

**NUMBER : BC 04/2011                      DATE: 25 FEBRUARY 2011**

**START DATE : IMMEDIATELY**

**SUBJECT : MOTOR VEHICLE PASSENGER LIABILITY COVER**

**ORIGIN : COMMERCIAL UNDERWRITING**

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## **PARTICULARS**

Insurers and brokers alike have been awaiting the final judgement by the Constitutional Court following the constitutional challenge by the Law Society and various others of the Road Accident Fund Amendment Act (the Act was implemented with effect from 1 August 2008; see our Broker Communication 16/2008 of 7 November 2008 for details of all the changes).

The Constitutional Court judgement was finally delivered on 25 November 2010, and declared the regulations of the RAF Amendment Act as constitutional, bar the payment of medical expenses where the Minister of Transport had wanted to restrict payment to amounts equivalent to those payable by Public Health Authorities. The Constitutional Court declared this unconstitutional and invalid and victims are therefore allowed access to healthcare costs even if these are for private healthcare services.

What does this mean to our mutual clients?

We believe that there will be limited need for Passenger Liability cover for instances where:

1. The RAF has no funds to meet its obligations (unable to pay claims for compensation);
2. A third party has a valid claim for emotional shock (sustained by that party when that person witnessed or observed or was informed of the bodily injury or death of another person as a result of driving a motor vehicle);
3. Our Insured travels outside the borders of the Republic of South Africa (the RAF only covers motor vehicles travelling within the borders of the RSA).

In our previous Broker Communication (referred to above), we advised our brokers that the concerns and/or uncertainties raised by the then pending legal challenge merited the retention of passenger liability cover by policyholders until a final judgement concerning the

constitutionality of the Amendment to the RAF Act was delivered. It is safe to say that the abovementioned judgement means that this issue has finally been laid to rest.

Beyond the scope referred to in (1), (2) and (3) above, the cover may seldom be beneficial to a policyholder. We believe it is prudent for brokers and policyholders (including potential policyholders) to consider whether they require the cover given the limited benefits. It also follows that the underwriter should review the costs of such risk. Santam Commercial is reviewing the rating and criteria for this type of risk to ensure that the terms of cover are commensurate with the now limited risk. It is recommended that policyholders be advised accordingly and should they wish to delete the cover from their policies, or reduce policy liability limits, appropriate instruction be given to underwriters. **Bear in mind that the Third Party Liability extension of most Motor policies automatically includes this cover and it would therefore be unnecessary to request amendments to such cover. We are more concerned with vehicles insured under our Commercial policies, where additional premium was charged specifically for the Passenger Liability extension, or where higher limits for Passenger Liability were sought in excess of the standard R 2.5 million limit provided as part of the Motor cover.**

The inability to sue the driver, and the limitation of loss of income (currently limited to R182 047) payable by the RAF to the injured party (or his/her dependants), has created a gap in compensation for our clients. Santam is able to offer the following products to fill this gap:

1) Personal lines policies:

Option 1: The Santam Personal policy makes the Personal Accident section available where cover for Death and Permanent Disablement can be purchased with limits of up to R1 million.

Option 2: Santam launched a new stand-alone Personal Accident product in October 2009. Death and Permanent Disablement limits of up to R5 million can be purchased to make up the shortfall in payments from the Road Accident Fund. Two options are available namely Comprehensive Accident or Road Accident cover only. Cover is also available for individuals or families. Please contact your Personal Lines Call Centre or your Relationship Manager.

2) Commercial policies:

Employers who wish to cover their staff for accidents that occur while they travel by road are able to purchase standard Group Personal Accident (GPA) or Stated

Benefits cover. We now also offer reduced cover restricted to road accidents only. The clause to be used for this is Clause 1626 that reads as follows:

*The Bodily Injury as stated in the Defined Events of this section of the policy is limited to an injury arising from an event involving a Motor Vehicle whether such person was a driver of or passenger in such a motor vehicle, or a pedestrian.*

*For the purposes of this clause, Motor Vehicle shall mean any vehicle designed or adapted for propulsion or haulage on a road by means of fuel, gas or electricity, including a trailer, a caravan, an agricultural or any other implement designed or adapted to be drawn by such motor vehicle*

A discount of up to 50% is available on our standard GPA or Stated Benefits premium if the Insured chooses to restrict cover with this clause. Kindly note however that with existing policies that already enjoy a discount of more than 50% on our technical rates we will not be able to provide a further discount. Please feel free to talk to your Commercial Contact Centre or Relationship Manager about this clause.

Our further communication will follow shortly.

Any queries regarding this circular can be referred to your relationship manager or Commercial Contact Centre.