreman, was convicted and sentenced after pleading guilty to 22 counts of overtime fraud. She said Mthembu was fined R30 000 and the court ordered that R151 068.13 be deducted from his pension and be paid over to municipality.”

<https://www.iol.co.za/mercury/news/ex-electricity-department-foreman-at-msunduzi-municipality-convicted-for-overtime-fraud-600d7923-d0b9-494f-8a1b-beca23c505ed>

Ivan Pillay's Early Pension Payout

Media Comment

Thamm, Marianne. Mkhwebane called Pravin Gordhan ‘a threat to democracy’, and other bombshells at Public Protector impeachment hearing.

2023 Feb 23 Daily Maverick

“In November 2018, Public Protector Busisiwe Mkhwebane was preparing two reports: one on the so-called SARS rogue unit and another on former deputy commissioner Ivan Pillay's early pension payout. While the courts set aside both of Mkhwebane's reports, Parliament's Section 194 impeachment inquiry has heard that her office spent R15-million relentlessly and unprocedurally pursuing the Gordhan matter.”

<https://www.dailymaverick.co.za/article/2023-02-23-mkhwebane-called-pravin-gordhan-a-threat-to-democracy-and-other-bombshells-at-public-protector-impeachment-hearing/>

Life and Living Annuities

Internet Articles

Collier, Gareth. Choosing between a life and a living annuity.

2023 Feb 27 Moneyweb

“Upon retiring from your pension, provident, preservation, or retirement annuity fund, you are mostly compelled to use at least two-thirds of your investment to purchase an annuity income for your retirement years. Generally speaking, retirees are faced with the option of either a life annuity or a living annuity – two vehicles that are widely disparate in make-up, function, and purpose. In this article, we explore the differences between these two forms of annuity vehicles and their advantages and disadvantages in greater detail.”

<https://www.moneyweb.co.za/financial-advisor-views/choosing-between-a-life-and-a-living-annuity/>

Jordaan, Eric. Living annuities as an option for retirement income.

2023 Feb 23 Moneyweb

“It's important to understand how they work, their benefits, and their important role in your overall estate plan... Funds invested in a living annuity structure – being governed by the Long-Term Insurance Act – are not subject to such limitations and investors enjoy full investment flexibility with the option to invest 100% offshore (assuming the chosen investment platform has sufficient capacity for this), although keep in mind that this will need to be done using a rand-denominated offshore feeder fund as living annuity investors cannot invest directly offshore using foreign-domiciled funds.”

<https://www.moneyweb.co.za/financial-advisor-views/living-annuities-as-an-option-for-retirement-income/>

Q's & A's

Collier, Gareth. Can I use tracker funds as part of a living annuity portfolio?

2023 Feb 22 Moneyweb

“Can one use tracker funds or an exchange-traded fund (ETF) as part of, or a complete 100%, of a living annuity portfolio? For example, the S&P 500, the MSCI World Index, or the Nasdaq 100. How do I go about that exactly? Am I forced to work with a defined, structured living annuity product from specific service providers such as 10X or Sygnia? Or can I go to any service provider of my choice and tailor-make a specific living annuity with them?”

“As living annuities do not fall under the Pension Funds Act and are not restricted by the provisions of Regulation 28 thereof, there are no restrictions on how you can allocate the funds within your living annuity. That said, only registered and duly licensed financial services providers (FSPs) may offer living annuities, so be sure to check the FSP number.”

<https://www.moneyweb.co.za/qa/advisor-questions/can-i-use-tracker-funds-as-part-of-a-living-annuity-portfolio-2/>

Prescription



Law Firm Article

Yuda, Amina. The tussle between non-payment of contributions and the application of prescription [[Private Security Sector Provident Fund v Isidingo Security Services \(t/a Unitrade \(Pty\) Ltd\) \(3048/2021P\) \[2022\] ZAKZPHC 67 \(14 June 2022\)](#)].

2023 Feb 21 Norton Rose Fulbright: Financial Institutions Legal Snapshot

“In 2022, in a decision handed down by the KwaZulu Natal High Court... it was made clear that the failure by a pension fund to timeously collect arrear pension contributions from recalcitrant employers, will result in the fund not having a claim against the employer where the defence of prescription is raised by such employer. The case and its consequences have caused a debate in the retirement fund industry as to whether prescription should apply to arrear contributions in light of the onus placed on employers to ensure that contributions are paid to a pension fund; whichever fence you may sit on, the law remains clear on its stance: prescription applies.”

<https://www.financialinstitutionslegalsnapshot.com/2023/02/the-tussle-between-non-payment-of-contributions-and-the-application-of-prescription/>

Reconsideration of PFA Decisions

Financial Services Tribunal Rulings

Shaw in re Estate Late Glenn Darry Shaw v Lifestyle Retirement Annuity Fund; Liberty Group Limited; Pension Fund Adjudicator. (Case no. PFA86/2020) (23 February 2023)

Complaint in terms of sec 30A of Pension Funds Act 24 of 1956 – PFA dismissed complaint and applied for reconsideration in terms of sec 210 (1) of Financial Sector Regulation Act 9 of 2017 – Complainant passed away before hearing and his son proceeded to deal with as executor of estate – Complainant misconstrued functions and duties of PFA – Application dismissed.

[https://www.fsca.co.za/Enforcement-Matters/Publications and Documents/Decision - BP Shaw \(Executor E-LGD Shaw\) v PFA & Others.pdf](https://www.fsca.co.za/Enforcement-Matters/Publications%20and%20Documents/Decision%20-%20BP%20Shaw%20(Executor%20E-LGD%20Shaw)%20v%20PFA%20&%20Others.pdf)

Stemela v Old Mutual Life Assurance Company (Pty) Ltd; South African Retirement Annuity Fund; The Pension Funds Adjudicator (Case no. PFA63/2022) (24 February 2023)

Reconsideration of decision of Pension Funds Adjudicator (30M) in terms of section 230 of Financial Sector Regulation Act 9 of 2016 – Handling of funds after maturity of policy and investment in Max Income Annuity – Application dismissed.

[Decision - Hamilton Sango Stemela v PFA & Others.pdf](#)

Reform

Blog Posts

Acton, Michelle. Retirement reform gets a boost from Godongwana.

2023 Feb 27 Today's Trustee

“[W]hile implementation challenges do remain, the country's retirement industry is undoubtedly stronger today than in the past. And it will be even stronger for future generations if we can lock down the reforms announced in Godongwana's Budget speech.”

<https://www.totrust.co.za/retirement-reform-gets-a-boost-from-godongwana/>

Donaldson, Andrew. The 2023 Budget: More of a holding operation than anything.

2023 Feb 27 Today's Trustee

“With real economic growth projected to average just 1.4% over the next three years, finance minister Enoch Godongwana had little room for manoeuvre. “Consolidation” has been the central theme of fiscal policy at least since 2018. This budget again signals expenditure reductions in real terms, and below-inflation adjustments to public service remuneration.”

<https://www.totrust.co.za/the-2023-budget-more-of-a-holding-operating-than-anything/>

South African Post Office

Media Comment

Zulu, Nompilo. DA wants Sapo's R2.4bn bailout used for benefit of staff.

2023 Feb 27 Sunday World



“The DA wants Finance Minister Enoch Godongwana to provide a detailed report explaining how the R2.4-billion financial aid allocated to SA Post Offices (Sapo) should be apportioned...She said the DA was informed recently that a probe by the Hawks is at an advanced stage. “This relates to the Sapo management taking medical aid, pension and other ‘contributions’ paid by staff and pensioners and not handing them over to the medical aid, or pension, but rather using that money elsewhere. “The consequences for staff and pensioners have been catastrophic.”

<https://sundayworld.co.za/news/politics/da-wants-sapos-r2-4bn-bailout-used-for-benefit-of-staff/>

Taxation

Media Comment

Government ties up tax loophole in South Africa.

2023 Feb 24 Business Tech

“The government, however, did not consider the effect these changes would have on contributions made to retirement funds or tax-free investments in South Africa, Leap Group said. “Due to the two years of assessments, a taxpayer who ceases to be a resident can contribute up to R72,000 towards a tax-free investment and deduct up to R700,000 pension funds contributions made over the 12-month period of the tax year they cease to be a resident.” “However, this is if the provisions of the Income Tax Act are theoretically strictly applied, and not necessarily the case practically – because at the end of the day, only one return is submitted, and one assessment is raised.”

<https://businesstech.co.za/news/business-opinion/667655/government-ties-up-tax-loophole-in-south-africa/>

Trustees

Magazine Article

Stokes, Gareth. Trustees ready: Backing projects that meet fund members’ risk-return needs.

2023 Feb FAnews p74

“Retirement fund members enter 2023 free from the threat of government ‘grabbing’ their retirement fund assets to invest in infrastructure projects. It took until the middle of last year for National Treasury to drop its prescribed assets solution to the state’s balance sheet shortcomings, in favour of a sensible cap on retirement funds’ total exposure to infrastructure assets.”

https://www.fanews.co.za/publication/pdf_287_fanewsfebruary_2023

Media Comment

Venter, Zelda. Trustees of retirement fund not bound by client’s final wishes, court confirms.

2023 Feb 27 IOL News

“The trustees of a retirement fund are not bound by the wishes of the holder as to who should receive the money – even if the holder stipulated those wishes on the beneficiary nomination form prior to death. This was once again confirmed by the high court in Durban when the customary law wife of a deceased complained that she and her husband’s common law wife each received 40% of the pension payout of the deceased.”

<https://www.iol.co.za/pretoria-news/news/trustees-of-retirement-fund-not-bound-by-clients-final-wishes-court-confirms-fa29ecf5-f749-4bdb-9b58-e838a9234d98>

Two-Pot System

Blog Post

Carter, Richard. Unanswered questions remain over two-pot system.

2023 Feb 27 Today’s Trustee

“During February’s Budget speech, finance minister Enoch Godongwana confirmed that the two-pot retirement system would be launched on March 1st, 2024. But with just 12 months to go, it is important to understand the regulatory aspects of how this will happen, and the potential challenges.”

<https://www.totrust.co.za/unanswered-questions-remain-over-two-pot-system/>

Law Firm Article

National Budget Speech, 2023 – Proposed changes to retirement funds.

2023 Feb 22 Bowmans



“Changes to retirement funds relate mainly to the new two-pot retirement system, but changes are also proposed regarding two retirement tax issued and in respect of the regulation of retirement funds.”

<https://bowmanslaw.com/insights/tax/south-africa-national-budget-speech-proposed-changes-to-retirement-funds/>

Media Comments

Budget 2023 review: A balancing act with red flags in each hand.

2023 Feb 23 Business Tech

“The finance minister has increased the tax-free lump sum that retirees can claim to R550,000 – putting more money in the pockets of cash-strapped consumers. Mike Teuchert, the head of taxation services at Mazar tax experts, said that retirees will now enjoy moderately higher withdrawal benefits with the inflationary adjustments. Some commentators, however, would have liked to see a bigger increase.”

<https://businesstech.co.za/news/budget-speech/667311/budget-2023-review-a-balancing-act-with-red-flags-in-each-hand/>

Moodley, Neesa. Retirees on hold after Budget 2023 delays the ‘two-pot’ retirement system.

2023 Feb 22 Daily Maverick

“In a country where many face increased financial instability in retirement due to a lack of savings, government’s proposed ‘two-pot retirement system’ remains earmarked for implementation from 1 March 2024.”

<https://www.dailymaverick.co.za/article/2023-02-22-retirees-on-hold-after-budget-2023-delays-the-two-pot-retirement-system/>

Withdrawal Benefits

Case – Law Reports

Jonck v Retail and Allied Employees Provident Fund and another [2023] 1 BPLR 6 (PFA)

Pension Funds Act 24 of 1956, s 37D(1)(b)(ii) – Withholding of complainant’s withdrawal benefit – Board acted in breach of fiduciary duties – Failed to comply with basic procedural requirements before deciding to withhold complainant’s benefit – Employer can pursue proceedings against complainant to exclusion of fund.

Butterworths Pension Law Reports available from [LexisNexis](#).

Kutting SA (Pty) Ltd v Old Mutual Superfund Provident Fund and another [2023] 1 BPLR 8 (PFA)

Pension Funds Act 24 of 1956, ss 30M, 37D(1)(b)(ii) – Request by complainant to fund to withhold former employee’s withdrawal benefit – Continued withholding of amount claimed by complainant lawful as Mr Mabunda signed acknowledgement of liability for said amount – Fund to deduct amount claimed by complainant from Mr Mabunda’s fund credit and then pay it over to complainant – Fund should then pay complainant balance of his fund credit.

Butterworths Pension Law Reports available from [LexisNexis](#).

Leamy v Eskom Pension and Provident Fund [2023] 1 BPLR 9 (PFA)

Pension Funds Act 24 of 1956, s 30M – Fund’s refusal to pay complainant cash lumpsum withdrawal benefit – Rules of fund approved by FSCA and binding on fund – Complaint dismissed.

Butterworths Pension Law Reports available from [LexisNexis](#).

Maharaj v Corporate Selection Umbrella Retirement Fund No: 2 and others [2023] 1 BPLR 10 (PFA)

Pension Funds Act 24 of 1956, s 30M – Failure of board of fund to discharge fiduciary duties pursuant to exercise of discretion to withhold complainant’s withdrawal benefit – Adjudicator is of view that continued withholding of withdrawal benefit is unjust and prejudicial – Relief sought by complaint granted.

Butterworths Pension Law Reports available from [LexisNexis](#).

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PERSONAL INJURY

Media Comment

Daniels, Nicola. Shoprite Checkers loses appeal over injury claim.

2023 Feb 21 IOL News

“Shoprite Checkers has lost its bid in the Supreme Court of Appeal (SCA) to challenge the amount of time that had lapsed concerning a former employee’s right to sue for damages suffered when she was flung from a forklift while packing goods on shelves. The appeal revolved around the proper interpretation of the various sections of the Prescription Act. Prescription relates to the period after which a debt can be extinguished or written off.



<https://www.iol.co.za/capetimes/news/shoprite-checkers-loses-appeal-over-injury-claim-2bde3b9e-25be-4af6-b3bc-1332009bfbf0>

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PRESCRIPTION

Case – Law Reports

Zurich Insurance Company South Africa Ltd v Gauteng Provincial Government [2023] 1 All SA 368 (SCA)

Insurance contract – Damage to rock mass when tunnels for Gautrain Rapid Rail System constructed – Whether insured's claim had prescribed – Whether rock mass surrounding tunnel void part of property insured – Whether order declaring insured's right to indemnification, and to be paid such amounts as are later proved, an effective order.

Judgment: <http://www.saflii.org/za/cases/ZASCA/2022/127.pdf>. All South African Law Reports available from [LexisNexis](#).

Law Firm Article

Yuda, Amina. The tussle between non-payment of contributions and the application of prescription [*Private Security Sector Provident Fund v Isidingo Security Services (t/a Unitrade (Pty) Ltd*) (3048/2021P) [2022] ZAKZPHC 67 (14 June 2022)].

2023 Feb 21 Norton Rose Fulbright: Financial Institutions Legal Snapshot

“In 2022, in a decision handed down by the KwaZulu Natal High Court... it was made clear that the failure by a pension fund to timeously collect arrear pension contributions from recalcitrant employers, will result in the fund not having a claim against the employer where the defence of prescription is raised by such employer. The case and its consequences have caused a debate in the retirement fund industry as to whether prescription should apply to arrear contributions in light of the onus placed on employers to ensure that contributions are paid to a pension fund; whichever fence you may sit on, the law remains clear on its stance: prescription applies.”

<https://www.financialinstitutionslegalsnapshot.com/2023/02/the-tussle-between-non-payment-of-contributions-and-the-application-of-prescription/>

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ROAD ACCIDENT FUND

Cases

Alexander v Road Accident Fund and Three Other Related Matters (2021/53043; 2021/26274; 2020/15348; 2022/5105) [2023] ZAGPJHC 112 (11 February 2023)

Motor vehicle accident – Compensation – Application for interim payment under Uniform Rules of Court, Rule 34A for medical costs already incurred – Written admission of liability for damages in Rule 34A(4)(a) – Written admission that accident caused by sole or contributory negligence of insured driver insufficient to satisfy court that Fund has admitted liability – Terminology: Potential confusion arising from statement that defendant has conceded ‘the merits’ (which may only dispose of issue of fault), as opposed to concession of ‘liability’ (which disposes of all issues other than quantum of damages) – Road Accident Fund Act, 56 of 1996, s 17(6).

<http://www.saflii.org/za/cases/ZAGPJHC/2023/112.pdf>

Cawood NO obo Nell v Road Accident Fund (65104/2020) [2023] ZAGPPHC 68 (10 February 2023)

Motor collision – Self-employed gardener, painter and repairman – General damages well supported by medical evidence – Not proving that self-employed – No proof of income, bank statement, qualification towards profession, tax documents or invoices – Failing to show loss of earnings.

<http://www.saflii.org/za/cases/ZAGPPHC/2023/68.pdf>

Mbethe v Road Accident Fund (856/2020) [2023] ZAMPBHC 5 (26 January 2023)

Motor collision – Road Accident Fund – Contingency fees – Settlement agreements to be made orders of court – Affidavits to be submitted to court – Requirements – Templates with variables inserted insufficient – Affidavits to deal with all requirements so that court in its oversight function can consider probity of settlement agreements –

Contingency Fees Act 66 of 1997, s 4(1)(a)–(e).

<http://www.saflii.org/za/cases/ZAMPBHC/2023/5.pdf>

Media Comment

Sidimba, Loyiso. EFF leader demoted over theft charges.



2023 Feb 27 IOL News

“The EFF in the North West has axed its former chairperson Betty Diale after she was charged with stealing R700 000 from Road Accident Fund (RAF) beneficiaries while still a practising attorney. In a letter to the provincial legislature dated February 1, EFF secretary-general Marshall Dlamini said Diale would be replaced by the party’s deputy provincial chairperson Primrose Bogatsu.”

<https://www.iol.co.za/sundayindependent/news/eff-leader-demoted-over-theft-charges-d3433654-9ad8-45af-995d-3822aad68faf>

Speech

National Treasury. Minister Enoch Godongwana: 2023 Budget Speech: Road Accident Fund. 22 February 2023.

“In addition to the tax measures I have announced to promote investments in renewable energy, the general fuel levy and the Road Accident Fund levy will not be increased this year. To ease the impact of the electricity crisis on food prices, the refund on the Road Accident Fund levy for diesel used in the manufacturing process, such as for generators, will be extended to manufacturers of foodstuffs. This takes effect from 1 April 2023 for two years...”

<https://www.gov.za/speeches/minister-enoch-godongwana-2023-budget-speech-22-feb-2023-0000>

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SHORT-TERM INSURANCE

FSCA Information Request

FSCA Information Request 1 of 2023 (INS). Financial Sector Regulation Act 9 of 2017. Request for information on personal lines claims reported in the 2022 calendar year. 24 February 2023.

“The Financial Sector Conduct Authority (“FSCA”), under Section 131 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (“FSRA”), requests all licensed non-life insurers that are members of The Ombudsman for Short-term Insurance (“OSTI”) (“relevant non-life insurers”) to furnish information to the FSCA on the number of personal lines claims reported in the 2022 calendar year via the FSCA’s “Conduct of Business Upload facility”.”

[https://www.fsca.co.za/Notices/FSCA Information Request 1 of 2023 \(INS\).pdf](https://www.fsca.co.za/Notices/FSCA%20Information%20Request%201%20of%202023%20(INS).pdf)

Government Gazette

Short-Term Insurance Act 53 of 1998

Penalty for failure to furnish authority with returns etc.

GN3079 GG 48104 p20 24Feb2023

<https://bit.ly/3Y2vPcq>

Internet Article

Knowler, Wendy. How to spot that scammer pretending to be calling from your bank.

2023 Feb 25 Dispatch Live

“Take no chances with your alternative power service provider...A number of insurance companies have been urging consumers to check that alternative power source companies — and the products they supply — are legitimate before transacting, to avoid disaster. If a homeowner does suffer any losses relating to the malfunctioning of such products a claim will only succeed if the installation was done by an accredited service provider, King Price Insurance warns. And if you don’t have a certificate of compliance for your solar installation, for example, you’re on your own.”

<https://www.dispatchlive.co.za/news/2023-02-25-how-to-spot-that-scammer-pretending-to-be-calling-from-your-bank/>

Law Firm Articles

Maphumulo, Mtho. Insurance law amid ongoing flooding.

2023 Feb 22 Adams & Adams

“The ongoing flooding has caused serious damage to people’s properties, cars, house contents, etc. It has also resulted in business interruption, loss of income, potential loss of jobs and employment, serious bodily injuries, and death. This demonstrates the far-reaching consequences of flooding. All these possibilities are risks that can be and usually are insured against.”

<https://www.adams.africa/commercial-litigation/business-insurance-repudiation-insurance-law/insurance-law-amid-ongoing-flooding/>



Rudd, Jean-Paul. Policyholders who fail to perform regular maintenance risk their insurance claims being rejected.

2023 Feb 23 Adams & Adams

“A policyholder’s failure to maintain an insured object may result in any claim for damage stemming therefrom being rejected by their insurer. Policyholders should therefore understand their duty of maintenance and take appropriate steps to comply with it.”

<https://www.adams.africa/commercial-litigation/business-insurance-repudiation-insurance-law/policyholders-who-fail-to-perform-regular-maintenance-risk-their-insurance-claims-being-rejected-author-jp-rudd/>

Magazine Articles

Nkhuna, Peter. A complicated claim.

2023 Feb FAnews p54

“In a matter recently reported to the Ombudsman for Short-Term Insurance (OSTI), the insured claimed for indemnification in terms of a Goods in Transit policy. It was facing a liability claim from its liquor producer and distributor client, to whom it was contracted to provide exclusive cartage services. The claim related to an alleged hijacking incident, in which a consignment of alcohol was stolen. When investigating the matter, the insured’s client required the insured owner operator and its employees to undergo polygraph tests, which they all failed.”

https://www.fanews.co.za/publication/pdf_287_fanewsfebruary_2023

Nondwana, Ayanda and Dukada, Sive. Non-compliance may invalidate an indemnity backed by an insurance guarantee.

2023 Feb FAnews p62

“In the *Constantia Insurance Company Ltd v the Master of the High Court, Johannesburg and Others [2022] ZASCA 179 (13 December 2022)* case, the court found that failure to comply with the procedural requirements of the Companies Act may render the indemnity invalid and therefore, unenforceable by the insurer against the indemnitor.”

https://www.fanews.co.za/publication/pdf_287_fanewsfebruary_2023

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SOCIAL GRANTS

Media Comments

Damons, Marecia. Budget: social grants go up, but not as much as inflation.

2023 Feb 22 GroundUp

“Finance Minister Enoch Godongwana has announced increases to social grants which are lower than inflation. The Social Relief of Distress (SRD) grant is extended until 31 March 2024. The budget is down by R8-billion from the previous budget of R44-billion. Godongwana also allocated R2.4-billion to the South African Post Office to boost sustainability.”

<https://www.groundup.org.za/article/covid-grant-budget-slashed-by-r8-billion/>

McCain, Nicole. Former Sassa officials jailed for disability grant fraud.

2023 Feb 23 News24

“The Giyani Specialised Commercial Crimes Court in Limpopo sentenced two former South African Social Security Agency (Sassa) officials on Tuesday to an effective five years in prison for disability grant fraud. Solani Agnes Baloyi, 56, and Jacob Manamela, 64, committed the fraud in January 2015 while working at the Sassa office in Tzaneen. The matter was reported to the Hawks after Sassa officials were alerted to the fraud.”

<https://www.news24.com/news24/southafrica/news/former-sassa-officials-jailed-for-disability-grant-fraud-20230223>

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TAXATION

Media Comment

Government ties up tax loophole in South Africa.

2023 Feb 24 Business Tech

“The government, however, did not consider the effect these changes would have on contributions made to retirement funds or tax-free investments in South Africa, Leap Group said. “Due to the two years of assessments, a taxpayer who



ceases to be a resident can contribute up to R72,000 towards a tax-free investment and deduct up to R700,000 pension funds contributions made over the 12-month period of the tax year they cease to be a resident.” “However, this is if the provisions of the Income Tax Act are theoretically strictly applied, and not necessarily the case practically – because at the end of the day, only one return is submitted, and one assessment is raised.”

<https://businesstech.co.za/news/business-opinion/667655/government-ties-up-tax-loophole-in-south-africa/>

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UNEMPLOYMENT INSURANCE

Media Comments

Maeko, Thando. SAA and SA Post Office receive combined R3.4bn bailout.

2023 Feb 22 Business Live

“State-owned airline SAA and the technically insolvent SA Post Office have been allocated a combined R3.4bn in bailouts in this year’s budget while the government has prioritised stabilising Eskom and the worsening energy crisis by embarking on a R254bn debt relief programme for the embattled power utility over the next three years... “The department of communications and Digital Technologies should ensure that a clear plan is developed and implemented to address the issue of 6,000 Post Office workers who are about to lose their jobs; and that the issue of statutory payments, such as to the Unemployment Insurance Fund (UIF), medical aid schemes and pension funds, is also addressed,” the treasury says in the budget documents.”

<https://www.businesslive.co.za/bd/national/2023-02-22-saa-and-sa-post-office-receive-combined-r34bn-bailout/>

Mahamba, Chulumanco. Businessman sentenced to 10 years imprisonment for UIF-TERS fraud after applying for over 500 ghost employees.

2023 Feb 26 IOL News

“A businessman, Treasure Moremi, 35, was sentenced to 10 years direct imprisonment on Friday for unemployment insurance fund fraud, also known as Covid-19 Temporary Relief Scheme fund fraud. The Hawks said a serious corruption investigation revealed that from April to June 2020, a company known as Denmag Trading, belonging to Moremi, applied for relief funds for its employees.”

<https://www.iol.co.za/the-star/news/businessman-sentenced-to-10-years-imprisonment-for-uif-TERS-fraud-after-applying-for-over-500-ghost-employees-61d84d9a-b98e-4818-be41-237a69773b47>

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Draft and Parliamentary Bills

**A list of draft and Parliamentary
Bills gazetted/tabled during 2023
as well as Bills approved by
Cabinet.**

View [here](#).



Events Calendar for 2023

View [here](#).



Summaries of Constitutional Court and Supreme Court of Appeal Judgments: 2022

View [here](#).

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