

**"FAIR" MATHEMATICS IN ASSESSING DELICTUAL DAMAGES****L Steynberg\*****SUMMARY**

In assessing delictual damages the plaintiff is burdened with the duty to prove loss with a preponderance of probability, including uncertain future loss. In quantifying such a claim an actuary is often used to make actuarial calculations based on proven facts and realistic assumptions regarding the future. The role of the actuary is to guide the court in the calculations to be made. Relying on its wide judicial discretion the court will have the final say regarding the correctness of the assumptions on which these calculations are based. The court should give detailed reasons if any assumptions or parts of the calculations made by the actuary are rejected. It should preferably refrain from making its own calculations if an actuary is involved and should rather instruct the actuary to do recalculations if necessary. It does, however, fall within the wide discretion of the court to make a general contingency adjustment after the basic calculations have been accepted. In assessing delictual damages it is the duty of the court to ensure that both objective and subjective factors are considered in such a manner that the assessment may be regarded as an application of "fair" mathematics.

**KEYWORDS**

Delictual damages; actuary; expert witness; evidence; burden of proof; judicial discretion; contingencies; probability

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