# South Africa:
# Insurance Industry Update
June 2021

## Introduction

The second quarter of 2021 has been a mixed bag of surprises. From higher gross domestic product (GDP) growth to a third wave of COVID-19 looming. Once again, some court rulings and regulatory updates made it into our Update, along with other topical issues which we found worth mentioning.

In this edition, we discuss these issues, while highlighting the continued presence of grey swan risks such as cyber and climate change, among others.

**IN THIS UPDATE:**



## Climate change: The insurance industry and the South African environment

Climate risk has become a reality and will impact us, but along with the risks there are opportunities.

A recent study has predicted that by 2050 a large portion of the global population could be displaced, major cities become uninhabitable and food production drop. Given the current trends in global temperature, this scenario seems very likely if we do not act now.

The insurance industry is one of the industries directly and immediately impacted by climate change. The various areas affected are claims frequency and severity, regulation and legislation, reputation and reinsurance.

Global regulatory impacts are beginning. In Europe, regulators have begun supervising climate change risk scenarios in the ORSA process.

South African insurers have also seen an increase in claims because of extreme weather events.

While there is not yet regulatory guidance from the Prudential Authority (PA), many South African insurers have recognised the recommendation and guidance published by the Task Force on Climate-related Financial Disclosures (TCFD). This guidance has set a global voluntary framework for the identification, assessment, management and disclosure of climate-related risks.

The Milliman white paper "Climate change: The Insurance industry and the South African environment" discusses the impact of climate change in the South African environment and how Milliman can assist in managing the related risks.

## Court ruling opens new controversial doors to claims

In 2013, an employee was involved in an accident while driving a company car. The director of the company filed an insurance claim with King Price, with whom the company has an insurance policy, on which the employee was registered as the regular driver. During the driver's interview with King Price to derive the circumstances around the accident, the driver supplied false information about the events, his movements and his level of intoxication.

When it was discovered that the information provided by the driver was false, the claim was immediately rejected, as the policy wording stated that "*If you, or anyone acting on your behalf submits a claim, or any information or documentation relating to a claim, that is in any way fraudulent, dishonest or inflated, we will reject the entire claim and cancel your policy retrospectively…*"

However, in April 2021, the Supreme Court of Appeal (SCA) regarded the clause "anyone acting on your behalf" as ambiguous, as the insurer would have to prove the employee was an agent of the insured (within the legal meaning of agency). The SCA concluded that the benefit of ambiguity should go to the insured and the claim paid, ruling that the insured person did not provide false information, and that the driver was considered as a third party and witness only.

This will likely spark controversy with many insurers, who deal with fraudulent claims on a regular basis and regularly rely on the protection provided by the contract wording. The ruling may result in insurers choosing to review their policy wording. This could take the form of specifying that anyone covered by the policy has the same duty as the policyholder. However, prior and current claims may need to be reevaluated, resulting in an increase in liabilities for affected insurers.

## PA reworks life IBNR guidance

In regulatory developments, the Prudential Authority (PA) has published its latest guidance note as a part of the Solvency and Assessment Management (SAM) Phase II project. This specific guidance relates to life incurred but not reported (IBNR) claims. The final regulation is considerably different from the initial draft published and largely asks insurers to consider the IBNR claims impact through the own risk and solvency assessment (ORSA) process.

The SAM Phase II working group of the Actuarial Society of South Africa (ASSA) is expected to publish an information note shortly on specific considerations for IBNR ORSA inclusion.

If you have any questions on SAM Phase II, how ASSA is assisting or on any of information the notes published, please reach out to richard.taylor@milliman.com.

## The cyber ransom conundrum

So far, 2021 has experienced several major cyberattacks, locally and abroad.

In March, one of the largest US insurers, CAN Financial Corp., suffered a ransomware attack. After about two weeks, the victim gave in and paid a ransom of $40 million to recover access to its system and retrieve stolen data.

A ransomware attack in May on Colonial Pipeline, a major US fuel pipeline owned by the company of the same name, caused chaos with fuel shortages and temporarily spiked fuel prices. The company conceded to paying a $4.4 million ransom, but with some of its own cyber stealth tactics, US law enforcement managed to recover $2.3 million from the hackers.

In May, global meat processing company, JBS Foods, paid an $11 million ransom to restore its operations following a cyberattack.

Locally, well-known brands, including in financial services, suffered highly publicised cyberattacks, but they are just the tip of the iceberg when counted against the attacks that don't make the news.

Currently, there is no requirement to publicly disclose cyberattacks.

Many have advised against paying ransoms as payment fuels further attacks. We've seen this movie before relating to kidnappings in certain countries and modern-day pirates. Unlike the movie line, it seems many do negotiate with terrorists.

The perceived risk that the hackers walk away with the ransom, without releasing the data and systems held captive, has been actively addressed by some ransomware groups, who have cultivated a reputation for providing decryption keys on payment of ransoms.

The president of Colonial Pipeline apologised for paying the ransom, but said "What a lot of people don't realise is [that] it takes months and months… even years to restore your systems," but the threat of exposure of customers' and employees' sensitive data may be a further key consideration under new data protection laws, including the Protection of Personal Information Act (POPIA), which becomes effective in July this year.

Sony Pictures suffered massive fallout from its 2014 hack. The data obtained from the attack included sensitive employees' data (and information about employees' families) along with projects Sony was working on at the time. The company was forced to take down its now infamous comedy depicting a plot to assassinate a world leader to please the hackers and stop the attack, an action which was later reversed.

Paying a ransom may be an easier decision if your cyber insurance covers it. In an interview with a representative from the ransomware gang REvil, the group refers to organisations that have insurance as "one of the tastiest morsels." In fact, hackers try to hack the insurers first—to get their customer base. This may have been the case for CAN Financial Corp., which is a provider of cyber insurance. Such cover is likely to become more expensive and may be excluded. As seen in France, AXA will stop covering ransom payments for policies following a request from the local government.

These recent attacks are a reminder to check whether your cyber risk crisis plan is realistic. What does your cyber insurance cover and not cover? Where is your best Rand spent on managing cyber risk and what additional costs may you incur in a severe event? Milliman can assist you in getting your ducks in a row when it comes to cyber security.

South Africa's Cybercrime Act has been passed and aligns our law with international trends and best practices. There is still much to be done to adequately resource and upskill those responsible for implementation, but at least South Africa has taken a positive step forward.

## Ever Given introduces the world to General Average

The incident in the Suez Canal with the Ever Given in March 2021 received significant media coverage, including introducing the idea of General Average to a wider audience.

General Average is a loss mitigation convention where, in the event that cargo has to be jettisoned from a ship in order to save the rest of the cargo (or the ship itself), all stakeholders have to share proportionally in those losses. This is to avoid a scenario where only one stakeholder's cargo is jettisoned and that stakeholder has to absorb the full loss, at the benefit of another stakeholder whose cargo (or ship) remained intact.

The owner of Ever Given informed the operators of the ship that they were declaring General Average, and that the cargo owners will need to share in the losses resulting from the grounding and potential claims from Egypt relating to lost income and labour costs.

The Egyptian claims are being challenged, and no doubt the application of General Average will be challenged too.

General Average has evolved into a specialist component of insurance, requiring experienced claim experts. Moreover, arrangements with global resourcing firms are required to provide financial guarantees to serve as security for the losses incurred, as the remaining cargo will not be released from the port authorities until such security has been obtained from all stakeholders.

Insurers participating in this field will grow increasingly dependent on marine specialists to remain ahead of the curve.

## Third COVID-19 wave, little protection

As South Africa heads into a third wave of COVID-19, the full effects of the first two waves are now evident, but there is significant uncertainty in the near term.

The South African Medical Research Council (SAMRC) is now reporting more than 170,000 excess deaths since April 2020, a number that is significantly higher than most initial pandemic analyses predicted. Across the South African population, this is approximately 2.8 deaths per mille.

Since the end of the second wave, approximately the end of February, natural deaths have continued to occur at above 20% the expected rate. Meanwhile, the end of lockdowns has seen accidental deaths increase. They are now also slightly higher (4%) than the normal levels, further compounding mortality experience losses.

The third wave is now spreading across the country, and early indications are that the areas that were somewhat spared from the second wave are bearing the brunt of the third wave. However, government appetite for large-scale lockdowns seems to have decreased. This could mean less protection for insurers’ mortality books but continued relief on retrenchment and loss of income products.

The vaccine rollout in South Africa appears to be too slow to significantly reduce the impact of the third wave. For insurers, the decision to restrict the current rollout to those above 60 and exclude those with chronic conditions under 60 means that many of the most-at-risk insured lives will not have any vaccine protection.

The emergence of new strains of the virus presents further problems. It is not clear what level of protection will be provided from prior infection with a different strain.

Many insurers are allowing for some amount of a fourth wave and have moved their considerations to whether to allow for a permanent increase in mortality from endemic COVID-19.

These issues, and the general level of uncertainty, will continue to create actuarial challenges in what seems to be an ever-evolving pandemic risk.

## How Milliman can help

If you would like to discuss any of the above, or anything else with us, then please contact us. Milliman can provide a range of services including:

- Dealing with regulatory change and approvals
- Product performance reviews and changes in light of COVID-19 lessons
- Solo and Group Head of Actuarial Function
- Independent review of actuarial and risk functions
- Own risk and solvency assessment (ORSA) and risk management maturity reviews
- Licence conversion and application assistance
- Cyber risk assessment and modelling
- IFRS 17 implementation and advice



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