SCHINDLERS CLE	
TITLE:	**Case Management Directive effective from First Terms of 2015 (Amended up to August 2015: effective for enrolments for certification from 7 September : trials set down from 5 October 2015)**
CATEGORY:	**Application for a Certification Conference (including Deputy Judge President Mojapelo's input)**
SUMMARY	The High Court of South Africa, Gauteng Local Division ("the Court") has implemented a new judicial case management system which is mandatory for all trial matters involving expert evidence that require certification conferences to be applied for before being able to proceed to trial. **Reasoning behind this:** The purpose is to ensure that the matter is trial ready at least 5 (Five) weeks before the trial date, so as to "declutter" the trial rolls. If the Judge certifies a matter trial ready, the parties will be given a certification certificate and the trial date will be allowed to be proceeded with. If the Judge certifies that the matter is not trial ready the following will occur: - If the Judge is of the opinion that the Defendant is not ready and such unreadiness is deemed unacceptable, Judges are permitted to give *cost de bonis propriis* orders against attorneys; - If the Plaintiff produces his/her expert reports but the Defendant fails to do so, those that the Plaintiff has produced will be certified and the Defendant will not be able to bring any experts on the trial date as the reports would not have been certified by the Judge; - The trial date will be lost, however it has been said that if the parties have entered into a settlement, they will be able to keep their date in order for such settlement to be made an order of court.

Issuing of Summons:

When issuing Summons the Plaintiff's attorney needs to state whether the matter requires expert evidence or not.

Application for a trial date:

The Plaintiff shall file a practice note stating whether or not the Parties are in agreement that the merits of the claim and the quantum of damages be separated. When applying for the date (in terms of the directive), the date will be given orally and the allocation of the date will be sent to the Plaintiff's attorney via fax. However, it has been said that practically dates will be given immediately as the faxing system has not been done.

Application for Certification Conference:

The Plaintiff can at any time that he/she believes that the matter is trial ready, **but not later** than the **Monday, 5 weeks before the week in which the trial is set down,** file an application to the Registrar at Room 004 of the Court for a Pre Trial Conference with a Judge, to certify that the matter is in actual fact, trial ready. A copy of such application shall be sent to all the other Parties to the action. If this is not done, the trial will not be allowed to proceed on the set down date.

Requirements when making Application for the Certification Conference: (Can only can be done on Mondays)

When making application for the Certification Conference the following is required:

- The prescribed form shall be completed and submitted to the Registrar. (See attached form in this regard marked as "B");

- A statement by the Plaintiff's attorney which shall contain:

    - Confirmation that the discovery is complete for all Parties and if not, an explanation as to why same has not been done;

	■ A concise summary of common cause facts (no evidence shall be led at trial regarding these); ■ A statement of the questions of law and of fact that the Court must decide; ■ Whether or not the Parties have agreed to separate the merits and the quantum and if not, an explanation as to why not; and ■ A list of witnesses that the Parties will be calling to testify as well as what issue each witness will address. - A legible, indexed and paginated bundle of the Pleadings as well as a spread sheet of the allegations contained in the Pleadings which are admitted and disputed; - A copy of a registered recent Rule 37 Conference (Pre-Trial Conference) which is indexed and paginated and signed by all the Parties; - Expert Evidence Information: ■ All evidence by experts which must be indexed, paginated and bound; ■ If there are any reports, these must be included and must be drafted in a format that is designed for lucidity, brevity and convenient cross referencing, set out in numbered paragraphs; ■ If there are no reports there must be an explanation as to why these have not been provided as well as a timetable of when the specific experts are available; and ■ A Joint Minute of the experts must be provided and same must identify what is agreed and not agreed, if agreement cannot be reached, there must be reasons stated as to why. **<u>Allocation of Certification Conference:</u>** - A date shall be allocated to a Judge on a fixed date and time on a Wednesday, Thursday or Friday from 09h30 onwards in the fourth week before the week of the trial date. - The Plaintiff must notify every Party to the matter of the date and time of such

conference within 1 day of allocation and proof of same must be filed.

Certification Conference:

- The Judge who shall preside at the Conference must be provided by the Registrar with the trial files on the Friday before the week in which the Conference shall take place.

- On conclusion of the Conference the Judge shall summarize the decisions made and the Judge may if he/she deems necessary, direct that the Plaintiff file a minute within 5 days, which will be settled by the Judge and shall be stapled to the inside left cover of the file.

Trial Preparation:

- On the Monday 2 weeks before the trial date, before 12h00, the Plaintiff shall file a Practice Note with the Deputy Judge President stating the following:

  - Any information about settlement or prospective settlement;
  - The status quo regarding the trial readiness;
  - The estimated duration of the trial;
  - The names and email address of all counsel as well as the attorneys involved in the matter;
  - An updated version of a Rule 37 Pre-Trial Conference Minute; and
  - A copy of the minute that has been drafted in accordance with the certification conference shall be attached to the Practice Note.

Notes from DJP Mojapelo:-

- He expressed that although the Uniform Rules of Court state that expert notices and reports are only to be served 15 and 10 days before trial respectively. Attorneys must rather comply with this directive and thus, irrespective of the rules, expert notices and reports should be ready at least **5 (Five) weeks BEFORE the trial date.**
- He further expressed that the Judges dealing with these Conferences have stated that they are “too disorderly” and have required that attorneys and

	advocates dealing with the matters on the Certification Conference roll and attending at the Certification Conference are to do the following: ■ Dress appropriately, as if you are attending a formal court room (no jeans or casual clothing); ■ Know about the matter, one cannot send a junior that has no idea about the matter just to secure attendance at the Conference; ■ When sending counsel to the Conference, he or she must be briefed in the matter and have knowledge of the merits as well as facts pertaining to same; and ■ Treat the procedure as if it is a formal court. - DJP Mojapelo has stated that should this not occur, the Conference has the potential to be turned into a formal court proceeding and that should the process not be respected, the Judges of the High Court are willing to give punitive cost orders against those who don't comply with same.		
VALUE:	This process will essentially aid the Court in determining whether a matter is trial ready or not which hopefully will avoid unnecessary postponements when the trial eventually commences.		
VETTED BY:	**MEGAN HARRINGTON-JOHNSON**		
WRITTEN BY:	**JENNIFER STOLER**	**DATE OF CLE:**	**4 DECEMBER 2015**

- **ADDITIONAL INFORMATION DJP MOJAPELO DEALT WITH:**

- Special Interlocutory Court at the High Court:

- This court sits every Tuesday and one may give notice to their opponent by the Thursday before;
- Instances when it can be used:
  - In order to compel your opponent to sign a Pre-Trial Minute;
  - All applications to compel;
  - Application to strike out; and
  - Simple separation of issue matters.
- NOT used for an opposed exception.
- Judges in this case are ready to give cost *de bonis propriis* orders against attorneys that are not complying.
- The Affidavit need not be longer than 1 page and the attorney must take a draft order along with them. (set out all the correspondence, notices and so on that have been sent to the opposing attorneys and the relief sought)