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Insurers are not 'villains' of bomb aftermath

YOUR article on the front page (*Cape Times*, January 31) refers. I am sure that everyone in Cape Town shares the grief and sorrow suffered by those involved in and affected by the bomb attack on St Elmo's, Camps Bay last year. This is a given.

But I do feel it is unreasonable of Judge Dennis Davis to "slam" the insurers concerned — especially since he is basing his remarks on papers presented in the liquidation court hearing without having, apparently, looked closely into the insurance matter. The judge's comments are also surprising given his background at UCT in commercial affairs.

All South African insurance policies contain the same exclusions in this regard, excluding acts (whether on behalf of any organisation, body or person or group of persons) calculated or directed to overthrow or influence any state of government — with force or by means of fear, terrorism or violence.

A further standard exclusion is any act — calculated — to further any political aim — or to bring about any social or economic change, or in protest against any state — or for the purposes of inspiring fear in the public.

The key aspect of the standard clause is that the onus of proof is on the insured — St Elmo's has to prove that the damage does not fall into one of the above categories.

This "reverse-onus" is unusual but is being used more and more in modern legislation and it has been part of insurance contracts for 20 years or more.

If St Elmo's insurers have declined to pay the claim, then the assumption is that St Elmo's was unable to prove that the damage was not that envisaged in the exclusions mentioned above.

It is unfair to expect an insurer to be charitable, even though the cause maybe a good one, and pay claims for damage and loss which was never insured, especially if that cover is available but is not purchased. Since 1976 or thereabouts, it has been possible to buy "riot" or "Sasria" cover to insure against just this very thing. In fact, many claims have already been paid for bomb damages.

Most insurers have shareholders who could object to the actions of management if claims were paid without there being an underlying policy.

Such management could, in terms of current legislation following the King Report on Corporate Governance, be held responsible for losses the shareholders may suffer.

Does Judge Davis really find it "unreasonable" that an insurance company does not pay for damage that is uninsured when the policyholder had the option of insuring it but declined to do so? If so, then why insure anything at all?

I have no professional involvement in this matter. In fact, I do not know the identity of the insurer nor the broker concerned.

This letter is based purely on what has appeared in the *Cape Times*.

STUART MACPHERSON

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