



The Guardrisk Update

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Incorporating AidsGuard Update

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THE Prevention and Combating of Corrupt Activities Act could spell the end of many traditional practices including wining and dining in return for business (*Business Times, 17 Oct*). Any gift, described in the law as a “gratification”, no matter how small, would be illegal if it amounted to an “unauthorized or improper inducement to do or not to do anything”.

THE Ethics Institute of SA is to develop a rating instrument to measure the ethical standards of companies (*Business Report, 4 Nov*). A firm's capacity to manage risk and promote moral conduct will be assessed.

IN a controversial ruling, a judge has held that a large corporation may not unilaterally withdraw subsidized medical aid contributions to a number of former employees (*The Star, 28 Oct*). The fact that membership of the company's medical scheme was compulsory and subsidized made the in-service subsidiary, as well as the entitlement to post retirement subsidies, conditions of service.

AUDITORS would have to be more sceptical, questioning and investigative when examining financial statements after a fraud standard comes into operation on 15 December (*Business Report, 18 Nov*). The additional procedures to audit financial statements were designed to improve the identification of fraud and the risk of material misstatement due to fraud.

THE latest analysis indicates that 5%–10% of all short-term insurance claims are fraudulent (*Business Times, 7 Nov*). Fraudulent claims were previously estimated at 15%–35%. The industry has been clamping down on fraud by the sharing of information, a fraud hotline and close collaboration between insurers and law enforcement agencies.

Employers could be liable for employees' drunken driving

Increasingly, employers are finding themselves vulnerable to previously unthinkable lawsuits arising from harm befalling employees. One situation – particularly relevant at this time of year and rife with such possibility – is the annual staff party.

A couple of landmark rulings in recent years indicate that employers may well find themselves liable for costs arising out of a drunken driving accident involving an employee if the company has supplied the alcohol.

In the 1996 case of *Jacobsen v. Nike Canada*, the British Columbia Supreme Court held Nike 75% liable when one of its employees, having drunk beer supplied by Nike suffered injuries in an accident attributed to impaired driving. The ruling cost the company more than \$2 million.

A project manager had supplied a group of employees who were setting up a trade display for Nike with a large quantity of beer during working hours. After they finished working the employees stopped briefly at a pub where they continued drinking. Later one employee drove his car into a ditch; the accident left him a quadriplegic.

The court ruled that unless an employer takes reasonable steps to prevent the foreseeable harm that could occur when alcohol is provided, the employer is exposed to liability.

The court, however, did point out that, had Nike provided transportation or taxi vouchers to employees for their trip home, or arranged discount accommodations after a company-sponsored party, it could have satisfied its legal responsibility and may not have been liable.

In 2002 Linda Hunt, a Canadian receptionist, sued her employer after sustaining permanent physical and brain injuries in a motor accident following a Christmas party for clients. Hunt was required to attend the function as part of her employment. After the party she joined other guests at a pub where she continued drinking. Later, while driving home in a snowstorm, she lost control of her vehicle and was hit by an oncoming vehicle.



Hunt claimed that her employer ought to have intervened to prevent her from driving home intoxicated. She was awarded damages of \$300 000 when the judge ruled that her employer was partly responsible for the accident by offering an open bar at the party, which “led her into the danger in question.”

While it is not clear exactly what would definitively be considered adequate intervention by an employer to stop employees driving drunk (Hunt's employer had made a general offer of a cab to employees, and offered to call her husband to come and drive her home); prudent employers should take proactive, tangible precautions to ensure the safety of employees who have consumed alcohol at work-related social events, and by so doing, limit their own liability.

Risk Barometer

DEMAND for reinsurance is likely to increase as a result of this year's storm losses as even cedants unaffected by the hurricanes look to review exposures (*Insurance Day, 11 Nov*). And attachment points of reinsurance contracts are likely to be the focus of particular attention, as a result of the relatively low level but repeat nature of the 2004 hurricane losses.

THE UK government is waging war on those nurturing the compensation culture in the UK (*Insurance Day, 12 Nov*). "The UK needs to stop fearing the likelihood of being sued" and the government is clamping down on the excesses of the claims management firms, which it believes are actively encouraging the public to sue amid promises of big payouts for accidents that may have happened up to three years ago.

MAJOR financial institutions, although aware of the risk of cyber-crime, are failing to protect themselves adequately against the potential exposures to their business (*Insurance Day, 21 Oct*). Big business is still not taking adequate cover for their potential exposures despite specialist policies being available.

THE risk-linked securities market continues to grow gradually, driven by issuers seeking strengthened reinsurance capacity and by investors increasingly viewing catastrophe bonds as an attractive risk (*Business Insurance, 15 Nov*).

THE UK should brace itself for a huge leap in the level of asbestos claims and compensation demands as the issue continues to haunt the industry for decades to come (*Insurance Day, 3 Nov*). It is estimated that the total future UK cost of asbestos-related diseases will be £8bn-£20bn, with the UK insurance industry expected to face half this cost.

RISK managers negotiating lower rates and better terms for their corporate D&O programmes certainly will benefit the organization but risk managers who have not also recently reviewed and updated their organizations' indemnification provisions may be leaving either executives under protected or their organizations overexposed (*Business Insurance, 1 Nov*).

AidsGuard Update

Aids Barometer

THE International Federation of Red Cross and Red Crescent Societies has challenged the business community to do more to combat HIV/Aids, warning that they are losing clients and qualified workers because of the pandemic (*Business Day, 29 Oct*). "If they do not invest in HIV/Aids prevention, care and support then they are investing in their downfall."

AFRICA must brace itself for an Aids time bomb as 8000 people are infected with HIV a day in the region says the United Nations (*Business Day, 15 Oct*). 70% of the 45-million people worldwide infected with HIV live in sub Saharan Africa even though the region is home to only 11% of the world's population.

A prominent local medical journal has further lifted the lid on the HIV crisis in the healthcare sector, warning that the pandemic's prevalence among health workers in SA is "very high" (*Business Day, 13 Oct*). Of a sample of 721 health workers and an 82,5% response rate or 595 respondents, the study found an estimated 15,7% of health workers in public and private health facilities in the four provinces had HIV/Aids in 2002. Among younger health workers, the risk was even higher. The group, aged between 18 and 35, had an estimated HIV prevalence rate of 20%. About 20,3% of non-professionals were infected with HIV, while 13,7% of professionals were HIV-positive.

THE number of South African children who lost one or both parents to Aids rose 80% in the past three years, to 1,1-million, says the United Nations (*Business Day, 4 Oct*). Health workers are seeing more and more women who are falling pregnant knowing that they are infected with the disease.

FROM January 1, life insurers will not refuse cover to people with HIV/Aids (*The Star, 23 Nov*). The LOA says that while some of its members have already announced that they would remove all HIV/Aids exclusion clauses for new and some existing business, this is now mandatory for all members of the association. The LOA has resolved to amend the HIV testing protocol, to disallow the use of exclusion clauses for new business. This applies to all types of business, including group life. "This is a significant step for the industry. This will mean that HIV is treated no differently from any other medical condition."



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