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IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Division, Pretoria

CASE NO: **2022-046038**

In the matter between:

LEGAL PRACTITIONERS INDEMNITY INSURANCE FUND, NPC	Plaintiff / Applicant / Appellant
and	
ROAD ACCIDENT FUND,MINISTER OF TRANSPORT,MS T MBSIBI IN HER CAPACITY AS THE CHAIR OF THE BOARD OF THE ROAD ACCIDENT FUND ,MR COLLINS LETSOALO IN HIS CAPACITY AS CHIEF EXECUTIVE OFFICER OF THE ROAD ACCIDENT FUND ,THE LAGAL PRACTICE COUNCIL	Defendant / Respondent

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Review

NOTE: **This document was filed electronically by the Registrar on 11/11/2022 at 10:31:52 AM South African Standard Time (SAST). The time and date the document was filed by the party i d on the header of each page of this document.**



ELECTR SIGNED BY:

Registrar of High Court of South Africa , Gauteng Division,Pretoria

11/11/2022-10:31:52 AM

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case No: _____/2022

In the application between:

LEGAL PRACTITIONERS INDEMNITY INSURANCE FUND NPC	Applicant
and	
THE ROAD ACCIDENT FUND	First Respondent
THE MINISTER OF TRANSPORT	Second Respondent
CHAIRPERSON OF THE BOARD, ROAD ACCIDENT FUND	Third Respondent
CHIEF EXECUTIVE OFFICER, ROAD ACCIDENT FUND	Fourth Respondent
THE LEGAL PRACTICE COUNCIL	Fifth Respondent

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PRETORIA
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NOTICE OF MOTION

TAKE NOTICE that the Applicants intend to apply to the above Honourable Court for an order in the following terms:

1. That the following decisions and actions be reviewed and set aside, with or without directions, in terms of section 8(1) of the Promotion of Administrative Justice Act 3 of 2000:

    1.1. The First Respondent's adoption and implementation of Board Notice 271 of 2022, "ROAD ACCIDENT FUND TERMS AND CONDITIONS UPON WHICH

CLAIMS FOR COMPENSATION SHALL BE ADMINISTERED", published in the Government Gazette on 6 May 2022, and any directives or instructions issued in terms thereof;

1.2. The Second Respondent's decision on 30 June 2022 to adopt BOARD NOTICE 302 of 2022, DEPARTMENT OF TRANSPORT, ROAD ACCIDENT FUND ACT 1996 (ACT NO. 56 of 1996), FORM RAF 1", published in the Government Gazette on 4 July 2022, and any directives or instructions issued in terms thereof.

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2. The order in prayer 1 *supra* is granted with retrospective effect, and the First Respondent's objection and/or rejection of any claim is declared null and void if the claim was rejected for want of compliance with:

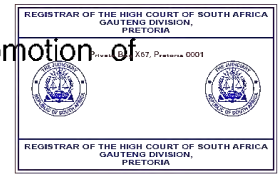
2.1. Board Notice 271 of 2022, "ROAD ACCIDENT FUND TERMS AND CONDITIONS UPON WHICH CLAIMS FOR COMPENSATION SHALL BE ADMINISTERED"; and/or

2.2. Board Notice 302 of 2022, DEPARTMENT OF TRANSPORT, ROAD ACCIDENT FUND ACT 1996 (ACT NO. 56 of 1996), FORM RAF 1"

3. Legal Practitioners acting for claimants whose claims were rejected for non-compliance with Board Notice 271 of 2022, "ROAD ACCIDENT FUND TERMS AND CONDITIONS UPON WHICH CLAIMS FOR COMPENSATION SHALL BE ADMINISTERED"; and/or Board Notice 302 of 2022, DEPARTMENT OF TRANSPORT, ROAD ACCIDENT FUND ACT 1996 (ACT NO. 56 of 1996), FORM

RAF 1" are afforded a period of 3-months to resubmit their clients' claims in accordance with the provisions of the Road Accident Fund Act 56 of 1996 and Road Accident Fund Regulations, 2008 from date of an order being granted by the Honourable Court.

4. In the event the Honourable Court is unwilling to grant the orders in prayers 1 to 3 *supra*, then and in that event, any order that the Honourable Court deems just and equitable in the circumstances in terms of section 8(1) of the Promotion of Administrative Justice Act 3 of 2000.



5. Regulation 7(1) the Road Accident Fund Regulations, 2008, issued by the Second Respondent in terms of section 26 of the Road Accident Fund Act, 56 of 1996, is declared unconstitutional and unlawful and is reviewed and set aside to the extent that it gives the First Respondent the right to amend or substitute the "RAF1 Form" attached as Annexure "A" to the Regulations.

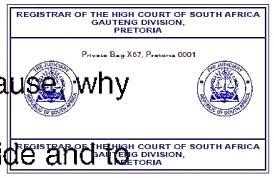
   5.1. That condonation is granted per the provisions of section 9(1) of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) for the institution of the review of the second Respondent's decision to adopt Regulation 7(1) in so far as it may be required.

6. The First and Second Respondents are to pay the costs jointly and severally.

7. Any further and/or alternative relief that the Honourable Court may deem just and equitable in the circumstances.

TAKE NOTICE THAT the founding affidavit and supplementary affidavit in terms of Rule 53(4) of **THOMAS MARK HARBAN** attached hereto, together with annexures thereto, will be used in support of this application.

FURTHER TAKE NOTICE THAT the Applicants hereby appoint **ADAMS & ADAMS** of the address stated below, at which address the Applicants will accept notice and service of all further process in these proceedings.



FURTHER TAKE NOTICE THAT the Respondents are called upon to show cause why the decision referred to above, should not be reviewed and corrected or set aside and to dispatch within 15 (FIFTEEN) days after receipt of this notice of motion and annexures, to the registrar of the above Honourable Court, the record of such proceedings sought to be corrected or set aside, together with such reasons as the Respondents are by law required or desire to give or make and to notify the Applicant that they have done so.

PLEASE TAKE FURTHER NOTICE that the Applicants may, within 10 (TEN) days after the registrar has made the record available to the Applicants, by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of the notice of motion and supplement the supporting affidavit.

PLEASE TAKE NOTICE that should any of the Respondents or any affected party desire to oppose the granting of the order prayed in the notice of motion, such party shall, within 15 (FIFTEEN) days after receipt by it of the notice of motion or any amendment thereof, deliver notice to the Applicant that it intends so to oppose, and shall in such notice appoint an address referred to in rule 6(5)(b) at which it will accept notice and service of all

process in such proceedings, and within 30 (THIRTY) days after the expiry of the time referred to in Rule 53(4), deliver any affidavits it may desire in answer to the allegations made by the Applicant.

PLEASE TAKE NOTICE that the application will be set down in terms of the rules of the above Honourable Court accordingly.

DATED AT **PRETORIA** ON THIS THE 10TH DAY OF **NOVEMBER 2022**.

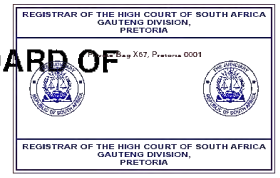


(SIGNED) JEAN-PAUL RUDD
ADAMS & ADAMS
ATTORNEYS FOR APPLICANTS
LYNNWOOD BRIDGE OFFICE PARK
4 DAVENTRY ROAD
LYNNWOOD RIDGE
PRETORIA
EMAIL: jp.rudd@adams.africa
TEL: 012 432 6000
REF: **JPR/JLR/P5467**

TO: **THE REGISTRAR OF THE ABOVE HONOURABLE COURT**
PRETORIA

AND TO: **THE ROAD ACCIDENT FUND**
FIRST RESPONDENT
2 ECO GLADES OFFICE PARK
420 WITCH-HAZEL AVENUE
CENTURION

AND TO: **THE MINISTER OF TRANSPORT**
SECOND RESPONDENT
159 STRUBEN STREET
FORUM BUILDING
PRETORIA
C/O THE STATE ATTORNEY
PRETORIA
316 THABO SEHUME STREET
PRETORIA CENTRAL
PRETORIA



AND TO: **MS T MBSIBI IN HER CAPACITY AS THE CHAIR OF THE BOARD OF THE ROAD ACCIDENT FUND**
THIRD RESPONDENT
2 ECO GLADES OFFICE PARK
420 WITCH-HAZEL AVENUE
CENTURION

AND TO: **MR COLLINS LETSOALO, IN HIS CAPACITY AS CHIEF EXECUTIVE OFFICER OF THE ROAD ACCIDENT FUND**
FOURTH RESPONDENT
2 ECO GLADES OFFICE PARK
420 WITCH-HAZEL AVENUE
CENTURION

AND TO: **THE LEGAL PRACTICE COUNCIL**
C/O THE LEGAL PRACTICE COUNCIL
PROVINCIAL OFFICES
PROCFORUM BUILDING
123 PAUL KRUGER STREET
PRETORIA
info@lpc.org.za / infogp@lpc.org.za

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case No: _____/2022

In the application between:

LEGAL PRACTITIONERS INDEMNITY INSURANCE FUND NPC	Applicant
and	
THE ROAD ACCIDENT FUND	First Respondent
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THE LEGAL PRACTICE COUNCIL	Fifth Respondent

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FOUNDING AFFIDAVIT

I, the undersigned

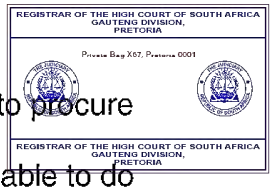
THOMAS MARK HARBAN

do hereby make oath and say:

1. I am a major male and the General Manager of the applicant with place of employment at 1256 Heuwel Avenue, Centurion, Gauteng Province.

2. The contents of this affidavit fall within my personal knowledge, save where the contrary appears from the context thereof, and are, to the best of my belief, both true and correct.

3. The applicant has authorised me to depose to this affidavit. As General Manager, I have access to and knowledge of the applicant's files and records relevant to this application. I am, therefore, competent to depose to this affidavit.



4. To the extent that I rely on information provided by others, I endeavour to procure confirmatory affidavits from the relevant persons where necessary. If unable to do so, I respectfully request the Honourable Court to exercise the discretion conferred by section 3 of the *Law of Evidence Amendment Act No 45 of 1998* to admit said evidence. All annexures attached to this affidavit are incorporated herein by reference.

THE APPLICANT

5. The applicant is the **LEGAL PRACTITIONERS INDEMNITY INSURANCE FUND NPC,** a non-profit company duly registered and incorporated in terms of the company laws of the Republic of South Africa and licenced per the Insurance Act 18 of 2017 with principal place of business at 1256 Heuwel Avenue, Centurion, Gauteng Province.

6. The Legal Practitioners Fidelity Fund (LPFF), previously the Attorneys Fidelity Fund, established the applicant as a non-profit company through which

professional indemnity insurance is provided to legal practitioners with Fidelity Fund certificates and certain bonds of security are granted to practising attorneys. The applicant is *sui generis* and has its origin in legislation, and the applicant does not exist for commercial purposes.

7. The applicant is the vehicle through which the insurance functions, set out in section 77 of the Legal Practice Act 28 of 2014 (the "LPA"), are carried out. The applicant is funded by a single premium paid by the Legal Practitioners' Fidelity Fund per sections 57(1) (g) and 77 of the LPA.

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7.1. Under the Insurance Act and the Twin Peaks model implemented per the Financial Sector Regulation Act 9 of 2017 (the "FSR Act"), the applicant is regulated by the Financial Sector Conduct Authority (the "FSCA") and the Prudential Authority.

7.2. The Prudential Authority granted the applicant's insurance licence in terms of the Insurance Act 18 of 201. The applicant's insurance licence authorises two classes of insurance for attorneys. First, professional indemnity liability insurance is in line with sections 77(1) and (2) of the LPA. Second, guarantee insurance relating to bonds of security issued to attorneys appointed as executors of deceased estates per section 77 (3) of the LPA. A copy of the licence is attached as Annexure **"FA1"**.

7.3. The LPFF has tasked the applicant to provide professional indemnity insurance to insured legal practitioners in a sustainable manner and with

due regard for the interest of the profession and the public by protecting the integrity, esteem, status and assets of the insured and the legal profession.

7.4. The Professional Indemnity Insurance Policy (the "Master Policy") further describes the applicant's functions and powers. In terms of the Master Policy, the applicant must protect the public against indemnifiable and provable losses arising from legal services provided by insured practitioners per the terms and conditions of the Master Policy. I attach a copy of the policy as Annexure **"FA2"**.

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8. The applicant's strategic objective is to provide efficient and cost-effective professional indemnity insurance and other services to legal practitioners with Fidelity Fund Certificates practising in South Africa while equally protecting the interests of the public. I address the nature of the applicant in more detail below.

THE RESPONDENTS

9. The first respondent is **THE ROAD ACCIDENT FUND**, a national public entity per schedule 3A of the Public Finance Management Act 1 of 1999 (the "PFMA"), duly established in terms of section 2(1) of the Road Accident Fund Act 56 of 1996 (the "RAF Act") with principal place of business situated at 2 Eco Glades Office Park, 420 Witch-Hazel Avenue, Centurion, Pretoria.

9.1. The legislature established the first respondent (the "RAF") to pay compensation under the RAF Act for loss or damage wrongfully caused by the driving of motor vehicles. The RAF's principal object is the constitutionally mandated amelioration of vulnerable motor accident victims' plights. Through the RAF, the State fulfils its constitutional duty to protect the security of road accident victims.

9.2. Payment of compensation by the Fund under the RAF Act is a statutory obligation prescribed by section 17(1), read with the provisions of section 3 of the RAF Act. Payment is not only a statutory duty but a mechanism whereby the State complies with the constitutional duty prescribed in section 12(1)(c), read with section 7(2), of the Constitution to protect road users against the risk of infringement of the right to freedom and security of their persons.

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10. The second respondent is **THE MINISTER OF TRANSPORT**, cited herein in his official capacity as the responsible member of the executive and head of the Department of Transport with office at 159 Struben Street, Forum Building, Pretoria, care of the State Attorney, 316 Thabo Sehume Street, Pretoria Central, Pretoria.

10.1. The second respondent (the "Minister") is the statutorily-appointed executive authority for the RAF. Parliament has tasked the Minister with overseeing the financial viability, policymaking, and management of policy to ensure that the RAF complies with its statutory mandate.

11. The third respondent is the **CHAIRPERSON OF THE ROAD ACCIDENT FUND BOARD** (the "Board Chairperson"), cited in her official capacity as head of the Road Accident Fund Board, with principal place of employment at 2 Eco Glades Office Park, 420 Witch-Hazel Avenue, Centurion, Pretoria.

11.1. The Road Accident Fund Board ("RAF Board") is established by section 10 of the RAF Act. The RAF Board is the accounting authority of the RAF per the provisions of the PFMA.

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11.2. The RAF Board is tasked with exercising overall authority and control over the RAF's financial position, operation, and management.

12. The fourth respondent is the **CHIEF EXECUTIVE OFFICER** of the Road Accident Fund (the "CEO"), duly appointed per section 12 of the RAF Act by the Minister of Transport, cited herein in his official capacity, with principal place of employment at 2 Eco Glades Office Park, 420 Witch-Hazel Avenue, Centurion, Pretoria.

13. The fifth respondent is **THE LEGAL PRACTICE COUNCIL**, a statutory body established in terms of section 4 of the Legal Practice Act 28 of 2014 ("LPA"). The Legal Practice Council and its Provincial Councils regulate and exercise jurisdiction over all legal practitioners (attorneys and advocates). The Legal Practice Council has its National office at Building 20, Thornhill Office Park, 94 Bekker Road, Vorna Valley, Midrand, with email address info@lpc.org.za.

13.1. The applicant and the fifth respondent have a common interest concerning legal practitioners. The applicant's interest arises from an indemnity insurance perspective, and the fifth respondent's interest arises from a regulatory perspective.

13.2. I will cause a copy of this application to be served on the Legal Practice Council ("LPC") and request that it disseminate this application amongst all legal practitioners so that this review application comes to their knowledge and attention.

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13.3. The applicant does not cite the firms of legal practitioners or clients who may have suffered damages due to the RAF's and Minister's administrative actions.

14. For ease of reference, in this affidavit, I will refer to the first respondent as the "RAF" or the "Fund", the second respondent as the "Minister", the third respondent as the "Board Chairperson", the fourth respondent as the "CEO" and the fifth respondent as the "LPC". Where I refer to "respondents", it must be accepted to mean the first to fourth respondents.

15. The applicant does not seek relief against the fifth respondent ("Legal Practice Council or "LPC"). The applicant has cited the LPC as a party that may have a direct and substantial interest in this application and its outcome.

PURPOSE AND NATURE OF RELIEF SOUGHT

16. The RAF and Minister have adopted and implemented peremptory requirements that significantly restrict claimants' ability to exercise their constitutional right to claim compensation from the RAF. This application challenges the legality of the RAF and the Minister's *ultra vires* and constitutionally invalid administrative decisions.

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17. The RAF published a Board Notice in May 2022 stipulating terms and conditions that must be adhered to before the RAF will accept a third-party claim. The Minister subsequently amended the Road Accident Fund Regulations, 2008 (the "RAF Regulations") by publishing a new RAF 1 Claim Form ("RAF 1") in July 2022. The RAF has resolved to implement the amended regulation, subject to the Board Notice.

18. The applicant asserts that the RAF does not have the authority to adopt or implement the Board Notice. The administrative decisions are an *ultra vires* and constitutionally invalid hurdle for the submission of valid third-party claims by mandated and insured legal practitioners.

19. The applicant asks the Court to set aside the RAF and Minister's administrative action with directions in terms of section 8(1) of the *Promotion of Administrative Justice Act 3 of 2000* ("PAJA"), In this affidavit, the applicant establishes that the RAF has taken unauthorised administrative decisions and assumed powers that the RAF Act has not delegated to the RAF, the Board or the CEO. Moreover, the

Minister's decision to adopt a new RAF 1 is procedurally unfair and influenced by an error of law. I deal comprehensively with the grounds of review in more detail below.

20. Considering the above-mentioned, the applicant asks the Honourable Court to review and set aside:

20.1. The RAF's decision to adopt and implement Board Notice 271 of 2022, "Terms and Conditions upon which compensation shall be administered", published on 6 May 2022 (Government Gazette no 46322);

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20.2. The Minister's decision to adopt and publish the new Form RAF 1" in the Government Gazette on 4 July 2022;

20.3. The provisions of Regulation 7(1) of the Road Accident Fund Regulations, 2008 (GNR770 in GG 31249 of 21 July 2008) insofar as the Minister has sub-delegated to the RAF the power to amend or substitute the RAF 1 Claim Form attached as Annexure "A" to the Regulations.

21. Concerning the review of Regulation 7(1), the applicant applies for an extension of 180 days in terms of section 9(2) of PAJA, insofar as it may be necessary in the circumstances. I deal with the requirements for the condonation sought in the discussion of the grounds of review hereinbelow.

22. Lastly, suppose the Honourable Court were to find that the decisions are not administrative action. In that case, the applicant requests that the decisions be

reviewed and set aside based on the principle of legality. Courts are empowered to go beyond the confines of PAJA in scrutinising the exercising of public power for compliance with constitutional prescripts. Legality is the controlling principle for exercising all public power.

THE APPLICANT IS IMPORTANT TO THE PUBLIC AND LEGAL PROFESSION

23. The applicant protects the public against indemnifiable and provable losses arising out of the legal profession per the terms and conditions of the Master Policy (see annexure "FA2" above). The applicant is obligated to provide professional indemnity insurance to the legal profession sustainably and with due regard for the public's interest. The applicant exists in the interest of the public and the legal profession.

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24. Access to justice in the narrow sense focuses on access to legal advice and legal services. In exercising the aforesaid right, the public demands an accountable legal profession. Legal practitioners must be guided by truth, fairness, and justice. Attorneys must execute their clients' mandates diligently and with the necessary skill. The applicant's protection allows the public to confidently use the services provided by attorneys.

25. Consequently, protecting the public and enhancing public confidence in the profession are core to the applicant's mandate.



26. The RAF's decisions directly impacts attorneys' ability to execute their mandate. If the RAF makes it impossible for an attorney to submit a claim under the RAF Act timeously, the claim prescribes, and the claimant holds the attorney liable. The only recourse for a claimant is to institute action against the attorney.

(a) The applicant's relationship with the RAF

27. As an insurer, the applicant is obliged to meet the minimum solvency levels prescribed in the Prudential Standards issued in terms of the Insurance Act. A marked and sudden increase in claims affect the applicant's solvency level and financial sustainability.

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28. Prescribed and under-settled RAF claims are one of the main risks for the applicant. The claims make up the highest number of claims paid by the applicant. The quantum of the claims are also the highest. Moreover, the costs of investigating, assessing, and defending the claims are substantial.

29. The RAF's actions and decisions discussed below have increased professional indemnity claims. The increase in claims have directly affected the applicant's future sustainability and solvency levels. Consequently, the RAF's *ultra vires* conduct threatens the applicant's ability to provide indemnity insurance services to the legal profession.

(b) How legal practitioners are impacted

30. When insured legal practices are faced with a claim or are aware of circumstances that may lead to a professional indemnity claim, they are obliged to notify the applicant thereof per clause 22 of the Master Policy. The amount of cover afforded to insured attorneys' practices is determined by the number of partners / directors in the firm on the date that the cause of action arose.

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31. If the claim amount exceeds the annual amount of cover (which is an annual amount and not cover for each claim) afforded under the policy, the insured attorney will be liable for the amount exceeding the applicant's cover.

32. Many third-party attorneys' are small practices with annual cover limited to R1,562,500.00. The aforesaid is the cover afforded to smaller firms ranging from sole practitioners to firms with six partners / directors. Multiple claims, or a single claim with a high value exceeding the cover available under the applicant's policy, pose an existential risk to the attorneys and their clients.

33. In most cases, the quantum of the claim against the attorney exceeds the available indemnity limit. If the claim exceeds the indemnity limit, the attorney is personally exposed if they do not have top-up insurance coverage. If the attorney is forced to close his / her doors, the remaining RAF clients must find a new attorney, which could lead to further claims. The situation is further complicated if the insolvent attorney supplies legal services on contingency per the Contingency Fee Act 66 of 1997.

34. The institutional framework of the RAF depends on a functional board that acts lawfully. The Minister and CEO also fulfil essential roles in this regard. Consequently, a summary of the respondents' powers and functions is vital to appreciate the extent of the RAF and Minister's *ultra vires* actions, substantiated below.

THE LIMIT OF THE RAF AND THE MINISTER'S POWER

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35. The RAF Act is clear and unambiguous in delegating power to the Minister to publish regulations. No direct or implied delegation to the RAF Board to adopt, amend or substitute the Minister's regulations is found in the RAF Act. As I show below, the RAF Board's power is limited to making recommendations to the Minister on amendments to the RAF Regulations or the RAF Act.

36. The RAF Act establishes the Road Accident Fund. The provisions of sections 2 to 16 of the RAF Act are essentially administrative and create the machinery by which the RAF is "administered". The Board controls, manages and administers the Fund. For this reason, I will first deal with the powers and functions of the Fund, followed by a discussion of the powers and duties of the Board, CEO and Minister.

(a) RAF's Power and Functions

37. The RAF Act is a vital form of social security legislation. The RAF serves as a social security safety net for South Africans. The RAF scheme is further intended to provide compulsory social insurance cover for all South African road users.

38. Section 3 of the RAF Act describes the object of the RAF as the payment of compensation per the RAF Act for loss or damage wrongfully caused by the driving of motor vehicles. Section 4, "Powers and Functions of the Fund", sets out the power and functions of the RAF as follows:

> "4(1) The powers and functions of the Fund shall include:
>
> (a) The stipulation of the terms and conditions upon which claims for the compensation contemplated in section 3, shall be administered;
>
> (b) The investigation and settling, subject to this Act of claims arising from loss or damage caused by the driving of a motor vehicle whether or not the identity of the owner or the driver thereof, or the identity of both the owner and the driver thereof, has been established;
>
> (c) The management and utilisation of the money of the Fund for purposes connected with or resulting from the exercise of its powers or the performance of its duties; and
>
> (d) Procuring reassurance for any risk undertaken by the Fund under the Act ..."

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39. The RAF Act allows the Fund to take a variety of steps which are incidental or conducive to the exercise of its powers or the performance of its functions, *inter alia*, the purchase of property, investing and borrowing money. The RAF may further institute or defend legal proceedings. The RAF is also empowered to

initiate, conduct, defend or abandon legal proceedings in connection with investigated or settled claims.

(b) Section 24 and the Minister's power to make regulations.

40. Section 24(1) of the RAF Act makes it compulsory for a claimant to submit his / her claim on the prescribed form. The prescribed form invites, guides, and facilitates the RAF's claims investigation. The provisions of section 24(1)(a) read with section 24(4) are directory and not peremptory. Substantial as opposed to strict compliance is required. Consequently, creating administrative hurdles essentially prejudices claimants.

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41. The information furnished in the claim form must be accurate to the extent that the RAF can rely on the information supplied to resist, concede or settle a claim. Providing inaccurate information does not necessarily make a claim detective if, despite the inaccuracies, there was substantial compliance with sections 17 and 24.

42. The provisions of section 24 will be substantially complied with if the claim form under consideration discloses at least the identity of the claimant, the particulars of the collision that gave rise to injuries or death, the identity of the driver or owner of the vehicle concerned, and the calculation and composition of the amount claimed.

(i) The Minister's Power

43. The legislature delegated the power to make regulations to the Minister regarding any matter prescribed by the Act or necessary or expedient to achieve the Act's object in section 26 of the RAF Act.

44. In 2008 the Minister published the regulations under section 26 of the RAF Act. The regulations came into operation on 1 August 2008. I understand that a public participation process preceded the adoption of the regulations. Regulation 8 provides the transitional arrangements and states that:

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> "(1) These Regulations shall not apply to any claim for compensation under section 17 of the Act in respect of which the cause of action arose before the date on which these Regulations came into operation, and any such claim shall be dealt with as if these Regulations had not come into operation."

45. Per the transitional arrangement, any claim arising from a motor vehicle accident before 1 August 2008 (operation date) is not subject to the RAF Regulations. The transitional provision aligns with the presumption against the retrospective application of legislation and administrative action.

46. Regulation 7(1) states that a claim for compensation and the accompanying medical report referred to in section 24(1)(a) must be submitted using the RAF 1 attached to the Regulations as "Annexure A, Third-Party Claim Form" to the Regulations. The RAF 1 is delegated legislation made by the Minister per the empowering provision of section 26 of the RAF Act. I deal in more detail with the

RAF 1 and substantial compliance below. For the Honourable Court's ease of reference, I provide the following extract from the RAF 1 dealing with substantial compliance:

20 SUBSTANTIAL COMPLIANCE
Please complete the following information to validate your claim for substantial compliance with section 24 of the RAF Act.
1 The identity (of the injured.) - (paragraph 1).
2 The date and place of accident (paragraph 5).
3 Identify the insured motor vehicles (paragraph 6 / 7 and 8).
4 A completed statutory medical report (paragraph 22);
5 Amount claimed as compensation (paragraph 19);
6 Attach accounts, vouchers, invoices etc. to support your claim for medical expenses;
7 Complete this form as prescribed in section 24 of the RAF Act.
8 In the event that loss of support or funeral expenses are claimed provide documentary proof of the death of the deceased; and

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9 Should the space provided in this claim form be insufficient to answer any questions you are welcome to attach a further page to this claim form in which such further information can be provided to the RAF.
10 Should you require any assistance with the completion of this claim form please feel free to contact the RAF on Sharecall number 0860 2355 23.

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47. I digress to mention that the sheer unreasonableness and irrationality are manifest when the above-mentioned list is compared to the RAF's various board notices and substituted RAF 1 Forms discussed below. I attach a copy of the RAF 1 as Annexure **"FA3"**.

(c) The RAF Board

48. The Board of the RAF is empowered to exercise overall authority and control of the RAF's finances, operation, and management. Relevant to this application is section 11(1)(a) of the RAF Act, which states:

> "1) The Board shall, subject to the powers of the Minister, exercise overall authority and control over the financial position, operation and management of the Fund, and may inter alia-
>
> (a) make recommendations to the Minister in respect of-
>
> (i) the annual budget of the Fund;
>
> (ii) any amendment of this Act;

(iii) the entering into an agreement with any institution referred to in section 9;

(iv) .....[Sub-para. (iv) deleted by s. 4 of Act 19 of 2005 (wef 31 July 2006).]

v) any regulation to be made under this Act;" (own emphasis)

49. The RAF Act further grants the RAF Board the power to approve internal rules and directions regarding fund management. The RAF Act does not grant the Board the authority to adopt and publish 'external' rules or directions that add conditions for the valid submission of claims.

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50. In this regard, the RAF Act only grants the Board the power to make recommendations to the Minister regarding the amendment of the RAF Act and any regulation required in terms of the RAF Act. In terms of Section 11(1)(a)(v), the Board may recommend to the Minister any regulation to be made under the Act. Significant is the absence of an empowering provision that allows the Board to issue, add, vary or restrict any statutory provisions of the RAF Act or regulations issued by the Minister.

51. Lastly, the Board can delegate or assign to the CEO or any RAF staff member any power or duty of the Board as it may deem fit. However, the Board is not to be divested of any power or duty so delegated or assigned and may amend or withdraw any decision made by virtue of such delegation or assignment. The aforesaid is limited to the delegation of powers the Board has in terms of the RAF Act. The RAF Board cannot delegate powers to the CEO, which it does not have.

(d) The RAF CEO's power and function

52. The Board's powers and functions are subject to the Minister. In turn, the CEO's powers and functions are subject to the Board's directions. Section 12(2) of the RAF Act describes the CEO's duties and powers.

53. In the discussion of the background below, the Honourable Court will note that the CEO alleges that he is empowered by section 4(1)(a) of the RAF Act. Section 4(1)(a) affords the Fund the ability to stipulate the terms and conditions upon which claims will be "administered". Section 12(2) restricts the CEO's powers to:

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> "(2) Subject to the directions of the Board, the Chief Executive Officer shall conduct the current business of the Fund, and he or she may-
>
> (a) exercise the powers and shall perform the functions of the Fund mentioned in section 4(1)(b), (c) and (d), (2) and (3);
>
> (b) appoint, determine the conditions of employment of and dismiss the staff of the Fund, excluding members of staff on management level;
>
> (c) draft internal rules and directions in respect of the management of the Fund and make recommendations in respect thereof to the Board;
>
> (d) enter into an agreement with any person for the rendering of a particular service related to the management of the Fund or its functions;
>
> (e) issue guidelines to agents regarding the manner in which claims should be administered by them on behalf of the Fund; and

(f) exercise such powers and shall perform such duties as may be delegated and assigned to him or her by the Board under section 11 (1) (h)." (own emphasis)

54. Section 12(2)(a) provides that the CEO shall perform the functions of the Fund mentioned in section 4(1)(b), (c) and (d), (2) and (3). By way of omission, the RAF Act excludes section 4(1)(a) from the CEO's powers.

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THE FACTUAL BACKGROUND

55. The Minister published the first RAF 1 as annexure "A" to the 2008 RAF Regulations.

56. The RAF1 remained unchanged and was implemented without any direction from board notices for years. Moreover, use of substantial compliance as the threshold for submitting a valid claim for compensation remained a fixed and crystallised principle of law until the RAF Chairperson and CEO decided to change the status quo in March 2021.

(a) RAF issues ultra vires Management Directive

57. On 8 March 2021, the CEO and Chair of the Board issued a document called "*Management Directive*" with the reference "*1/2021-Compulsory information to be submitted when lodging a claim for compensation with the RAF*" (the *"Management Directive*").

58. Per the Management Directive, the documents listed in the Management Directive must form part of the supporting documents lodged to ensure that a valid claim is lodged with the RAF. The Management Directive required that the documents listed must be attached to all claims submitted to the RAF, effective 1 April 2021. A copy of the Management Directive is attached as Annexure **"FA4"**.

59. On the same day, the RAF's Acting Chief Operations Manager, Ms M. Rambuali, sent a memorandum to the Chairperson of the Claims and Legal Committee ("CLECOM"). The subject of the memorandum is the "Compulsory Supporting Documents Required for RAF Claims Administration."

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60. In her memorandum, Ms Rambuali confirms that Exco discussed and approved the Management Directive. Unfortunately, Ms Rambuali does not mention the date of the Exco meeting. Ms Rambuali further indicated that no legal, communication or financial implications bar CLECOM from noting and approving the Management Directive. The memorandum further requests the committee Chairperson to note and approve the directive issued to all plaintiffs and claimants. The Directive will also be shared via multiple channels, including the RAF webpage and social media.

61. The CEO and Ms Rambuali signed the memorandum on 8 March 2021, when the RAF released the Management Directive. Significantly, the committee chairperson only approved and signed the memorandum the next day. I attach a copy of the memorandum as Annexure **"FA5"**.

62. The RAF Board held a meeting on 10 March 2021, 2 days after the Management Directive's release. The minutes of the meeting marked the meeting as "Urgent". It provided the following extract from Item 7.2 on the agenda of the meeting "Compulsory supporting Documents Required for RAF Claims Administration":

> "In response to a question, it was stated that this submission was tabled at the urgent meeting to fast-track a process in terms of which sufficient documentation is submitted by financial year-end which could support the 120 days turnaround time.
>
> Section 4(1)(a) of the Act provides that the powers and functions of the Fund shall include the stipulation of the terms and conditions upon which claims for compensation contemplated in section 3, shall be administered.
>
> In conclusion, it was noted that this Directive would be published on the RAF website and on media platforms."

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63. The committee Chairperson only signed the minutes 3 months later, on 9 July 2021. However, the minutes indicate that the Board approved the Management Directive and resolved to meet on 28 April 2021. A copy of the minutes and the resolution is attached as **Annexure "FA6"**.

64. The RAF CEO has conceded under oath that no public participation occurred before implementing the Management Directive. I deal with the aforesaid in more detail below.

(i) The RAF's belated Media Roadshow

65. On 25 May 2021, the RAF invited all media to attend a press conference at the RAF's head office at 10:00 am. The conference's purpose was to discuss the minimum information requirements directive of the RAF. The RAF also issued a written media statement on 25 May 2021. For ease of reference, the following extract from the media statement is provided:

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> "The RAF issued a compulsory minimum information directive on the 8th of March, following the resolution of the board. The aforementioned directive was circulated to all plaintiff attorneys within the RAF database on the 11th of March and was published on the Legal Practice Council website for the attention of all attorneys on 15th March 2021. In terms of directive, the implementation was to be effective on the 1st of April 2021. Additionally, a month reprieve was granted leading to the effective date being the 1st of May 2021.
>
> Since the implementation, the Fund has been inundated with queries and complaints resisting the implementation of the minimum information directive. This has resulted in the RAF considering it necessary to hold a press conference to brief the media fraternity and South Africans at large with a view to clarify our position regarding the directive." (my emphasis)

66. Copies of the invitation and media statement are attached as Annexures **"FA7"** and **"FA8.**

67. The media statement further refers to the delayed implementation of the directive. It alleges that the RAF granted a month's reprieve and only started implementing

the directive on 1 May 2021. To my knowledge, no notice of any reprieve was issued to the LPC or plaintiff attorneys on the RAF's database. Moreover, the RAF's website did not contain a media statement referring to any reprieve.

(ii) The consequences of the RAF's implementation of the Management Directive

68. From my communication with legal practitioners and further investigations, I determined that the RAF refused to accept the claims if they did not comply with the published Management Directive. This drastic decision had dire consequences for claims on the verge of prescribing. The problems regarding implementing the Management Directive started to escalate in May 2021.

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69. The RAF's refusal to accept the lodgement of claims for want of compliance with the Management Directive resulted in various urgent applications. Attorneys were forced to approach the urgent court to protect claimants' rights and avoid prescription. After the adoption of the Management Directive, the following additional court orders were granted against the RAF:

69.1. Case number 22142/2021 in the matter between Paul Nel and the Road Accident Fund in which the Honourable Lady Justice Neukircher granted an order on 7 May 2021;

69.2. Case number 23223/2021 in the matter between Neo Eva Mashilo and the Road Accident Fund in which an order was granted by His Lordship Mr Justice Nkosi on 12 May 2021;

69.3. Case number 22400/2021 in the matter between ND Mchunu and the Road Accident Fund in which an order was granted by His Lordship Mr Justice Nkosi on 12 May 2021;

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69.4. Case number 23549/2021 in the matter between Dimakatso Soso Buda on behalf of Phemelo Chantele Buda and the Road Accident Fund in which an order was granted by His Lordship Mr Justice Tlhapi on 14 May 2021;

69.5. Case number 23568/2021 in the matter between Rachel Mahlangu and the Road Accident Fund in which an order was granted on 18 May 2021;

69.6. Case number 23943/2021 in the matter between Hconyiswa Tamara Makita and the Road Accident Fund in which an order was granted by his Lordship Mr Justice Mbongwe on 19 May 2021;

69.7. Case number 25073/2021 in the matter between Oscar Makolane Mampuro and the Road Accident Fund in which an order was granted by His Lordship Mr Justice Fourie on 25 May 2021;

69.8. Case number 22639/2021 in the matter between TM Mkhize and the Road Accident Fund in which an order was granted by His Lordship Mr Justice Fourie on 25 May 2021;

69.9. Case number 22641/2021 in the matter between Z Ndwalane and the Road Accident Fund in which an order was granted by His Lordship Mr Justice Fourie on 25 May 2021;

69.10. Case number 25871/2021 in the matter between Ryno Gerhardt Maya and the Road Accident Fund in which an order was granted by His Lordship Mr Justice Fourie on 26 May 2021;

69.11. Case number 26369/2021 in the matter between L Simelane and the Road Accident Fund in which an order was granted by His Lordship Mr Justice Teffo on 1 June 2021.

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70. Copies of the court orders are attached hereto as Annexures **"FA9.1"** to **"FA9.11"**.

71. In most of the above-mentioned urgent applications, the court found substantially in favour of the applicants in holding that the matters are urgent; ordering the RAF to accept delivery forthwith of the applicants' documents embodying their claims for compensation per the RAF Act and to acknowledge written receipt of same and reserving and preserving the RAF's rights in respect of the claims lodged. The RAF was further ordered to pay the costs of these applications.

(b) The RAF decides to adopt the Board Notice and Substitute the RAF 1 Claim Form

72. On 2 June 2021, the RAF's Acting General Manager submitted a memorandum titled "BOARD NOTICE – SUBSTITUTION OF RAF 1 CLAIM FORM AND A

PUBLICATION OF THE COMPULSORY MINIMUM REQUIREMENTS FOR LODGEMENT OF CLAIMS" to the Chairperson of CLECOM.

73. The memorandum asks the Chairperson to consider and approve the Board Notice and RAF 1 Form attached to the memorandum for publication in the Government Gazette. The Acting Chief Strategy Officer, Acting Chief Operations Officer, and CEO supported the recommendation and signed the memorandum on 2 June 2021. The Acting General Manager motivated the aforesaid request as follows:

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"3.3 A decision was taken to implement a compulsory minimum requirement directive ('the Directive') in terms of Section 4(1)(a) of the Road Accident Fund Act. The Directive was published to all claimant attorneys who are in the RAF database to the Legal Practice Council to all its members.

3.4 Since the implementation of the Directive, we have noted resistance from some quarters of the legal profession, and we have therefore considered it necessary to publish the Directive in the Government Gazette. The draft notice for publication is attached herein as annexure 'A'.

3.5 In order to ensure that the claims are lodged at the Fund an assessable state, we have further considered it necessary to substitute the current RAF1 claim for a new RAF1 form which will

(a) make it compulsory to submit supporting documents on lodgement,

(b) be in line with the new product on claims administration. The draft notice for publication is attached herein as Annexure 'B'."

74. The RAF published the Board Notice 58 of 2021 (the "Board Notice 58") and the substituted RAF 1 Form in the Government Gazette on 4 June 2021.

(i) The terms and conditions of Board Notice 58

75. The Board Notice is described as "Stipulation of Terms and Conditions upon which Claims for Compensation shall be Administered." The following is recorded in the foreword:

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> "The Road Accident Fund hereby, in accordance with section 4(1)(a) of the Road Accident Fund Act, No. 56 of 1996, stipulates the terms and conditions upon which claims for compensation shall be administered, as set out in the Schedule hereto."

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76. Under the heading of "SCHEDULE", the peremptory requirements of the Board Notice largely mirror the 8 March 2021 Management Directive requirements. Paragraph 2 explains the purpose of the 'schedule' as follows:

> "2. In order to enable Fund to effectively and efficiently administer claims, and in addition to the documentation required in terms of the Act to ensure that a valid claim is lodged which substantially complies with the Act, the following documents must be included and form part of the claim's supporting documents when lodging the claim with the Fund:" (my emphasis)

77. The Board Notice is also given retrospective effect from 1 April 2021. A copy of the Government Gazette publication is attached as Annexure **"FA10"**.

(ii) The Substituted RAF 1 Claim Form

78. The RAF published a notice titled "Substitution of RAF 1 Claim Form" in the Government Gazette on the same day as the Board Notice discussed above. In the foreword, the RAF describes the authority granted to the RAF as follows:

> "The Road Accident Fund hereby, in accordance with Regulation 7(1) of the Road Accident Fund Regulations, 2008 published under Government Gazette Notice No 770 of 21 July 2008 in Government Gazette No 31249 substitutes the RAF 1 Claim Form as set out in the Schedule."

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79. The RAF 1 form had a cover page titled "SCHEDULE", directing claimants to use the RAF 1 Form as the old claim form would not be accepted as the prescribed claim form. The effective date of the new RAF 1 Form was 4 June 2021, the date of publication. The RAF 1 Form incorporated all the requirements listed in the Board Notice and rendered the re-equipment peremptory by stating:

> "c. Your attention is drawn to the provision of section 24(4)(a) of the Act, which provides that any form referred to in the section which is not completed in all its particulars shall not be acceptable as a claim under the Act.
>
> d. Please take note that when a form submitted to the Fund is not completed in all its particulars and not acceptable as a claim the provisions of section 24(1) shall not be invoked, and the Fund shall not be obliged to acknowledge receipt thereof." (own emphasis)



80. The provisions quoted above were not contained in the old RAF 1 Form (see annexure "FA3" discussed above).

(c) The Court grants an Interim Interdict against the RAF

81. Individual claimants instituted an urgent application on or about 25 May 2021 under case number 26320/2021 to secure and protect their rights and the rights of members of the public. The applicants successfully obtained an interim interdict to stay the implementation of the Management Directive, Board Notice 58 and Substituted RAF 1 pending the institution and finalisation of a review application challenging the aforesaid administrative action. A copy of the court order is attached as Annexure **"FA11"**.

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82. The concession made by the CEO in the "Explanatory Affidavit" filed by the RAF is relevant to this application. The CEO described the RAF's actions going forward as follows:

> "30. In promulgating the directive, the fact that there was no notice and comment procedure followed is common cause between the parties. As such, I confirm that the RAF intends to proceed as follows:
>
> 30.1 the RAF will withdraw the stipulation of terms and conditions as set out in Board notice of 58 of 2021;
>
> 30.2 the RAF will suspend implementation of the RAF1, an amended form, until further notice. This will allow the RAF to embark on a public

education campaign to explain the rationale for the new form and what advantage can be attained if it is to be completed in full; and

30.3. the RAF will follow the required notice and comment procedure in respect of the terms and conditions for administering claims."

83. For the Honourable Court's ease of reference, I attach a copy of the explanatory affidavit, without the annexure, as Annexure **"FA12"**.

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84. The aforementioned applicants duly instituted the review application under case number 29459/2021. I attach a copy of the Notice of Motion as Annexure **"FA13"**.

(d) The RAF backtracks and withdraws Board Notice 58 and suspends RAF 1 implementation

85. On 22 June 2021, the RAF published Board Notice 65 of 2021 in the Government Gazette titled "Withdrawal of Terms and Conditions upon which Claims for Compensation shall be Administered and Suspension of the Effective Date of the Substitution of the RAF 1 Form". For the Honourable Court's ease of reference, I provide the following extract:

"The Road Accident Fund hereby withdraws the terms and conditions upon which claims for compensation shall be administered which were published in Board Notice 58 of 2021, Government Gazette 44674 on 4 June 2021, with immediate effect and suspends, until further notice to be published in the Gazette, the effective date of the substitution of the RAF 1 Form."

86. The RAF did not withdraw the substituted RAF 1 Form; instead, it suspended the effective date of its operation. Consequently, the RAF 1 Form remained in place pending the RAF advising when the substituted claim form would again be effective.

THE DEVELOPMENTS LEADING TO THIS REVIEW APPLICATION

87. On 22 June 2021, the RAF published the "Draft Terms and Conditions upon which Claims for Compensation shall be Administered" (the "draft board notice") as Board Notice 66 of 2021. The Notice asserted that the RAF published the draft terms under section 4(1) of the RAF Act. Interested persons were invited to submit their comments within 30 days.

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88. The draft terms did not differ from the withdrawn board notice I have discussed above.

89. The applicant and other interested parties, inter alia, the Association for the Protection of Road Accident Victims ("APRAV)", Law Society of South Africa ("LSSA"), and various firms of attorneys submitted substantive written representations to the RAF.

(a) The Applicant's Comments on the Draft Terms

90. The applicant timeously submitted its comments to the RAF. In the comments, the applicant confirmed that it does not have a commercial interest in the matter and that the applicant would not be able to recoup the additional losses that would flow

from the implementation of the draft board notice. The applicant described its interest as follows:

> "4. Claims arising from circumstances where legal practitioners have failed to either lodge matters with the RAF timeously or, having lodged the claims on time, fail to issue summons within the prescribed period (thus resulting in prescription) make up the highest number and value of the claims reported to and paid by the LPIIF. Furthermore, claims against legal practitioners by claimants who allege that the practitioners have under-settled their claims against the RAF also make up one of the main categories (in number and value) of claims dealt with by the LPIIF.
>
> 5. In assessing both prescribed and under-settled claims, the LPIIF effectively steps into the shoes of the RAF. In this assessment of the underlying liability and the quantum of the claims, the LPIIF goes through a similar process to that undertaken by the RAF."

91. The applicant confirmed that prescription-related claims did not only arise from the fault of legal practitioners and substantiated the statement by referring to relevant case law. The applicant further confirmed that, as of the submission of its comments, it had 1379 prescribed RAF claims and 327 under-settled claims and paid R179,712,492.00 collectively for the aforesaid claims in the last 10 years. Elaborating on its interest and reasons for commenting on the draft board notice, the applicant explained:

> "11. The LPIIF thus, to a large extent, picks up liability that would otherwise have been attributable to the RAF and is, outside of that organisation, the only other

entity that indemnifies a significant number of claims that would otherwise have been indemnified by the RAF.

12. Over the years, the LPIIF has sought through various structures (including the RAF sub-committee of the National Efficiency Enhancement Committee (NEEC)) and also in bilateral engagements with the RAF to address the underlying risks faced by both entities.

13. The proposed changes sought to be introduced by the Board Notice will increase the risk of claimants not being able to submit their claims timeously and the risk of obtaining adequate compensation."

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92. The applicant stated that it had sight of the submissions made by the LSSA and Adams and Adams and confirmed that it was in complete agreement with their submissions. Consequently, the applicant's submissions were in addition to those made by the LSSA and Adams and Adams. In this affidavit, I will not provide a detailed discussion of the applicant's submissions or that of the LSSA or Adams and Adams. However, I deem it prudent to deal with the summary of the applicant's comments.

93. In summary, the applicant stated that section 24 of the RAF Act seeks to strike a balance between a substantively fair approach versus a merely technical approach to the requirements for lodging a claim in terms of the Act and furthermore:

"32.2. The Board Notice is *ultra vires* the RAF Act. In terms of section 26 of that Act, only the Minister has the power to make regulations regarding any matter in terms of the RAF Act. The LPIIF submits that section 4(1)(a) of the

RAF Act does not authorise the RAF the power to issue regulations under the RAF Act or to prescribe any terms or conditions by means of a Board Notice or Management Directive under which claims are to be lodged with the RAF. The LPIIF submits that the Board Notice extends beyond what RAF is empowered to do in terms of section 4(1)(a) of the RAF Act and are, as such, *ultra vires* RAF's powers and therefore unlawful and unconstitutional;

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32.3. The RAF Act defines 'prescribe' as meaning to prescribe by regulation under section 26 of the Act. Furthermore, the 'Act' is defined as including regulations made under section 26 of the Act. The Board Notice is published under section 4(1)(a) of the RAF Act and purports to amend the procedure and requirements under section 24 of the Act. The intended reliance and effect of the Board Notice on section 4(1)(a) is unclear as the Minister has the sole authority to prescribe a procedure in terms of section 26 of the Act;

32.5. The Board Notice constitutes an unjustifiable intrusion on the rights of claimants. The proposed amendments contemplated in Board Notice will have a significant adverse impact on claimants as the requirements increase the burden in lodging claims with the RAF;"

94. Considering the above-mentioned, the applicant asserted that the RAF's decision was taken because relevant considerations were not considered, and the means adopted by the RAF were not proportional to the intended outcome. The *ultra vires* decision was so unreasonable that no reasonable person could have made the decision.

95. The applicant concluded its submission with a confirmation that it opposed the introduction of the draft board notice. I attach copies of the applicant's comments, the LSSA's comments, and the comments of Adams and Adams as Annexures **"FA14.1"** to **"FA14.3"**.

(b) The applicant requested a meeting with the RAF

96. I attended the stakeholder roundtable hosted by the RAF in Midrand on 1 March 2022. The RAF CEO and various other senior members attended the stakeholder roundtable. At the request of the LPC's (fifth respondent) representative, I agreed to comment, *inter alia*, on the prescription and under-settlement of RAF claims. My comments were guided by the applicant's concerns addressed above.

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97. I provided an impromptu address to the forum on the aforementioned risks. The RAF's representatives did not respond to my address or deal with any crucial issues.

98. The next day, I emailed Mr Tshisikhawe Ndou requesting a meeting to discuss matters of mutual interest. For ease of reference, I provide the following extract from my email:

> "Would it be possible to have a discussion with a representative/ representatives of the RAF to discuss areas of mutual interest and common risk issues? The Legal Practitioners Indemnity Insurance Fund NPC (the LPIIF) is a non-profit insurance company that provides professional indemnity insurance to legal

practitioners in terms of section 77 of the Legal Practice Act. The LPIIF has paid out approximately R1,3 billion in claims. Prescribed RAF matters make up about 60% of that total and under-settled RAF matters make up approximately 16% of the amount paid. When we deal with those matters we essentially step into the shoes of the RAF and have to deal with the matters in the same way that the RAF would have dealt with them. The issues that we have to consider (the mandate to the attorney, the locus standi of the plaintiff, the merits of the accident, fraud, the quantum etc.) are similar to what the RAF considers. It is thus my view that collaboration and cooperation between the two organisations should be explored."

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99. Mr Ndou responded on even date. He requested that I let him know when I am ready, and the RAF will facilitate the engagement. On the same morning, I replied as follows:

"I am available on any day in March except 10, 16, 18, 24 and 31. We are based in Centurion can either have a face-to-face meeting or hold the discussion on one of the virtual platforms. I will go for a date, time, venue and format that suits the RAF team best. We do not mind coming to the RAF offices if that will be more convenient and also taking into account that the RAF delegation will be bigger. From the LPIIF side, I will invite my colleague, Joseph Kunene, who is the Claims Executive at the company.

Please let us know which date and time with suit you. I think that an hour will be sufficient for the first meeting. If it is alright with you, I will prepare a short introductory presentation that also highlights the risks we are seeing in respect

of RAF matters. That will, in my view, assist in setting the context and also facilitating the points of discussion."

100. Mr Ndou replied to my email that afternoon. He advised that he would respond after an "internal consultation process with affected internal stakeholders". I never received Mr Ndou's response or a response from any other RAF representative. I attach copies of the emails as Annexure **"FA15"**.

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(b) <u>6 May 2022: The RAF's second attempt at publishing a Board Notice</u>

101. On 6 May 2022, the RAF published a Board Notice 271 of 2022 with the heading "Terms and Conditions upon which Compensation shall be Administered." The RAF continued to rely on section 4(1)(a) of the RAF Act to assert that the RAF had the right to regulate and impose more conditions for the valid submission of a claim in the notice.

102. The notice stated that the implementation of the terms and conditions should be effected with the due and necessary amendment to the RAF 1 Claim Form, per regulation 7(1) of the RAF Regulations. Consequently, the RAF intended to amend the RAF 1 Form published in the above substitution notice. The RAF had merely suspended the effective date of the RAF 1 Form.

103. It is significant to note that the notice goes further than "that a valid claim is lodged" by claimants. Paragraph 2.4 lists mandatory information and/or documentation submitted before claims are paid. For ease of reference, I quote:

"2.4.1. To ensure that payments are processed in line with the settlement agreements concluded and/ in compliance with court orders, the following documents must accompany any request for payment:

2.4.1.1. Stamped Court Order/duly signed discharge form or settlement agreement:

2.4.1.2. Duly signed Power of Attorney

2.4.1.3. Tax clearance certificate, which shall be submitted by the claimants' attorneys at least once a year.

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2.4.1.4. Proof of banking details / confirmation of Banking Details (Trust Account).

2.4.1.5. Copy of the Contingency Fee Agreement concluded with the claimant and Proof of compliance with section 4 of the Contingency Fee Act, alternatively, the attorney must submit an affidavit to confirm that there is no contingency fee agreement."

104. Therefore, the 'schedule' published under the above-mentioned Board Notice went beyond administering claims. The RAF assumed the power to impose obligations and restrictions on the payment of compensation to claimants who had successfully obtained court orders against the RAF. The RAF provided itself with the right to impose conditions before it would follow court orders.

105. I attach a copy of the Board Notice published in the Government Gazette as Annexure **"FA16"**.

106. The applicant's attorneys addressed a letter to the RAF, Chair of the Board, CEO and Minister on 25 May 2022. The letter confirmed the limitations of the RAF's powers. It referred to the pending review application instituted under case number 29459/2021, in which individual claimants seek to review and set aside the Management Directive, the first Board Notice, and the substitution of the RAF 1 Form. I attach a copy of the letter from Adams & Adams to the Respondents as Annexure **"FA17"**.

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107. The applicant's attorney recorded that the publication of the Board Notice does not consider the prescription of claims in circumstances where the claimants do not have the peremptory supporting documents for the valid submission of a claim. The RAF's failure to supply notice before implementing the requirements was also criticised. The applicant's attorney confirmed that if the RAF did not provide an undertaking that it would not enforce the Board Notice by 1 June 2022, the applicant would institute urgent proceedings.

108. On 26 May 2022, the RAF's attorney replied, advising that the RAF intended to amend the RAF 1 Claim Form published in the Government Gazette on 27 May 2022. The letter confirmed that the RAF intended to withdraw the notice in the month's Government Gazette ending July 2022.

109. I attach a copy of the RAF attorney's letter as Annexure **"FA18"**.

(c) 27 May 2022: The RAF's second attempt at the substitution of the RAF 1 Claim Form

110. The RAF published Board Notice 280 of 2022 on 27 May 2022. The RAF described the purpose of the "SUBSTITUTION OF RAF 1 THIRD PARTY CLAIM FORM AND EFFECTIVE DATE FOR TERMS AND CONDITIONS UPON WHICH CLAIMS FOR COMPENSATION SHALL BE ADMINISTERED" as follows:

> "The Road Accident Fund hereby, in accordance with Regulation 7(1) of the Road Accident Fund Regulations, 2008, substitutes for the RAF 1 Third Party Claim Form published in GNR.770 of 21 July 2008: Road Accident Fund Regulations, 2008 (Government Gazette No. 31249) the RAF 1 Third Party Claim Form set out in the Schedule.
>
> The substitution of the RAF 1 Third Party Claim Form and the terms and conditions upon which claims for compensation shall be administered, as set out in Board Notice 271 of 2022 published on 6 May 2022 in Government Gazette No. 46322, shall come into effect on 1 June 2022."

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111. The RAF did not publish a 'new' RAF 1 Claim Form with the second Board Notice published by the RAF in early May 2022. In the preceding section, I described the RAF's second publication of terms and conditions. A copy of the substituted notice is attached as Annexure **"FA19"**.

(d) 30 MAY 2022: The RAF withdraws the second RAF 1 Claim Form

112. The RAF published Board Notice 281 of 2022, "Withdrawal of the Substitution of the RAF 1 Third Party Claim Form", in the Government Gazette on 31 May 2022. The RAF described the withdrawal as follows:

"The Road Accident Fund in Board Notice 280 of 2022, published on 27 May 2022 in Government Gazette No. 46422, substituted the RAF 1 Third Party Claim Form and provided that the aforementioned substitution and the terms and conditions upon which claims for compensation shall be administered, as set out in Board Notice 271 of 2022 published on 6 May 2022 in Government Gazette No. 46322, shall come into effect on 1 June 2022. The Road Accident Fund hereby withdraws Board Notice 280 of 2022."

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113. Significantly, the RAF did not withdraw the Board Notice the RAF published on 6 May 2022 that contained the terms and conditions for administering claims. I attach a copy of the withdrawal notice published in the Government Gazette as Annexure **"FA20"**.

114. Notwithstanding the pending review application, and the written representations made by the applicant, APRAV, Adams and Adams, and the LSSA during the irregular public participation discussed above, the RAF unremittingly asserted it has the power to dictate peremptory requirements (terms and conditions) for administering claims. The RAF, therefore, attributed to itself the right to publish the board notices and substitution notices discussed in the paragraphs above.

THE MINISTER'S SURPRISE DECISION TO PUBLISH A RAF 1 CLAIM FORM

115. Considering the above-mentioned, the Minister surprised the applicant by publishing a notice in the Government Gazette on 4 July 2022 with description:

"The Minister of Transport, in terms of section 26 of the Road Accident Fund Act 1996 (Act No. 56 of 1996) herewith prescribed the RAF1 Form in the Schedule."

116. I say 'surprise' because the Minister's decision was not preceded by any notice calling for public participation. The Minister exercised power delegated by the legislature in section 26 of the RAF Act. The Minister's decision to amend the RAF Regulations is separate from the RAF's abovementioned decisions. The Minister's 'surprise' decision, therefore, stands independently from the RAF's attempts at public participation.

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117. Factually, the Minister amended the RAF Regulations by publishing a new RAF 1 Claim Form. The Minister's decision creates many problems, as I show below. A copy of the Government Gazette Notice is attached as Annexure **"FA21"**.

THE RAF IMPLEMENTS PEREMPTORY REQUIREMENTS RETROSPECTIVELY

118. I discuss the RAF's conduct concerning the submission of claims below. Factually, the RAF has retrospectively implemented the terms and conditions of the 6 May 2022 Board Notice and the Minister's RAF 1 Form. I show below that the RAF even instructed its officials to reconsider claims lodged for compliance. I supply examples of the RAF's conduct below, whereafter I will address the applicant's grounds of review.

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(a) 12 July 2022: RAF Internal Management Directive on the 'New RAF 1 Form

119. The Acting Chief Claims Officer, Ms Rambuali, sent a management directive (the "internal directive") to all claims staff regarding implementing the Minister's RAF 1 Form on 12 July 2022. The Acting Head of Legal Service, Mr G Baloi, also signed the internal directive.

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120. In summary, Ms Rambuali directed claims staff to only accept claims lodged using the Minister's RAF 1 Form as of 4 July 2022. For the Honourable Court's ease of reference, I provide the following extract from the directive:

> "All RAF offices are required to enforce compliance with the new RAF 1 Form. All lodgments received on or after 04 of July 2022 must be submitted using the New RAF 1 Form. Claims lodged on the old RAF 1 Form must be objected to, using the prepared template objection letters, citing the reason for the objection as utilisation of the old RAF 1 Form. The matters must be pre-assessed and captured on the pre-assessment system, but not registered. (my emphasis)

121. The internal directive confirms the introduction of a preliminary assessment step. Effectively, claims submitted do not progress to the evaluation and objection phase in section 24 of the RAF Act. The applicant contends that the RAF disqualifies claims without registering them on the RAF's system. The aforesaid has drastic consequences for claims submitted by legal practitioners on the verge of prescribing. The internal directive is marked "effective immediately".

122. Ms Rambiali attached the "template objection" to the internal directive. The template provides insight into the RAF's intention. The following quote from the template is informative:

> "To administer claims effectively and efficiently lodged with the Road Accident Fund (the RAF), pursuant to section 4(1)(a) of the Act, in Board Notice 271 of 2022 (the Notice) published in Government Gazette No. 46322 on 6 May 2022, stipulated terms and conditions upon which claims for compensation shall be administered. These terms and conditions, read with section 24 of the Act, stipulate documents which must be included and form part of the supporting documents when lodging a claim for compensation with the RAF, to ensure that a substantially compliant and valid claim is lodged."
>
> We have pre-assessed the claim for substantial compliance with section 24 of the Act and wish to bring to your attention that the claim does not meet the following requirement(s)) and we therefore object to same in terms of Sub-section 24(5) of the Act: (own emphasis)

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123. The internal directive and template confirm that the RAF asserts peremptory compliance with its 6 May Board Notice. The use of 'must' in the internal directive and template indicates that the RAF will not accept a claim if the documents are not included. A copy of the internal directive and template objection are attached as Annexure **"FA22"**.

(b) RAF's Refusal and complaints received by the Applicant from Legal Practitioners

124. The LPIIF has received over 150 notifications from legal practitioners relating to matters rejected by the RAF based on alleged non-compliance with Board Notice 271 of 2022 (the Board Notice).

125. In all the matters, the accidents occurred before the Board Notice came into effect on 4 July 2022. In some instances, the information provided is that the claims were lodged before 4 July 2022, but an objection was raised by the RAF on 4 July 2022 or thereafter, purportedly relying on the requirements set out in the Board Notice.

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126. I will not burden this affidavit by attaching copies of all the notices, complaints and correspondence received from attorneys to date. If challenged to do so, I reserve the applicant's right to provide documentary evidence in reply. Considering the aforesaid, I provide the following examples:

126.1. V Rea and Associates Attorneys act for Sherley Adam Radebe in respect of a claim following an accident that occurred on 10 August 2019. The claim was lodged with the RAF on 4 August 2022. The RAF claim number is JFA101856047/GD/LI/FME/0/0. The RAF's objections to that claim are set out in a letter dated 7 September 2022.

126.2. On 19 September 2022, the RAF issued another letter 'withdrawing" the objection letter dated 7 September 2022 and issued a new objection letter that expressly referred to the Board Notice. The RAF staff thus seem uncertain of the purported basis of the objection to the claim; and

126.3. Pieter Skein Attorneys act for Mathone Magdalina Tsoehlesi (Thibeletsa), who was injured in an accident on 21 July 2019. The claim was lodged on 13 July 2022. The RAF claim reference number is JFA101860206. The objection from the RAF is dated 14 September 2022.

127. I attach copies of the documents received from the respective firms relating to the aforementioned matters as Annexures **"FA23.1"** and **"FA23.2."**

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THE APPLICANT'S GROUNDS OF REVIEW

128. Rule 53 (4) of the Uniform Rules of Court provides the applicant with the right to amend, add to or vary the terms of the Notice of Motion and supplement the founding affidavit within 10 days from receipt of the record. Therefore, the grounds of review discussed below are preliminary and subject to change after the applicant receives the record.

129. Three decisions stand to be reviewed and set aside. First is the RAF's 6 May 2022 Board Notice. Second is the Minister's publication of the RAF 1 Form. Third, and linked to the second, is the challenge to the legality of regulation 7(1) of the RAF Regulations. I deal with the aforesaid below.

(a) Grounds of Review: The 6 May 2022 Board Notice

130. The CEO and the Board Chairperson's decision to adopt and implement the Board Notice 271 of 2022. "Terms and Conditions upon which compensation shall be Administered" ("the Board Notice") is an administrative decision that stands to be

reviewed and set aside per the provisions of PAJA. Even if the decision does not fall within the ambit of PAJA, the applicant asserts that it is entitled to an order declaring the Board Notice invalid per section 172(1)(a) of the Constitution and an order setting aside the Board Notice per section 172(1)(b).

131. The applicant contends that the Board Notice stands to be reviewed and set aside in terms of section 6(2)(a), (c), (e)(i), (f), (h) and (i) of PAJA.

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(i) The RAF's decision and actions are not authorised by empowering provisions

132. The RAF Act does not contemplate two sets of rules – one by Regulation and another by "directives" or one by Regulation and another by "*Board Notices*". Moreover, the RAF Act does not delegate to the RAF Chairperson or CEO the power to make regulations on the RAF's behalf.

(ii) The RAF's action is not rationally connected to the purpose for which it was taken

133. The CEO and RAF Chairperson were not authorised by the empowering provisions of the RAF Act to adopt, publish and implement the Board Notice; alternatively, the CEO acted under a delegation of power which was not authorised by the empowering provisions of the Act or the Regulations. The Board Notice is further clearly influenced by an error of law regarding the powers afforded to the RAF, the Board, the Chair of the Board and the CEO under the RAF Act.

134. None of the aforesaid parties is granted the authority to adopt additional peremptory requirements not contained in the RAF Act or any Regulations published by the Minister. Considering the CEO's version discussed above, the Boards decision to adopt the Management Directive was taken for an ulterior purpose. The RAF raised the bar for the submission of claims to lessen the administrative workload of the RAF's officials.

135. The RAF has adopted the stance that it will be better served if claimants are obliged to submit more than the minimum documents currently prescribed in the Act and Regulations. The RAF alleges that the overburdening lists of documents required by the Board Notice will facilitate better evaluation of claims to determine validity. I submit that this is unreasonable and unfair.

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136. The applicant asserts the Board Notice is an unlawful infringement on claimants' rights to compensation in circumstances where claimants cannot provide the documents required by the Board Notice. Claims are rejected without regard to the doctrine of substantial compliance.

137. The applicant has established in this affidavit that the RAF has implemented the Board Notice retrospectively. I am advised by the applicant's legal representatives that there is a general prohibition against the retrospective implementation of administrative action without authorisation. If the RAF is allowed to continue with its conduct, the claims of widows, minors and seriously injured persons will prescribe. The applicant will be forced to step in as the insurer for legal practitioners mandated to act on behalf of the claimants.

138. As submitted at the outset, the RAF is a statutory body exercising public powers and performing public duties and functions per the provisions of the Act. Implementing the Board Notice will have highly detrimental and disproportionate financial ramifications and consequences for the applicant and legal practitioners acting for the claimants.

139. In deciding to adopt and implement the Board Notice, the CEO and RAF Chairperson failed to apply their minds to the disproportionately adverse effect of their decision on claimants. It is submitted that the Board Notice is procedurally unfair and that the decision was taken based on irrelevant considerations; alternatively that the necessary relevant considerations were not even considered. It is emphasised that the lack of public participation and/or community participation was simply not reasonable in the present circumstances.

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140. The provisions of the Board Notice are vague and embarrassing. The Board Notice prescribes and demands the submission of all documents to constitute a valid claim, yet on reading the requirements, not all documents are relevant. In other instances, duplicates are required. Not all the documents required are available in the normal course of submitting and preparing claims. This is demonstrated by the following vague and embarrassing requirements:

140.1. As standard documentation for death and injury benefits the RAF requires an "*Accident Report Form and docket and sketch plan*" to be submitted. The SAPS does not prepare a docket and sketch plan for all motor vehicle collisions.

140.2. Similarly, a "*Power of Attorney and contingency fee agreement*" are required without stating that the contingency fee agreement is only required if applicable.

140.3. Regarding claims for loss of support, a "*Post-mortem report/Inquest record/charge sheet/other documents proving that the deceased was killed in the collision*", "*Copy of [the] Liquidation and Distribution account*", and Actuarial report are, *inter alia,* required. These documents do not exist in all instances, or they are not freely accessible to legal representatives, let alone unrepresented, direct claimants, that must rely upon the SAPS, the Master of the High Court and other State departments to provide the documentation if it is applicable and available at all.

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140.4. The format of the required "Employer's certificate" is not prescribed. The information to be provided in the employer's certificate is cumbersome, and many, if not most, employers (outside the corporate sector) will be unable to provide information regarding the "*…prospect of advancement and compensation…*". For purposes hereof, I presume that the word "*advancement*" refers to prospects of promotion, salary increases etc., in the future.

140.5. The Board Notice prescribes that the claimants must submit the deceased's tax records (without specifying what records) and "*…if not available, communication from SARS that Claimant is not registered for*

tax, in which case a bank statements for three years preceding death (or injury) will be required". This raises the issue of substantive compliance squarely. What is the status of claims where the deceased or claimant does not have tax records or three years bank statements?

140.6. The requirement further presupposes that those claimants who suffered and claims loss of support has access to and/or an automatic right of access to the deceased's bank statements. This is simply not so.

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141. It is reiterated that the Fund has now sought to correct the situation by publishing the Board Notice and Substitution Notice providing for additional requirements. As the RAF regulations currently stand, the RAF is not entitled to add additional hurdles that constitute an unconstitutional bar to a claimant's right to lodge his/her claim and receive compensation. Further legal arguments will be presented at the hearing of this application in this regard.

(iii) <u>The action is unconstitutional and unlawful</u>

142. The adoption and implementation of the Board Notice further contravenes the provisions of the RAF Act and infringes on claimants' and legal practitioners' rights. Regarding the far-reaching prejudice and implications of the Board Notice, the CEO and Chair of the Board's decision to adopt the Management Directive and to require peremptory compliance is unreasonable, unconstitutional, and unlawful.



143. In consideration of the above-mentioned, the decision to adopt and implement the Management Directive stands to be reviewed and set aside in terms of sections 6(2)(a)(i) and (ii), as well as 6(2)(b),(c),(d) (e)(i), (f)(i) and (ii), (h) and (i) of PAJA, alternatively reviewed and set aside based on the principle of legality.

144. The RAF has exceeded its power to issue and apply the Board Notice in a peremptory way without any statutory authorisation. This is invalid under the Constitution according to the doctrine of legality.

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(b) Ground of Review: The Minister's RAF 1 Substitution

145. The Board's powers have already been addressed in paragraphs 45 to 48 above. Section 11(1)(a)(v) of the RAF Act grants the authority to the Board of the RAF to make recommendations to the Minister in respect of any regulation to be made under this Act. The section presupposes an obligation on the Board to, at the minimum, consult and make recommendations to the Minister before any regulations are adopted in terms of the RAF Act.

146. The RAF commenced a public participation process in June 2021 when it published the "Draft Terms and Conditions upon which Claims for Compensation shall be Administered" ("draft board notice"). I discussed the draft board notice and the comments submitted by the applicant thereon above. From my summation of the subsequent developments, the following is common cause:

146.1. The RAF published Board Notice 271 of 2022 after the notice and comment process was finalised on 6 May 2022;

146.2. The RAF published a second RAF 1 Form on 27 May 2022. The second RAF 1 substituted the RAF's first form. The Honourable Court will recall that the first substituted RAF 1 Form's implementation was only suspended after the Court granted the interim interdict against the RAF.

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146.3. On 30 May 2022, the RAF withdrew the second RAF 1 Form through Board Notice 281 of 2022. The RAF did not rely on Regulation 7(1) to withdraw its second RAF 1 Form. Consequently, the RAF amended the RAF Regulations by a simple board notice; neither the RAF Act nor the Regulations provide for this.

147. I digress at this stage. It is important to note that a person involved in an accident after 30 May 2022 is left in a severely prejudicial position. There is a vacuum as the RAF Regulations did not have a RAF 1 Claim Form after 30 May 2022. I respectfully emphasised that the RAF substituted the RAF 1 Form. The RAF did not amend or vary the claim form. The RAF's withdrawal Board Notice further lacks guidance regarding the form claimants should use. The aforesaid is just another example of the irresponsibility and irrationality of the RAF's conduct.

148. Returning to the Minister's reviewable conduct on 4 July 2022, the Minister published an RAF 1 Claim Form. Unlike the RAF's second RAF 1 Claim Form, the Minister did not embark on any form of public participation before publishing the

RAF 1 Form in June 2022. The RAF 1 Form does not mention the Board Notice. However, I have shown that the RAF has decided to implement the RAF 1 Form retrospectively and subject to the *ultra vires* Board Notice published in May 2022.

149. The Minister cannot allege that the RAF's notice and comment process resulting in the *ultra vires* Board Notice and withdrawn second RAF 1 Form can validate the Minister's "surprise" RAF 1 Form. Having regard to the impact on claimants' rights, legal practitioners, medical doctors, and the South African Police Service, substantial and meaningful engagement was undoubtedly necessary. The record-keeping of the SAPS and hospitals in rural areas is a long-standing problem for legal practitioners acting for claimants.

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150. Meeting the peremptory requirements will require the SAPS and Department of Health to declare that all accident reports and medical information will be recorded and filed correctly, thereby eliminating the "lost documents" problem many legal practitioners continuously face.

151. The Minister's RAF 1 Claim Form is further implemented with retrospective effect. The aforesaid means that the Regulations are now implemented retrospectively, and all persons involved in motor vehicle accidents who have suffered loss and damages before 4 July 2022, must now comply with the new regulation RAF 1 Form's peremptory requirements. I am advised that there is a presumption against the retrospective application of legislation.

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152. Even the 2008 RAF Regulations recognised the importance of the restriction by only giving the regulations prospective application. I provided an extract of the transitional provision in my summary above. Notably, the RAF Regulations recognised that a cause of action arising before the RAF Regulations' adoption must be instituted under regulations in place at the time when the damage or loss is suffered.

153. Consequently, the applicant asserts that the Minister's RAF 1 Claim Form stands to be reviewed and set aside per section 6(2)(c), e(iii) and (iv), f(ii)(aa) to (dd) and (h).

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(c) The Minister's delegation in regulation 7 is *ultra vires* and invalid

154. Section 7(1) of PAJA obligates a party to review an administrative decision within 180 days. Section 9(2) grants the Honourable Court the discretion to extend the 180 days where the interests of justice require. The applicant's attorney advises me that the nature and extent of the illegality is a weighty factor in deciding to overlook a delay per section 9(2). I first deal with the applicant's request for an extension in terms of section 9(2) of PAJA.

(i) Granting an extension is in the interests of justice

155. In this application, the applicant does not challenge the administrative fairness of the regulation-making process leading to the adoption of the RAF Regulations. The applicant's challenge to regulation 7(1) strikes at the substance of the regulation

and the *ultra vires* sub-delegation of the power to the RAF, allowing the amendment or substitution of the Minister's regulations.

156. The merits of the RAF 1 Form's numerous substitutions over the last year are critical for determining whether the interests of justice dictate that the delay should be condoned. The applicant has shown that an RAF 1 Form is not a mere clerical document or checklist. Used for the wrong purpose, it can bar claimants from exercising their constitutional right to compensation.

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157. Before 2021 the RAF did not attempt to exercise the sub-delegated power in Regulation 7(1). The chronological summary in this affidavit confirms that the broad discretion the Minister has sub-delegated to the RAF has primarily contributed to the administrative chaos described herein. Consequently, the applicant's challenge cannot be considered unreasonably delayed because the unreasonable and substantively irrational adverse impact was only experienced when the RAF published and withdrew two RAF 1 Claim Forms.

158. The last withdrawal created a vacuum where no RAF 1 Form existed between 30 May 2022 and 4 July 2022, when the Minister published an RAF 1 Form.

159. Furthermore, if the Honourable Court reviews and sets aside Regulation 7(1), the Minister is entitled to commence the process of adopting new regulations. Unlike the more 'general' administrative decisions, the Minister is not *functus officio* and cannot be barred from revisiting regulations when required.



160. Considering the above-mentioned, the applicant respectfully contends that the need for procedural finality should not be confused with the ever-present right to challenge the constitutional consistency of Regulation 7(1) in the circumstances. The interests of justice undoubtedly justify the granting of condonation, having regard to the importance of the matter and the real possibility of further abuse by the RAF of the sub-delegated power in Regulation 7(1).



161. The Honourable Court should not allow procedural obstacles to prevent it from looking into the lawfulness of the Minister's sub-delegation. The applicant respectfully requests the Honourable Court to condone the institution of the review of Regulation 7(1) by the applicant. I turn to the grounds of review that justify setting aside Regulation 7(1).

(ii) Grounds of Review for setting aside Regulation 7(1)

162. Regulation 7 of the Road Accident Fund Regulations, 2008 (the RAF Regulations) states that:

> (1) A claim for compensation and accompanying medical report referred to in section 24(1)(a) of the Act, shall be in the form RAF1 attached as Annexure A to these Regulations, or such amendment or substitution thereof as the Fund may from time to time give notice of in the Gazette.
>
> (2) A claim by a supplier referred to in section 24(3) of the Act shall be in the form RAF2 attached as Annexure B to these Regulations, or such amendment or

substitution thereof as the Fund may from time to time give notice of in the Gazette.

(3) The particulars and statements referred to in section 22(1)(a) of the Act shall be furnished to the Fund in the form RAF3, attached as Annexure C to these Regulations, or such amendment or substitution thereof as the Fund may from time to time give notice of in the Gazette.

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163. The RAF regulations constitute delegated legislation made under the authority of the RAF Act. Parliament has chosen the Minister to exercise the powers provided in section 26 of the RAF Act. The Minister is authorised to make regulations regarding any matter that may be prescribed in the RAF Act or necessary or expedient to achieve or promote the object of the RAF Act.

164. As a general rule, the Minister is the only party authorised to make regulations per the provisions of the RAF Act. In this application, the Honourable Court is called on to determine whether the RAF Act grants the Minister the power to delegate his authority to issue and amend regulations to the RAF Board with regard to the original purpose and intent of the legislature.

165. It is the applicant's position that the sub-delegation by the Minister to the RAF to amend, substitute or vary the RAF 1 Form is *ultra vires* and invalid and stands to be set aside.

CONCLUSION

166. In closing, it is respectfully submitted that the applicant has complied with the substantive requirements for the relief sought.

167. Since the applicant raises constitutional issues in its challenge to the RAF's Board Notice and the Minister's RAF 1 Claim Form and Regulation 7(1), a Rule 16A notice will be issued together with the review application. This will allow other interested parties and *amici curiae* to intervene if they so wish. A copy of the application will also be delivered to the parties (of whom the applicant is aware) who submitted comments on the RAF's draft board notice.

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WHEREFORE an order is sought as prayed for in terms of the Notice of Motion.

THOMAS MARK HARBAN

SIGNED and SWORN to at Pretoria on this 10th day of November 2022 by the Deponent who stated that:

1. He knows and understands the contents of the declaration; and
2. He has no objection to taking the prescribed oath; and
3. He considers the prescribed oath as binding on his conscience;
4.

And Government Notice Regulation 1258 as amended by the Government Notice Regulation 1648, Government Notice Regulation 1428 and Government Notice Regulation 773, was fully complied with.

CERTIFIED AS A TRUE COPY OF THE ORIGINAL DOCUMENT

DAWID SMITH
COMMISSIONER OF OATHS • PRACTISING ATTORNEY
GROUND FLOOR GRONDVLOER DUNCAN MANOR BUILDING / GROOND
JAN SHUIN & BROOKS STREETS STRATE, BROOKLYN, PRETORIA
P.O. BOX 11147 HATFIELD 0028 • DOCEX 235 PRETORIA
TEL: (012) 362 3137 • FAX/FAKS: (012) 362 4139

COMMISSIONER OF OATHS

"FA1"

Certificate No. IN0026

South African Reserve Bank

Prudential Authority

INSURANCE ACT, 2017

(ACT NO.18 OF 2017)

CERTIFICATE OF LICENSING

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The Prudential Authority hereby certifies that,

Legal Practitioners Indemnity Insurance Fund NPC (LPIIF)

is licensed as a non-life insurer in terms of section 23 of the Insurance Act, 2017 (Act No. 18 of 2017) to conduct insurance business and operations in the stipulated classes and sub-classes of insurance business and subject to the conditions as set out in the Annexure(s).

Issued at Pretoria on 1st day of October 2020.

Chief Executive Officer

Prudential Authority

Prudential Authority · Prudential Authority ·

ANNEXURE A

Approved classes and sub-classes of insurance business – Non-life

Class of Business	Sub-class
Liability	Professional indemnity
Guarantee	

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ANNEXURE B

Licence conditions as per section 25(8) of the Act

1. The classes and sub-classes specified in Annexure A may only be written for business in South Africa.

2. No business maybe written through a cell structure.

3. LPIIF is an insurer with a captive market and is limited to:

   a) Legal Practitioners in respect of claims which may proceed from their professional conduct; and

   b) Under the Guarantee class to providing bonds of security to practitioners in respect of them acting as or agents for any of the undermentioned:
      - Executors of deceased estates;
      - Trustees of insolvent estates;
      - Curators over the persons and property of disabled persons; and
      - As principles or agents in any similar capacity.

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"FA2"

Legal Practitioners
Indemnity Insurance
Fund NPC

Est 1993 by the Legal Practitioners Fidelity Fund

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THE LEGAL PRACTITIONERS INDEMNITY INSURANCE FUND NPC

(Registration number 93/03588/08)

PROFESSIONAL INDEMNITY INSURANCE POLICY

1 JULY 2022 TO 30 JUNE 2023

Preamble

The **Legal Practitioners' Fidelity Fund**, as permitted by the **Act**, has contracted with the **Insurer** to provide professional indemnity insurance to the **Insured**, in a sustainable manner and with due regard for the interests of the public by:

a) protecting the integrity, esteem, status and assets of the **Insured** and the legal profession;
b) protecting the public against indemnifiable and provable losses arising out of **Legal Services** provided by the **Insured**, on the basis set out in this policy.



Definitions:

I **Act:**
The Legal Practice Act 28 of 2014;

II **Annual Amount of Cover:**
The total available amount of cover for the **Insurance Year** for the aggregate of payments made for all **Claims**, **Approved Costs** and **Claimants' Costs** in respect of any **Legal Practice** as set out in Schedule A;

III **Approved Costs:**
Legal and other costs incurred by the **Insured** with the **Insurer's** prior written consent (which will be in the **Insurer's** sole discretion) in attempting to prevent a **Claim** or limit the amount of a potential **Claim**;

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IV **Legal Practitioners' Fidelity Fund:**
As referred to in Section 53 of the **Act**;

V **Bridging Finance**:
The provision of short-term finance to a party to a **Conveyancing Transaction** before it has been registered in the Deeds Registry;

VI **Claim:**
A written demand for compensation from the **Insured**, which arises out of the **Insured's** provision of **Legal Services**. For the purposes of this policy, a written demand is any written communication or legal document that either makes a demand for or intimates or implies an intention to demand compensation or damages from an **Insured**;

VII **Claimant's Costs:**
The legal costs the **Insured** is obliged to pay to a claimant by order of a court, arbitrator, or by an agreement approved by the **Insurer**;

VIII **Conveyancing Transaction:**
A transaction which:

a) involves the transfer of legal title to, or the registration of a real right in immovable property from, one or more legal entities or natural persons to another; and/or

b) involves the registration or cancellation of any mortgage bond or real right over immovable property; and/or

c) is required to be registered in any Deeds Registry in the Republic of South Africa, in terms of any relevant legislation;

IX **Cybercrime:**

Any criminal or other offence that is facilitated by or involves the use of electronic communications or information systems, including any device or the internet or any one or more of them. (The device may be the agent, the facilitator or the target of the crime or offence). Hacking of any of the electronic environments is not a necessity in order for the offence or the loss to fall within this definition;

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X **Defence Costs:**

The reasonable costs the **Insurer** or **Insured,** with the **Insurer's** written consent, incurs in investigating and defending a **Claim** against an **Insured**;

XI **Dishonest:**

Bears its ordinary meaning but includes conduct which may occur without an **Insured's** subjective purpose, motive or intent, but which a reasonable legal practitioner would consider to be deceptive or untruthful or lacking integrity or conduct which is generally not in keeping with the ethics of the legal profession;

XII **Employee:**

A person who is or was employed or engaged by the **Legal Practice** to assist in providing **Legal Services**. (This includes in-house legal consultants, associates, professional assistants, candidate legal practitioners, paralegals and clerical staff but does not include an independent contractor who is not a **Practitioner**);

XIII **Excess:**

The first amount (or deductible) payable by the **Insured** in respect of each and every **Claim** (including **Claimant's Costs**) as set out in schedule B;

XIV **Fidelity Fund Certificate:**

A certificate provided for in terms of section 84 of the **Act**, read with Rules 3, 47, 48 and 49 of the South African Legal Practice Council Rules made under the authority of section 95(1) of the **Act**;

XV **Innocent Principal:**

Each current or former **Principal** who:

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a) may be liable for the debts and liabilities of the **Legal Practice**; and

b) did not personally commit or participate in committing the **Dishonest**, fraudulent or other criminal act and had no knowledge or awareness of such act;

XVI **Insured:**

The persons or entities referred to in clauses 5 and 6 of this policy;

XVII **Insurer:**

The Legal Practitioners Indemnity Insurance Fund NPC, Reg. No. 93/03588/08;

XVIII **Insurance Year:**

The period covered by the policy, which runs from 1 July of the first year to 30 June of the following year;

XIX **Legal Practice:**

The person or entity listed in clause 5 of this policy;

XX **Legal Services:**

Work reasonably done or advice given in the ordinary course of carrying on the business of a **Legal Practice** in the Republic of South Africa in accordance with the provisions of section 33 of the **Act**. Work done or advice given on the law applicable in jurisdictions other than the Republic of South Africa are specifically

excluded, unless provided by a person admitted to practise in the applicable jurisdiction;

XXI **Practitioner:**

Any attorney, advocate referred to in section 34(2)(b) of the **Act**, notary or conveyancer as defined in the **Act**;

XXII **Prescription Alert:**

The computerised back-up diary system that the **Insurer** makes available to the legal profession;

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XXIII **Principal:**

An advocate referred in section 34(2)(b) of the **Act**, sole **Practitioner**, partner or director of a **Legal Practice** or any person who is publicly held out to be a partner or director of a **Legal Practice**;

XXIV **Risk Management Questionnaire:**

A self-assessment questionnaire which can be downloaded from or completed on the **Insurer's** website (www.lpiif.co.za) and which must be completed annually by the advocate referred to in section 34(2)(b) of the **Act**, sole practitioner, senior partner, director or designated risk manager of the **Insured** as referred to in clause 5. The annual completion of the **Risk Management Questionnaire** is prescribed by this policy (see clause 23) and the South African Legal Practice Council Rules (the Rules) made under the **Act**;

XXV **Road Accident Fund claim (RAF):**

A claim for compensation for losses in respect of bodily injury or death caused by, arising from or in any way connected with the driving of a motor vehicle (as defined in the Road Accident Fund Act 56 of 1996 or any predecessor or successor of that Act) in the Republic of South Africa;

XXVI **Senior Practitioner:**

A **Practitioner** with no less than 15 years' standing in the legal profession, with experience in professional indemnity insurance law;

XXVII Trading Debt:

A debt incurred as a result of the undertaking of the **Insured's** business or trade. (Trading debts are not compensatory in nature and this policy deals only with claims for compensation). This exclusion includes (but is not limited to) the following:

a) a refund of any fee or disbursement charged by the **Insured** to a client;
b) damages or compensation or payment calculated by reference to any fee or disbursement charged by the **Insured** to a client;
c) payment of costs relating to a dispute about fees or disbursements charged by the **Insured** to a client; and/or
d) any labour dispute or act of an administrative nature in the **Insured's** practice.

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What cover is provided by this policy?

1. On the basis set out in this policy, the **Insurer** agrees to indemnify the **Insured** against professional legal liability to pay compensation to any third party:

   a) that arises out of the provision of **Legal Services** by the **Insured**; and
   b) where the **Claim** is first made against the **Insured** during the current **Insurance Year**.

2. The **Insurer** agrees to indemnify the **Insured** for **Claimants' Costs** and **Defence Costs** on the basis set out in this policy.

3. The **Insurer** agrees to indemnify the **Insured** for **Approved Costs** in connection with any **Claim** referred to in clause 1.

4. As set out in clause 38, the **Insurer** will not indemnify the **Insured** in the current **Insurance Year,** if the circumstance giving rise to the **Claim** has previously been notified to the **Insurer** by the **Insured** in an earlier **Insurance Year**.

Who is insured?

5. Provided that each **Principal** had a **Fidelity Fund Certificate** at the time of the circumstance, act, error or omission giving rise to the **Claim**, the **Insurer** insures all **Legal Practices** providing **Legal Services** in the form of either:

   a) a sole **Practitioner**;

   b) a partnership of **Practitioners**;

   c) an incorporated **Legal Practice** as referred to in section 34(7) of the **Act**; or

   d) an advocate referred to in section 34 (2)(b) of the **Act**. For purposes of this policy, an advocate referred to in section 34(2)(b) of the **Act**, will be regarded as a sole practitioner.

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6. The following are included in the cover provided to the **Legal Practice**, subject to the **Annual Amount of Cover** applicable to the **Legal Practice**:

   a) a **Principal** of a **Legal Practice** providing **Legal Services**, provided that the **Principal** had a **Fidelity Fund Certificate** at the time of the circumstance, act, error or omission giving rise to the **Claim**;

   b) a previous **Principal** of a **Legal Practice** providing **Legal Services**, provided that that **Principal** had a **Fidelity Fund Certificate** at the time of the circumstance, act, error or omission giving rise to the **Claim**;

   c) an **Employee** of a **Legal Practice** providing **Legal Services** at the time of the circumstance, act, error or omission giving rise to the **Claim**;

   d) the estates of the people referred to in clauses 6(a), 6(b) and 6(c);

   e) subject to clause 16(c), a liquidator or trustee in an insolvent estate, where the appointment is or was motivated solely because the **Insured** is a **Practitioner** and the fees derived from such appointment are paid directly to the **Legal Practice**.

Amount of cover

7. The **Annual Amount of Cover**, as set out in Schedule A, is calculated by reference to the number of **Principals** that made up the **Legal Practice** on the date of the circumstance, act, error or omission giving rise to the **Claim**.

   A change during the course of an insurance year in the composition of a **Legal Practice** which is a partnership will not constitute a new **Legal Practice** for purposes of this policy and would not entitle that **Legal Practice** to more than one limit of indemnity in respect of that **Insurance Year**.

8. Schedule A sets out the maximum **Annual Amount of Cover** that the **Insurer** provides per **Legal Practice**. This amount includes payment of compensation (capital and interest) as well as **Claimant's Costs** and **Approved Costs.**

9. Cover for **Approved Costs** is limited to 25% of the **Annual Amount of Cover** or such other amount that the **Insurer** may allow in its sole discretion.

Insured's excess payment

10. The **Insured** must pay the **Excess** in respect of each **Claim,** directly to the claimant or the claimant's legal representatives, immediately it becomes due and payable. Where two or more **Claims** are made simultaneously, each **Claim** will attract its own **Excess** and, to the extent that one or more **Claims** arise from the same circumstance, act, error or omission, the **Insured** must pay the **Excess** in respect of each such **Claim**;

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11. The **Excess** is calculated by reference to the number of **Principals** that made up the **Legal Practice** on the date of the circumstance, act, error or omission giving rise to the **Claim**, and the type of matter giving rise to the **Claim,** as set out in Schedule B.

12. The **Excess** set out in column A of Schedule B applies:

    a) in the case of a **Claim** arising out of the prescription of a **Road Accident Fund claim**. This **Excess** increases by an additional 20% if **Prescription Alert** has not been used and complied with by the **Insured**, by timeous lodgement and service of summons in accordance with the reminders sent by **Prescription Alert**;
    b) in the case of a **Claim** arising from a **Conveyancing Transaction.**

13. In the case of a **Claim** where clause 20 applies, the **excess** increases by an additional 20%.

14. No **Excess** applies to **Approved costs** or **Defence costs**.

15. The **Excess** set out in column B of Schedule B applies to all other types of **Claim.**

What is excluded from cover?

16. This policy does not cover any liability for compensation:

a) arising out of or in connection with the **Insured's Trading Debts** or those of any **Legal Practice** or business managed by or carried on by the **Insured**;
b) arising from or in connection with misappropriation or unauthorised borrowing by the **Insured** or **Employee** or agent of the **Insured** or of the **Insured's** predecessors in practice, of any money or other property belonging to a client or third party and/or as referred to in section 55 of the **Act**;
c) which is insured or could more appropriately have been insured under any other valid and collectible insurance policy available to the **Insured**, covering a loss arising out of the normal course and conduct of the business, or where the risk has been guaranteed by a person or entity, either in general or in respect of a particular transaction, to the extent to which it is covered by the guarantee. This includes but is not limited to Misappropriation of Trust Funds, Personal Injury, Commercial and Cybercrime insurance policies;
d) arising from or in terms of any judgment or order(s) obtained in the first instance other than in a court of competent jurisdiction within the Republic of South Africa;
e) arising from or in connection with the provision of **Investment Advice**, the administration of any funds or taking of any deposits as contemplated in:

(i) the Banks Act 94 of 1990;
(ii) the Financial Advisory and Intermediary Services Act 37 of 2002;
(iii) the Agricultural Credit Act 28 of 1996;
(iv) any law administered by the Financial Sector Conduct Authority and/or the South African Reserve Bank and any regulations issued thereunder; or
(v) the Medical Schemes Act 131 of 1998
as amended or replaced;

For purposes of this Clause, **Investment Advice** means any recommendation, guidance or proposal of a financial nature furnished to any client or group of clients –

a) in respect of the purchase of any financial product; or
b) in respect of the investment in any financial product; or
c) to engage any financial service provider.

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f) arising where the **Insured** is instructed to invest money on behalf of any person, except for an instruction to invest the funds in an interest-bearing account in terms of section 86(4) of the **Act**, and if such investment is done pending the conclusion or implementation of a particular matter or transaction which is already in existence or about to come into existence at the time the investment is made;

This exclusion does not apply (subject to the other provisions of this policy) to funds which the **Insured** is authorised to invest in his or her capacity as executor, trustee, curator or in any similar representative capacity;

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g) arising from or in connection with any fine, penalty, punitive or exemplary damages awarded against the **Insured**, or from an order against the **Insured** to pay costs *de bonis propriis*;

h) arising out of or in connection with any work done on behalf of an entity defined in the Housing Act 107 of 1997 or its representative, with respect to the National Housing Programme provided for in the Housing Act;

i) directly or indirectly arising from, or in connection with or as a consequence of the provision of **Bridging Finance** in respect of a **Conveyancing Transaction.** This exclusion does not apply where **Bridging Finance** has been provided for the payment of:

(i) transfer duty and costs;

(ii) municipal or other rates and taxes relating to the immovable property which is to be transferred;

(iii) levies payable to the body corporate or homeowners' association relating to the immovable property which is to be transferred;

j) arising from the **Insured's** having given an unqualified undertaking legally binding his or her practice, in matters where the fulfilment of that undertaking is dependent on the act or omission of a third party;

k) arising out of or in connection with a breach of contract unless such breach is a breach of professional duty by the **Insured**;

l) arising where the **Insured** acts or acted as a business rescue practitioner as defined in section 128(1)(d) of the Companies Act 71 of 2008;

m) arising out of or in connection with the receipt or payment of funds, whether into or from the **Legal Practice's** trust account or otherwise, where that receipt or payment of funds:

(i) is unrelated to the successful completion of the direct instruction to provide specific **Legal Services** being carried out or having been completed; or

(ii) where the insured acts merely as a conduit for the transfer of funds from the **Legal Practice's** trust or other account to the payee;

n) arising out of a defamation **Claim** that is brought against the **Insured**;

o) arising out of **Cybercrime**. Losses arising out of **Cybercrime** include, payments made into an incorrect and/or fraudulent bank account where either the **Insured** or any other party has been induced to make the payment into the incorrect bank account and has failed to verify the authenticity of such bank account;

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For purposes of this clause, "verify" means that the **Insured** must have a face-to-face meeting with the client and/or other intended recipient of the funds. The client (or other intended recipient of the funds, as the case may be) must provide the **Insured** with an original signed and duly commissioned affidavit confirming the instruction to change their banking details and attaching an original stamped document from the bank confirming ownership of the account.

p) arising out of a **Claim** against the **Insured** by an entity in which the **Insured** and/or related or interrelated persons* has/have a material interest and/or hold/s a position of influence or control**.

* as defined in section 2(1) of the Companies Act 71 of 2008

** as defined in section 2(2) of the Companies Act 71 of 2008

For the purposes of this paragraph, "material interest" means an interest of at least ten (10) percent in the entity;

q) arising out of or in connection with a **Claim** resulting from:

(i) War, invasion, act of foreign enemy, hostilities or warlike operations (whether war is declared or not) civil war, mutiny, insurrection, rebellion, revolution, military or usurped power;

(ii) Any action taken in controlling, preventing, suppressing or in any way relating to the excluded situations in (i) above including, but not limited to, confiscation, nationalisation, damage to or destruction of property by or under the control of any Government or Public or Local Authority;

(iii) Any act of terrorism regardless of any other cause contributing concurrently or in any other sequence to the loss;

For the purpose of this exclusion, terrorism includes an act of violence or any act dangerous to human life, tangible or intangible property or infrastructure with the intention or effect to influence any Government or to put the public or any section of the public in fear;

r) arising out of or in connection with any **Claim** resulting from:

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(i) ionising radiations or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion or use of nuclear fuel;
(ii) nuclear material, nuclear fission or fusion, nuclear radiation;
(iii) nuclear explosives or any nuclear weapon;
(iv) nuclear waste in whatever form;

regardless of any other cause or event contributing concurrently or in any other sequence to the loss. For the purpose of this exclusion only, combustion includes any self-sustaining process of nuclear fission or fusion;

s) arising out of or resulting from the hazardous nature of asbestos in whatever form or quantity; and
t) arising out of or resulting from **Legal Services** carried out in violation of the **Act** and the Rules.

Fraudulent applications for indemnity

17. The **Insurer** will reject a fraudulent application for indemnity.

Claims arising out of dishonesty or fraud

18. Any **Insured** will not be indemnified for a **Claim** that arises:

a) directly or indirectly from any **Dishonest**, fraudulent or other criminal act or omission by that **Insured**;
b) directly or indirectly from any **Dishonest**, fraudulent or other criminal act or omission by another party and that **Insured** was knowingly connected with, or colluded with or condoned or acquiesced or was party to that dishonesty, fraud or other criminal act or omission.

Subject to clauses 16, 19 and 20, this exclusion does not apply to an **Innocent Principal**.

19. In the event of a **Claim** to which clause 18 applies, the **Insurer** will have the discretion not to make any payment, before the **Innocent Principal** takes all reasonable action to:

    a) institute criminal proceedings against the alleged **Dishonest** party and present proof thereof to the **Insurer**; and/or
    b) sue for and obtain reimbursement from any such alleged **Dishonest** party or its or her or his estate or legal representatives;

    Any benefits due to the alleged **Dishonest** party held by the **Legal Practice,** must, to the extent allowable by law, be deducted from the **Legal Practice's** loss.

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20. Where the **Dishonest** conduct includes:

    a) the witnessing (or purported witnessing) of the signing or execution of a document without seeing the actual signing or execution; or
    b) the making of a representation (including, but not limited to, a representation by way of a certificate, acknowledgement or other document) which was known at the time it was made to be false;

    The **Excess** payable by the **Innocent Insured** will be increased by an additional 20%.

21. If the **Insurer** makes a payment of any nature under the policy in connection with a **Claim** and it later emerges that it wholly or partly arose from a **Dishonest**, fraudulent or other criminal act or omission of the **Insured**, the **Insurer** will have the right to recover full repayment from that **Insured** and any party knowingly connected with that **Dishonest,** fraudulent or criminal act or omission.

The Insured's rights and duties

22. The **Insured** must:

    a) give immediate written notice to the **Insurer** of any circumstance, act, error or omission that may give rise to a **Claim**; and
    b) notify the **Insurer** in writing as soon as practicable, of any **Claim** made against them, but by no later than one (1) week after receipt by the **Insured**, of a

written demand or summons/counterclaim or application. In the case of a late notification of receipt of the written demand, summons or application by the **Insured**, the **Insurer** reserves the right not to indemnify the **Insured** for costs and ancillary charges incurred prior to or as a result of such late notification;

23. Once the **Insured** has notified the **Insurer**, the **Insurer** will require the **Insured** to provide a completed **Risk Management Questionnaire** and to complete a claim form providing all information reasonably required by the **Insurer** in respect of the **Claim**. The **Insured** will not be entitled to indemnity until the claim form and **Risk Management Questionnaire** have been completed by the **Insured**, to the **Insurer's** reasonable satisfaction and returned to the **Insurer**.

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24. The **Insured:**

    24.1. shall not cede or assign any rights in terms of this policy;
    24.2. agrees not to, without the **Insurer's** prior written consent:

    a) admit or deny liability for a **Claim**;
    b) settle a **Claim**;
    c) incur any costs or expenses in connection with a **Claim** unless the sum of the **Claim** and **Claimant's Costs** falls within the **Insured's Excess**;

    failing which, the **Insurer** will be entitled to reject the **Claim,** but will have sole discretion to agree to provide indemnity, wholly or partly.

25. The **Insured** agrees to give the **Insurer** and any of its appointed agents:

    25.1. all information and documents that may be reasonably required, at the **Insured's** own expense.
    25.2. assistance and cooperation, which includes, but not limited to, preparing, service and filing of notices and pleadings by the **Insured** as specifically instructed by the **Insurer** at the **Insurer's** expense, which expenses must be agreed to in writing.

26. The **Insured** also gives the **Insurer** or its appointed agents the right of reasonable access to the **Insured's** premises, staff and records for purposes of inspecting or reviewing them in the conduct of an investigation of any **Claim** where the **Insurer** believes such review or inspection is necessary.

27. Notwithstanding anything else contained in this policy, should the **Insured** fail or refuse to provide information, documents, assistance or cooperation in terms of this policy, to the **Insurer** or its appointed agents and remain in breach for a period of ten (10) working days after receipt of written notice to remedy such breach (from the **Insurer** or its appointed agents) the **Insurer** has the right to:

    a) withdraw indemnity; and/or
    b) report the **Insured's** conduct to the regulator; and/or
    c) recover all payments and expenses incurred by it.

    For the purposes of this paragraph, written notice will be sent to the address last provided to the **Insurer** by the **Insured** and will be deemed to have been received five (5) working days after electronic transmission or posting by registered mail.

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28. By complying with the obligation to disclose all documents and information required by the **Insurer** and its legal representatives, the **Insured** does not waive any claim of legal professional privilege or confidentiality.

29. Where a breach of, or non-compliance with any term of this policy by the **Insured** has resulted in material prejudice to the handling or settlement of any **Claim** against the **Insured**, the **Insured** will reimburse the **Insurer** the difference between the sum payable by the **Insurer** in respect of that **Claim** and the sum which would in the sole opinion of the **Insurer** have been payable in the absence of such prejudice. It is a condition precedent of the **Insurer's** right to obtain reimbursement, that the **Insurer** has fully indemnified the **Insured** in terms of this policy.

30. Written notification of any new **Claim** must be given to:

    Legal Practitioners Indemnity Insurance Fund NPC
    1256 Heuwel Avenue|Centurion|0127
    PO Box 12189|Die Hoewes|0163
    Docex 24 | Centurion
    ***Email*: claims@lpiif.co.za**
    Tel:+27(0)12 622 3900

The Insurer's rights and duties

31. The **Insured** agrees that:

a) the **Insurer** has full discretion in the conduct of the **Claim** against the **Insured** including, but not limited to, its investigation, defence, settlement or appeal in the name of the **Insured**;
b) the **Insurer** has the right to appoint its own legal representative(s) or service providers to act in the conduct and the investigation of the **Claim**;

The exercise of the **Insurer's** discretion in terms of a) will not be unreasonable.

32. The **Insurer** agrees that it will not settle any **Claim** against any **Insured** without prior consultation with that **Insured**. However, if the **Insured** does not accept the **Insurer's** recommendation for settlement:



a) the **Insurer** will not cover further **Defence Costs** and **Claimant's Costs** beyond the date of the **Insurer's** recommendation to the **Insured**; and
b) the **Insurer's** obligation to indemnify the **Insured** will be limited to the amount of its recommendation for settlement or the **Insured's** available **Annual Amount of Cover** (whichever is the lesser amount).

33. If the amount of any **Claim** exceeds the **Insured's** available **Annual Amount of Cover** the **Insurer** may, in its sole discretion, hold or pay over such amount or any lesser amount for which the **Claim** can be settled. The **Insurer** will thereafter be under no further liability in respect of such a **Claim**, except for the payment of **Approved Costs** or **Defence Costs** incurred prior to the date on which the **Insurer** notifies the **Insured** of its decision.

34. Where the **Insurer** indemnifies the **Insured** in relation to only part of any **Claim**, the **Insurer** will be responsible for only the portion of the **Defence Costs** that reflects an amount attributable to the matters so indemnified. The **Insurer** reserves the right to determine that proportion in its absolute discretion.

35. In the event of the **Insured's** material non-disclosure or misrepresentation in respect of the application for indemnity, the **Insurer** reserves the right to report the **Insured's** conduct to the regulator and to recover any amounts that it may have incurred as a result of the **Insured's** conduct.

36. If the **Insurer** makes payment under this policy, it will not require the **Insured's** consent to take over the **Insured's** right to recover (whether in the **Insurer's** name or the name of the **Insured**) any amounts paid by the **Insurer**;

37. All recoveries made in respect of any **Claim** under this policy will be applied (after deduction of the costs, fees and expenses incurred in obtaining such recovery) in the following order of priority:

    a) the **Insured** will first be reimbursed for the amount by which its liability in respect of such **Claim** exceeded the **Amount of Cover** provided by this policy;
    b) the **Insurer** will then be reimbursed for the amount of its liability under this policy in respect of such **Claim**;
    c) any remaining amount will be applied toward the **Excess** paid by the **Insured** in respect of such **Claim**.

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38. If the **Insured** gives notice during an **Insurance Year**, of any circumstance, act, error or omission (or a related series of acts, errors or omissions) which may give rise to a **Claim** or **Claims**, then any **Claim** or **Claims** in respect of that/those circumstance/s, act/s, error/s or omission/s subsequently made against the **Insured**, will for the purposes of this policy be considered to fall within one **Insurance Year**, being the **Insurance Year** of the first notice.

39. This policy does not give third parties any rights against the **Insurer**.

How the parties will resolve disputes

40. Subject to the provisions of this policy, any dispute or disagreement between the Insured and the Insurer as to any right to indemnity in terms of this policy, or as to any matter arising out of or in connection with this policy, must be dealt with in the following order:

    a) written submissions by the Insured must be referred to the Insurer's internal complaints/dispute team at disputes@lpiif.co.za or to the address set out in clause 30 of this policy, within thirty (30) days of receipt of the written communication from the Insurer which has given rise to the dispute;
    b) should the dispute not have been resolved within thirty (30) days from the date of receipt by the Insurer of the submission referred to in a), then the parties must agree on an independent **Senior Practitioner** who has experience in the area of professional indemnity insurance, to whom the dispute can be referred for a determination. Failing such an agreement, the choice of such **Senior Practitioner** must be referred to the Chairperson of the Legal Practice Council to appointment the **Senior Practitioner** with the relevant experience;
    c) the parties must make written submissions which will be referred for

SCHEDULE A

Period of Insurance: 1st July 2022 to 30th June 2023 (both days inclusive)

No of Principals	Annual Amount of Cover for Insurance Year
1	R1 562 500
2	R1 562 500
3	R1 562 500
4	R1 562 500
5	R1 562 500
6	R1 562 500
7	R1 640 625
8	R1 875 000
9	R2 109 375
10	R2 343 750
11	R2 578 125
12	R2 812 500
13	R3 046 875
14 and above	R3 125 000

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SCHEDULE B

Period of Insurance: 1st July 2022 to 30th June 2023 (both days inclusive)

No of Principals	Column A Excess for prescribed RAF* and Conveyancing Claims**	Column B Excess for all other Claims**
1	R35 000	R20 000
2	R63 000	R36 000
3	R84 000	R48 000
4	R105 000	R60 000
5	R126 000	R72 000
6	R147 000	R84 000
7	R168 000	R96 000
8	R189 000	R108 000
9	R210 000	R120 000
10	R231 000	R132 000
11	R252 000	R144 000
12	R273 000	R156 000
13	R294 000	R168 000
14 and above	R315 000	R180 000

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*The applicable **Excess** will be increased by an additional 20% if **Prescription Alert** is not used and complied with.

The applicable **Excess will be increased by an additional 20% if clause 20 of this policy applies.

THIRD PARTY CLAIM FORM "FA3"

Road Accident

RAF 1

1 PERSONAL DETAILS OF CLAIMANT:

Title

Surname

Name

Date of birth

ID number / Passport number

Note: A certified legible copy of your identity document must be attached to this claim form

Residential address

Postal address

Home telephone number

Work telephone number

Cellular number

Email

How would you like us to contact you?

E-mail SMS Post

Tel (H) Tel (W) Cell

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2 DETAILS OF PERSON CLAIMING IN REPRESENTATIVE CAPACITY:

Are you claiming compensation on behalf of someone else?

YES NO

If you answered YES kindly furnish the following information

Your name & surname: address

Your ID / passport number:

In what capacity are you acting

3 BANK ACCOUNT DETAILS OF CLAIMANT:

If your claim is successful the RAF will pay you directly. Please provide bank account details for payment of compensation due to you.

Bank (Name)

Account number:

Branch number

Name of account holder

THIRD PARTY CLAIM FORM

Road Accident Fund

RAF 1

4 BANK ACCOUNT DETAILS OF THE CLAIMANT'S LEGAL REPRESENTATIVE:

If costs become due, please provide details of the account into which you want the costs to be paid.

Account number

Bank name

Branch code

Name of account holder

Kindly attach one of the following documents to the claim form to enable the RAF to verify the banking details: a cancelled cheque or a certified legible copy/original statement of account which clearly indicates the account holder's name, account and branch number, or an original letter from the bank (on an official letterhead) which confirms the account holder's name, account and branch number.

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5 MOTOR VEHICLE ACCIDENT DETAILS:

Date of accident

Time of accident

Place of accident (street number and name, suburb, town, province)

Address of SAPS station where the accident was reported

Accident report number

In the accident were you (or the injured / deceased)

Driver → complete paragraph 7

Motorcyclist → complete paragraph 7

Motorcycle passenger → complete paragraph 6

Passenger → complete paragraph 6

Cyclist → complete paragraph 6

Pedestrian → complete paragraph 6

In an affidavit, to be attached to this claim form, please describe how the accident occurred

6 PASSENGERS, PEDESTRIANS & CYCLISTS:

What is the registration number of the vehicle on or in which you / injured / deceased was a passenger?

What is the driver's name and surname?

If you were a cyclist or a pedestrian, what is the registration number(s) of the other vechicle(s) involved in the accident?

Driver's physical address:

Driver's contact number:

What is the driver's name and surname?

THIRD PARTY CLAIM FORM

Road Accident Fund

RAF 1

7 DRIVER / MOTOR CYCLIST:

What is the registration number of the motor vehicle / motorcycle driven by you (or the injured / deceased)?

If you (or the injured / deceased) are not the owner of the motor vehicle / motorcycle kindly furnish the following information in respect of the owner -

Name and surname

Telephone number:

Cell number:

Physical address:

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8 DETAILS OF OTHER VEHICLES IN THE ACCIDENT:

Please provide details of any other vehicles involved in this accident. (Pedestrians and cyclists, must also answer this question by providing details of the vehicles involved.)

Registration number:

Driver's contact number:

Was this a "hit-and-run" accident?

☐ Yes ☐ No

9 PARTICULARS OF DECEASED (IF APPLICABLE):

Name

Surname

ID number

Date of birth

Date of death

What is your relationship to the deceased?

Kindly attach a copy of the death certificate, inquest report or charge sheet

10 SAFETY MEASURES:

Kindly indicate whether you (or the injured) were wearing a seatbelt at the time of the accident?

Yes ☐ No ☐

OR

Kindly indicate whether you (or the injured) were wearing a helmet at the time of the accident?

Yes ☐ No ☐

THIRD PARTY CLAIM FORM

Road Accident Fund

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11 DETAILS OF WORKMAN'S COMPENSATION:

The Compensation for Occupational Injuries and Diseases Act gives workers the right to claim compensation if they are injured during work.

Did the motor vehicle accident give rise to a claim(s) under the Compensation for Occupational Injuries and Diseases Act

Yes ☐ No ☐

If you answered YES kindly furnish the following information. Did you lodge a claim with the Compensation Fund.

Yes ☐ No ☐

If YES furnish the Compensation Fund's reference number

State the amount of compensation received to date

Indicate whether the compensation received represents the final award

Yes ☐ No ☐

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12 WITNESSES:

Were there any witness(es) to the accident?

Yes ☐ No ☐

If you answered YES kindly furnish the following information in respect of such witness(es):

Name and Surname

Address

Telephone no

Cell no

Name and Surname

Address

Telephone no

Cell no

(Should this claim form not provide enough space to list all the witnesses kindly list the remaining witnesses and their details on a separate page to be attached to this claim form)

13 EMPLOYMENT STATUS:

What was the injured's / deceased's employment status at the time of the accident?

Employed ☐

Self employed ☐

Unemployed ☐

THIRD PARTY CLAIM FORM

Road Accident Fund

RAF 1

14 EMPLOYED DETAILS:

Was the claimant or / the injured required to take time off work due to injuries sustained in the accident

Yes ☐ No ☐

If you answered YES, please furnish the the following details

Dates not at work

Number of work days the injured was not at work

Did the injured receive payment from the employer while not at work

Yes ☐ No ☐

If you answered YES, please indicate the amount received

If you answered YES to the previous question, what was the nature of the payment received from the employer

☐ sick leave ☐ gratuitous ☐ or other

If you answered OTHER, please indicate the nature of the payment

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15 EMPLOYER'S DETAILS:

Please provide the following details regarding the injured's / deceased's employment.

Name of employer

Postal address

Telephone number

Contact person

Employee number

Kindly indicate the basis of employment

☐ Permanent ☐ Temporary

☐ Casual ☐ Contract

If the employment is (or was) on a temporary/ casual or contractual basis please indicate:

Date of commencement

Date of expiry

16 PROOF OF INCOME:

To assist the RAF with the processing of the claim, for past and / or future loss of income, please indicate the documents you can provide to confirm the injured's / deceased's earnings.

☐ Payslips

☐ Most recent tax return

☐ Printout of payments from employer

☐ PayslipsBank Statements

☐ Other. Please specify:

☐ Printout of payments from employer

(Kindly attach copies of the documents identified by you to this claim form).

Tax reference Number

THIRD PARTY CLAIM FORM

Road Accident Fund

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17 SELF EMPLOYED CLAIMANTS:

If the injured / deceased was self employed please complete the following details:

Business name

Nature of business

Business address

Identify the applicable legal entity in respect of the injured / deceased business-

☐ sole trader ☐ partnership ☐ trust ☐ close corporation ☐ company

☐ other - specify

If applicable, kindly furnish the Company / Close Corporation / Trust registration number of the business

Has the injured / deceased / business lodged tax returns during last 3 financial years

☐ Yes ☐ No

If you answered YES, please attach copies of those tax returns to this claim form

If you answered NO, please attach income and expenditure statements / bank statements for the business, for the past 3 years or for such shorter period that the injured / deceased has been in business.

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18 CLAIMS FOR LOSS OF SUPPORT:

Please furnish the requested details of all the persons who, at the time of death, were dependent on the deceased for support

Dependant 1

Name

Date of birth

ID number

Relationship

Reason for dependence

Dependant 2

Name

Date of birth

ID number

Relationship

Reason for dependence

Dependant 3

Name

Date of birth

ID number

Relationship

Reason for dependence

Dependant 4

Name

Date of birth

ID number

Relationship

Reason for dependence

Dependant 5

Name

Date of birth

ID number

Relationship

Reason for dependence

Note: As proof of the relationship between the deceased and the particular dependent please attach certified copies of the relevant documentation, i.e. marriage certificate, unabridged birth certificate, adoption court order, etc.

(Should this claim form not provide enough space to list all the dependants kindly list the remaining dependants on a separate page to be attached to this claim form)

THIRD PARTY CLAIM FORM

Road Accident Fund

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19 COMPENSATION CLAIMED:

Kindly indicate with an "X", in the space provided, the type(s) of compensation claimed as well as the exact amount claimed in respect of each type

Type(s) of Compensation Claimed	
☐ Emergency medical treatment	R
☐ Non-emergency medical treatment	R
☐ Future medical expenses	R
☐ Past loss of income	R
☐ Future loss of income	R
☐ Past loss of support	R
☐ Future loss of support	R
☐ Funeral expenses (attach specified invoices)	
☐ Non- pecuniary loss (general damages)*	
Total Amount claimed	R

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* If this claim includes a claim for non-pecuniary loss (general damages) please furnish the RAF with a serious injury assessment report as prescribed in the regulations.

20 SUBSTANTIAL COMPLIANCE:

Please complete the following information to validate your claim for substantial compliance with Section 24 of the RAF Act.

1. The identity (of the injured.) - (paragraph 1).
2. The date and place of accident (paragraph 5)
3. Identify the insured motor vehicles (paragraph 6 / 7 and 8).
4. A completed statutory medical report (paragraph 22);
5. Amount claimed as compensation (paragraph 19);
6. Attach accounts, vouchers, invoices etc. to support your claim for medical expenses;
7. Complete this form as prescribed in Section 24 of the RAF Act.
8. In the event that loss of support or funeral expenses are claimed provide documentary proof of the death of the deceased; and
9. Should the space provided in this claim form be insufficient to answer any question you are welcome to attach a further page to this claim form in which such further information can be provided to the RAF.
10. Should you require any assistance with the completion of this claim form please feel free to contact the RAF on ShareCall number 0860 2355 23.

THIRD PARTY CLAIM FORM

Road Accident Fund

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21 DECLARATION AND CONSENT:

The Consent granted to the Road Accident Fund (RAF) in this paragraph authorises the RAF to obtain copies of any records and to access any information which relates to this claim for compensation and to contact any person or entity for purposes of obtaining or verifying such information and /or documentation.

I, _____ (name and surname of claimant), declare that, to the best of my knowledge, the information provided in this Third Party Claim Form is true and correct in every respect; and

I confirm that I am claiming compensation:

in my personal capacity as a result of injuries I sustained in the accident; alternatively

in my personal and / or representative capacity as _____

(state capacity) on behalf of _____ (name and surname of injured) who sustained injuries in the accident; alternatively

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in my personal and / or representative capacity as _____ (state capacity)

of _____ (state name of the deceased) who died as a result of the injuries sustained in the accident.

(Indicate, and if applicable complete, the applicable statement above)

I hereby consent to the release, to the Road Accident Fund, of copies of all documentation and /or information, including, but not limited to, documentation and /or information of a medical or financial nature, in the possession of any person or entity, which documentation or information, in any way, relates to this claim for compensation arising from the motor vehicle accident detailed in the claim form

I further consent to, and authorise, the Road Accident Fund to contact any person or entity for purposes of obtaining or verifying such information and /or documentation.

Signature of the Claimant	Signature of the Witness

THIRD PARTY CLAIM FORM

Road Accident Fund

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22 MEDICAL REPORT:

Section 24(2)(a) provides that this report shall be completed by the medical practitioner who treated the injured or deceased person for the bodily injuries sustained by him/her in the accident from which this claim arises

1. DETAILS OF PATIENT

Name

Surname

ID number

Date of birth

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2. PAST EMERGENCY MEDICAL TREATMENT

Note that, in terms of the regulations, emergency medical treatment is defined as "…the immediate, appropriate and justifiable medical evaluation, treatment and care required in an emergency situation in order to preserve the person's life or bodily functions, or both"

Did the patient receive emergency medical treatment, as defined

☐ Yes ☐ No

If you answered YES, please furnish the following information in respect of such treatment –

What was the nature of the treatment?

☐ Emergency transport

☐ Hospital care

☐ ICU

☐ Other, if other please indicate nature of the treatment

ICD 10 Code	Treatment plan

Kindly furnish the ICD 10 codes applicable to the emergency medical treatment provided to the patient and motivate why the treatment is viewed as emergency medical treatment. Should the space provided in this claim form be insufficient to answer any question attach a further page(es) to this claim form in which such further information can be provided to the RAF.

THIRD PARTY CLAIM FORM

Road Accident Fund

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MEDICAL REPORT:

5. FUTURE MEDICAL TREATMENT

Is the patient currently receiving ongoing medical treatment for the injury(ies) sustained in the accident, or is it foreseen that the patient would require future medical treatment for such injury(ies)

☐ Yes ☐ No

If you answered YES, please furnish the name(s) and contact number(s) of the service provider(s) who will be rendering treatment, future treatment.

6. MEDICAL TREATMENT IN MEDICAL FACILITY/HOSPITAL

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Was the patient admitted to a medical facility / hospital as a result of the injury(ies) sustained in the accident, or did he patient receive treatment at a medical facility / hospital for such injury(ies)

☐ Yes ☐ No

If you answered YES, please furnish the name(s) and contact number(s) of the hospital / facility, and if admitted, the date admitted and date discharged

Name of Hospital / Facility	Contact number	Date admitted	Date discharged

7. MEDICAL PRACTITIONERS DETAILS

Name

Surname

Qualifications

Practice Number (HPCSA and/or BHF)

Telephone number

Facsimile number

Cell number

Postal address

Physical address

THIRD PARTY CLAIM FORM

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DECLARATION:

DECLARATION

I hereby declare that to the best of my knowledge and belief the information set out in this medical report is true and correct in every respect.

Signature of medical practitioner

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Signed at

Date

11/11/2022-10:31:52 AM

Management Directive

Road Accident Fund

"FA4"

From : **The Chief Executive Officer Road Accident Fund**

Title : **Compulsory Supporting documents required for RAF Claims Administration**

Date : **8 March 2021**

Audience : **Plaintiff Attorneys and anyone submitting on behalf of Claimants**

Directive : **1/2021 - Compulsory Information to be submitted when lodging a claim for compensation with the RAF**

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The Road Accident Fund is on a transformation journey to move away from a litigation-based operation towards a strong claims administration capability. The board has approved strategic plans that will see RAF operate sustainably and managing claims within 120 days. The focus has shifted to a product approach when assessing death and injury benefits.

The object of the Fund as clearly set out in section 3 of the RAF Act, as amended, is the payment of compensation in accordance with the Act for loss or damage wrongfully caused by the driving of motor vehicles.

Section 4(1)(a) of the Act provides that the Powers and Functions of the Fund shall include the stipulation of the terms and conditions upon which claims for the compensation contemplated in section 3, **shall be administered.**

In order to enable RAF to effectively and efficiently administer claims, and in addition to the documentations required in terms of the Act to ensure that a valid claim is lodged which substantially complies with the Act, the following documents must be included and form part of the claim(s) supporting documents when submitting to the RAF for lodgement:

Centurion: 420 Witch-hazel Avenue Eco Glades 2 Centurion 0046 | Private Bag X178 Centurion 0046
T +27 12 621 1600 | www.raf.co.za

Board Members: Ms Thembelihle Msibi (Chairperson), Dr Nomonde Mabuya-Molcele (Vice Chairperson), Mr Hilmi Daniels, Ms Lorraine Francois, Mr Lusani Mulaudzi, Mr Khotso Mothobi, Mr Moses Nyama, Dr Maria Peenze, Mr Thulani Tshabalala, Mr Mokoditloa Moemi (Director General of Transport)

Directive: Compulsory Supporting documents/Information required for RAF Claims Administration

Standard documentation applicable to both death and injury benefits:

- Copies of Identity Documents certified by SAPS
- Accident Report Form and docket and sketch plan
- Power of Attorney and contingency fee agreement
- Permission for RAF to obtain and inspect hospital and medical records in terms of s19(e)(ii) and 19(e)(iii)
- All statements and documents in claimant's possession as outlined in S19(f)(ii)
- When the claimant is claiming in the capacity as guardian of a minor or for loss of support, copies of the unabridged birth certificate must accompany the claim form.
- Curator submitting a claim include a copy of Court order/Masters' letters of appointment



CLAIMS ADMINISTRATION REQUIREMENTS FOR DEATH BENEFITS CLAIMS

Death benefits claims are payable when an accident result in death. The claims payable could either be a funeral, loss of support or past medical expenses.

Funeral Claim

When submitting a funeral benefit claim, the following documents must accompany the claim form :

- Death certificate
- Proof of the relationship of claimant to deceased (certified marriage certificate/ unabridged birth certificate/Affidavit confirming relationship)
- Postmortem report
- A tax invoice for funeral expenses with proof of payment

Loss of support

When submitting a loss of support benefit claim, the following documents must accompany the registration form:

- Certified copy of deceased's ID
- Certified death certificate
- Curatorship: Certified copy of court order/Letters of appointment
- Certified copy of marriage certificate/certificate proving customary marriage/un-abridged birth certificate

Directive: Compulsory Supporting documents/Information required for RAF Claims Administration

- If not married, an affidavit setting out the legal basis of claimant's dependency on deceased
- Deceased's medical and hospital records
- Specified vouchers for medical costs if claimed
- Post-mortem report/ Inquest record/charge sheet/other documents proving that the deceased was killed in the collision
- Employer's certificate of deceased's service showing nature of employment, the period of service, remuneration, prospects of advancement and compensation and retirement age
- Payslips
- Claimant's tax records (if not available, communication from SARS that Claimant is not registered for tax) in which case a bank statements for three years preceding death will be required.
- Proof of any additional income
- Copy of Liquidation and Distribution account
- Copy of maintenance order if made
- The child support grant official documents
- Employer's certificate of spouse indicating the period of employment, remuneration and advancement prospects
- Official confirmation of the Compensation Fund's award if deceased died during the course and scope of employment
- Actuarial report

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CLAIMS ADMINISTRATION REQUIREMENTS FOR INJURY BENEFITS CLAIMS

Loss of earnings and medical expenses incurred as a result of being injured in an accident. An undertaking certificate covers future medical care related to the accident. The cost of medical expenses will be subjected to an RAF medical tariff or the Unified Patient Fee Structure where applicable.

General damages for pain and suffering, in instances where the claimant sustained a serious injury as confirmed by a serious injury assessment report. A medical practitioner must duly complete the RAF FORM 4 serious injury assessment in line with the Act, Regulations and AMA guides.

Directive: Compulsory Supporting documents/Information required for RAF Claims Administration

Past Medical Expenses

When submitting a medical expenses claim, the following documents must accompany the registration form:

- An itemised tax invoice from a registered medical provider or hospital for past medical expenses, together with proof of payment

Loss of earnings

When submitting a Loss of Earnings claim, the following documents/information must accompany the registration form:

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- Copies of all medical and hospital records, including photographs of the injuries
- Employer's certificate showing nature of employment, the period of employment, remuneration, prospects of advancement and retirement age
- Proof of any other income
- Claimant's tax records (if not available, communication from SARS that Claimant is not registered for tax) in which case a bank statements for three years preceding death will be required.
- Payslips pre and post-accident
- Copies of all hospital and medical records in terms of s 19(e)(i) and 19(e)(ii)
- Copies of all hospital and medical accounts
- Medical reports or documentation establishing or substantiating claimant's temporary/permanent disability and the loss of earnings claimed
- Official confirmation of remuneration/compensation received from other sources
- Official documentation confirming any disability grant
- Official confirmation of the Compensation Fund's award if claimant was injured during the course and scope of employment.

General damages

When submitting a general damages claim, the following documents/information must accompany the registration form:

- FORM 4 serious injury report duly completed in line with AMA guides
- Narrative test where applicable
- Copies of all hospital and medical records in terms of s 19(e)(i) and 19(e)(ii)

Directive: Compulsory Supporting documents/Information required for RAF Claims Administration

- Medical reports
- Photographs of injuries or scarring , where applicable

Henceforth, the documents listed in this directive must be attached to all claims submitted to the RAF, effective 1 April 2021.

Required Outcome : **Compliance to Directive**

Due date : **1 April 2021**

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Name of responsible GM or Executive : **Chief Executive Officer Collins Letsoalo**

Signature : _____

Name of responsible GM or Executive : **Chair of the board Ms T Msibi**

Signature : _____

"FA5"

Memorandum

Road Accident Fund

TO: DR MARIA PEENZE
CHAIRPERSON CLAIMS AND LEGAL COMMITTEE (CLECOM)

FROM: MARIA RAMBAULI
ACTING CHIEF OPERATIONS OFFICER

SUBJECT: COMPULSORY SUPPORTING DOCUMENTS REQUIRED FOR RAF CLAIMS ADMINISTRATION

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TYPE OF MEMORANDUM:

Information Memorandum

Decision Memorandum

1. Strategy Endorsement
2. Commercial Options
3. Approval ✓

1. Purpose

The purpose of this memo is for the Claims and Legal Committee to note and approve the attached directive outlining the compulsory supporting documents required for RAF Claims Administration.

2. Background

The RAF is on a transformation journey to shift from a predominantly litigious dispensation to a product-based claims administration. The directive outlines the additional documents required to be included as supporting documents when submitting claims. The directive is required to support the processing of claims with 120

SUBJECT: COMPULSORY SUPPORTING DOCUMENTS REQUIRED FOR RAF CLAIMS ADMINISTRATION

days and to enable RAF to effectively and efficiently administer claims in terms of the Act. The directive also informs key stakeholders of the strategic shift towards product based administration.

3. Discussion

3 1 The directive was discussed and approved at EXCO.

4. Consultation

4.1 AGM Legal, ACSO

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5. Legal Implications

5.1 None

6. Communications Implications

6.1 None

7. Financial Implications

7.1 None

8. Recommendations

8.1 Note and approve the attached directive to be issued to all plaintiff attorneys and other claimants. The directive will also be shared via multiple channels, including the RAF webpage and social media

I hereby confirm that relevant and applicable RAF Policies, procurement processes, PFMA and its Regulations, including any other regulatory requirements, shall be complied with.

9. Signatures:

Supported by:

Estelle Janse van Rensburg

Senior Manager: Operations

Date: Mar 8, 2021

Comments:

2

SUBJECT: COMPULSORY SUPPORTING DOCUMENTS REQUIRED FOR RAF CLAIMS ADMINISTRATION

8. Recommendations

8.1 Note and approve the attached directive to be issued to all plaintiff attorneys and other claimants. The directive will also be shared via multiple channels, including the RAF webpage and social media.

Supported by:

Maria Rambaull
Acting Chief Operations Officer
Date: Mar 8, 2021
Comments:

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Supported by:

Collins Letsoalo
Chief Executive Officer
Date:
Comments:

Approved by:

Dr Maria Peenze
Chairperson: Claims and Legal Committee of the Board
Date: Mar 9, 2021
Comments:

Comments:

"FA6"

Road Accident

MINUTES OF AN URGENT MEETING OF THE BOARD OF THE ROAD ACCIDENT FUND, HOSTED ON MICROSOFT TEAMS VIRTUAL PLATFORM ON 10 MARCH 2021 *Ref no 3/21*

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Date	10 March 2021	Time	13h00
Venue	Microsoft Teams		
Chairperson	Ms TN Msibi	Corporate Secretariat	JR Cornelius

ATTENDEES PRESENT
MEMBERS
Ms TN Msibi (Chairperson)
Dr N Mabuya-Molocle (Vice-Chairperson)
Mr H Daniels
Ms ZL Francois
Mr KM Mothobi
Mr LK Mulaudzi
Mr LM Nyama
Dr MC Peenze
Mr M Moemi (Director General of Transport)

APOLOGIES
MEMBERS
Mr T Tshabalala

ATTENDEES
Mr C Letsoalo (Chief Executive Officer)
Mr. I Barriel (Acting Chief Human Capital Officer)
Mr P Lukhwareni (Acting Chief Strategy Officer)
Ms. M Rambauli (Acting Chief Operations Officer)
Mr B Mabunda (Specialist Corporate Secretariat)

No	SUBJECT MATTER, DETAILS & RESOLUTION	ACTION

1. **Opening and Welcome**

The Chairperson welcomed everyone and declared the meeting open.

2. **Attendance and Apologies**

Noted. The attendance register was circulated in adobe format.

3. **Quorum**

There being a quorum, the Chairperson declared the meeting duly constituted.

4. **Declaration of Interests**

There were no declarations of conflict of interest.

5. **Confirmation of the Agenda**

The chairperson asked the attendees whether there were any additional items to the agenda.

Thereafter the agenda was adopted.

6. **In-Committee Discussion**

A separate minute has been retained.

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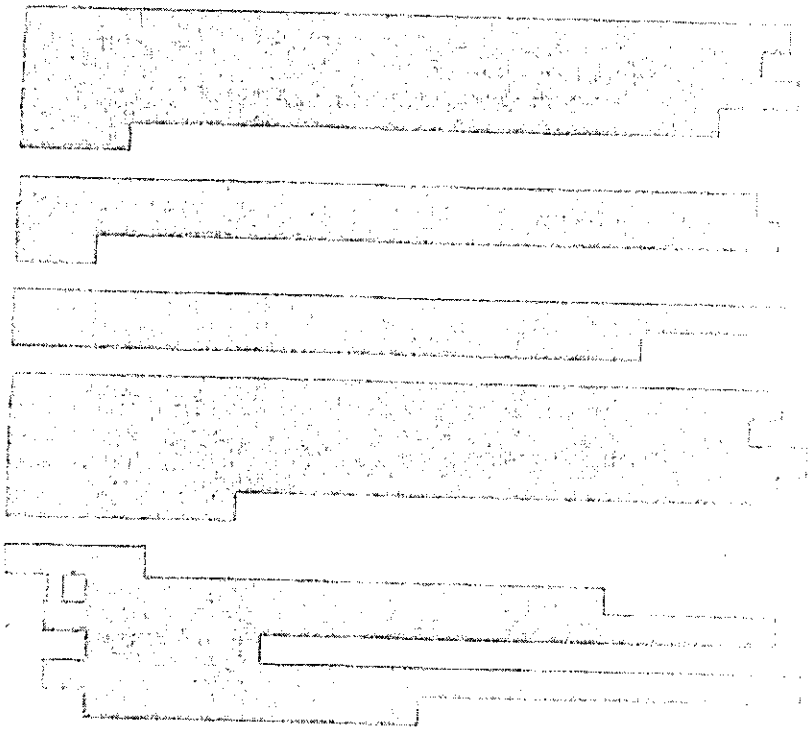
7. **Matters for Consideration**

7.1 **To-Be Conceptual Model, Functional Structure and Executive Structure**

This item was tabled for approval purposes.

[redacted]



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7.2 **Compulsory Supporting Documents Required for RAF Claims Administration**

This item was tabled for approval purposes.

The RAF has embarked on a transformation journey to shift from a predominantly litigious dispensation to a product-based claims administration. The directive outlines the additional documents required to be included as supporting documents when submitting claims. The directive is required to support the processing of claims within 120 days and to enable RAF to administer claims effectively and efficiently in terms of the Act. The directive also seeks to inform key stakeholders of the strategic shift towards product-based administration.

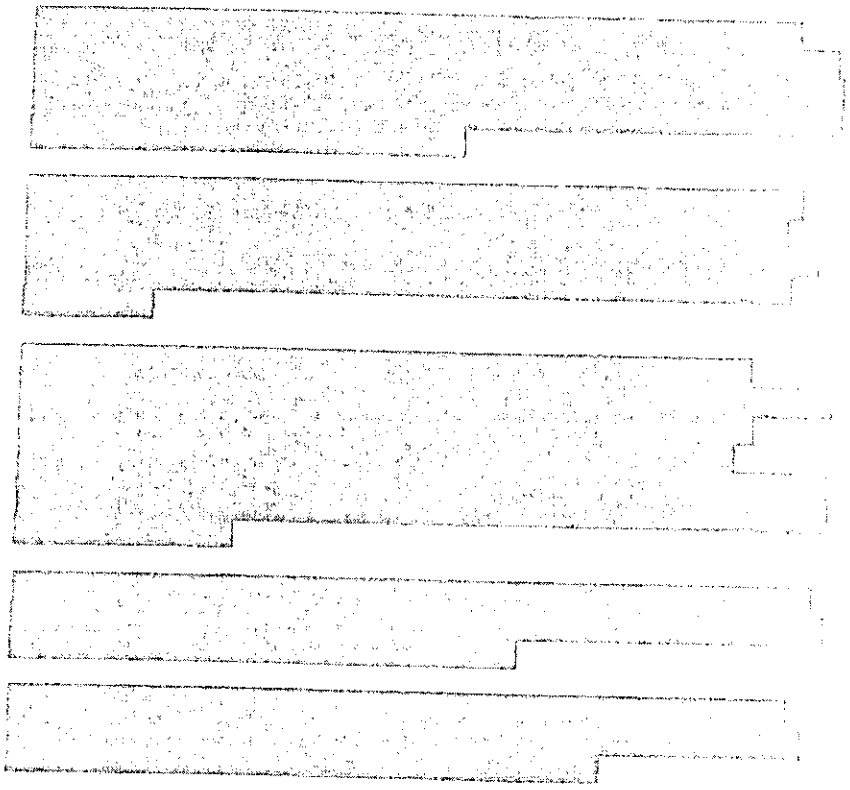
In response to a question, it was stated that this submission was tabled at the urgent meeting to fast track a process in terms of which sufficient documentation is submitted by financial year-end which would support the 120 days' turnaround time.

Section 4(1)(a) of the Act provides that the Powers and Functions of the Fund shall include the stipulation of the terms and conditions upon which claims for the compensation contemplated in section 3, shall be administered.

In conclusion, it was noted that this directive would be published on the RAF website and on media platforms.

Resolved that
The board approved the directive outlining the compulsory supporting documents required for RAF Claims Administration

7.3 **Legislative Amendments**



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8. **OTHER MATTERS**

None

9. **Date of Next Meeting**

28 April 2020

10. **Closure**

The meeting adjourned at 14h45.

SIGNED AS A FAIR REFLECTION OF THE PROCEEDINGS

Chairperson **Date** 07/07/2021

"FA7"



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INVITATION TO THE RAF PRESS CONFERENCE
ROAD ACCIDENT FUND
HEAD OFFICE
Media & Publicity
TO. ALL MEDIA

ISSUED. 25 MAY 2021

INVITATION TO THE ROAD ACCIDENT FUND PRESS CONFERENCE:

The Road Accident Fund invites all members of the media to its press conference. The purpose of the conference will be focusing on:

1. Minimum Information Requirements Directive at RAF

The press conference will take place as follows:

DATE: 25 MAY 2021
PLACE: 420 Witch-Hazel Avenue, Eco Glades Office Park 2
Centurion
Time: 10:H00

ENQUIRIES: WILLIAM MAPHUTHA
RAF: SPOKESPERSON
william@raf.co.za

11/11/2022-10:31:52 AM

"FA 8"

Road Accident Fund

DATE: 25 MAY 2021

TO: ALL MEDIA

MEDIA STATEMENT

The RAF issued a compulsory minimum information directive on the 8th of March, following the resolution of the board. The aforementioned directive was circulated to all plaintiff attorneys within the RAF database on the 11th of March and was published on the Legal Practice Council website for the attention of all attorneys on 15th March 20201. In terms of directive, the implementation was to be effective on the 1st of April 2021. Additionally, a month reprieve was granted leading to the effective date being the 1st of May 2021.

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Since the implementation, the fund has been inundated with queries and complaints resisting the implementation of the minimum information directive. This has resulted in the RAF considering it necessary to hold a press conference to brief the media fraternity and South Africans at large with a view to clarify our position regarding the directive.

The RAF has, over the years experienced serious challenges, which included amongst others;

- A highly litigious and ineffective operating model;
- An unsustainable Funding model, where the benefits offered are much more costly than the funding that is available for the scheme through fuel levies and a lack of nexus between the revenue and the benefits offered;
- An inadequate legislative framework; and
- Compounded by an extraordinarily high motor vehicle accident rate.

As a consequent, Claimants had to wait on average 1475 days for their claims to be settled. Further, the Fund spent a significant amount of its fuel levy income on high administrative costs.

In order to address these challenges, the RAF Board and Management under the leadership of Minister Mbalula in the 6th Administration embarked on a new strategic path, through the development and implementation of the 2020-25 strategic plan. Central to the strategy was the settlement of claims within 120 days, reducing the average age of old claims and reducing administrative costs. The preliminary indications from the implementation of the first year of the strategy are showing positive improvement on the administrative costs and the claims liability, this will become much clearer when the Audited Annual Financial Statements are tabled on the 31 July 2021. Notwithstanding these positive developments, challenges remain in ensuring the Fund is able to settle claims within 120 days and reduce the claims backlog.

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We have discovered that the main root cause behind this is the lodgment of claims by Plaintiff attorneys with insufficient information to enable the Fund to investigate and settle claims within 120 days. This enables the Attorneys to issue summons against the Fund after the prescribed 120 days has lapsed, thereby charging legal costs. The Fund spends about R6 billion on Plaintiff legal costs. We believe that this a gross disservice to the claimants who are victims of motor vehicle accidents.

Our preliminary investigation established that at least 80% of claims already in our system have no required information to enable us to investigate and settle. For proper context, as at 13 May 2021, the RAF had a total of 306,181 open claims of which 226, 919 are represented and 79,262 are non-represented claims. The Fund has not been able to make a merits decision in 65,728 of open represented claims which represent a 29% of the represented claims. Similarly, we have not been able to produce a quantum offer due to lack of information in 212,472 which represent 94% of open represented claims. For the non-represented claimants, all the claims (79,262) were also lodged with incomplete information to allow the Fund to assess these claims.

This clearly illustrates that the Fund is incapable to investigate and settle these claims within the prescribed 120 days without the required information. We have also observed that our officials in the merits department have to spend 70% of their time corresponding with attorneys to try and collate the outstanding documents to be submitted.

By way of an example, a claimant who was involved in an accident during May 2018 and has during the same year instructed an attorney to lodge a claim against the Fund has 1095 days to obtain the required documentation or information. Unfortunately, the attorneys opt on lodging the claim only less than 5 days before the claim prescribes, without the required information of documentation that will enable the Fund to investi-gate, assess and settle such a claim. It takes them more than 1000 days to lodge a claim and yet the Fund is expected to investigate the claim, without sufficient particulars, within 120 days failing which they issue summons against the Fund.

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This delay that has been observed by the Fund in the timeous lodgment of claims with sufficient information required is to the prejudice of claimants who labor under the im-pression that the Fund takes long to settle claims yet it is the attorneys who delay the lodgment of claims.

In an effort to address this state of affairs, the RAF has issued a directive in terms of Section 4 of the RAF Act setting out the minimum requirements for lodging a claim. The directive was issued in terms of section 4(1)(a) of the Act which empowers the Fund to stipulate the terms and conditions upon which claims for compensation shall be admin-istered.

The object of the Fund is clearly stipulated in section 3 of the Act. Such object is not to litigate but to pay compensation in accordance with the Act for loss or damage wrongfully caused by driving of motor vehicles.

It is the function of the Fund to investigate and settle such claims within 120 days of lodg-ment.

The Fund has however, over a period became a highly litigious institution which contributed significantly to the high volume of the court rolls in South Africa.

The following factors are amongst others contributing to the situation as alluded to above:

- Claimants lodged with the Fund claims that cannot be assessed, investigated and settled for lack of full particulars.

- Claimants lodges claims at the Fund with a view of interrupting prescription and issuing summons upon expiry of the 120 days.

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In exercising its powers in terms of section 4(1)(a) and section 4(2)(g) the Fund, through its Board, took a decision to stipulate the terms and conditions upon which claims for the compensation contemplated in section 3 shall be administered. Such stipulations were set out through the Management Directive referred to hereinafter mainly making it compulsory that such documents as inevitably required to assess, investigate and settle the claims be attached to and accompany the form referred to in section 24 of the Act and Regulation 7.

Given their literal meaning, the words '*the stipulation of terms and conditions upon which a claim for the compensation contemplated in section 3 shall be administered*' cannot be subverted on any account for such stipulations were made in accordance with an empowering provision.

Any purported lodgment that does not comply with these terms and conditions will defeat the purpose of lodgment and the object of the Fund.

We are concerned about some Plaintiff Attorneys who are not supportive of this key operational intervention, which will enable the Fund to expedite the settlement of claims and bring justice to victims of motor vehicle accidents, who currently have to wait over five years to get their benefits. Some of these Plaintiff Attorneys have dragged the Fund

to court seeking orders to compel the Fund to accept lodgment of these "skeleton" claims, which do not comply with the directive as issued.

We call upon all claimants and their legal representatives to cooperate with the Fund in this regard.

We have also observed with concern that, over the years the Fund has not been receiving accident reports (prescribed forms - RAF 3) as contemplated in Section 22(1) (a), which requires that, " *when, as a result of the driving of a motor vehicle, any person other than the driver of that motor vehicle has been killed or injured, the owner and the driver, if the driver is not the owner, of the motor vehicle shall, if reasonably possible within 14 days after the occurrence, furnish the Fund on the prescribed form with particulars of the occurrence together with the prescribed statements…*"

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We believe that this is critical in enabling the Fund to settle claims within 120 days.

Although challenges remain, the implementation of the 2020-25 Strategy is on track. We are encouraged by the preliminary performance outcomes of year 1 of this Strategy. We remain resolute to our commitment to transform the RAF and to set it on a sustainable financial and operational path. We will pursue this guided by our I CARE values, where the interests of the claimant take priority.

For more enquiries: William Maphutha: 067 428 3274

Issued by: The Road Accident Fund

25 May 2021

"FA 9.1"

1

7/5/2021

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

ON 7 MAY 2021 AT PRETORIA

BEFORE THE HONOURABLE JUSTICE NEUKIRCHER

Via videoconferencing

Urgent application no 29F

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REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Private Bag X67, Pretoria 0001
2021 -05- 07
GD-PRET-006

In the matter between:

PAUL NEL

and

ROAD ACCIDENT FUND

Case No: 22142/2021

Applicant

Respondent

This Order is made an Order of Court by the Judge whose name is reflected hereon, duly stamped by the Registrar of the Court and is submitted electronically to the parties or their legal representatives by e-mail. This Order is further uploaded to the electronic file of this matter on Case Lines by the Judge or his Secretary. The date of this Order is deemed to be 7 May 2021.

COURT ORDER

HAVING HEARD Counsel for the parties, having perused the documents and considered the matter

IT IS ORDERED THAT:

1. The Respondent is hereby ordered to accept delivery forthwith on 7 May 2021 before close of business of Applicant's documents embodying his claim for compensation under and in terms of Act 56 of 1996 as amended and to acknowledge in writing receipt of same.

2. The Respondent's rights are reserved and preserved in respect of the claim that is to be lodged.

3. The Respondent be ordered to pay the party and party costs of this application including the cost of two counsel.

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Private Bag X67, Pretoria 0001

BY THE COURT

2021 -05- 07

REGISTRAR.

GD-PRET-006

"FA9.2"

4-214

RETURN OF SERVICE

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

BEFORE THE HONOURABLE JUSTICE MAOS
ON THE 12th DAY OF MAY 2021

HEARD VIA MICROSOFT TEAMS

CASE NO: 23223/2021

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
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In the matter between

NEO EVA MASHILO APPLICANT

And

THE ROAD ACCIDENT FUND RESPONDENT

DRAFT ORDER

Having heard counsel for the Parties, the following is made an order of Court:

1. That this matter is dealt with as a matter of urgency and that the usual rules pertaining to notice, time limits and service are dispensed with.

2. That the Respondent be and is hereby ordered to accept delivery forthwith on 13 May 2021 before close of business of Applicant's documents embodying

4-214

ANNEXURE QDT7

4-215

01-8

her claim for compensation under and in terms of Act 62 of 1995 as amended, and to acknowledge in writing receipt of same.

3. That the Respondent's rights are reserved and preserved in respect of the claim that is to be lodged; and

4. That the Respondent be ordered to pay the costs of this application on the scale as between attorney and own client.

BY ORDER

REGISTRAR

COUNSEL FOR APPLICANT: ADV CG Jordaan
cgs@caiojordaan.co.za
072 263 4190

COUNSEL FOR RESPONDENT: Adv Magware

01-8

4-215

RETURN OF SERVICE

ANNEXURE CDT8

" FA 9.3 "

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

ON 12 MAY 2021 AT PRETORIA VIRTUALLY

BEFORE THE HONOURABLE JUSTICE NKOSI AJ

12/05/2021

In the matter between:

2021 -05- 12

Case No: 22400/2021

ND MCHUNU

Applicant

and

ROAD ACCIDENT FUND

Respondent

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

Private Bag X67, Pretoria 0001

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

This Order is made an Order of Court by the Judge whose name is reflected hereon, duly stamped by the Registrar of the Court and is submitted electronically to the parties or their legal representatives by e-mail. This Order is further uploaded to the electronic file of this matter on Case Lines by the Judge or his Secretary. The date of this Order is deemed to be 12 May 2021

DRAFT COURT ORDER

Having perused the documents, heard counsel and considered the matter, it is ordered THAT:

1. The Respondent be and is hereby ordered to accept delivery forthwith on 14th of May 2021 before close of business of Applicant's documents embodying his claim for compensation under and in terms of Act 56 of 1996 as amended; and to acknowledge in writing receipt of same.

2. The Respondent's rights are reserved and preserved in respect of the claim that is to be lodged.

3. The Respondent be ordered to pay the Attorney and Own-client costs of this application including the cost of two counsel.

BY ORDER:

REGISTRAR

2021 -05- 12

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
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REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

"FA 9.4" "X"

Tlhapi

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO: 23549/2021

Before the Honourable Justice Tlhapi J on the 14th day of May 2021
At 09:30 via Microsoft Teams In the matter between:

DIMAKATSO SOSO BUDA obo
PHEMELO CHANTELE BUDA — APPLICANT

and

THE ROAD ACCIDENT FUND — RESPONDENT

2021 -05- 14

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

DRAFT ORDER

AFTER HAVING HEARD COUNSEL for the Applicant and having read the documents filed of record: IT IS ORDERED:

1. That this matter be dealt with as a matter of urgency and that the usual rules pertaining to notice, time limits and service be dispensed with.

2. That the Respondent be and is hereby ordered to accept delivery forthwith on or before close of business on 14 May 2021 of Applicant's documents embodying his claim for compensation under and in terms of Act 56 of 1996 as amended; and to acknowledge in writing receipt of same.

3. That the Respondent be ordered to pay the costs of this application on the scale as between party and party.

BY ORDER

REGISTRAR

000-1

"FA9.5" 18/5/2021 D1

C1

IN THE HIGH COURT OF SOUTH AFRICA
[GAUTENG DIVISION, PRETORIA]

CASE NUMBER: 23568/21

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
Private Bag X67, Pretoria 0001
2021 -05- 18
GD-PRET-015

In the matter between:

RACHEL MAHLANGU APPLICANT

and

THE ROAD ACCIDENT FUND RESPONDENT

DRAFT ORDER

AFTER HAVING heard the parties and after having read the documents filed of record, the Court orders that:

1. Condonation is granted for the applicant's non-compliance with the Uniform Rules of Court regarding service, timeframes and forms, and the application is heard as an urgent application as contemplated in Uniform Rule 6(12);

2. The respondent must immediately and before the close of business on 18 May 2021, accept delivery of the applicant's lodgement documents embodying her claim for compensation in terms of the *Road Accident Fund*

18/5/2021 D1

Act 56 of 1996, as amended, and to acknowledge in writing receipt of same;

3. The respondent must pay the costs of this application on an attorney and client scale.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
2021 -05- 18
GD-PRET-015
BY ORDER OF THE COURT
THE REGISTRAR

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

18/5/2021

C2

D2

"FA9.6"

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

BEFORE THE HONOURABLE JUSTICE MBONGWE

IN COURT 6C, ON THE 19TH OF MAY 2021

CASE NO: 23943/2021

In the matter between:

HCONYISWA TAMARA MAKITA **APPLICANT**

(IDENTITY NUMBER: 581023 0829 084)

Private Bag X67, Pretoria 0001
2021 -05- 19
GD-PRET-015

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

And

THE ROAD ACCIDENT FUND **RESPONDENT**

DRAFT ORDER

Having heard counsel for the Parties, the following is made an order of Court:

1. That this application is dealt with as an urgent application as contemplated in Uniform Rule 6(12) and that condonation be granted to the applicants for not complying with the rules of the above Honourable Court pertaining to forms and service of the application;

2. That, subject to the respondent's right to object to the validity of the claim form within 60 (sixty) days (as contemplated in section 24(5) of Act 56 of 1996), the respondent is ordered to accept delivery by hand and acknowledge receipt of the Applicant's claim for compensation under Act 56 of 1996, as contemplated in section 24(1)(b) of Act 56 of 1996;

3. That the respondent pays the cost of this application, ~~on the scale as between attorney and own client including the costs of senior counsel~~.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

Private Bag 267, Pretoria 0001

2021 -05- 19

GD-PRET-015

BY ORDER

REGISTRAR

COUNSEL FOR APPLICANT: ADV AB ROSSOUW, SC
alwynrossouw@icloud.com
083 259 2547

COUNSEL FOR RESPONDENT: ADV V MAGWANE

"FA 9.7"

F1

25/5/21

IN THE HIGH COURT OF SOUTH AFRICA
[GAUTENG DIVISION, PRETORIA]

CASE NUMBER: 25073/21

REGISTRAR OF THE NORTH GAUTENG HIGH COURT, PRETORIA
PRIVATE BAG PRIVAATSAK X67
25 MAY 2021
GRIFFIER VAN DIE NOORD-GAUTENG HOË HOF PRETORIA

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

On the 25th day of May 2021 before the honourable Justice Fourie

In the matter between:

OSCAR MAKOLANE MAMPURO — APPLICANT

and

THE ROAD ACCIDENT FUND — RESPONDENT

DRAFT ORDER

AFTER HAVING heard the applicant's counsel and after having read the documents filed of record, the Court orders that:

1. Condonation is granted for the applicant's non-compliance with the Uniform Rules of Court regarding service, timeframes and forms, and the application is heard as an urgent application as contemplated in Uniform Rule 6(12);

2. The respondent must immediately and before the close of business on ~~25~~ 26 May 2021, accept delivery of the applicant's lodgement documents.

F1
C1

11/11/2022-10:31:52 AM

embodying her claim for compensation in terms of the *Road Accident Fund Act* 56 of 1996, as amended, and to acknowledge in writing receipt of same;

3. The respondent must pay the costs of this application on an attorney and client scale.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

REGISTRAR OF THE HIGH COURT GAUTENG HIGH COURT, PRETORIA
PRIVATE BAG P/SAKSAK X67 JUDGE'S SECRETARY
25 MAY 2021
REGISTRAR PRETORIA COURT
GRIFFIER VAN DIE NOORD GAUTENG HOF HOF, PRETORIA

BY ORDER OF THE COURT

~~THE REGISTRAR~~

APPEARANCE:

DS FOURIE
JUDGE OF THE HIGH COURT PRETORIA 25/5/2.

Order granted after reads on 25/5/21

DD SWART
COUNSEL FOR THE APPLICANT
CLUB ADVOCATES' CHAMBERS
PRETORIA SOCIETY OF ADVOCATES
EMAIL : swart@clubadvocates.co.za
TEL: 072 634 7604

F2
C2

11/11/2022-10:31:52 AM

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

ON 25 MAY 2021 AT PRETORIA VIRTUALLY

BEFORE THE HONOURABLE JUSTICE FOURIE J

REGISTRAR OF THE NORTH GAUTENG HIGH COURT, PRETORIA
PRIVATE BAG/PRIVAATSAK X67
JUDGE'S SECRETARY
25 MAY 2021
POSTBUS/BUS
PRETORIA 0001
GRIFFIER VAN DIE NOORD GAUTENG HOË HOF PRETORIA

In the matter between: Case No: 22639/2021

TM MKHIZE Applicant

and

ROAD ACCIDENT FUND Respondent

This Order is made an Order of Court by the Judge whose name is reflected hereon, duly stamped by the Registrar of the Court and is submitted electronically to the parties or their legal representatives by e-mail. This Order is further uploaded to the electronic file of this matter on Case Lines by the Judge or his Secretary. The date of this Order is deemed to be 25 May 2021.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

DRAFT COURT ORDER

After having perused the documents, heard counsel and considering the matter, it is hereby ordered THAT:

1. The Respondent be and is hereby ordered to accept delivery forthwith on 26TH of May 2021 before close of business of the Applicant's documents embodying the Applicant's claim for compensation under and in terms of Act 56 of 1996 as amended and to acknowledge in writing receipt of same.

2. The Respondent's rights are reserved and preserved in respect of the claim that is to be lodged.

3. The Respondent be ordered to pay the Attorney and Own-client costs of this application.

BY ORDER,

DS FOURIE

Order granted after hours on 25/5/21

JUDGE OF THE HIGH COURT

PRETORIA;

25/5/21

REGISTRAR OF THE NORTH GAUTENG HIGH COURT, PRETORIA
PRIVATE BAG / PRIVAATSAK X67
JUDGE'S SECRETARY
25 MAY 2021
GRIFFIER VAN DIE NOORD GAUTENG HOF POSBUS PRETORIA

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

"FA 9.9"

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

ON 25 MAY 2021 AT PRETORIA VIRTUALLY

BEFORE THE HONOURABLE JUSTICE FOURIE J

25/5/21

In the matter between:

Z NDWALANE

and

ROAD ACCIDENT FUND

REGISTRAR OF THE NORTH GAUTENG HIGH COURT, PRETORIA
PRIVATE BAG DEPARTMENT X67
JUDGE'S CHAMBERS
25 MAY 2021
GAUTENG

Case No: 22641/2021

Applicant

Respondent

This Order is made an Order of Court by the Judge whose name is reflected hereon, duly stamped by the Registrar of the Court and is submitted electronically to the parties or their legal representatives by e-mail. This Order is further uploaded to the electronic file of this matter on Case Lines by the Judge or his Secretary. The date of this Order is deemed to be 25 May 2021.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

DRAFT COURT ORDER

Having perused the documents, heard counsel and considered the matter, it is ordered THAT:

1. The Respondent be and is hereby ordered to accept delivery forthwith by 31st of May 2021 before close of business of Applicant's documents embodying his claim for compensation under and in terms of Act 56 of 1996 as amended and to acknowledge in writing receipt of same.

2. The Respondent's rights are reserved and preserved in respect of the claim that is to be lodged.

3. The Respondent be ordered to pay the Attorney and Own-client costs of this application.

BY ORDER

DS FOURIE

Order granted after hearing on 25/5/21.

JUDGE OF THE HIGH COURT

PRETORIA

25/5/21

REGISTRAR OF THE NORTH GAUTENG
HIGH COURT PRETORIA
PRIVATE BAG PRIVAATSAK X67
PRETORIA 0001
25 MAY 2021
REGISTRAR VAN DIE NOORD GAUTENG
HOË HOF PRETORIA

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

" FA 9.10 "

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 25871/2021

REGISTRAR OF THE NORTH GAUTENG
HIGH COURT, PRETORIA
PRIVATE BAG PRIVAATSAK X67
RECEIVED / ONTVANG
26 MAY 2021
GRIFFIER VAN DIE NOORD GAUTENG
HOF, HOF PRETORIA

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

On 26 May 2021

Before the Honourable Mr Justice Fourie J

In the application between:

RYNO GERHARDT MAYA APPLICANT

and

ROAD ACCIDENT FUND RESPONDENT

DRAFT ORDER

AFTER HEARING COUNSEL AND HAVING READ THE PAPERS THE FOLLOWING ORDER IS MADE:

1. The respondent is ordered to accept delivery, and to acknowledge receipt in writing, of the applicant's claim for compensation under the provisions of Act 56 of 1996, by close of business 26 May 2021,

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subject to the respondent's right to object to the validity of the applicant's claim within 60 (sixty) days of such delivery (as contemplated in section 24(5) of Act 56 of 1996);

2. The respondent is to pays the cost of this application, on the scale as between attorney and client.

REGISTRAR OF THE NORTH GAUTENG
HOOFD COUP L PRETORIA
PRIVATE BAG PRIVAATSAK X67
26 MAY 2021
GRIFFIER VAN DIE HOOGGD GAUTENG
HOOFPOS PRETORIA

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Order granted by
DS Fourie (J)
on
20/05/2021

BY ORDER

REGISTRAR

"FA 9.11"

17-1

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

ON 1 JUNE 2021 AT PRETORIA VIRTUALLY

BEFORE THE HONOURABLE JUSTICE TEFFO

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
Private Bag X67, Pretoria 0001
2021 -06- 01
GD-PRET-006

In the matter between: Case No: 26369/2021

L SIMELANE Applicant

and

ROAD ACCIDENT FUND Respondent

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

This Order is made an Order of Court by the Judge whose name is reflected hereon, duly stamped by the Registrar of the Court and is submitted electronically to the parties or their legal representatives by e-mail. This Order is further uploaded to the electronic file of this matter on Case Lines by the Judge or his Secretary. The date of this Order is deemed to be 1 JUNE 2021.

DRAFT COURT ORDER

Having perused the documents, heard counsel and considered the matter, it is ordered THAT:

1. The Respondent be and is hereby ordered to accept delivery forthwith by 1st of June 2021 before close of business of Applicant's documents embodying his claim for compensation under and in terms of Act 56 of 1996 as amended; and to acknowledge in writing receipt of same.

2. The Respondent's rights are reserved and preserved in respect of the claim that is to be lodged.

3. The Respondent be ordered to pay the Party and Party costs of this application including the cost of two counsel.

17-1

17-2

BY ORDER,

REGISTRAR.

Private Bag X67, Pretoria 0001

2021 -06- 01

GD-PRET-006

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Private Bag X67, Pretoria 0001

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

17-2

"FA10"



REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

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Staatskoerant
REPUBLIC OF SOUTH AFRICA
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REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

11/11/2022-10:31:52 AM

BOARD NOTICE 58 OF 2021

ROAD ACCIDENT FUND

STIPULATION OF TERMS AND CONDITIONS UPON WHICH CLAIMS FOR THE COMPENSATION SHALL BE ADMINISTERED

The Road Accident Fund hereby, in accordance with section 4(1)(a) of the Road Accident Fund Act, No. 56 of 1996, stipulates the terms and conditions upon which claims for compensation shall be administered, as set out in the Schedule hereto.

SCHEDULE

1 In this Schedule "the Act" means the Road Accident Fund Act, No. 56 of 1996.

2 In order to enable Fund to effectively and efficiently administer claims, and in addition to the documentation required in terms of the Act to ensure that a valid claim is lodged which substantially complies with the Act, the following documents must be included and form part of the claim's supporting documents when lodging the claim with the Fund:

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

2 1 Standard documentation applicable to both death and injury benefits

- 2 1.1 Certified Copies of Identity Documents
- 2 1 2 Accident Report Form, Case docket and sketch plan
- 2 1 3 Power of Attorney and Contingency Fee Agreement
- 2 1 4 Permission for the Fund to obtain and inspect hospital and medical records in terms of s19(e)(ii) and 19(e)(iii)
- 2 1 5 All statements and documents in claimant's possession as outlined in S19(f)(ii)
- 2 1 6 When the claimant is claiming in the capacity as guardian of a minor or for loss of support, copies of the unabridged birth certificate must accompany the claim form.
- 2 1.7 If it is a Curator submitting a claim, certifed copy of Court order/Masters' letters of appointment

2 2 Claims administration requirements for death benefits claims

2 2 1 Funeral Claim

- 2 2 1 1 Death certificate
- 2 2 1 2 Proof of the relationship of claimant to deceased (certified marriage certificate/ unabridged birth certificate/Affidavit confirming relationship)
- 2 2 1 3 Post - mortem report
- 2 2 1 4 A tax invoice for funeral expenses with proof of payment

2 2 2 Loss of support

- 2 2 2 1 Certified copy of deceased's ID
- 2 2 2 2 Certified copy of death certificate
- 2 2 2 3 Curatorship Certified copy of court order/Letters of appointment
- 2 2 2 4 Certified copy of marriage certificate/certificate proving customary marriage/un-abridged birth certificate
- 2 2 2 5 If not married, an affidavit setting out the legal basis of claimant's dependency on deceased
- 2 2 2 6 Deceased's medical and hospital records, if applicable
- 2 2 2 7 Specified vouchers for medical costs if claimed
- 2 2 2 8 Post-mortem report/ Inquest record/charge sheet/other documents proving that the deceased was killed in the accident
- 2 2 2 9 Employer's certificate of deceased's service showing nature of employment, the period of service, remuneration, prospects of advancement and compensation and retirement age
- 2 2 2 10 Deceased's Payslips

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2.2.2.11 Deceased's tax records (If not available, communication from SARS that Claimant is not registered for tax) in which case a bank statements for three years preceding death will be required.
2.2.2.12 Proof of any additional income, if applicable
2.2.2.13 Copy of Liquidation and Distribution account
2.2.2.14 Copy of maintenance order, if applicable
2.2.2.15 The child support grant official documents, if applicable
2.2.2.16 Employer's certificate of spouse indicating the period of employment, remuneration and advancement prospects
2.2.2.17 Official confirmation of the Compensation Fund's award if deceased died during the course and scope of employment
2.2.2.18 Actuarial report

2.3 Claims administration requirements for injury benefits claims

2.3.1 Past Medical Expenses

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

2.3.1.1 An itemised tax invoice from a registered medical provider or hospital for past medical expenses, together with proof of payment

2.3.2 Loss of earnings

2.3.2.1 Copies of all medical and hospital records, including photographs of the injuries
2.3.2.2 Employer's certificate showing nature of employment, the period of employment, remuneration, prospects of advancement and retirement age
2.3.2.3 Proof of any other income, if applicable
2.3.2.4 Claimant's tax records (if not available, communication from SARS that Claimant is not registered for tax) in which case a bank statements for three years preceding death will be required
2.3.2.5 Payslips pre and post-accident
2.3.2.6 Copies of all hospital and medical records in terms of s 19(e)(i) and 19(e)(ii)
2.3.2.7 Copies of all hospital and medical accounts
2.3.2.8 Medical reports or documentation establishing or substantiating claimant's temporary/permanent disability and the loss of earnings claimed
2.3.2.9 Official confirmation of remuneration/compensation received from other sources
2.3.2.10 Official documentation confirming any disability grant
2.3.2.11 Official confirmation of the Compensation Fund's award if claimant was injured during the course and scope of employment

2.3.3 General damages

2.3.3.1 Duly compeleted RAF 4 FORM
2.3.3.2 Copies of all hospital and medical records in terms of s 19(e)(i) and 19(e)(ii)
2.3.3.3 Medical reports
2.3.3.4 Photographs of injuries or scarring, where applicable

2.4 Mandatory information / documentation to be submitted for claims payments

2.4.1 To ensure that payments are processed in line with the settlement agreements concluded and/ in compliance with court orders, the following documents must accompany any request for payment:

2.4.1.1 Stamped Court Order/duly signed discharge form or settlement agreement
2.4.1.2 Duly signed Power of Attorney
2.4.1.3 Tax clearance certificate, which shall be submitted by the claimants' attorneys at least once a year.
2.4.1.4 Proof of banking details / confirmation of Banking Details (Trust Account)
2.4.1.5 Copy of the Contingency Fee Agreement concluded with the claimant and Proof of compliance with section 4 of the Contingency Fee Act, alternatively, the attorney must submit an affidavit to confirm that there is no contingency fee agreement

3. These terms and conditions took effect on 01 April 2021

11/11/2022-10:31:52 AM

ROAD ACCIDENT FUND

SUBSTITUTION OF RAF 1 CLAIM FORM

The Road Accident Fund hereby, in accordance with Regulation 7(1) of the Road Accident Fund Regulations, 2008 published under Government Notice No 770 of 21 July 2008 in Government Gazette No. 31249, substitutes the RAF 1 Claim Form as set out in the Schedule.

SCHEDULE

1 In this Schedule "the Act" means the Road Accident Fund Act, No. 56 of 1996.

2 A claim for compensation and accompanying medical report referred to in section 24 (1) (a) of the Act must be in the form of the RAF 1 form, prescibed as follows

[insert claim form]

3 A claim for compensation and accompanying medical report referred to in section 24 (1) (a) of the Act which is not in the form of the RAF 1 form in paragraph 2 shall not be acceptable by the Fund as a claim

4 Claimants are directed to make use of the substituted RAF 1 form in paragraph 2, as the old RAF 1 form will not be aceptable as the prescribed claim form

5 The effective date of the substitution of the RAF 1 form is the date of publication of this Notice in the Gazette

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

11/11/2022-10:31:52 AM

RAF 1 FORM

Road Accident Fund

Important Information

a. This is a prescribed form to be completed in respect of claims for compensation under section 17 of the Road Accident Fund (RAF) Act, provided for in terms of section 24(1)(a) of the Act.

b This form shall be completed in all its particulars and in instances where there are astensks indicating that supporting documents will be required, such must be included for completeness

c. Your attention is drawn to the provisions of section 24(4)(a) of the Act, which provides that any form referred to in the section which is not completed in all its particulars shall not be acceptable as a claim under the Act.

d. Please take note that when a form submitted to the Fund is not completed in all its particulars and not acceptable as a claim, the provisions of section 24(1)(b) shall not be invoked, and the Fund shall not be obliged to acknowledge receipt thereof.

e The form and relevant supporting documents can be sent to us via our regional offices or by registered mail

f. This form consists of three sections: Section A, B and C.

g. Complete Section A and B if lodging an Injury Benefit Claim and Section A and C for a Death Benefit Claim

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Section A
(Personal Information and Accident Details)

1. Capacity

Unrepresented	
Represented	*Attach proof of contingency fee agreement and power of attorney
Representative's Name and Surname	
Representative Capacity	
Name of Firm	
Bank Name	
Branch Number	
Name of Account Holder	

2. Personal Information

Title		Name and Surname	
ID Number / Passport Number	*Attach a certified copy of ID or passport	Date of Birth	
Residential Address	Town		
	Province		
	Postal Code		
Postal Address	Town		
	Province		
	Postal Code		
Home Telephone Number		Work Telephone Number	
Cell Phone Number		Email	

Preferred Method of Communication	✓	Email	SMS	Post	Tel /Cell
Home / Preferred Language of Communication					
Country of Residence					
Ethnicity / Race			Country of Birth		
Sex	✓	Male		Female	
Marital Status					
Residential Country					

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22 Personal Details of the proposed [illegible] (if the applicant is not the natural person)

Title		Name and Surname	
Date of Birth		ID Number / Passport Number	*Attach a certified copy of ID, unabridged birth certificate or passport
Residential Address		Complex	
		Street	
		Town	
		Province	
		Postal Code	
Postal Address		Postal Box	
		Street	
		Town	
		Province	
		Postal Code	
Home Telephone Number		Work Telephone Number	
Cell Phone Number		Email	

Preferred Method of Communication	✓	Email	SMS	Post	Tel /Cell
Home / Preferred Language of Communication		Marital Status			
Ethnicity / Race		Country of Birth			
Residential Country					
Sex	✓	Male		Female	

23 Personal Details of the deceased

Title		Name and Surname	
Date of Birth		Date of Death	*Attach a certified copy of death certificate
Residential Address		Complex	
		Street	
		Town	
		Province	
		Postal Code	
Time of Death		ID Number /	*Attach a certified copy of ID or passport
		Passport Number	
Country of Birth			
Residential Country			
Sex	✓	Male	Female

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Title	
Name and Surname	
Date of Birth	
ID Number / Passport Number	*Attach a certified copy of ID, Unabridged birth certificate
Ethnicity / Race	
Country of Birth	
Residential Country	
Sex (Male/Female)	
Relationship to the Deceased	
Reason for Dependence	
Marital Status	

Title	
Name and Surname	
Date of Birth	
ID Number / Passport Number	*Attach a certified copy of ID, Unabridged birth certificate
Ethnicity / Race	
Country of Birth	
Residential Country	
Sex (Male/Female)	
Relationship to the Deceased	
Reason for Dependence	
Marital Status	

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Title	
Name and Surname	
Date of Birth	
ID Number / Passport Number	*Attach a certified copy of ID, Unabridged birth certificate
Ethnicity / Race	
Country of Birth	
Residential Country	
Sex (Male/Female)	
Relationship to the Deceased	
Reason for Dependence	
Marital Status	

Title	
Name and Surname	
Date of Birth	
ID Number / Passport Number	*Attach a certified copy of ID, Unabridged birth certificate
Ethnicity / Race	
Country of Birth	
Residential Country	
Sex (Male/Female)	
Relationship to the Deceased	
Reason for Dependence	
Marital Status	

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Title	Name and Surname		
Home Telephone Number		Work Telephone Number	
Cell Phone Number		Email	
Relationship to Claimant/Injured			
Sex	✓ Male		Female

3. Accident Details

Date of Accident		
Time of Accident		
Place of Accident	Street	
	Town	
	Province	
	Postal Code	
Name and Address of Police Station Where the Accident was Reported	Name	
	Town	
	Province	
	Postal Code	
Contact Details of SAPS Station		*Attach SAPS Accident Report
Name of Investigating Officer		*Attach a docket
Accident Report Number (AR Number)		
Case Reference Number (CR Number)		
Post-mortem Results Relating to the Deceased		* Post mortem report (for death claims only)
Accident Notification - RAF 3 Form Reference Number		

*Attach accident report or copy of the case docket or both documents in case of death

Capacity in Accident	Pedestrian	Passenger		Cyclist
	Driver			Motorcyclist
Vehicle Registration Number				
Driver's Name and Surname				
Vehicle Make and Model				
Please Indicate if This is a Public Transport Vehicle			Yes	No
Driver's Physical Address	Complex			
	Street			
	Town			
	Province			
	Postal Code			
Driver's Cell Phone Number				

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To be completed where the injured or deceased was a pedestrian or cyclist

[illegible]	
Crossing a road with poor visibility and obstructed view of oncoming traffic	✓
Crossing the road at a robot-controlled intersection/pedestrian crossing/robot-controlled pedestrian crossing	
Crossing in front of or behind a stationary vehicle	
Crossing a highway	
Running/cycling across the road	
Pedestrian standing on the centre line/painted island/centre island	
Pedestrian under seven years of age	
Pedestrian between seven and 14 years of age	
Other (Specify)	

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To be completed where the injured or deceased was a driver or motorcyclist

[illegible]				
Vehicle Registration Number				
Vehicle Owner's Name & Surname				
Vehicle Owner's Telephone Number				
Vehicle Owner's Cell Phone Number				
Vehicle Owner's Physical Address	Complex			
	Street			
	Town			
	Province			
	Postal Code			
Driver's Licence number				*Attach certified copy of driver's licence
Category of Licence and Restrictions				
Date of Issue				
Valid	From		To	
Insurance Details (Include All Details of Claim)				

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3.5 Accident Scenario (Indicate with a ✓)	✓
Head-on collision	
Rear-end collision	
Stop-street-controlled intersection (4-way stop, T-junction, opposing stop streets)	
Robot-controlled intersection	
Tyre burst	
Collision with animal	
Single-vehicle accident	
Accident with object	
Poor visibility/dust cloud/smoke	
Right turn	
Overtaking	
Lane change	
T-junction	
Merging/ joining/yield sign	
Traffic circle	
Stationary vehicle	
Reversing	
Other (Specify)	

3.6 Details of Other Vehicle(s) involved in the Accident					
Vehicle Registration Number	*All vehicles involved*				
Vehicle Make and Model					
Driver's Contact Details	*All vehicles involved*				
Unidentified Motor Vehicle		Yes		No	
Please indate if any of the vehicles is a public transport vehicle					

3.7 Witness				
Any Witnesses to the Accident? *If yes, attached the witness statement(s)*	Yes		No	
Witness's Name and Surname				
Witness's Address				
Witness's Telephone Number				
Witness's Cell Phone Number				

3.8 Safety Issues				
Seatbelt/Helmet worn at time of accident?	Yes		No	
Blood alcohol tested?	Yes		No	
Results *If yes, attach results*	*Attach results*		Yes	No

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Section B
Injury Benefits Claim

4. Benefits Claimed

Past Loss of Earnings	R _____	*Medical Reports and proof of income
Future Loss of Earnings	R _____	*Medical Reports and proof of income
General Damages	R _____	*Medical and hospital records and serious injury assessment
Past Medical Expenses	R _____	*Specified vouchers and proof of payment
Future Medical Expenses	R _____	*Medical Reports

5. Employment Information

5.1 Injury Claims (if applicable)

MVA under Compensation for Occupational Injuries and Diseases Act	Yes	No
Claim Lodged with the Compensation Fund?	Yes	No
Compensation Fund Reference Number		
Amount Received		
Final Award *Attach final award	Yes	No

5.2 Employment Status

Status	✓	Employed	Self-Employed	Unemployed
Employment Sector Category				✓

Self-employed	
Public Servant	
Formal Regulated Industry	
Informal Unregulated Industry	

Employment Sector	
Agriculture, Food and Natural Resources	
Architecture and Construction	
Arts, Audio/Video Technology and Communications	
Business Management and Administration	
Education and Training	
Finance	
Government and Public Administration	
Health Science	
Hospitality and Tourism	
Human Services	
Information Technology	
Law, Public Safety, Corrections and Security	
Manufacturing	
Marketing, Sales and Service	
Science, Technology, Engineering and Mathematics	
Transportation, Distribution and Logistics	
Other (Specify)	

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5.2 Employment Details	
Occupation	
Annual Remuneration (pre- and post-accident)	
Highest Qualification and NQF Level	
Was the injured required to take time off duty?	
If yes, please specify the dates	
Number of work days absent	
Did you receive any remuneration while away from work?	
State amount received	
Nature of payment received	

5.3 Employer Details				
Name of Employer				
Physical Address				
Telephone Number				
Contact Person				
Employee Number				
Nature of Employment	✓	Permanent	Temporary	Casual / Contract
Period of Temporary / Contract / Casual Employment				

5.4 Proof of Income					
Payslips	*	Tax Return	*	Declaration to give RAF consent to validate any income	
Printout of Payments from Employer	*	Bank Statements	*		
Other (Specify)	*				
Tax Reference Number	*				

*attach proof of items marked with an **

5.5 Self-Employed				
Business Name				
Nature of Business				
Business Address				
Legal Entity of Business	✓	Sole Trader	Partnership	Trust
		Company	Close Corporation	Other

5.6 Educational Details	
Level of education at the time of accident	
Age at the time of accident	
Level of education at the time of submitting the claim	
Age at the time of submitting the claim	
School /university report pre-accident	*minimum three years report
School /university report post-accident	

6. Injury Details	
Type(s) of Injuries	
Severity of Injuries	
List of Injuries	
Hospital	
Address of Hospital	
Person who treated the injured	

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		✓
Standard documents		
i.	Statutory Medical Report	
ii.	Copies of all Hospital and Medical Records in terms of section 19 (e) (i) and 19 (e) (ii)	
ii.	Amount Claimed as Compensation	
iii.	Certified copy of Claimant's ID	
iv.	Certified copy of Injured's ID (if different from claimant)	
v.	Unabridged birth certificate (if a natural guardian is claiming on behalf of a minor). If it's the legal guardian claiming on behalf of a minor they must submit a court order.	
vi.	Officer's Accident Report	
vii.	Docket and Sketch Plan	
viii.	Consent for RAF to obtain and inspect hospital and medical records in terms of section 19 (ii) and 19 (e) (iii)	
ix.	Consent for RAF to obtain and inspect financial and earnings information	
x.	Court Order or Master's letter of appointment (If Curator submitting on behalf of minor – (If applicable)	
xi.	Power of Attorney (if Represented)	
xii.	Contingency Fee Agreement (if Represented)	
xiii.	Affidavit in terms of Section 19 (f) (i)	
xiv.	Any other statements/documents in accordance with section 19 (f) (ii)	
General Damages		
i.	Photographs of injuries or scarring, where applicable	
ii.	RAF 4 Form for serious injury report duly completed in line with American Medical Association (AMA) guides	
iii.	Narrative test where applicable	
Loss of Earnings		
i.	RAF 4 Form where applicable	
ii.	Employer's certificate showing nature of employment, the period of service, remuneration, prospects of advancement and retirement age	
iii.	Proof of any other income (If applicable)	
iv.	Claimant's tax records (if not available, communication from SARS that the claimant is not registered for tax), in which case a bank statement for three years preceding the accident must be submitted	
v.	Payslips pre- and post-accident	
vi.	Academic records	
vii.	Medical reports or documentation establishing or substantiating claimant's temporary/ permanent disability and the loss of earnings claimed (Medico-legal reports)	
viii.	Official confirmation of remuneration / compensation received from other sources	
ix.	Official documentation confirming any disability grant	
x.	Official confirmation of the Compensation Fund's award (if the claimant was injured during the course and scope of employment)	
Past Medical Expenses		
i.	An itemised tax invoice from a registered medical provider/or hospital for past medical expenses	
ii.	Proof of payment of medical expenses	

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7. Medical Report

Section 24(2)(a) provides that this report shall be completed by the medical practitioner who treated the injured or deceased person for the bodily injuries sustained by him/her in the accident, from which this claim arises or by the superintendent (or his representative) of the hospital in which the injured or deceased person was treated for such bodily injuries. (ii) Where blocks are provided for the purpose of replying to a question, place a cross in the appropriate block.

Patient's Name and Surname	
Patient's ID Number	
Patient's Date of Birth	
Have you verified that this is the person mentioned in the injured section of the claim form using an ID or a Passport	
Date when first seen after the accident	
Did you treat the patient at any time before?	
If yes, give date of last such treatment and nature of correct ailment	
Give full details of the nature of the injuries and any complications (e.g. fractured rib with haemothorax, contusion of the heart, compound fracture, etc.)	

Patient body part injured

	Head	Central Nervous System	Chest	Neck	Abdomen	Back	Upper Limbs	Lower Limbs	Pelvis	Musculo-skeletal & skin
Minor										
Moderate										
Severe										

ICD 10 CODE	PROCEDURE	TREATMENT PLAN

Medical Facility Division

Level of care	Duration
ICU	
High Care	
Ward	
Step-down / Rehabilitation	

*Attach any clinical notes

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Any other treatment given to date?		
Is there any current or future permanent disability?	Yes	No
If yes, provide details		
If no, has the condition stabilised?		
Is there any future/ongoing medical treatment, e.g. specialist, physiotherapy, etc.?	Yes	No
If yes, provide name and address of treating service provider		
Any other treatment given to date?	Yes	No
Is there any current or future permanent disability?	Yes	No
If yes, provide details		
If no, has the condition stabilised?		
Is there any future/ongoing medical treatment, e.g. specialist, physiotherapy, etc.?	Yes	No
If yes, provide name and address of treating service provider		
What is the nature of such treatment?		
Is hospitalisation foreseen in connection with future treatment referred to above?	Yes	No
What are the pre-existing conditions?		
Have the injuries aggravated any pre-existing pathological condition?	Yes	No
If yes, please give details		
Have any such pre-existing pathological conditions aggravated the effects of trauma?	Yes	No
If yes, please give details		
Has the patient been confined to a hospital/rehab centre/ stepdown facility?	Yes	No
Date of admission		
Name and address and practice number of facility		
Hospital reference number		
Date of discharge or when discharge is expected		
If in employment at date of accident, state date when return to employment is expected		
7.2 Medical Report - Medical Practitioner's Details		
Name and Surname		
Speciality		
Practice Number Health Professions Council of South Africa (HPCSA) and/or Board of Healthcare Funders (BHF)		
Telephone Number		
E-mail Address		
Cell Phone Number		
Postal Address		
Physical Address		

Signature	Affix Stamp (If applicable)
Date	

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Section C
Death Benefit Claim

8. Benefits Claimed

Funeral Expenses	R _____	*Specified Voucher (Tax invoice for funeral expenses)
Past Loss of Support	R _____	*Proof of Income
Future Loss of Support	R _____	*Proof of Income
Past Medical Expenses	R _____	*Specified vouchers and proof of payment

9. Employment Information

9.1 Details of Injury or Sick Leave (if applicable)

MVA under Compensation for Occupational Injuries and Diseases Act	Yes	No
Claim Lodged with the Compensation Fund?	Yes	No
Compensation Fund Reference Number		
Amount Received		

9.2 Deceased Employment Status

Status	✓	Employed	Self-Employed	Unemployed
Employment Sector Category				✓

Self-employed	
Public Servant	
Formal Regulated Industry	
Informal Unregulated Industry	

Employment Sector	
Agriculture, Food and Natural Resources	
Architecture and Construction	
Arts, Audio/Video Technology and Communications	
Business Management and Administration	
Education and Training	
Finance	
Government and Public Administration	
Health Science	
Hospitality and Tourism	
Human Services	
Information Technology	
Law, Public Safety, Corrections and Security	
Manufacturing	
Marketing, Sales and Service	
Science, Technology, Engineering and Mathematics	
Transportation, Distribution and Logistics	
Other (Specify)	

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Final Award *Attach final award		Yes	No

10. Deceased's Employment Details

10.1 Deceased's Employment Details

Occupation	
Annual Remuneration (Pre- and Post-Accident)	
Highest Qualification and NQF Level	

10.2 Deceased's Employer's Details

Name of Employer	
Postal Address	
Telephone Number	
Contact Person	
Employee Number	
Nature of Employment	✓ Permanent / Temporary / Casual / Contract
Period of Temporary / Contract / Casual Employment	

10.3 Deceased's Proof of Income

Payslips	*	Tax Return	*	Declaration to give RAF consent to validate any income
Printout of Payments from Employer	*	Bank Statements	*	
Other (Specify)	*			
Tax Reference Number	*			

*attach proof of items marked with an **

10.4 Self-Employed Deceased

Business Name	
Nature of Business	✓
Business Address	
Legal Entity of Business	Sole Trader / Partnership / Trust / Company / Close Corporation / Other

10.5 Employment History of Deceased

Occupation	
Employer	
Annual Renumeration	
Payslip	
Tax Reference Number	
Declaration to give RAF consent to validate any income	

11. Injury Details (Only Where the Deceased Did Not Die at the Scene)

Type(s) of Injuries	
Severity of Injuries	
List of Injuries	
Hospital	
Address of Hospital	
Person who treated the deceased	

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Standard documents	
i.	Completed Statutory Medical Report (Only applicable if the deceased did not die at the scene)
ii.	Hospital and medical records (Only applicable if the deceased did not die at the scene)
iii.	Amount claimed as compensation
iv.	Certified copy of the claimant's ID
v.	Certified copy of the dependant's ID
vi.	Certified copy of the deceased's ID
vii.	Certified copy of death certificate
viii.	Unabridged birth certificate (if a natural guardian is claiming on behalf of a minor) If it's the legal guardian claiming on behalf of a minor they must submit a court order.
ix.	Officer's Accident Report
x.	Docket and Sketch Plan
xi.	Court Order or Master's letter of appointment (If Curator submitting on behalf of minor – (if applicable)
xii.	Power of Attorney (if Represented)
xiii.	Contingency Fee Agreement (if Represented)
xiv.	Affidavit in terms of Section 19 (f) (i)
xv.	Any other statements/documents in accordance with section 19 (f) (ii)
xvi.	Post-mortem/ Inquest Report/Charge sheet and/or any other document(s) proving that the deceased was killed in the collision or as a result of the collision
Funeral	
i.	Specified Voucher (Tax invoice for funeral expenses)
ii.	Proof of Payment of funeral expenses
iii	Proof of relationship to the deceased (certified marriage certificate/unabridged birth certificate/ affidavit confirming relationship)
Loss of Support	
i.	Certified copy of marriage certificate/Certificate proving customary marriage/unabridged birth certificate
ii.	If not married, an affidavit setting out the legal basis of the claimant's dependency on the deceased
iii	Employer's certificate of the deceased's service showing nature of employment, the period of service, remuneration, prospects for advancement and compensation and retirement age
iv	Payslips
v.	Copy of maintenance order, if any
vi	Claimant's tax records (if not available, communication from SARS that the claimant is not registered for tax, in which case a bank statement for three years preceding death must be submitted)
vii	Proof of additional income (if applicable)
viii	Copy of Liquidation and Distribution Account (if applicable)
ix.	Employer's certificate of surviving spouse indicating period of employment, remuneration and prospects for advancement
x	Proof of guardianship (if claimant not biological parent)
xi	Proof of academic registration for children or dependants
xii	Actuarial Report
xiii	All payments in terms of Compensation Commissioner, Rand Mutual, Police, Defence Force, etc
Past Medical Expenses	
i	An itemised tax invoice from a registered medical provider/or hospital for past medical expenses

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12. Medical Report (Only Applicable Where the Deceased Did Not Die at the Scene)

Section 24(2)(a) provides that this report shall be completed by the medical practitioner who treated the injured or deceased person for the bodily injuries sustained by him/her in the accident, from which this claim arises or by the superintendent (or his representative) of the hospital in which the injured or deceased person was treated for such bodily injuries. (ii) Where blocks are provided for the purpose of replying to a question, place a cross in the appropriate block.

Patient's Name and Surname	
Patient's ID Number	
Patient's Date of Birth	
Have you verified that this is the person mentioned in the injured section of the claim form using ID or passport	
Date when first seen after the accident	
Did you treat the patient at any time before?	
If yes, give date of last such treatment and nature of correct ailment	
Give full details of the nature of the injuries and any complications (e.g. fractured rib with haemothorax, contusion of the heart, compound fracture, etc.)	

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Parts of body injured and degree

	Head	Central Nervous System	Chest	Neck	Abdomen	Back	Upper Limbs	Lower Limbs	Pelvis	Musculo-skeletal & skin
Minor										
Moderate										
Severe										

ICD 10 CODE	PROCEDURE	TREATMENT PLAN

Level of care and duration

Level of care	Duration
ICU	
High Care	*Attach any clinical notes
Ward	
Step-down / Rehabilitation	

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Any other treatment given to date?		
Is there any current or future permanent disability?	Yes	No
If yes, provide details		
If no, has the condition stabilised?	Yes	No
Is there any future/ongoing medical treatment, e g specialist, physiotherapy, etc ?	Yes	No
If yes, provide name and address of treating service provider		
Any other treatment given to date?		
Is there any current or future permanent disability?	Yes	No
If yes, provide details		
If no, has the condition stabilised?		
Is there any future/ongoing medical treatment, e g specialist, physiotherapy, etc.?	Yes	No
If yes, provide name and address of treating service provider		
What is the nature of such treatment?		
Is hospitalisation foreseen in connection with future treatement referred to above?	Yes	No
What are the pre-existing conditions?		
Have the injuries aggravated any pre-existing pathological condition?	Yes	No
If yes, please give details		
Have any such pre-existing pathological conditions aggravated the effects of trauma?	Yes	No
If yes, please give details		
Has the patient been confined to a hospital/rehab centre/ stepdown facility?	Yes	No
Date of admission		
Name and address and practice number of facility		
Hospital reference number		
Date of discharge or when discharge is expected		
If in employment at date of accident, state date when return to employment is expected		
(2) Medical Report - Medical Practitioner's Details		
Name and Surname		
Speciality		
Practice Number (HPCSA and/or BHF)		
Telephone Number		
E-mail Address		
Cell Phone Number		
Postal Address		
Physical Address		
Signature	Affix Stamp (If applicable)	
Date		

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13. Declaration and Consent:

The consent granted to the RAF in this paragraph authorises the RAF to obtain copies of any records and to access any information which relates to this claim for compensation and to contact any person or entity for purposes of obtaining or verifying such information and /or documentation.

I, _____ (name and surname of claimant), declare that, to the best of my knowledge, the information provided in this Third Party Claim Form is true and correct in every respect; and

I confirm that I am claiming compensation:

In my personal capacity as a result of injuries I sustained in the accident; alternatively

In my personal and / or representative capacity as _____

(state capacity) on behalf of _____ (name and surname of injured) who sustained injuries in the accident; alternatively

In my personal and / or representative capacity as _____ (state capacity)

of _____ (state name of the deceased) who died as a result of the injuries sustained in the accident.

(Indicate, and if applicable complete the applicable statement above)

I hereby consent to the release, to the RAF, of copies of all documentation and /or information, including, but not limited to, documentation and /or information of a medical or financial nature, in the possession of any person or entity, which documentation or information, in any way, relates to this claim for compensation arising from the motor vehicle accident detailed in the claim form.

I further consent to, and authorise, the RAF to contact any person or entity for purposes of obtaining or verifying such information and /or documentation.

_____

Signature of the Claimant

_____

Signature of the Witness

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17

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"FA11"

15/06/2021

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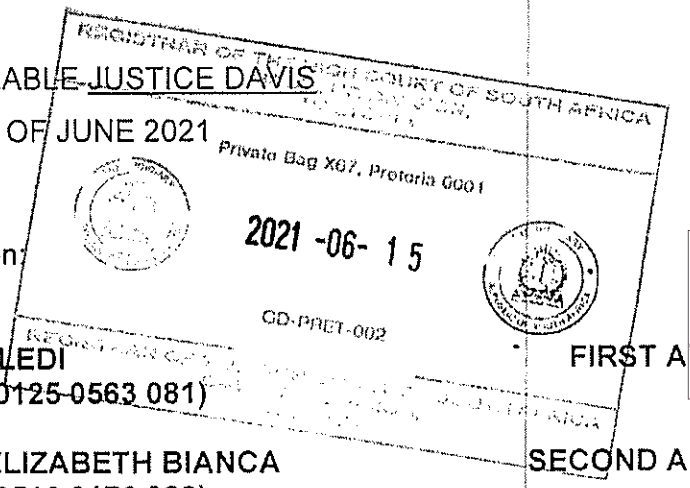
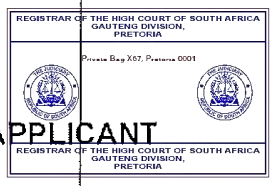
IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case No: 2021/26302





BEFORE THE HONOURABLE JUSTICE DAVIS

ON THIS THE 15TH DAY OF JUNE 2021

In the application between:

MAUTLA, LESEDI DIKELEDI (IDENTITY NUMBER 020125 0563 081)	FIRST APPLICANT
STEYN, ANTOINETTE ELIZABETH BIANCA (IDENTITY NUMBER 890516 0176 089)	SECOND APPLICANT
DIPPENAAR, GERMARI (IDENTITY NUMBER 840829 0078 085)	THIRD APPLICANT
STRUASS, JOHANNES CHRISTOFFEL (IDENTITY NUMBER 730621 5256 086)	FOURTH APPLICANT
SILUMA, NOMTHANDAZO ELIZABETH (IDENTITY NUMBER 851212 0785 080)	FIFTH APPLICANT
BOKO, SINOVUYO (IDENTITY NUMBER 991009 0818 080)	SIXTH APPLICANT
RADEBE, NONHLANHLA CECILIA (IDENTITY NUMBER 830517 0807 080)	SEVENTH APPLICANT
And	
THE ROAD ACCIDENT FUND	FIRST RESPONDENT
THE MINISTER OF TRANSPORT	SECOND RESPONDENT
MS T MSIBI IN HER CAPACITY AS THE CHAIR OF THE BOARD OF THE ROAD ACCIDENT FUND	THIRD RESPONDENT
MR COLINS LETSOALO	FOURTH RESPONDENT

15/06/2021

11/11/2022-10:31:52 AM

CHIEF EXECUTIVE OFFICER, ROAD ACCIDENT FUND

THE LEGAL PRACTICE COUNCIL — FIFTH RESPONDENT

~~DRAFT~~ COURT ORDER

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2021 -06- 15
GD PRET 002
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

HAVING PERUSED THE FILED DOCUMENTS AND HEARING COUNSEL for the applicants an Order is granted in the following terms:

1. The first respondent is ordered to cease from enforcing:

   1.1. The Management Directive titled *"1/2021 – Compulsory information to be submitted when lodging a claim for compensation with the RAF"* and any directives or instructions issued in terms thereof as a peremptory requirement for the lodgement of any claim with the Road Accident Fund;

   1.2. The *"BOARD NOTICE 58 of 2021"* with description *"Road Accident Fund, Stipulation of Terms and Conditions upon which Claims for the Compensation shall be Administered"*, published in the Government Gazette on 4 June 2021and any directives or instructions issued in terms thereof as a peremptory requirement for the lodgement of any claim with the Road Accident Fund;

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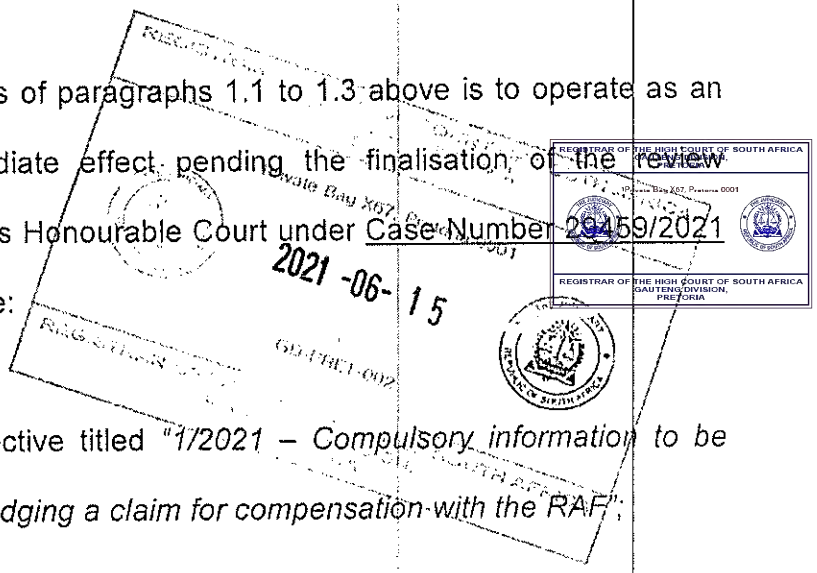
Mbong
15/06/2021

1.3. The *"SUBSTITUTION OF RAF1 CLAIM FORM"* published in the Government Gazette on 4 June 2021 and any directives or instructions issued in terms thereof as a peremptory requirement for the lodgement of any claim with the Road Accident Fund.

2. The relief granted in terms of paragraphs 1.1 to 1.3 above is to operate as an interim order with immediate effect pending the finalisation of the review application instituted in this Honourable Court under Case Number 29459/2021 to review and set aside the:



2.1. Management Directive titled *"1/2021 – Compulsory information to be submitted when lodging a claim for compensation with the RAF"*;

2.2. The *"BOARD NOTICE 58 of 2021"* with description *"Road Accident Fund, Stipulation of Terms and Conditions upon which Claims for the Compensation shall be Administered"*, published in the Government Gazette on 4 June 2021; and

2.3. The *"SUBSTITUTION OF RAF1 CLAIM FORM"* published in the Government Gazette on 4 June 2021.

3. This order shall forthwith be published by the first respondent forwarding a copy of this Court Order to:

15/06/2021

3.1. To the fifth respondent (Legal Practice Council) for distribution to all legal practitioners;

3.2. By email to all attorneys listed on the first respondent's database;

3.3. To the second respondent (Minister of Transport) by service on the State Attorney;

3.4. Further by publication in the two National Newspapers and the uploading of the order on to the first respondent's website.

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4. The first respondent be ordered to pay the costs of this application including the costs occasioned upon the employment where applicable of three counsel.

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Private Bag X67, Pretoria 0001
2021 -06- 15
GD-PRET-002

BY ORDER OF THE COURT

ADAMS & ADAMS

JPR/JLR/P5272

Adv JP van den Berg SC, (012) 942 2225, 082 466 4588, advjp1@gmail.com

Adv E van As, 076 741 2127, evert@advocate-vanas.com

Adv V Mabuza, 072 950 2307, adv@vincentmabuza.com

15/06/2021

"FA12"

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO.: 2021/26302

In the matter between:

MAUTLA, LESEDI DIKELEDI	First Applicant
STEYN, ANTOINETTE ELIZABETH BIANCA STEYN	Second Applicant
DIPPENAAR, GERMARI	Third Applicant
STRAUSS, JOHANNES CHRISTOFFEL	Fourth Applicant
SILUMA, NOMTHANDAZO ELIZABETH	Fifth Applicant
BOKO, SINOVUYO	Sixth Applicant
RADEBE, NONHLANHLA CECILIA	Seventh Applicant

and

THE ROAD ACCIDENT FUND	First Respondent
THE MINISTER OF TRANSPORT	Second Respondent
MS T MSIBI IN HER CAPACITY AS THE CHAIR OF THE BOARD OF THE ROAD ACCIDENT FUND	Third Respondent
MR COLLINS LETSOALO, CHIEF EXECUTIVE OFFICER, ROAD ACCIDENT FUND	Fourth Respondent
THE LEGAL PRACTICE COUNCIL	Fifth Respondent

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FIRST, THIRD AND FOURTH RESPONDENTS' EXPLANATORY AFFIDAVIT

I, the undersigned –

COLLINS PHUTJANE LETSOALO

do hereby make oath and say as follows:

1. I am an adult male employed as the Chief Executive Officer of the first respondent ("**the RAF**"). I depose to this affidavit on behalf of the first, third and fourth respondents ("**the respondents**"). I am duly authorised to do so.

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2. The facts contained in this affidavit are within my personal knowledge, unless otherwise indicated by the context. To the best of my knowledge and belief, the factual allegations that I make in this affidavit are all true and correct.

3. Where I make legal submissions, I do so with reference to the advice of my legal representatives, which I accept as correct. My legal submissions are subject to expansion and elucidation in legal argument, to the extent that this becomes necessary.

INTRODUCTION AND OVERVIEW

4. I have read the applicants' founding and supplementary affidavits. I do not oppose the admission of the applicants' supplementary affidavit. I do, however, respectfully submit that the relief sought by the applicants – which *inter alia* is far-reaching and would do separation-of-powers harm – is neither necessary nor prudent, given the position of the respondents in relation to the legality of the directive that the applicants impugns in this application ("**the directive**"). Indeed, for the avoidance of any doubt, I am advised and accept that the directive must be withdrawn for want of procedural

fairness. The respondents therefore consent to an order in terms of which the directive must be withdrawn. The respondents furthermore consent to an order for costs on the ordinary scale.

5. I depose to this affidavit for two reasons:

5.1 Firstly, to explain the *bona fides* of the respondents in relation to the directive, and what I submit is the legitimate purpose that it seeks to achieve; and

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5.2 Secondly, to delineate the ambit of the order to which the respondents are willing to consent, and to confirm that the directive will be withdrawn, and a notice and comment procedure will be followed.

6. Given the purpose of this affidavit, I do not respond to the applicants' allegations *ad seriatim*. Those allegations should be taken to be denied to the extent inconsistent with my submissions in the present affidavit.

7. I shall expand on the two reasons I depose to this affidavit below. I shall structure the remainder of this affidavit as follows:

7.1 First, I shall set out the RAF's new strategy.

7.2 Second, I shall explain the factual circumstances which gave rise to the directive's enactment, and the legitimate purpose that I submit it seeks to achieve.

7.3 Third, I shall explain the RAF's intended way forward, in light of the omission to follow the proper process;

7.4 Fourth, I shall set out the circumstances that lead to the belated filing of

this affidavit and beg leave of the Court to accept this belated affidavit.

7.5 Lastly, I shall explain the ambit of the order to which the RAF will consent in these proceedings.

THE NEW STRATEGY

8. When the First Respondent's new management was appointed in late 2019, it immediately began implementing safeguards against the decades of fraud, theft and impropriety committed against the First Respondent. The First Respondent had to implement radical measures, because to continue with old structures that were in place before the First Respondent's new management was appointed would allow for further exploitation of the First Respondent's systems and the RAF Fuel Levy.

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9. Since the appointment of new management and the implementation of our strategies to turn around the First Respondent's parlous state, the First Respondent has now reported a historic R 3,2 billion surplus for the period ended on 31 March 2021. This was an unprecedented achievement, especially considering that:

9.1 the First Respondent collects R 43 billion a year through the RAF Fuel Levy. Only R 26 billion (or 60%) of this annual revenue is spent on the actual compensation of claimants. R 17 billion (or 40%) is spent on administrative costs. Of this, R 10.6 billion is spent on legal costs. More than R 2 billion is spent on medical costs;

9.2 the situation is further exacerbated by the number of fraudulent claims the First Respondent has to contend with;

9.3 the model that the First Respondent had operated on, before the appointment of new management, was centred on litigation, with 99% of the claims settled moments before trial. The legal costs had been

growing exponentially over the years, as set out below.

10. Suffice to say, that drastic measures are required to turn around and to prevent future exploitation of the RAF Fuel Levy.

11. Reducing the First Respondent's actuarial liability in excess of R 300 billion was a priority for the First Respondent's new management. With this being a contingent liability of the State, it made the First Respondent the biggest liability after Eskom. The First Respondent has, however, made, *inter alia,* the following progress since the appointment of new management just over a year ago:

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11.1 the First Respondent achieved a significant reduction in the administrative costs of more than R 7 billion in the 2020/2021 financial year;

11.2 the First Respondent has for the first time in many years posted a surplus of R 3,2 billion. This is a dramatic shift from a R 5,2 billion deficit on the previous year;

11.3 investment income has increased by 152%, year-on-year, from R 62 million to R 157 million;

11.4 finance costs have decreased by 62%, year-on-year, from R 263 million to R 90 million;

11.5 writs of execution have reduced by more than 50%, through a legal strategy and stratification of the debt book;

11.6 the short-term liability has reduced by R 2,2 billion, from R 17 billion to R 14,8 billion;

11.7 11.7 current assets have increased, including cash position, by more than R 4 billion; and

11.8 more importantly, the First Respondent has adopted a more appropriate

accounting treatment for social benefits, in line with its mandate, than the insurance contracts, previously employed. This has resulted in the massive decrease of the First Respondent's reported liability from R 305 billion, bringing the RAF liability to R 28 billion and the net liability position to R 13,5 billion. This accounting treatment has been independently reviewed by an independent accounting firm and an International Public Sector Accounting Standards expert.

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12. In the past year, the measures implemented have included, *inter alia,* extraordinary relief granted to the First Respondent by the Court. The First Respondent was successful in obtaining a suspension of all writs of execution against all of its assets for a period of time to enable it to implement systems to make equitable payment of claims from oldest to newest, *a prior tempore*. The First Respondent further recouped over a billion Rand in duplicate payments to Plaintiff's attorneys and was successful in obtaining a suspension of writs in cases where payment was to be made to a trust account administered by a firm of attorneys that had received but failed or refused to make repayment of the duplicate payments, until *inter alia* the double payments are repaid.

13. A copy of the Full Court's judgment in the suspension of writs matter is attached as Annexure "RAF1" and a copy of the Court's judgment suspending warrants until repayment of duplicate payments is attached as Annexure "RAF2".

14. The main aspect of the First Respondent's new strategy, however, is to prevent the substantial legal costs that are unnecessarily paid to plaintiff attorneys, which is the bulk of legal fees paid by the First Respondent due to, inter alia, contingency fee agreements. The First Respondent will rigorously attempt to settle matters within 120

days of a claimant lodging a claim with the First Respondent. In the past, the First Respondent's model was fraught with mismanagement of claims during the first 120 days and very seldom were claims brought to conclusion within this period. Should a larger number of cases be settled during this period, then the First Respondent foresees further massive savings in legal costs. This was the underlying reason for the Directive.

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THE DIRECTIVE

15. I am appointed by the Minister on recommendation of the Board in terms of section 12(1)(a). I exercise the powers and perform the functions of the RAF mentioned in Section 4(1)(b), (c) and (d) as well as those in Section 4(2) and (3) as provided for in Section 12(2)(a). I, therefore, am charged with the responsibility of investigating claims under Section 4(1)(b) and to do so I am empowered under Section 4(2)(g) to take any other action or steps which are incidental and conducive to the exercise of the RAF's powers or the performance of its functions.

16. A significant part of the implementation of the RAF's new model of assessing claims upon lodgement and determining whether these claims can be investigated and settled as contemplated Section 4(1)(b), is part of the exercise of my powers and functions as the CEO of the RAF. This power is quite distinct from the powers given to the Minister which includes, amongst others, the powers under Section 26 to make regulations and also distinct from the powers and the functions of the Board under Section 11(1)(a)(v) to make recommendations to the Minister in relation to regulations to be made under the Act.

17. The RAF has operated on a litigation-focused model for decades, resulting in it being in a precarious financial position. Over the course of the years and over and above

the abuse of the claims process, the Fund has paid billions of rands in legal fees, to attorneys and counsel.

18. Historically, plaintiff firms would submit incomplete or unsubstantiated claims to the Fund. For example, in some instances forms would not be properly completed in all their particulars, in others they would not be accompanied by supporting vouchers, serious injury assessment reports, relevant hospital records, accident report and other information that is necessary for the proper assessment of a claim's legitimacy. The particulars required in terms of Section 22 of the Act are also often not provided.

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19. The incomplete claims lodged make it impossible to decide whether to object to or settle the claims within the prescribed 60 day period and most importantly make it impossible for the RAF to investigate and settle claims within 120 days as contemplated by Section 4(1)(b) and 24 (6) of the Act. As such, many claims were deemed "valid" and subsequently progressed to litigation stage. These claims would often settle at the doors of court with these documents having been received hardly ten court days before trial. The result has been that the RAF has haemorrhaged, financially. The system was, regrettably, not without unconscionable abuse from members of the legal profession. The late submission of claim documents just before prescription of three years after the accident and the added long litigation route means that claimants wait up to 8 years to receive compensation that they could have received within 120 days if complete claims were lodged by their attorney. Meanwhile, this long delay puts the RAF at a disadvantage of properly investigating its liability given the long effluxion of time. These delays aid and abet fraudulent claims.

20. The RAF has adopted a turn-around strategy, of which the Directive was intended to form an integral part. The purpose of the Directive, which I respectfully submit is not

only rational but serves a legitimate government purpose and is prudent, is to better facilitate and improve efficiencies at the 'point of entry' of the claims process. However, I am advised and accept that the process that was followed in enacting the directive requires correction. I confirm that the RAF intends to do so, in good faith, as I explain below.

21. We discovered that when claimants institute a claim against the First Respondent, the lodgement of the claims are wholly inadequate to enable the First Respondent to assess the claims. In a large number of matters, the documents are hardly completed with real consideration. Historically, plaintiffs submitted incomplete or unsubstantiated claims to the First Respondent which made it impossible for the First Respondent to meaningfully consider those claims before the expiry of the 120-day period. The First Respondent respectfully submits that this made the safeguards set out in the Act against huge legal fee expenditure redundant and has contributed to the RAF's parlous state.

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22. The practice developed where the lodgement is seen as a nuisance to firms of attorneys representing the claimants in terms of, inter alia, contingency fee agreements. The documents are submitted as a procedural requirement, rather than to enable the First Respondent to accurately assess its liability in a particular matter. In some instances, the First Respondent's new management has discovered that the documents are almost deliberately starved of information to ensure that it becomes litigious.

23. The First Respondent's media statement (attached to the Applicants' papers) is to be specifically noted. The media statement, *inter alia*, noted the following:

"The RAF issued a compulsory minimum information directive on the 8th of March, following the resolution of the board. The aforementioned directive was circulated to all plaintiff attorneys within the RAF database on the 11th of March and was published on the Legal Practice Council website for the attention of all attorneys on 15 March 20201 (sic). In terms of [the] directive, the implementation was to be effective on the 1st of April 2021. Additionally, a month reprieve was granted leading to the effective date being the 1st of May 2021…

As a consequent (sic), Claimants had to wait on average 1475 days for their claims to be settled. Further, the Fund spent a significant amount of its fuel levy income on high administrative costs…

We have discovered that the main root cause behind this is the lodgement of claims by Plaintiff attorneys with insufficient information to enable the Fund to investigate and settle claims within 120 days. This enables the attorneys to issue summons against the Fund after the prescribed 120 days has lapsed, thereby charging legal costs. The Fund spends about R 6 billion on Plaintiff legal costs. We believe that this is a gross disservice to the claimants who are victims of motor vehicle accidents.

Our preliminary investigation established that at least 80% of claims already in our system have no required information to enable us to investigate and settle. For proper context, as at 13 May 2021, the RAF has a total of 306,181 open claims of which 226,919 are represented and 79,262 are non-represented claims. The Fund has not been able to make a merits decision in 65,728 of open represented claims which represent a 29% of the represented claims. Similarly, we have not been able to produce a quantum offer due to lack of information in 212,472 which represent 94% of open represented claims. For the non-represented claimants, all the claims (79,262) were also lodged with incomplete information to allow the Fund to assess these claims…

By way of an example, a claimant who was involved in an accident during May 2018 and has during the same year instructed an attorney to lodge a claim against the Fund has 1095 days to obtain the required documentation or information. Unfortunately, the attorneys opt on lodging the claim only less than 5 days before the claim prescribes, without the required information of document that will enable the Fund to investigate, assess and settle such a claim. It takes them more than 1000 days to lodge a claim and yet the Fund is expected to investigate the claim, without sufficient particulars, within 120 days failing which they issue summons against the Fund…"

24. The First Respondent respectfully submits that it was the legislature's intention with the statutory bar on litigation against the First Respondent for the 120 day period was intended to ensure that the First Respondent would only litigate matters where a claimant was being unreasonable after the First Respondent was able to consider its liability in a claim. The intention of the Legislator is circumvented when the lodgement does not enable the First Respondent to accurately assess whether or not it is at risk of litigation. On 22 May 2021, I wrote an email which is attached to the Applicants' founding affidavit as Annexure "FA11". The email emphasized the manifestly prejudicial practice that has developed over the years:

"1. The RAF has powers, under Section 4 of the RAF Act, which included stipulation of terms and conditions under which the compensation is administered. The directive was issued in line with this provision.

2. The RAF has the powers to reject any documents that do not meet with these stipulations. The RAF cannot be expected to accept documents that it cannot assess and settle. The practice of dumping RAF with documents and attorneys bringing summons after 120 days on documents that RAF cannot do anything about can no longer be acceptable."

(my emphasis)

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25. In recent matters before the Honourable Court where orders were sought to compel the First Respondent to accept lodgement of claims after they had been lodged and the First Respondent advised that the claims were not acceptable in terms of Section 24 of the Act, the First Respondent was successful in opposing one of the applications on 10 June 2021 as the Honourable Court found that the relief sought would infringe upon the doctrine of separation of powers. This was in the matter of *VT Molepo v the Road Accident*. Her Ladyship Madam Justice Fisher in that matter further found that the applicant was not without alternative remedies which are, *inter alia*, that the decisions could be taken on review, or those parties could plead justifiable reason to dispute any (potential) plea of prescription. The Respondents have caused to be transcribed the transcript of the above proceedings. The transcript will be made available should be it completed before the hearing of this application.

26. Two matters came before His Lordship Mr. Justice Sardiwala on June 8th in which the First Respondent filed affidavits. It is respectfully submitted that the answering affidavits filed therein clearly demonstrated the deficiency in the two claims that were lodged, to the extent that the claims did not comply with Section 24 of the Act.

27. Sardiwala J granted the applicants orders. Thus far no reasons have been made available. The First Respondent will, with respect, be seeking leave to appeal as, *inter alia,* the Court held that it was satisfied that there had been *"substantial compliance"* and ordered the First Respondent to accept lodgement. With respect, the order was granted without engaging with the extent and detail of the defectiveness of the claims in those matters.

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28. I mention the above to illustrate the divergent court findings in this Division in this respect. The Honourable Court will be referred to court records of the three matters on Caselines during the hearing of this matter under the following case numbers:

28.1 Case number 26302/2021 – VT Molepo // RAF

28.2 Case number 27561/2021 – PN Mlaba // RAF

28.3 Case number 27560/2021 – T Msabala // RAF

29. The First Respondent respectfully believes that it has good reason to implement the requirements for lodging of claims. The Respondents have, however, considered the Applicants' grounds for its application and, after having received legal advice, the Respondents accepted that advice which is set out herein.

THE WAY FORWARD

30. In promulgating the directive, the fact that there was no notice and comment procedure followed is common cause between the parties. As such, I confirm that the RAF intends to proceed as follows:

30.1 the RAF will withdraw the stipulation of terms and conditions as set out in Board notice of 58 of 2021;

30.2 the RAF will suspend implementation of the RAF1 an amended form until

further notice. This will allow the RAF to embark on a public education campaign to explain the rationale for the new form and what advantage can be attained if it is to be completed in full; and

30.3 the RAF will follow the required notice and comment procedure in respect of the terms and conditions for administering claims.

31. That leaves the question of the order which this Court will grant pursuant to my concessions above. I explain the order to which the respondents will consent immediately below.

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CONDONATION

32. The Respondents wish to respectfully apologize for the late filing of this affidavit. The late filing was definitely not deliberate, or an attempt to delay these proceedings in any way. The issues raised in the application by the Applicants will have a significant impact on the First Respondent and its policies.

33. Furthermore, the First Respondent considered the first directive and resolved that in order for that directive to reach the public it will publish the terms and conditions as well as an amended RAF 1 Form in the *Gazette*. The First Respondent's *bona fide* intention was to publish two notices in that regard.

33.1 a notice of the stipulation of the terms and conditions pursuant to Section 4 (1)(a) of the Act;

33.2 a distinct second notice of an amended RAF 1 Claim Form pursuant to, *inter alia*, the provisions of Regulation 7; and

33.3 arrangements were made with the Government Printing Works for the two publications.

34. Regrettably, the two notices were inadvertently published as one on June 4th, 2021. The assumption by the Applicants that the RAF Board's notice was published in reaction to this Court application is not correct. Publication was arranged well ahead of the launching of the application. Upon receipt of the Applicants' application, the First Respondent proceeded to engage an external legal team to assist it with advice on both the stipulation of the terms and conditions in accordance with the Board notice, now Gazetted, as well as the amended RAF1 form and its effect.

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35. That legal team's efforts were derailed by five urgent applications, which were launched in the interim period. Three of these applications were launched in the Gauteng Division, and the two others in the East London Circuit Local Division. Their legal resources were accordingly split between providing an advisory opinion to the First Respondent and preparing answering affidavits in relation to those urgent applications. That team provided their advisory opinion on Saturday, June 12th, 2021. This was certainly not due to any party's manifestly deliberate attempt to delay these proceedings nor did any party have any *mala fide* ulterior motive. The First Respondent respectfully apologize, and request condonation for the late filing. The issues raised are of significant importance and should the First Respondent be refused condonation, or should the late filing be held against it, it will impact on the First Respondent's Constitutional obligations.

36. The RAF's lead Senior Counsel has since tested positive for Covid-19 and one of the Junior Counsels has only recently recovered from the illness. This affidavit was, however, prepared urgently after their appointment.

THE AMBIT OF THE ORDER TO WHICH THE RESPONDENTS CONSENT IN THESE PROCEEDINGS

37. In light of the above, the respondents consent to an order in the following terms:

37.1 The applicants' non-compliance with the forms, service and time periods prescribed in terms of the Uniform Rules of Court is condoned, and the application is heard as one of urgency.

37.2 The RAF is ordered to withdraw the terms and conditions as published in Board notice 58 of 2021, on the basis that the proper notice-and-comment process was not followed; and

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37.3 The respondents will pay the applicants' costs, on a party-and-party basis.

38. I am advised that punitive costs orders are reserved for instances of *mala fides*. In light of the above, I respectfully submit that no *mala fides* are present on the facts of this application, certainly no *mala fides* or negligence that justifies the RAF being mulcted with a punitive costs order. I respectfully submit that there is accordingly no reason to deviate from the ordinary rules on costs.

DEPONENT

I hereby certify that the deponent has acknowledged that the deponent knows and understands the contents of this affidavit, which was signed and sworn before me at POLOKWANE on the 14TH JUNE 2021, the regulations contained in Government Notice No. R 1258 of 21 July 1972, as amended, and Government Notice No. R 1648 of 19 August 1977, as amended, having been complied with.

COMMISSIONER OF OATHS
Full Names:
Business Address:
Office:

TINA CONSTANCE MUTHIVHI
LEGAL PRACTITIONER
COMMISSIONER OF OATHS
MAHOWA INC
MODJADJI HOUSE
36 BOUNDARY STR
TZANEEN. 0850
TEL.:015 307 4574
UNIT 3. CONSTANTIA PARK
80 HANS VAN RENSBURG STR
POLOKWANE. 0699
015 28[illegible] 3732 / 1025

14/06/2021

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T.C

"FA 13" ORIGINAL

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case No: 29459/21

In the application between:

MAUTLA, LESEDI DIKELEDI **(IDENTITY NUMBER 020125 0563 081)**	**FIRST APPLICANT**
STEYN, ANTOINETTE ELIZABETH BIANCA **(IDENTITY NUMBER 890516 0176 089)**	**SECOND APPLICANT**
DIPPENAAR, GERMARI **(IDENTITY NUMBER 840829 0078 085)**	**THIRD APPLICANT**
STRUASS, JOHANNES CHRISTOFFEL **(IDENTITY NUMBER 730621 5256 086)**	**FOURTH APPLICANT**
SILUMA, NOMTHANDAZO ELIZABETH **(IDENTITY NUMBER 851212 0785 080)**	**FIFTH APPLICANT**
KUBOKO, SINOVUYO **(IDENTITY NUMBER 991009 0818 080)**	**SIXTH APPLICANT**
RADEBE, NONHLANHLA CECILIA **(IDENTITY NUMBER 830517 0807 080)**	**SEVENTH APPLICANT**

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GAUTENG DIVISION,
PRETORIA

2021 -06- 14
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA, GAUTENG DIVISION, PRETORIA

And

THE ROAD ACCIDENT FUND	**FIRST RESPONDENT**
THE MINISTER OF TRANSPORT	**SECOND RESPONDENT**
MS T MSIBI IN HER CAPACITY AS THE CHAIR OF THE BOARD OF THE ROAD ACCIDENT FUND	**THIRD RESPONDENT**
MR COLLINS LETSOALO **CHIEF EXECUTIVE OFFICER, ROAD ACCIDENT FUND**	**FOURTH RESPONDENT**
THE LEGAL PRACTICE COUNCIL	**FIFTH RESPONDENT**

NOTICE OF MOTION

TAKE NOTICE that the Applicants intend to apply to the above Honourable Court for an order in the following terms:

2021 -06- 14
K.M MEHLAPE
REGISTRAR / CLERK
GRIFFIER VAN DIE HOË HOF VAN
SUID-AFRIKA, GAUTENG AFDELING, PRETORIA

THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

1. That the following decisions and actions be reviewed and set aside, with or without directions, in terms of section 8(1) of the *Promotion of Administrative Justice Act 3 of 2000*:

   1.1. The decision to adopt and implement the Management Directive titled *"1/2021 – Compulsory information to be submitted when lodging a claim for compensation with the RAF"*, dated 8 March 2021, and any directives or instructions issued in terms thereof;

   1.2. The decision to publish, adopt and implement the *"BOARD NOTICE 58 of 2021"* with description *"Road Accident Fund, Stipulation of Terms and Conditions upon which Claims for the Compensation shall be Administered"*, published in the Government Gazette on 4 June 2021, and any directives or instructions issued in terms thereof;

   1.3. The decision to publish, adopt and implement the *"SUBSTITUTION OF RAF1 CLAIM FORM"* published in the Government Gazette on 4 June 2021, and any directives or instructions issued in terms thereof.

2. In the event that the Honourable Court is unwilling to grant the order in prayer 1 *supra*, then and in that event, any order that the Honourable Court deems just and equitable in the circumstances in terms of section 8(1) of the *Promotion of Administrative Justice Act 3 of 2000*.

3. If the Honourable Court finds that the adoption and implementation of the decisions by the First, Third and Fourth Respondents in prayer 1.1 to 1.3 *supra* does not constitute administrative action falling within the ambit of the *Promotion of Administrative Justice Act 3 of 2000*, then and in that event, the following order is sought:

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3.1. that the adoption and implementation of the decisions in prayer 1.1 to 1.3 by the first, third and fourth respondents is declared unlawful and constitutionally invalid per the provisions of section 172(1)(a) of the Constitution of the Republic of South Africa;

3.2. Pursuant to the aforesaid declaration of constitutional invalidity, directing in terms of section 172(1)(b) of the Constitution, as a just and equitable remedy, that the decision be reviewed and set aside.

4. The First Respondent is to pay the costs on a scale as between attorney and client.

5. Further and/or alternative relief.

TAKE NOTICE THAT the founding affidavit of **JEAN-PAUL RUDD** attached hereto, together with annexures thereto, will be used in support of this application.

FURTHER TAKE NOTICE THAT the applicants hereby appoint **ADAMS & ADAMS** of the address stated below, at which address the applicants will accept notice and service of all further process in these proceedings.

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FURTHER TAKE NOTICE THAT the respondents are called upon to show cause why the decision referred to above should not be reviewed and corrected or set aside, and to dispatch within fifteen days after receipt of this notice of motion and annexures, to the registrar of the above Honourable Court, the record of such proceedings sought to be corrected or set aside, together with such reasons as respondents are by law required or desire to give or make and to notify the applicant that they have done so.

PLEASE TAKE FURTHER NOTICE that the applicants may, within ten days after the registrar has made the record available to the applicants, by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of the notice of motion and supplement the supporting affidavit.

PLEASE TAKE NOTICE that should any of the respondents or any affected party desire to oppose the granting of the order prayed in the notice of motion, such party shall, within fifteen days after receipt by him of the notice of motion or any amendment thereof, deliver

notice to the applicant that he intends so to oppose, and shall in such notice appoint an address referred to in rule 6(5)(b) at which he will accept notice and service of all process in such proceedings, and within thirty days after the expiry of the time referred to in Rule 53(4), deliver any affidavits he may desire in answer to the allegations made by the applicant.

PLEASE TAKE NOTICE that the application will be set down in terms of the rules of the above honourable court accordingly.

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PRETORIA

DATED AT PRETORIA ON THIS THE 14TH DAY OF JUNE 2021.

pp JR

(SIGNED) JEAN-PAUL RUDD
ADAMS & ADAMS
ATTORNEYS FOR APPLICANTS
LYNNWOOD BRIDGE OFFICE PARK
4 DAVENTRY ROAD
LYNNWOOD RIDGE
PRETORIA
EMAIL: jp.rudd@adams.africa
REF: JPR/JLR/P5272

TO: **THE REGISTRAR OF THE ABOVE HONOURABLE COURT**
PRETORIA

AND TO: **THE ROAD ACCIDENT FUND**
FIRST RESPONDENT
2 ECO GLADES OFFICE PARK
420 WITCH-HAZEL AVENUE
CENTURION
EMAIL: collinsl@raf.co.za; gontseb@raf.co.za; justicem@raf.co.za; phathutshedzol@raf.co.za

AND TO: **THE MINISTER OF TRANSPORT**
SECOND RESPONDENT
159 STRUBEN STREET
FORUM BUILDING
PRETORIA
Email: transportministry@dot.gov.za; info@dot.gov.za
C/O THE STATE ATTORNEY
PRETORIA
316 THABO SEHUME STREET
PRETORIA CENTRAL
PRETORIA
Email: stateattorneypretoria@justice.gov.za

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AND TO: **MS T MSIBI IN HER CAPACITY AS THE CHAIR OF THE BOARD OF THE ROAD ACCIDENT FUND**
THIRD RESPONDENT
2 ECO GLADES OFFICE PARK
420 WITCH-HAZEL AVENUE
CENTURION

AND TO: **MR COLLINS LETSOALO**
CHIEF EXECUTIVE OFFICER
ROAD ACCIDENT FUND
FOURTH RESPONDENT
2 ECO GLADES OFFICE PARK
420 WITCH-HAZEL AVENUE
CENTURION
Email: collinsl@raf.co.za

AND TO: **THE LEGAL PRACTICE COUNCIL**
C/O THE LEGAL PRACTICE COUNCIL
PROVINCIAL OFFICES
PROCFORUM BUILDING
123 PAUL KRUGER STREET
PRETORIA
EMAIL: info@lpc.org.za; infogp@lpc.org.za



11/11/2022-10:31:52 AM

"FA 14.1"

Legal Practitioners Indemnity Insurance Fund NPC
Est. 1993 by the Legal Practitioners Fidelity Fund

Head Office
: 012 622 3900
: 086 407 9104
: www.LPIIF.co.za
: @LPIIFZA

Prescription Alert Unit
: 021 422 2830
: 086 575 6803
: alert@LPIIF.co.za

Date : 21 July 2021

To:

The Acting General Manager: Legal Services

Road Accident Fund

Email: Justicem@raf.co.za

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LPIIF COMMENTS ON THE DRAFT RAF BOARD NOTICE 66 OF 2021

Introduction

1. On 22 June 2021, the Road Accident Fund (RAF) published a draft Board Notice in Government Gazette No 44747 (for convenience, we refer to the document as "the Board Notice" in our submissions). The Board Notice is entitled the "Draft terms and conditions upon which claims for compensation shall be administered". Interested parties were called upon to submit written comments on the draft terms and conditions within 30 days of the date of publication. The Legal Practitioners Indemnity Insurance Fund NPC's (LPIIF) comments on the Board Notice as set out below.

Background

2. The LPIIF is a non-profit short-term insurance company established by the Legal Practitioners' Fidelity Fund (the Fidelity Fund) to provide, *inter alia*, insurance cover to legal practitioners with Fidelity Fund certificates in respect of claims arising out of the professional conduct of such legal practitioners as contemplated in the Legal Practice Act (the Act)[1]. The LPIIF is funded by way of a single premium paid annually by the Fidelity Fund on behalf of all insured legal practitioners[2]. Since inception of the LPIIF in 1993, the insured legal practitioners have enjoyed the benefit of the cover afforded by the LPIIF without having to contribute to the insurance premium paid to the company. The company thus does not have a commercial interest in the matter and

[1] Act 28 of 2014. The professional indemnity insurance is provided in terms of sections 77(1) and 77(2) of the Act. The provisions of the Act relating to suretyships are not relevant for present purposes.
[2] Sections 57(1)(g) and 77 (4) of the Act.

cannot recoup any additional losses that may flow as a result of the implementation of the Board Notice from the pool of practitioners that it insures.

3. The LPIIF's functions and powers are regulated by the provisions of the Act, the Insurance Act[3] (in terms of which it is licenced to write liability and guarantee classes of business in line with the provisions of the Act) and, for current purposes, the single Master Policy issued annually in terms of which all insured legal practitioners are indemnified[4]. Being a non-profit company, the LPIIF is also subject to the provisions of the Companies Act[5] applicable to that type of company.

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4. Claims arising from circumstances where legal practitioners have failed to either lodge matters with the RAF timeously or, having lodged the claims on time, fail to issue summons within the prescribed period (thus resulting in prescription) make up the highest number and value of the claims reported to and paid by the LPIIF[6]. Furthermore, claims against legal practitioners by claimants who allege that the practitioners have under-settled their claims against the RAF also make up one of the main categories (in number and value) of claims dealt with by the LPIIF[7].

5. In assessing both prescribed and under-settled claims, the LPIIF effectively steps into the shoes of the RAF. In this assessment of the underlying liability and the quantum of the claims, the LPIIF goes through a similar process to that undertaken by the RAF.

6. It will be appreciated that one of the requirements for a successful professional indemnity claim against a legal practitioner in these circumstances is that the claimant

[3] Act 18 of 2017.
[4] Some of the characteristics of the *sui generis* nature of the LPIIF are set out in *Propell Specialised Finance (Pty) Ltd v Attorneys Insurance Indemnity Fund NPC and Others* (16864/2013) [2017] ZAWCHC 71; [2017] 3 All SA 1005 (WCC) (30 June 2017).
[5] Act 71 of 2008.
[6] The LPIIF has paid R297 289 141 in damages and R30 855 916 in claimants' party and party costs between 1997 and 2021 in 2297 prescribed RAF claims.
[7] The LPIIF has paid R59 468 178 damages and R10 551 664 in claimants' party and party costs for under-settled RAF claims notified between 1997 and 2021.

must allege and prove that he or she had a sustainable cause of action against the RAF and that, but for the breach of mandate or failure to meet the standard expected of a reasonable legal practitioner in the circumstances, the RAF would have indemnified the claim. The claimant is the same party who would, otherwise, have instituted a claim against the RAF.

7. In assessing these claims, the LPIIF does not have the benefit of the 120-day period the RAF has in terms of the Road Accident Fund Act (the RAF Act)[8]. The LPIIF must thus conduct the assessment of the claim within a much shorter period as specified in the *dies* for the filing of a plea, with fewer resources than those available to the RAF. Such assessment must, however, still consider issues of liability (the merits of the underlying accident) and quantum of the claim (the extent of the damages suffered by the claimant).

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8. Unlike commercial insurance companies, both the LPIIF and the RAF carry out statutory functions with neither of the parties receiving an insurance premium from the parties it is respectively required by statute to indemnify or on which it can conduct a risk assessment and structure individual terms of indemnification. The two entities also only become aware of the claims when they receive a notification thereof and the respective indemnity is triggered. The RAF's position is thus not unique.

9. Prescription-related claims do not solely arise due to fault on the part of the legal practitioner. The litigation in the matter between Advocate Gianni NO on behalf of Victor Lephole Lephole against the RAF is one example of this[9]. In that matter the claimant had initially lodged the claim unrepresented. The *curatrix ad litem* was later appointed and pursued the claim against the RAF on behalf of her ward. The RAF sought to join BL Kretzman Incorporated (a firm of attorneys) as a third party to the litigation, while simultaneously raising a special plea of prescription. BL Kretzman Incorporated reported the matter to the LPIIF and the latter defended the joinder which

[8] Act 56 of 1996.
[9] As the RAF was a party to this litigation, it will be aware of the matter. Copies of the documents can, however, be made available if required by the RAF.

was withdrawn a few days before the trial date. The special plea of prescription was also challenged and the RAF elected not to persist with that defence.

10. In the last decade alone, the LPIIF has dealt with a total of 1379 prescribed RAF claims, 327 under-settled claims and paid R179 712 492 and R35 637 942 in respect of these two categories of claims, respectively.

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11. The LPIIF thus, to a large extent, picks up liability that would otherwise have been attributable to the RAF and is, outside of that organisation, the only other entity that indemnifies a significant number of claims that would otherwise have been indemnified by the RAF.

12. Over the years, the LPIIF has sought through various structures (including the RAF sub-committee of the National Efficiency Enhancement Committee (NEEC)) and also in bilateral engagements with the RAF to address the underlying risks faced by both entities.

13. The proposed changes sought to be introduced by the Board Notice will increase the risk of claimants not being able to submit their claims timeously and the risk of obtaining adequate compensation.

14. The LPIIF thus has a direct and substantial interest in the subject matter of the Board Notice both in terms of its potential effect on claimants and their attorneys as well as its effects on the liability of the RAF and ensuring that the latter carries out its statutory mandate.

Submissions made by other parties

15. We have had sight of the submissions made by the Adams and Adams team and the Law Society of South Africa (the LSSA), respectively. We are in full agreement with both submissions and fully support them. Our submissions set out below will only

address additional matters we wish to raise and to amplify those mentioned where we deem it necessary to add any additional considerations.

16. We have also read the documents filed by Adams and Adams in both tranches of litigation challenging the Board Notice and the Management Directive and agree with the grounds raised in those challenges.

The grounds on which the LPIIF opposes the draft Board Notice

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17. We agree with the submissions made that the Board Notice is outside of the authority of the RAF board and the Chief Executive Officer (CEO) and that in purporting to introduce the new requirements, the parties have acted *ultra vires*. We are also in respectful agreement with the LSSA's submission that Board Notice is premised on an incorrect interpretation of section 4(1)(a) of the RAF Act.

18. The questions regarding the power to make subordinate RAF legislation were addressed by the LPIIF in the legal arguments advanced in the litigation in *Legal Practitioners Indemnity Insurance Fund NPC versus Minister of Transport and Road Accident Fund* under case number 26286/2020 in the Gauteng Division of the High Court. Judgement in that matter was handed down on 21 June 2021 in favour of the LPIIF's challenge to the provisions of RAF Regulations 2(1)(b) and 2(2). The grounds on which the RAF Regulations were successfully challenged included that the impugned regulations impose an unreasonable and unjustifiable limitation on the constitutionally enshrined right[10] of the affected plaintiffs to access the courts. A constitutional challenge had also successfully been raised against the old Regulation 2(a)(c)[11]. Similar grounds for a constitutional challenge will lie against the Board Notice.

19. The Board Notice seeks to amend an Act of parliament[12] by introducing additional requirements to those set out in the legislation for the validity of a claim and substantial compliance with the RAF Act. The Board Notice provides that:

[10] In terms of section 34 of the Constitution.
[11] *Engelbrecht v Road Accident Fund and Another* (CCT57/06) [2007] ZACC 1; 2007 (6) SA 96 (CC); 2007 (5) BCLR 457 (CC) (6 March 2007)
[12] The RAF Act.

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Indemnity Insurance
Fund NPC
Est. 1993 by the Legal Practitioners Fidelity Fund

> *" 2. In order to enable the Fund to effectively and efficiently administer claims, and in addition to the documentation required in terms of the [RAF] Act, the following documents must be included and form part of the claims' (sic) supporting documents when lodging a claim with the Fund;"* (emphasis added)

The expressed intention of the Board Notice is thus to purportedly raise the bar, so to speak, by adding more onerous requirements for acceptance of claims than those specified in the legislation. The test for substantial compliance with the RAF legislation has been set out in several judgements. The effect of the Board Notice is to go against the settled jurisprudence on the question of substantial compliance.

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20. The proposed requirements do not consider that many claimants who have suffered injuries because of motor vehicle accidents may not be aware of their rights to claim compensation. Some claimants may only become aware of their rights years after the accident and only then seek legal assistance. The legal practitioners acting for such claimants will then be hard pressed to obtain the required documents timeously from various public institutions and the risk of prescription is increased. There may be legal practitioners who refuse to take instructions for fear of the risk of prescription and the claimants will thus be denied their rights to compensation. Unrepresented claimants face an even greater risk as legal knowledge and experience in personal injury matters is required to meet the Board Notice requirements.

21. The requirements for the submission of claims sought to be introduced by the Board Notice conflate the information required to meet a higher standard of substantial compliance (unfairly), the assessment of the liability (merits) and the quantum of the claim and the authority of the legal practitioner to act for the plaintiff.

22. It is noted that paragraph 2.4 of the Board Notice only refers to attorneys when, in terms of the Act, an advocate practising with a trust account in terms of section 34 (2)(b) could act for a claimant. Trust account advocates are not included in the proposed provisions. The reasons for the distinction between the two classes of legal practitioners who are authorised to act for claimants are not explained.

23. If the authority of the attorney to act for the plaintiff is disputed, the Uniform Rules provide an adequate procedure in this regard[13]. The requirement to submit a power of attorney is already provided for.

24. The requirement that claimant's attorneys must annually submit a tax clearance certificate appears misplaced in the context of the validity of a claim for compensation or the requirements for a claim payment to be made. This is not a tender to provide services to a public institution and the tax status of the claimant's legal representatives is thus irrelevant[14].

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25. The basis on which a legal practitioner acts for a claimant and the fee agreement (whether on a contingency basis or otherwise) is a matter of contract between the parties to that agreement and are subject to attorney client privilege. The RAF is not a party to that agreement. The Legal Practice Council (the Council) and the courts, not the RAF, have jurisdiction in respect of the validity or otherwise of contingency fee agreements. Similarly, if a claimant disputes the fee levied by a legal practitioner (this is outside of the scope of the RAF's functions), such dispute will fall within the regulatory ambit of the Council and the matter will be adjudicated by the courts, if necessary.

26. It is trite that the RAF Act is a form of social legislation. The requirements of the Board Notice go against this settled legal principle. The socio-economic realities of South Africa have not been considered in drafting the requirements listed in the Board Notice. Many of the claimants are indigent, illiterate or semi-literate. The costs and unjustified extra effort required to meet the requirements will deter many deserving parties from lodging claims, thus denying them their statutory rights to compensation. For many it will simply be impossible to meet the higher threshold. The RAF seeks to introduce requirements that are more onerous than those imposed by insurance companies for

[13] Uniform Rule 7.
[14] As pointed out in the other submissions, this requirement has been successfully challenged in other matters in any event.

losses arising out of damages to vehicles in accidents or for the acceptance of injury, disability or death related claims.

27. The risks the RAF seeks to address with the Board Notice are not clear. If the intention is to avoid fraudulent claims, this can be achieved by an investigation within the 120-day period granted to the organisation by the existing legislative framework. The additional requirements will only induce fraudulent claimants to increase their efforts to produce fraudulent documents that meet the extended checklist. The RAF does not state that it will verify the documents provided.

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28. The RAF is within its rights to refuse to pay compensation in claims where valid grounds exist, and the claimants may then litigate. The grounds on which the RAF has refused to compensate will then be ventilated in the litigation and ultimately adjudicated by a court. A large tranche of the information listed in the Board Notice is held by public institutions to which the RAF (being a statutory entity) has better access than the claimants and is thus at an advantage due to its legislative mandate and resources. However, effectively barring the claimants from exercising their rights by introducing the onerous requirements will not meet the legal muster or the risks sought to be mitigated. The Board Notice will unfairly enhance the advantage the RAF already has against claimants.

29. Many public offices (including the Master of the High Court, Department of Home Affairs and the courts) have had intermittently closures since the lockdown measures for first implemented. Others have gone through periods where only limited services were provided. Public health institutions have been prioritising essential medical treatment. The effect of this is that the collation of information to submit a claim to the RAF and the completion of the medical reports has become increasingly difficult for claimants and their legal representatives as this was not considered essential and the resources were directed to other priority services. The affected parties were only authorised to leave their residences for very limited reasons for a significant part of this period. The RAF offices were also closed at a certain point and claims could not be

lodged. All these factors have made it increasingly difficult to obtain all the relevant documents to submit a claim under the current regime and it will be even more difficult to meet the requirements proposed in the Board Notice. These factors must also be considered. The timing of the Board Notice will only exacerbate the position of already vulnerable claimants.

30. In the event that an unrepresented claimant lodges a claim with the RAF and an employee gives incorrect advice to the claimant on the Board Notice requirements, will the organisation accept liability? Has an assessment been conducted of many unrepresented claims are affected by the Board Notice? These are questions that must also be considered.

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31. As indicated above, we agree with the points raised by Adams and Adams and the LSSA on all the grounds listed in the respective submissions. In some instances, the documents required to be submitted will contain information already provided in others. Our additional submissions in respect of selected requirements are as follows (the relevant paragraph of the Board Notice is referred to in each instance):

31.1. For a variety of reasons, not every South African has an identity document. Furthermore, there are many inhabitants of South Africa who are not citizens or permanent residents but are injured in motor vehicle accidents and are not in possession of identity documents. All injured parties without identity documents will not be able to claim compensation although their injuries fall within the liability set out in the RAF Act as they will not be able to meet the requirements of paragraphs 2.1.1 and 2.2.2.1;

31.2. The requirement to produce a power of attorney and contingency fee agreement (repeated in paragraphs 2.1.3, 2.4.1.2 and 2.4.1.5) has been addressed above. It is unclear why these documents have been included in the requirements and also why there is a requirement for the repeated submission thereof;

31.3. Post-mortem reports (paragraphs 2.2.1.3 and 2.2.2.8) are not readily available to claimants. The deceased's cause of death will be stated on the death certificate which is required to be submitted. The RAF can apply for access to the BL1663 form from the Department of Home Affairs should it dispute the cause of death. The same comments will apply to the requirement to provide the inquest records;

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31.4. A tax invoice for the funeral expenses (paragraph 2.2.1.4) will also not be available in all cases. Not all funeral undertakers will necessarily be registered VAT vendors and may thus not always issue a tax invoice[15]. Regard must also be had to the realities of South Africa and the various cultural and religious practices in respect of deaths and funeral rites. In some instances, several members of a family (immediate or extended) may make financial contributions to the funeral costs and either pay cash or make separate payments to the funeral undertakers. Furthermore, the funeral undertaker may offer the service as a package or even on credit. Communities also make contributions to funeral costs and the deceased's family may not have a full record thereof. There are also several burial societies and insurers that cover the costs associated with the funeral;

31.5. Payments by third parties (medical aid schemes pay the medical costs directly to the health care service providers) could also be made in respect of the medical costs referred to in paragraph 2.2.2.7; and

31.6. If a matter is settled, the RAF will be a party to such settlement having agreed to the terms thereof. The organisation will thus have a copy of the settlement agreement that was signed. In litigious matters, the RAF will be a party to the litigation and the court order will have been granted either after a judgement or by agreement between the parties. In the latter instance, the court order will be granted in circumstances where the parties have agreed to its terms and

[15] Is the thinking that the claimant will claim the output VAT? This requirement is misplaced.

confirmed to the court that they have agreed thereto. It is unclear why the claimant is then required to produce the same documents that the RAF already has for the payment to be made (paragraphs 2.4.1 and 2.4.1.1).

Summary

32. In summary, the LPIIF's comments on the Board Notice are as follows:

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32.1. The rationale motivating the amendments proposed by the Board Notice is not clearly articulated. The regime created by section 24 of the RAF Act which has been pronounced upon by the courts satisfies all stakeholders as it seeks to strike a balance between a substantively fair approach versus a merely technical approach to the requirements for lodging a claim in terms of the Act;

32.2. The Board Notice is *ultra vires* the RAF Act. In terms of section 26 of that Act, only the Minister has the power to make regulations regarding any matter in terms of the RAF Act. The LPIIF submits that section 4(1)(a) of the RAF Act does not authorise the RAF the power to issue regulations under the RAF Act or to prescribe any terms or conditions by means of a Board Notice or Management Directive under which claims are to be lodged with the RAF. The LPIIF submits that the Board Notice extends beyond what RAF is empowered to do in terms of section 4(1)(a) of the RAF Act and are, as such, *ultra vires* RAF's powers and therefore unlawful and unconstitutional;

32.3. The RAF Act defines 'prescribe' as meaning to prescribe by regulation under section 26 of the Act. Furthermore, the 'Act' is defined as including regulations made under section 26 of the Act. The Board Notice is published under section 4(1)(a) of the RAF Act and purports to amend the procedure and requirements under section 24 of the Act. The intended reliance and effect of the Board Notice on section 4(1)(a) is unclear as the Minister has the sole authority to prescribe a procedure in terms of section 26 of the Act;

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32.4. The Board Notice constitutes an unjustifiable intrusion on the rights of claimants. The proposed amendments contemplated in Board Notice will have a significant adverse impact on claimants as the requirements increase the burden in lodging claims with the RAF;

32.5. The Board Notice amounts to administrative action for purposes of the Promotion of Administrative Justice Act[16] and, if ultimately promulgated, could be challenged under, *inter alia*, the following grounds of review:

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32.5.1. the action was taken because relevant considerations were not considered;

32.5.2. the means adopted by RAF are not proportional to the intended outcome, namely, to achieve a balance between the effective administration of claims and a claimant's right to compensation under the Act; and

32.5.3. the decision, given that it is *ultra vires*, is so unreasonable that no reasonable person could have exercised the power or performed the function; and

32.6. The Board Notice is fraught with uncertainty and inconsistencies. They will result in confusion and uncertainty for claimants and legal practitioners acting on their behalf.

[16] Act 3 of 2000.

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Conclusion

33. For the reasons set out above, the LPIIF is thus opposed to the introduction of the Board Notice.

Yours Faithfully

Thomas Harban
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"FA14.2"

LAW SOCIETY SOUTH AFRICA – COMMENTS ON BOARD NOTICE 66 OF 2021: ROAD ACCIDENT FUND

On 22 June 2021 the **BOARD OF THE ROAD ACCIDENT FUND** ("the Board") published a notice being **BOARD NOTICE 66 OF 2021** which stated as follows:-

> ***"The Road Accident Fund hereby, in accordance with Section 4 (1) (a) of the Road Accident Fund Act No. 56 of 1996, publishes for comment the draft terms and conditions upon which claims for compensation shall be administered, as set out in the schedule below".***

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Interested persons are called to make comment within 30 (THIRTY) DAYS of the date of publication of Board Notice 66 of 2021.

It is submitted that the notice is premised on an incorrect interpretation of **Section 4 (1) (a)** of the **ROAD ACCIDENT FUND ACT NO. 56 OF 1996** ("the Act").

Section 4 (1)(a) provides that:-

> ***The powers and functions of the Fund shall include:-***
>
> ***"(a) the stipulation of the terms and conditions upon which claims for the compensation contemplated in Section 3 shall be administered".***

The power to stipulate the terms and conditions for **administering** claims does not include the power to regulate and/or prescribe additional requirements for a substantially compliant and thus valid claim in terms of Section 24(1). Those requirements are established by legislation as interpreted by case law.

Section 11 of the Act sets out the powers and functions of the Board. In terms of Section 11 the Board is empowered, subject to the powers of the Minister, to exercise overall authority and control over the financial position operation and management of the Fund and may, *inter alia*, **make recommendations** to the Minister in respect of any amendment to the Act or any Regulation to be made under the Act. Thus the Board, itself, does not have the power to regulate and may only

make recommendations to the Minister. The Board and the CEO exercise their powers and function within the parameters of the legislation. Any act beyond those parameters is *ultra vires* and thus invalid.

Section 12 of the Act, which deals with the **CHIEF EXECUTIVE OFFICER (CEO)** and other staff of the Fund, specifically omits Section 4 (1)(a) from the powers and duties afforded to the CEO.

In terms of the Act, neither the Chief Executive Officer nor the Board have the power to amend the Act or the regulations. If a Board notice prescribing ***"terms and conditions upon which claims for compensation shall be administered"*** has the effect of amending the Act or the regulations such notice is *ultra vires* and invalid.

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Although the current Board Notice 66 of 2021 is not as specific as the notice issued by the CEO in March 2021 nor the notice gazetted by the Board in June 2021, paragraph 2 of the Schedule states that:

> ***"....and in addition to the documentation required in terms of the Act to ensure that a valid claim is lodged which substantially complies with the Act, the following documents must be included and form part of the claim's supporting documents when lodging a claim with the Fund:"***

It is submitted that this paragraph renders the content of the schedule *ultra vires* as documents "***in addition to the documentation required in terms of the Act***" are now required for a "***valid claim to be lodged which substantially complies with the Act***".

The notice does not spell out what response failure to provide the required documents will trigger. Whether delivery will be refused, as in the past, or whether an objection to the validity of the claim will be made in terms of Section 24 of the Act either will have an extremely harmful effect on claimants, particularly those who are unrepresented. In this first case, claims may prescribe and in the second, needless costs and time will be wasted on litigating the Fund's refusal to administer the claim on the basis of the objection raised in terms of Section 24.

The comment below on the contents of the schedule should be read in the light of the above. It is the stance of the LSSA that the introduction of any procedure which has the effect of imposing additional requirements for substantial compliance with Section 24 (1) of the Act is ultra virus the powers both of the Board as well as the Chief Executive Officer. The comment which follows is without prejudice to this stance.

2.1 STANDARD DOCUMENTATION APPLICABLE TO BOTH DEATH AND INJURY CLAIMS

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2.1.1 Identity documents:

Certified Copies of Identity Documents cannot always be provided by suppliers making claims direct in terms of Section 17 of the Act. In particular claims arising in emergency situations where the injured party is unconscious or for other reasons not able to provide a copy of his or her identity document it is in many circumstances simply not possible for a supplier to provide this.

Private ambulance services are often obliged to assist in providing lifesaving emergency transport services and should be compensated. The injured party is identified by name and surname as well as identity number and / or date of birth as well as contact numbers. In these circumstances this should be sufficient to investigate and compensate a supplier claiming direct.

2.1.2 Accident report form, case docket and sketch plan

In many instances these documents are not available and / or never exist.

The Act requires that the claimant prove that he or she or a breadwinner was involved in an accident. The provision of an accident

report form, case docket and sketch plan is not required for substantial compliance. A claimant cannot be denied compensation because the guilty motorist did not report the accident to the South African Police or the police failed to record the accident details and / or open a docket.

2.1.3 **Power of attorney and contingency fee agreement**

The Road Accident Fund is entitled to request proof that an attorney representing a claimant has been authorised. However failure to lodge a power of attorney does not render the claim invalid. A contingency fee agreement or any other fee agreement entered into between an attorney and the claimant is subject to attorney and client privilege.

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2.1.4 **Permission for the Fund to obtain hospital and medical records in terms of Section 19 (e) (ii) & (iii)**

The provision of hospital and medical records is not required for substantial compliance in terms of Section 24 (1).However, should a claimant refuse to provide copies of **medical or hospital records in his or her possession on request** then, in terms of section 19 (e) the Fund is not obliged to pay the claim.

2.1.5 **All statements and documents in claimant's possession as outlined in Section 19 (f) (ii)**

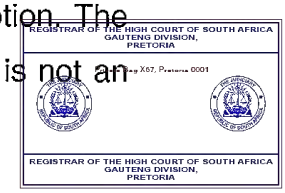
An affidavit pertaining to merits is a requirement for substantial compliance in terms of Section 19 (f) (ii) as read with Section 24 (1) **provided that the claimant is reasonable able to produce one..**

2.1.6 **Copies of unabridged birth certificate**

It is very difficult if not impossible to obtain an unabridged birth certificate from the Department of Home Affairs. This is not a requirement for substantial compliance.

2.1.7 **Proof of *locus standi* of curator**

If a curator has been appointed then it is usually possible for a copy of a court order to be provided. However in some instances the obtaining of court orders can be unduly delayed in which event a claimant should be entitled to proceed to a lodge a claim to interrupt prescription. The provision of evidence regarding the appointment of a curator is not an element for substantial compliance.



A copy of the court order appointing a curator (when available) will be sufficient to establish his *locus standi.*

2.2 CLAIMS ADMINISTRATION REQUIREMENTS FOR DEATH BENEFITS CLAIMS

2.2.1 Funeral claim

2.2.1.1 to 2.2.1.4

All the requirements stipulated in paragraphs 2. 2.1.1 to 2.2.1.4 are not essential for substantial compliance. In particular a post-mortem report is not required if it is apparent from another document such as the police report that the deceased died at the scene of the accident.

2.2.2 Loss of support

2.2.2.1 to 2.2.2.18

None of the documents stipulated in 2.2.2.1 to 2.2.2.18 are required for substantial compliance other than a document proving that the deceased was killed in the accident alternatively completion of the medical report, which is a substantial requirement.

General comment

Many of the "official" documents are not readily available. In particular obtaining any communication from the office of the compensation commissioner and in particular obtaining details of any award which may have been made is virtually impossible.

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Many of the documents may be relevant to the assessment of quantum but they cannot be elevated to peremptory requirements for substantial compliance for lodgement of a claim in terms of Section 24 (1). In particular it can be many years before a post-mortem report or inquest record is available. Marriage and birth certificates are sometimes lost and replacing them can be a long drawn out process. Many breadwinners do not have any financial records.

2.3 Claims administration requirements for injury benefits claims

2.3.1 Past medical expenses

Tax invoices from a registered medical provider may be a requirement in order to quantify the claim but it is not a requirement for substantial compliance when lodging a claim. Many claimants are treated at provincial hospitals who claim direct. However to protect them from a potential claim in the future an estimated amount is often claimed as past medical expenses.

2.3.2 Loss of earnings

All the documents required in paragraphs 2.3.2.1 to 2.3.2.11 are evidentiary in relation to quantum and cannot be elevated to peremptory requirements for substantial compliance. In particular a requirement for a communication from SARS that the claimant is not registered for tax and / or bank statement for three years preceding death (presumably in a claim for injury this should read the date of accident) may be inapplicable and / or difficult to obtain. The delay in obtaining supporting documents should not impact on the claimant's right to lodge a claim and thus interrupt prescription..

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Obtaining any communication from the office of the compensation commissioner is often impossible. In many instances claims in terms of COIDA are simply not processed. Case law has established a claimant's right to proceed with a claim for compensation from the Road Accident Fund regardless of whether the compensation commissioner has made an award or not.

2.3.3 **General damages**

There is established case law to the effect that a RAF 4 claim form can be lodged at any time after lodgement and need not accompany the initial lodgement. The other requirements 2.3.3.1 to 2.3.3.4 are evidentiary.

2.4 **Mandatory information / documents to be submitted for claims payments**

2.4.1.1 to 2.4.1.5

The Road Accident Fund will already be in possession of a power of attorney in favour of the claimant's attorneys and it is unclear why yet

another copy should be lodged when the settlement is loaded for payment.

Of all the requirements only the court order or duly signed discharged form or settlement agreement together with confirmation of banking details are reasonable requirements. In particular the imposition of a peremptory requirement of file a tax clearance certificate by the instructing attorney has been declared invalid in a recent court decision.

Contingency Fee Agreements are regulated by the courts and the legal practice council not the Road Accident Fund. These requirements are *ultra vires* the powers of the Fund.



11/11/2022-10:31:52 AM

"FA14.3"

COMMENTS ON BOARD NOTICE 66 OF 2021: ROAD ACCIDENT FUND

TO: THE ACTING GENERAL MANAGER: LEGAL SERVICES
ROAD ACCIDENT FUND
PRIVATE BAG X 178
CENTURION
0046

EMAIL: justicem@raf.co.za

SUBMISSION BY: MR JEAN-PAUL RUDD
ADAMS & ADAMS
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1. INTRODUCTION

1.1. This submission is made in reply to the Board Notice, 66 of 2021 published in the Government Gazette of 22 June 2021 (No 44747) (***"the Board Notice"***) in terms whereof the Road Accident Fund invited interested persons to submit their comments on the drafted terms and conditions embodied in the Board Notice.

1.2. Mr Jean-Paul Rudd is an interested party in terms of the Board Notice. He is a partner with Adams & Adams and a duly registered and practising legal representative and attorney.

1.3. Adams & Adams is a leading firm of attorneys, specialising in intellectual property, commercial, litigation, property and personal injury law. The firm was established in 1908 and has offices throughout the country.

1.4. Mr Rudd and his partners represent hundreds of victims of motor vehicle collisions in claiming compensation from the Road Accident Fund.

1.5. Mr Rudd and Adams & Adams have standing to make submissions as interested parties because of their direct and professional interest in the subject matter[1].

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2. STRUCTURE OF THIS SUBMISSION

The structure of this submission will be as follows:

2.1. Firstly – the factual background to the publication of the Board Notice and pending litigation.

2.2. Secondly – the relevant provisions of the RAF Act and the Fund's constitutional obligations will be summarised. This section serves as an introduction to the discussion of the lawfulness and validity of the Board Notice.

[1] Kruger v President of the Republic of South Africa [2009] JOL 22509 (CC)

2.3. Thirdly – submissions will be made that the process followed by the Road Accident Fund that culminated in the publication of the Board Notice is wrong and irregular, resulting in the voidness of the Board Notice; and

2.4. Fourthly – submissions will be made regarding substantive objections to the Board Notice.

3. FACTUAL BACKGROUND AND PENDING LITIGATION

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3.1. As an introduction, section 24(1)(a) of the RAF Act provides that claimants must set out the claim in the prescribed claim form. Courts have held the provisions of section 24 (1)(a) and (4) of the RAF Act to be directory and not peremptory. Only substantial compliance is required. As will be demonstrated later in the commentary, the Management Directive, Board Notice and Substitution Notice attempts to abolish the established principle of substantial compliance. It attempts to elevate sections 24(1) and (4) of the RAF Act from directory to peremptory.

3.2. On or about 8 March 2021, the CEO of the RAF and the RAF Chairperson Board issued a document headed "Management Directive" with the reference "1/2021 – Compulsory information to be submitted when lodging a claim for compensation with the RAF" ("the Management Directive").

3.3. The Management Directive requires claimants to submit additional documents and information required of claimants under section 24(1) and (4) of the RAF Act. The Management Directive is peremptory, and therefore strict compliance therewith is required. From 1 May 2021, the lodgement of applicants' claims with the RAF was refused by the latter for want of compliance with the stringent requirements set out in the Management Directive. I deal with the implications of the aforesaid in more detail below.

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3.4. On or about Friday, 4 June 2021, the RAF also published a "BOARD NOTICE 58 of 2021" in the Government Gazette titled "Road Accident Fund, Stipulation of Terms and Conditions upon which Claims for the Compensation shall be Administered" ("Board Notice"). The content of the Board Notice further accords with the content of the Management Directive of 8 March 2021. The Board Notice was given retrospective effect from 1 April 2021.

3.5. In addition to the Board Notice, the RAF published a "SUBSTITUTION OF RAF1 CLAIM FORM" notice in the Government Gazette on 4 June 2021 (hereinafter referred to as the "Substitution Notice"). The Substitution Notice was effective from the date of publication. As will be discussed in more detail later, the new RAF1 form incorporates the requirements listed in the Board Notice. The compensation regime established by the RAF Act is meant to be inclusive, sustainable, and

capable of meeting its constitutional obligations towards victims of motor vehicle accidents.

3.6. The aforesaid events culminated in Adams & Adams instituting urgent court proceedings on behalf of seven of its clients against the Road Accident Fund.

3.7. On 15 June 2021, the Honourable Mr Justice Davis granted an interim interdict pending the finalisation of a review application.



3.8. The review application provided for in the Court Order of 15 June 2021 was instituted in the High Court of South Africa, Gauteng Division on 14 June 2021. A copy of the Notice of Motion in the review application together with the applicants' Rule 16A Notice raising a constitutional issue is annexed hereto marked as Annexure "**JPR1**" and "**JPR2**".

3.9. The review application is still pending. The publication of the Board Notice and Substitution Notice on 4 June 2021 was irregular. It constitutes an administrative decision that is void. The Fund's Board and CEO do not have legislative power. The two publications on 4 June 2021 do therefore not qualify as subordinate legislation that can be withdrawn merely. The publications and the consequences flowing from it should be reviewed by the Court and set aside.

3.10. The contents of the Board Notice in respect of which this submission is made, are mutatis mutandis identical to the contents of the Board Notice of 4 June 2021 that forms the subject of the pending review application.

3.11. Mr Rudd and Adams & Adams's participation in this consultive process should not be seen as a concession or admission of any fact or legal position contrary to what is set out in the pending review application.

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3.12. The aforesaid must be seen further against the recent legislative and financial history of the Road Accident Fund. The financial crises in which the Road Accident Fund finds itself is common knowledge.

3.13. With reference to the Road Accident Fund's Annual Performance Plan that served before Parliament during the past three years, it is evident that the need for additional documentation to ensure that claims lodged comply substantially with the Act, was never highlighted.

3.14. The Fund's Annual Performance Plan 2020-2021 emphasised the importance of settling claims within 120 days after lodgement but lacks any facts to suggest that the Fund's inability to do so is a result of a lack of documentation and/or information. The Fund's ostensible inability to settle claims are due to other reasons not related to the lodgement of claims.

3.15. To demonstrate this practically, Mr Rudd directed a letter to the CEO of the Road Accident Fund on 25 June 2021. A copy of this letter is annexed hereto marked as **Annexure "JPR3"**. In the letter, the CEO's attention is drawn to at least 102 claims that are ready to proceed to trial and have been properly quantified based upon discovered documents and numerous reports by medical experts. The claims in respect of loss of income are properly quantified actuarially.

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3.16. Mr Rudd and Adams & Adams have made settlement proposals to the RAF based upon this. Contrary to the Fund's utterances that it intends to settle claims none of the settlement offers was accepted. Despite all of the aforesaid documentation and information available to the Road Accident Fund, no counter offers of settlement have been received.

3.17. This is the undeniable position in respect of many claims. In some instances, settlement proposals have been directed to the RAF claims handlers as far back as January 2019, without any resolve.

3.18. It begs the question of whether the true purpose of the Board Notice is to facilitate the efficient administration of claims. It is submitted that the Board Notice, if promulgated, will only lead to excluding victims of motor vehicle collisions from claiming compensation in terms of the Road Accident Fund Act.

3.19. An important policy and management document such as the Board Notice should (one would reasonably expect) form part of the Road Accident Fund's long-term management planning. It is therefore of great relevance to refer in this regard to the CEO's statement contained in the Road Accident Fund's "*Annual Performance Plan 2020-2022*" submitted to Parliament.

3.20. The CEO states as follows and I quote:



"... The Fund under the current dispensation is flooded with a high volume of represented claims. As a result, the system is open to an influx of litigated matters which results in claims finalisation backlog and overwhelms the justice system (courts). ...

In order to address this, the 2020-2025 Strategic Plan will focus on the following:

- *Reducing the legal costs by 75% by 2025*
- *Settle all new claims within 120 days to avoid summons, in case settlement fails, the Fund will explore mediation*
- *Review the current RAF litigation and panel model ..."*

And further

> *"... Over 60% of claims liability is made up of outstanding registered claims (ORC). These claims are accepted by the RAF and are at different stages of processing. Some of these claims are duplicate, dormant and those of deceased claimants. Management will, in the 2020/2021 financial year, embark on a claims database clean-up, to accurately measure the actuarial nett deficit."*

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3.21. Under the heading *"Legislative Amendment"* the CEO refers to three aspects being:

3.21.1. The reduction of medical costs;

3.21.2. System modernisation;

3.21.3. RAF Business Operating Module.

3.22. Not one of the proposed legislative amendments reported on by the CEO to the Parliament referred to the need for additional documents and information prescribed in the Board Notice.

3.23. I enclose herewith a copy of the relevant portion of the Annual Performance Plan 2020-2021 marked as **Annexure "JPR4"**.

3.24. In *"PART B OUR STRATEGIC FOCUS"* of the same document, the Fund lists in paragraph 3.2 under the heading *"INTERNAL ENVIRONMENT ANALYST"* the challenges inherent in the internal operating environment of the Fund.

3.25. A lack of documentation or information at the lodgement stage is not listed as one of the challenges inherent in the internal operating environment.

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3.26. In paragraph 4 of the 2020/2021 Plan the Fund lists as a priority during 2021 that it aims to settle only 20% of all new claims lodged within 120 days. This begs the question of how important and/or relevant the requirements embodied in the Board Notice is to the Fund's ability to settle claims and afford fair compensation to motor vehicle collision victims.

3.27. It appears that the CEO and Board intend with the Board Notice to change dramatically the legislative requirements for the lodgement of claims although it will have a dismal nett effect on the efficiency of the Fund, the settlement of claims and/or the financial sustainability of the Fund.

3.28. If the decision to publish the Board Notice was rationally founded it would have been foreshadowed in the CEO's report to Parliament.

4. RAF'S CONSTITUTIONAL MANDATE

4.1. It is a reality that hundreds of thousands of persons fall victim to motor vehicle collisions every year.

4.2. A victim's right of recourse to claim compensation as a result of a motor vehicle collision against the wrongdoer under the common law proved to be of limited avail[2].

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4.3. It, therefore, became clear that a scheme had to be created out of the constitutional need and social responsibility of the State. In effect, it was and indeed remains part of the social security net for all road users and their dependents[3].

4.4. In short, the Fund is constitutionally and statutorily bound to fulfil its obligations to provide social security and access to health care services to victims of motor vehicle collisions[4].

4.5. The State created the statutory right to compensation to protect and respect the bodily integrity of persons involved in motor vehicle accidents who suffer bodily injury or death arising from a motor vehicle collision.

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2 Law Society of South Africa & others v Min of Transport & others 2011 (1) SA 400 (CC) also reported at [2010] ZACC 25, judgment by the honourable Mr Justice Moseneke, DCJ in the Constitutional Court.

3 Law Society of South Africa & others v Min of Transport & others [2010] ZACC 25, at par 17 and 83

4 Road Accident Fund v Legal Practice Council and Others [2021] 2 ALL SA 886 (GP) at par 29

The RAF Act gives effect to the fundamental right of social security envisaged by the Constitution of South Africa.

5. PROCEDURAL OBJECTIONS - ILLEGALITY

5.1. The Law Society of South Africa submitted comments on the Board Notice. The Law Society correctly adopts the approach in submitting that the Board Notice is premised on an incorrect interpretation of section 4(1)(a) of the Road Accident Fund Act (Act 56 of 1996) ("the Act"). This approach and interpretation of the Act are sound.

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5.2. The RAF Act provides for the establishment of the Road Accident Fund. Section 2 to 16 of the Act are in the main administrative in that they create the machinery by which the Fund is administered. The Board controls, manages and administers the Fund. The Board does not legislate. The Board is not empowered to dictate the conditions to receiving compensation. This is the legislature's prerogative.

5.3. For this reason, the powers and functions of the Fund will first be highlighted, followed by a discussion of the powers and duties of the Board and the CEO.

6. THE POWER AND FUNCTIONS OF THE RAF

6.1. The legislature established the RAF to pay compensation under the RAF Act for loss or damage wrongfully caused by the driving of motor vehicles. Section 4 of the Act under the heading "Powers and Functions of the Fund" states as follows:

"4(1) The powers and functions of the Fund shall include:

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(a) The stipulation of the terms and conditions upon which claims for the compensation contemplated in section 3, shall be administered;

(b) The investigation and settling, subject to this Act of claims arising from loss or damage caused by the driving of a motor vehicle whether or not the identity of the owner or the driver thereof, or the identity of both the owner and the driver thereof, has been established;

(c) The management and utilisation of the money of the Fund for purposes connected with or resulting from the exercise of its powers or the performance of its duties; and

(d) Procuring reassurance for any risk undertaken by the Fund under the Act ..."

6.2. The Fund and the CEO contend that section 4(1)(a) of the RAF Act gives it powers to decide how claims are to be administered, which includes the right to issue Management Directives that restrict the rights of claimants submitting claims. The Fund's contention is wrong in law. Section 12, which deals with the duties and powers of the board, excludes section 4(1)(a) from the CEO's duties and powers.

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6.3. Even if the CEO's contention were to be accepted, it does not absolve the Board or the CEO from exercising power in an administratively fair manner.

7. THE RAF BOARD

7.1. The Board is established in terms of section 10 of the RAF Act, and section 11 sets out the powers and functions of the Board. The Board consists of the Director-General of Transport, or any other senior officer designated by him or her and at least eight but no more than twelve members appointed by the Minister of Transport (second respondent). The Board of the RAF is empowered to exercise overall authority and control of the finances, operation, and management of the RAF. Section 11(1) of the RAF Act provides:

"1) The Board shall, subject to the powers of the Minister, exercise overall authority and control over the financial position, operation and management of the Fund, and may inter alia-

(a) make recommendations to the Minister in respect of-

(i) the annual budget of the Fund;

(ii) any amendment of this Act;

(iii) the entering into an agreement with any institution referred to in section 9;

(iv) [Sub-para. (iv) deleted by s. 4 of Act 19 of 2005 (wef 31 July 2006).]

(v) any regulation to be made under this Act;

(b) terminate the appointment of any agent and determine the conditions on which such appointment is effected or terminated;

(c) approve the appointment, determination of conditions of employment and dismissal by the Chief Executive Officer of staff of the Fund on management level;

(d) approve internal rules and directions in respect of the management of the Fund;

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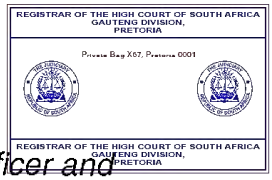
(e) approve loans made or given by the Fund;

(f) approve donations for research in connection with any matter regarding injuries sustained in motor vehicle accidents;

(g) determine guidelines in relation to the investment of the money of the Fund; and



(h) delegate or assign to the Chief Executive Officer and any member of the staff of the Fund any power or duty of the Board as it may deem fit, but shall not be divested of any power or duty so delegated or assigned, and may amend or withdraw any decision made by virtue of such delegation or assignment."

7.2. The Minister appoints the chairman and vice-chairman from the ranks of the Board. Therefore, the legislature only grants the Board the power to make recommendations to the Minister regarding the amendment of the RAF Act and any regulation required in terms of the RAF Act. In terms of Section 11 of the Act, the Board may recommend to the Minister any regulation to be made under the Act. Section 26 of the Act further provides that the Minister may make regulations regarding any matter that shall or may be prescribed in terms of the Act or necessary or expedient to prescribe to achieve or promote the Act's object.

7.3. Section 11 of the RAF Act does not give the Board the right to issue, add, vary or restrict any statutory provisions of the RAF Act or regulations issued by the Minister. The Board Notice, which has a direct and external legal effect on persons wishing to claim compensation, purports to add and restrict the rights given to persons desiring to submit claims to the RAF.

8. THE CHIEF EXECUTIVE OFFICER

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8.1. On the recommendation of the Board of the RAF, the Minister appoints the CEO of the RAF on such terms and conditions of employment determined by the Board. Whereas the Board's powers and functions are subject to the Minister's powers, the CEO's powers and functions are subject to the Board's directions. The CEO's duties and powers are described in Section 12(2) of the RAF Act, which provides:

> *"(2) Subject to the directions of the Board, the Chief Executive Officer shall conduct the current business of the Fund, and he or she may-*
>
> *(a) exercise the powers and shall perform the functions of the Fund mentioned in section 4(1)(b), (c) and (d), (2) and (3);*

(b) *appoint, determine the conditions of employment of and dismiss the staff of the Fund, excluding members of staff on management level;*

(c) *draft internal rules and directions in respect of the management of the Fund and make recommendations in respect thereof to the Board;*

(d) *enter into an agreement with any person for the rendering of a particular service related to the management of the Fund or its functions;*

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(e) *issue guidelines to agents regarding the manner in which claims should be administered by them on behalf of the Fund; and*

(f) *exercise such powers and shall perform such duties as may be delegated and assigned to him or her by the Board under section 11 (1) (h).”*

8.2. As mentioned at the outset of this discussion on the RAF’s powers and functions, section 4(1)(a) affords the Fund the ability to stipulate the terms and conditions upon which claims in terms of section 3 will be administered. Section 12(2)(a) provides that the CEO shall perform the

functions of the Fund mentioned in section 4(1)(b), (c) and (d), (2) and (3). No mention is made of section 4(1)(a).

8.3. Therefore, the CEO and Fund labour under a misapprehension if they contend the CEO and Chair of the Board are entitled to issue a Management Directive regarding the statutory requirements for submitting claims.

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9. THE SUBMISSION OF CLAIMS

9.1. Section 24(1) of the RAF Act makes it compulsory for a claimant to submit his claim on the prescribed form. Section 24(1)(a) and (4) contain the following directions regarding the completion of the claim form and medical report:

9.1.1. The claim form must be completed in all its particulars;

9.1.2. A clear reply must be given to all the questions, and if a question is not applicable, the words "not applicable" must be inserted;

9.1.3. All ticks, dashes, deletions and alterations must be countersigned; and

9.1.4. Precise details of compensation claimed must be given and should be accompanied by supporting vouchers.

9.2. As mentioned at the outset, the provisions of sections 24(1)(a) and (4) of the RAF Act are directory and not peremptory. The provisions of the section are deemed to have been substantially complied with if the claim form considered in its entirety discloses the identity of the claimant; the particulars of the collision that gave rise to the injuries or death; the identity of the driver or owner of the motor vehicle concerned; and the calculation and composition of the amount claimed. The information supplied must constitute a claim in terms of section 17, read with section 24 and be sufficient to enable the RAF to decide whether to resist or settle the claim or enter into settlement negotiations.

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9.3. In terms of section 24, a claim form for compensation may be dispatched by registered post or physically delivered to the RAF at a regional or branch office. The peremptory terms of section 24(1)(b) as to the RAF's obligations when a claim for compensation is delivered by hand states that:

> "... The Fund ... shall at the time of delivery by hand, acknowledge receipt thereof and the date of such receipt in writing."

9.4. Section 24(2)(a) of the Act demands that the medical report submitted with the claim form should be completed by the treating physician or the Superintendent of the relevant hospital. Section 24(5) provides that the RAF can object to the claim form's validity, i.e., after receiving it by registered post or after it is delivered by hand. The proviso that if the

RAF does not object to the validity thereof, a claim is deemed valid in law thereafter "... in all respects ...".

9.5. The point is that validity is to be determined after receipt of the claim. Furthermore, section 24(6) gives a 120 days grace period, during which the RAF may not be sued, and the RAF may, moreover, not be sued before the requirements that it raises under section 19(f) of the Act have been complied with.

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9.6. The practical effect of the Board Notice is to shut the door for claimants with technicalities, i.e. requirements not demanded by the legislature, the Minister, or the Courts. The envisaged implementation of the Board Notice means that the Fund will proverbially be the judge, jury and executioner regarding substantive compliance. The validity of claims cannot be determined at the doors of the RAF.

9.7. This is in breach of the principles of natural justice. It is unfair and unreasonable.

9.8. I submit that it is clear that the structure of the Act is that the RAF is bound to accept a claim dispatched by registered post or delivered by hand. The RAF may not turn someone away at the doors due to alleged non-compliance with a statutory provision.

9.9. The RAF has 60 days to object to the validity of the claim form and medical report. A defective claim may be rectified after submitting the claim, provided that the claim has not yet prescribed. All information supplied, including information supplied to rectify mistakes and inaccuracies after the original submission of the claim form, should be taken into account.

9.10. In terms of Regulation 7, a claim for compensation and accompanying medical report referred to in Section 24(1)(a) of the Act shall be in the form of an RAF 1 claim form attached to the regulations as Annexure A, or such amendments or substitutions thereof as the Fund may from time to time give notice of in the Gazette.

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9.11. Considering the above-mentioned, the RAF has adopted the stance that it will be better served if claimants are obliged to submit more than the minimum documents currently prescribed in the Act and Regulations. The Fund alleges that the overburdening lists of documents in the Board Notice will facilitate better and more prompt evaluation. I submit that this is unreasonable and unfair.

9.12. It constitutes an unlawful infringement on claimants' rights to compensation in circumstances where claimants cannot provide the documents required by the Board Notice. Claims are rejected without any legal basis for it or any fair warning.

10. PROCEDURAL VOIDNESS

10.1. The Fund's attempt to consult interested parties can not cure or legitimise the procedural irregular nature of the Board Notice.

10.2. The RAF's Board and CEO have exceeded their power in deciding to issue the Board Notice without any statutory authorisation. This is invalid under the Constitution according to the doctrine of legality. The RAF Act does not contemplate two sets of rules – one by Regulation and another by "Board Notices".

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10.3. Section 11(1)(a)(v) of the RAF Act grants the power to the Board of the RAF to make recommendations to the Minister in respect of any regulation to be made under this Act. This presupposes an obligation on the Board to, at the minimum, consult and make recommendations to the Minister before any regulations are adopted in terms of the RAF Act.

10.4. Regulation 7 of the Road Accident Fund Regulations, 2008 (the RAF Regulations) states that:

> (1) *A claim for compensation and accompanying medical report referred to in section 24(1)(a) of the Act, shall be in the form RAF1 attached as Annexure A to these Regulations, or such amendment or substitution thereof as the Fund may from time to time give notice of in the Gazette.*

(2) *A claim by a supplier referred to in section 24(3) of the Act shall be in the form RAF2 attached as Annexure B to these Regulations, or such amendment or substitution thereof as the Fund may from time to time give notice of in the Gazette.*

(3) *The particulars and statements referred to in section 22(1)(a) of the Act shall be furnished to the Fund in the form RAF3, attached as Annexure C to these Regulations, or such amendment or substitution thereof as the Fund may from time to time give notice of in the Gazette.*

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10.5. The RAF regulations constitute delegated legislation made under the authority of the RAF Act. Parliament has chosen the Minister (second respondent) to exercise the powers provided in section 26 of the RAF Act. The Minister is authorised to make regulations regarding any matter that shall or may be prescribed in terms of the RAF Act or necessary or expedient to achieve or promote the object of the RAF Act. As a general rule, the Minister is, therefore, the only party authorised to make regulations per the provisions of the RAF Act.

10.6. The RAF Act does not grant the Minister the power to delegate his authority to issue and amend regulations to the RAF Board, with regard to the original purpose and intent of the legislature. It is submitted that the RAF Board may have the power to amend or substitute the RAF1

form per Regulation 7, but not to determine the requirements of substantive compliance or compensation.

10.7. The RAF Chairperson and CEO do not have the power to publish a peremptory Board Notice in the government gazette that effectively revokes or amends the Minister's regulations and essentially usurps the power of the Minister. It further doesn't empower the RAF to publish a Board Notice containing peremptory requirements, which are given effect retrospectively. Regulation 7 allows the RAF to determine the format of the RAF forms. It does not grant the RAF the power to amend legislation and delegated legislation by imposing additional restrictions not envisaged by the RAF Act.

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10.8. There is no factual basis rationally connected to the purpose of the RAF Act to justify the means or measures envisaged in terms of the Board Notice. The Fund contends that all claims submitted directly (without the assistance of attorneys) did not comply with the minimum required information as per the RAF Act and regulations. The rationale behind the Board Notice has nothing to do with attorneys submitting so-called "*skeleton claims*". If claimants' constitutional rights to social security are to be reasonably and fairly limited it must be done proportionally. There exists no factual basis for the bold assumption by the Fund that additional peremptory requirements will inevitably lead to curtailing the cost of litigation. The peremptory, additional requirements will simply limit the number of claims "validly" lodged. It is in no way connected to the

purpose of the Fund. The real motivation for the Fund's action appears to be the curtailment of litigation and the associated burden of costs. What is at issue is not the burden placed upon the Fund's resources as a result of litigation, but rather whether the peremptory requirements will in actual fact lead realistically to the settlement of claims within 120 days.

10.9. The CEO and RAF Chairperson were not authorised by the empowering provisions of the RAF Act to issue the Board Notice. The CEO acted under a delegation of power that was not authorised by the empowering provisions of the RAF Act and its Regulations as per the maxim "*delegatus non potest delegare*". [5]The Board Notice is further clearly influenced by an error of law regarding the powers afforded to the RAF, the Board, the Chair of the Board and the CEO.

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10.10. The Board was not granted the authority to adopt additional peremptory requirements not contained in the RAF Act or any Regulations published by the Minister.

11. SUBMISSIONS – SUBSTANCE OF NOTICE

11.1. The provisions of the Board Notice are vague and embarrassing. The Board Notice prescribes and demands submission of all documents to constitute a valid claim, yet on reading the requirements not all

[5] AAA Investments (Proprietary) Limited v Micro Finance Regulatory Council and Another (CCT51/05) [2006] ZACC; 2006 (11) BCLR 1255 (CC); 2007 (1) SA343 (CC) (28 July 2006).

documents are relevant. In other instances, duplicates are required. Not all the documents required are available in the normal course of submitting and preparing claims. This is demonstrated by the following vague and embarrassing requirements:

11.1.1. It is required as standard documentation applicable to both death and injury benefits that an "Accident Report Form and docket and sketch plan" be submitted. The SAPS does not prepare a docket and sketch plan in respect of all motor vehicle collisions.



11.1.2. Similarly, a "Power of Attorney and contingency fee agreement" are required without stating that the contingency fee agreement is only required if applicable.

11.1.3. Regarding claims for loss of support a "Post-mortem report/Inquest record/charge sheet/other documents proving that the deceased was killed in the collision", "Copy of [the] Liquidation and Distribution account" and Actuarial report are required inter alia. These documents do not exist in all instances or they are not freely accessible to legal representatives, let alone unrepresented, direct claimants, that must rely upon the SAPS, the Master of the High Court and other State departments to provide the documentation, if it is applicable and available at all.

11.1.4. The format of the required "Employer's certificate" is not prescribed. The information to be provided in the employer's certificate is cumbersome and many if not most employers (outside the corporate sector), will be unable to provide information regarding "...prospect of advancement and compensation ...". For purposes hereof I presume that the word "advancement" refers to prospects of promotion, salary increase etc. in the future.

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11.1.5. The Board Notice prescribes that the claimants must submit the deceased tax records (without specifying what records) and "...if not available, communication from SARS that the Claimant is not registered for tax) in which case bank statements for three years preceding death (or injury) will be required". This raises squarely the issue of substantive compliance. What is the status of claims where the deceased, or claimant does not have tax records, or three years bank statements? The requirement further presupposes that those claimants who suffered and claims a loss of support has access to and/or an automatic right of access to the deceased's bank statements. This is simply not so.

11.1.6. Claimants are required to submit proof of payment for past medical expenses. This is simply outrageous. This will prevent most, if not all, claimants from recovering past medical expenses whilst they remain liable therefore.

11.1.7. Claimants, who are injured during the course and scope of employment, must submit the Compensation Fund's award. It is common knowledge that the Compensation Fund is poorly administered. The Fund has regularly received the worst possible findings by the Auditor General. Claimants' claims will undoubtedly prescribe prior to receiving the Compensation Fund's award.

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12. In this regard, the submissions made by the Law Society South Africa regarding the standard documentation applicable to the different types of injuries as identified in paragraph 2 of the Law Society's submissions are confirmed and supported as if specifically repeated herein.

13. In addition to the aforesaid, the following should further be noted:

13.1. There is a general lack of preciseness in the wording and format of the Board Notice.

13.2. Terms such as *"Certified"* is used without indicating what is meant by using such a term.

13.3. The aim of legislation should be to be clear in its intended purposes and effect.

13.4. The wording of any proposed amendment to the Regulations should be clear and absent of contradictions.

13.5. The lodgement requirements must be formulated in an easily understandable language so that even unrepresented claimants can understand what documents must be submitted. For example, the wording of paragraph 2.1.1. should spell out that all copies of identity documents should be certified by a commissioner of oaths as a true copy of the original.



13.6. The Board Notice contains duplications of requirements and is silent on the effect of a claimant's inability to provide one, or more of the required documents. Claimants and especially unrepresented claimants are not in possession at the time of lodgement of the documents prescribed in terms of the Board Notice.

13.7. This is specifically true when a claim is lodged initially. It is impossible to expect that claimants will be in a position to submit the documents required by the Board Notice.

13.8. The Board Notice does not take the practicalities into account by requiring simultaneous lodging of quantum documents even before the issue of negligence has been conceded in instances where the merits of the claim may be contentious and it is necessary to first dispose of the merits before embarking on a quantum investigation of the claim.

13.9. The Board Notice does not take into consideration the fact that certain injuries (specifically brain injuries) only realistically stabilise after 18 months. Medical practitioners, when completing their medico-legal (and) RAF4 Serious Injury Assessment reports, must indicate whether so-called "Maximum Medical Improvement" has been reached, in accordance with the stipulations of the *American Medical Association's Guides to the Evaluation of Permanent Impairment*, Sixth Edition (hereafter referred to as the *AMA Guides*).

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13.10. No other private or public insurance scheme requires for example that an actuarial calculation accompany a claim when lodged initially.

13.11. The proposed requirements are in conflict with the objects of the RAF Act.

13.12. The proposed requirements ignore the principle of "*prior in tempore potier jure*" by emphasising the expediting of new claims whilst there are more than 300 000 claimants whose claims are awaiting attention.

13.13. The proposed requirements are not sanctioned by the RAF Act or its regulations and are in conflict with the existing body of law relating to valid claims against the RAF.

13.14. The enforcement of the proposed requirements will effectively exclude many claimants and lead to untold hardship.

14. **CONCLUSION**

14.1. In the premises, it is submitted that the Board Notice is ill-conceived and procedurally and substantially invalid.

14.2. The Board Notice cannot serve as a legal foundation for the promulgation of any form of legislation aimed at amending the current Act and Regulations.



SIGNED AT PRETORIA ON THIS THE 19TH DAY OF JULY 2021.

JEAN-PAUL RUDD
ADAMS & ADAMS

Jevonne Le Roux "FA 15"

From: Thomas Harban <thomas.harban@LPIIF.co.za>
Sent: Wednesday, 02 March 2022 09:36
To: Tshisikhawe Ndou
Subject: RE: RAF STAKEHOLDER ROUND TABLE DISCUSSION

Dear Mr Ndou

Thank you very much to the RAF team for an excellently planned very informative session yesterday. I will be spending the upcoming months contemplating various matters that came out of the session.

Would it be possible to have a discussion with a representative/ representatives of the RAF to discuss areas of mutual interest and common risk issues? The Legal Practitioners Indemnity Insurance Fund NPC (the LPIIF) is a non-profit insurance company that provides professional indemnity insurance to legal practitioners in terms of section 77 of the Legal Practice Act. The LPIIF has paid out approximately R1,3 billion in claims. Prescribed RAF matters make up about 60% of that total and under-settled RAF matters make up approximately 16% of the amount paid. When we deal with those matters we essentially step into the shoes of the RAF and have to deal with the matters in the same way that the RAF would have dealt with them. The issues that we have to consider (the mandate to the attorney, the locus standi of the plaintiff, the merits of the accident, fraud, the quantum etc.) are similar to what the RAF considers. It is thus my view that collaboration and cooperation between the two organisations should be explored.

I look forward to hearing from you.

Kind regards

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Thomas Harban
General Manager

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Legal Practitioners Indemnity Insurance Fund NPC

From: Tshisikhawe Ndou <Tshisikhawen@raf.co.za>
Sent: Friday, February 25, 2022 12:48 PM
To: Thomas Harban <thomas.harban@LPIIF.co.za>
Subject: RE: RAF STAKEHOLDER ROUND TABLE DISCUSSION

Good day

Jevonne Le Roux

From: Tshisikhawe Ndou <Tshisikhawen@raf.co.za>
Sent: Wednesday, 02 March 2022 10:07
To: Thomas Harban
Cc: Veli Somagala; Maria Rambauli; Prudence Mpho Manyasha; Phathutshedzo Lukhwareni; Sikelelwa Maqaqa; Justice Mdhluli; Estelle Janse van Rensburg; Lethukuthula Makhunga
Subject: RE: RAF STAKEHOLDER ROUND TABLE DISCUSSION

Good morning Mr Harban

Thank you very much for the positive feedback. The email below and its content is noted. Let us know once you are ready and such an engagement will be facilitated.

Kind regards

From: Thomas Harban <thomas.harban@LPIIF.co.za>
Sent: 02 March 2022 9:35 AM
To: Tshisikhawe Ndou <Tshisikhawen@raf.co.za>
Subject: RE: RAF STAKEHOLDER ROUND TABLE DISCUSSION



Dear Mr Ndou

Thank you very much to the RAF team for an excellently planned very informative session yesterday. I will be spending the upcoming months contemplating various matters that came out of the session.

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I look forward to hearing from you.

Kind regards

Jevonne Le Roux

From: Thomas Harban <thomas.harban@LPIIF.co.za>
Sent: Wednesday, 02 March 2022 10:48
To: Tshisikhawe Ndou
Cc: Veli Somagala; Maria Rambauli; Prudence Mpho Manyasha; Phathutshedzo Lukhwareni; Sikelelwa Maqaqa; Justice Mdhluli; Estelle Janse van Rensburg; Lethukuthula Makhunga; Sithembi Joseph Kunene
Subject: RE: RAF STAKEHOLDER ROUND TABLE DISCUSSION

Dear Mr Ndou

Thank you very much for your speedy response.

I am available on any day in March except 10, 16, 18, 24 and 31. We are based in Centurion can either have a face-to-face meeting or hold the discussion on one of the virtual platforms. I will go for a date, time, venue and format that suits the RAF team best. We do not mind coming to the RAF offices if that will be more convenient and also taking into account that the RAF delegation will be bigger. From the LPIIF side, I will invite my colleague, Joseph Kunene, who is the Claims Executive at the company.

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GAUTENG DIVISION, PRETORIA
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REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Please let us know which date and time with suit you. I think that an hour will be sufficient for the first meeting. If it is alright with you, I will prepare a short introductory presentation that also highlights the risks we are seeing in respect of RAF matters. That will, in my view, assist in setting the context and also facilitating the points of discussion.

Kind regards

www.lpiif.co.za

Thomas Harban
General Manager

: 012 622 3900 (switchboard)
: 010 501 0723 (direct)

: 082 225 5014
: thomas.harban@LPIIF.co.za

Registered Office: 1256 Heuwel Avenue | Centurion | 0157
P O Box 12189 | Die Hoewes | 0163 | Docex 24 Centurion

Legal Practitioners Indemnity Insurance Fund NPC

From: Tshisikhawe Ndou <Tshisikhawen@raf.co.za>
Sent: Wednesday, March 2, 2022 10:07 AM
To: Thomas Harban <thomas.harban@LPIIF.co.za>
Cc: Veli Somagala <Velis@raf.co.za>; Maria Rambauli <Mariar2@raf.co.za>; Prudence Mpho Manyasha <PrudenceMa2@raf.co.za>; Phathutshedzo Lukhwareni <PhathutshedzoL@raf.co.za>; Sikelelwa Maqaqa <sikelelwam@raf.co.za>; Justice Mdhluli <Justicem@raf.co.za>; Estelle Janse van Rensburg

Jevonne Le Roux

From: Tshisikhawe Ndou <Tshisikhawen@raf.co.za>
Sent: Wednesday, 02 March 2022 12:53
To: Thomas Harban
Cc: Veli Somagala; Maria Rambauli; Prudence Mpho Manyasha; Phathutshedzo Lukhwareni; Sikelelwa Maqaqa; Justice Mdhluli; Estelle Janse van Rensburg; Lethukuthula Makhunga; Sithembi Joseph Kunene
Subject: RE: RAF STAKEHOLDER ROUND TABLE DISCUSSION

Good day Sir

I will advise accordingly after internal consultation process with affected internal stakeholders.

Kind regards

From: Thomas Harban <thomas.harban@LPIIF.co.za>
Sent: 02 March 2022 10:47 AM
To: Tshisikhawe Ndou <Tshisikhawen@raf.co.za>
Cc: Veli Somagala <Velis@raf.co.za>; Maria Rambauli <Mariar2@raf.co.za>; Prudence Mpho Manyasha <PrudenceMa2@raf.co.za>; Phathutshedzo Lukhwareni <PhathutshedzoL@raf.co.za>; Sikelelwa Maqaqa <sikelelwam@raf.co.za>; Justice Mdhluli <Justicem@raf.co.za>; Estelle Janse van Rensburg <Estelle.JansevanRensburg@raf.co.za>; Lethukuthula Makhunga <LethuM@raf.co.za>; Sithembi Joseph Kunene <sithembi.kunene@LPIIF.co.za>
Subject: RE: RAF STAKEHOLDER ROUND TABLE DISCUSSION

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Dear Mr Ndou

Thank you very much for your speedy response.

I am available on any day in March except 10, 16, 18, 24 and 31. We are based in Centurion can either have a face-to-face meeting or hold the discussion on one of the virtual platforms. I will go for a date, time, venue and format that suits the RAF team best. We do not mind coming to the RAF offices if that will be more convenient and also taking into account that the RAF delegation will be bigger. From the LPIIF side, I will invite my colleague, Joseph Kunene, who is the Claims Executive at the company.

Please let us know which date and time with suit you. I think that an hour will be sufficient for the first meeting. If it is alright with you, I will prepare a short introductory presentation that also highlights the risks we are seeing in respect of RAF matters. That will, in my view, assist in setting the context and also facilitating the points of discussion.

Kind regards

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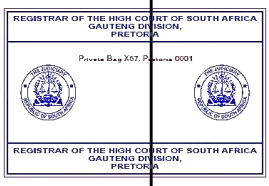
"FA16"





REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID AFRIKA

Vol. 683 6 May Mei 2022 No. 46322

PART 1 OF 5

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BOARD NOTICE 271 OF 2022

ROAD ACCIDENT FUND

TERMS AND CONDITIONS UPON WHICH CLAIMS FOR COMPENSATION SHALL BE ADMINISTERED

The Road Accident Fund hereby, in accordance with section 4(1)(a) of the Road Accident Fund Act, No. 56 of 1996, stipulates the terms and conditions upon which claims for compensation shall be administered, as set out in the Schedule hereto.

The implementation of these terms and conditions shall be effected with the due and neccesary amendment of the RAF 1 claim form, as provided for in Regulation 7(1) of the Road Accident Fund Regulations, 2008.

SCHEDULE

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
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REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

1. In this Schedule "the Act" means the Road Accident Fund Act, No. 56 of 1996.

2. In order to enable the Fund to effectively and efficiently administer claims, and in addition to the documentation required in terms of the Act to ensure that a valid claim is lodged which substantially complies with the Act, the following documents must be included and form part of the claim's supporting documents when lodging a claim with the Fund:

2.1 Standard documentation applicable to both death and injury benefits:

2.1.1 Certified Copies of Identity documents. If claimant is a foreigner, proof of identity must be accompanied by documentary proof that the claimant was legally in South African at the time of the accident.
2.1.2 Officers Accident Report (OAR) or case docket with sketch plan.
2.1.3 Power of Attorney.
2.1.4 Permission for the Fund to obtain and inspect hospital and medical records in terms of s19(e)(ii) and 19(e)(iii).
2.1.5 All statements and documents in claimant's possession as outlined in s9(f)(ii).
2.1.6 When the claimant is claiming in the capacity as guardian of a minor or for loss of support, copies of the unabridged birth certificate must accompany the claim form.
2.1.7 If it is a Curator submitting a claim, certified copy of Court order/Masters' letters of appointment.

2.2 Claims administration requirements for death benefits claims:

2.2.1 Funeral Claim
2.2.1.1 Death certificate
2.2.1.2 Proof of the relationship of claimant to deceased (certified marriage certificate/ unabridged birth certificate/Affidavit confirming relationship)
2.2.1.3 Post - mortem report
2.2.1.4 A tax invoice for funeral expenses with proof of payment

2.2.2 Loss of support
2.2.2.1 Certified copy of deceased's ID
2.2.2.2 Certified copy of death certificate
2.2.2.3 Curatorship: Certified copy of court order/Letters of appointment
2.2.2.4 Certified copy of marriage certificate/certificate proving customary marriage/un-abridged birth certificate
2.2.2.5 If not married, an affidavit setting out the legal basis of claimant's dependency on deceased

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2.2.2.6 Deceased's medical and hospital records, if applicable
2.2.2.7 Specified vouchers for medical costs if claimed
2.2.2.8 Post-mortem report/ Inquest record/charge sheet/other documents proving that the deceased was killed in the accident
2.2.2.9 Employer's certificate of deceased's service showing nature of employment, the period of service, remuneration, prospects of advancement and compensation and retirement age
2.2.2.10 Deceased's Payslips
2.2.2.11 Deceased's tax records (if not available, communication from SARS that Claimant is not registered for tax) in which case a bank statements for three years preceding death will be required
2.2.2.12 Proof of any additional income, if applicable
2.2.2.13 Copy of Liquidation and Distribution account, if applicable
2.2.2.14 Copy of maintenance order, if applicable
2.2.2.15 The child support grant official documents, if applicable
2.2.2.16 Employer's certificate of spouse indicating the period of employment, remuneration and advancement prospects
2.2.2.17 Official confirmation of the Compensation Fund's award if deceased died during the course and scope of employment
2.2.2.18 Actuarial report

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2.3 Claims administration requirements for injury benefits claims

2.3.1 Past Medical Expenses
2.3.1.1 An itemised tax invoice from a registered medical provider or hospital for past medical expenses, together with proof of payment

2.3.2 Loss of earnings
2.3.2.1 Copies of all medical and hospital records, including photographs of the injuries
2.3.2.2 Employer's certificate showing nature of employment, the period of employment, remuneration, prospects of advancement and retirement age
2.3.2.3 Proof of any other income, if applicable
2.3.2.4 Claimant's tax records (if not available, communication from SARS that Claimant is not registered for tax) in which case a bank statements for three years preceding death will be required.
2.3.2.5 Payslips pre and post-accident
2.3.2.6 Copies of all hospital and medical accounts
2.3.2.7 Medical reports or documentation establishing or substantiating claimant's temporary/permanent disability and the loss of earnings claimed
2.3.2.8 Official confirmation of remuneration/compensation received from other sources
2.3.2.9 Official documentation confirming any disability grant
2.3.2.10 Official confirmation of the Compensation Fund's award if claimant was injured during the course and scope of employment.

2.4 Mandatory information / documentation to be submitted for claims payments

2.4.1 To ensure that payments are processed in line with the settlement agreements concluded and/ in compliance with court orders, the following documents must accompany any request for payment:
2.4.1.1 Stamped Court Order/duly signed discharge form or settlement agreement:
2.4.1.2 Duly signed Power of Attorney
2.4.1.3 Tax clearance certificate, which shall be submitted by the claimants' attorneys at least once a year.
2.4.1.4 Proof of banking details / confirmation of Banking Details (Trust Account).
2.4.1.5 Copy of the Contingency Fee Agreement concluded with the claimant and Proof of compliance with section 4 of the Contingency Fee Act, alternatively, the attorney must submit an affidavit to confirm that there is no contingency fee agreement.

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COMMERCIAL, PROPERTY & LITIGATION ATTORNEYS

"FA17"

EMAIL MESSAGE

Adams & Adams

PRETORIA OFFICE: Lynnwood Bridge, 4 Daventry St, Lynnwood Manor, Pretoria, South Africa
PO BOX 1014, Pretoria 0001, South Africa
DOCEX 81 Pretoria
PHONE +27 12 432 6000
FAX +27 12 432 6599
EMAIL mail@adams.africa
WEB www.adams.africa

Our Reference: JPR/JLR/P5272

Your Reference:

Date: 25 May 2022

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

To: **The Road Accident Fund**
2 Eco Glades Office Park
420 Witch-Hazel Avenue
Centurion
Pretoria
Email: johnm@raf.co.za
victors@raf.co.za
phathutshedzol@raf.co.za
prudencema2@raf.co.za
gontseb@raf.co.za
justicem@raf.co.za

And to: **Mr P C Letsoalo**
Chief Executive Officer
Road Accident Fund
Email: collinsl@raf.co.za

And to: **Ms T Msibi**
Chair of the Board
Road Accident Fund

And to: **The Minister of Transport**
Department of Transport
159 Struben Street
Forum Building
Pretoria
Email: transportministry@dot.gov.za
info@dot.gov.za

From: jp.rudd@adams.africa

Dear Sirs

BOARD NOTICE 271 OF 2022

OFFICES: Pretoria | Johannesburg | Cape Town | Durban ASSOCIATE OFFICES: Angola | Botswana | Burundi | Cameroon (OAPI) | Cape Verde | Egypt | Ethiopia | Ghana | Kenya | Lesotho | Liberia | Libya | Mozambique (ARIPO) | Namibia | Nigeria | Sierra Leone | São Tomé and Príncipe | Swaziland | Tanzania (including Zanzibar) | The Gambia | Zimbabwe
Partners Dana Tanzini Johan du Plooy Colin Mackenzie Nella Hickman Mariëtte du Plessis Samantha Carpeling Gérard du Plessis Phil Pia Louis van der Walt Russell Bagnall Simon Brown Grégor Wallis Joseph Geldhuis Bian de Villiers André Visser Eugene Honey Darron Olivier Nishaat Goaba David Schneepes Megan Meerkotter Kelly Thompson Nala Khechane Janice Galvaid Nail Cheliv Lucy Spinola Steven Yeates Johnny Flondoro Leander Opperman Jenny Pienaar Danie Dannan Alexis Apostolidis Bilis Daby Debbie Marott Lauren Ross Dale Healy Mandy Swanepoel Roelof Grové Nicolette Koch James Davies Nicky Garnett Vishen Pillay Geoffrey Budler Jan Marais Ntnatisang Phaswana Nishan Singh Peter Visage Dieter Wolthagen Fardi Nyberg Somayya Khan Dario Stachan Wenna Griffiths Sajida Gamieldien Joni Cronjé Wihelm Pretorius Nicolette Biggar Jean-Paul Rudd Andrew Molver Linde Samuler Stephen Hollis Alicia Kabani Alicia van der Walt Andrew Phillips
Senior Consultants Chris Job Craig Forbes Gavin Kotze Ilze Dijkstra
Associates Deborah Marsicano Theresa Davis Clara Bothma Udi Pillay Amina Suliman Nicole Smotsenger Nonduniso Msimang Wynand Fouse Wensel Britz Kim Rampersadh Ilia Mia Gamiela Jan-Harm Swanepoel Dakalo Luvhengo Kerry Wiles Richard Wiles Kareema Shaik Femke Van Dyk Jean-Louis La Grange Vuyokazi Ndamse Nicole Haworth Jevonne Le Roux Tayyiba Nato Ina Van Zuydam Thando Manentso Alisa Nayanah Helgard Janse Van Rensburg Irshaad Savant Jeanette Visagie Mena Van Niekerk Melissa Dreyer Nazli Nordien Navashni Pillay Robyn Muller-Maburo Ramon Pereira Julie-Anne Tater Jean-Franco s Bruwer Shani Van Niekerk Uzo-Mari Van Dyk Alicia Heyneke Thembi Khoza Lavashnee Mandry Delia Veeran Shmuel Moch Donald Mokgatle Sarbel Smartsmiles Demi Prelorius Christi Prelorius Jameel Hamid Shane Steyn Charleen Rupnaram Nicholas Reades Michael Lamont Aslam Patel Nicole Christy Maureen Moloko Tamlynn Aviz Robyn Adams Yaqsani Nchoiata Lebohang Masola Donal Campbell Esmé Voogt Nala Gunqubela Khanyisa Mapipa Hugo Biermann Thapelo Montong Danielle van Rooyen Gabriela Dzeng Sipho Ngema Mmakoasi Maphumula Sbongakonke Khumalo Jessica Jada Fourie Sibusiso Khuzi Melissa Scorer Leana Vagsman Wilson Meintjes Thandeka Mhlonga Mozambique Mishak Anika Olivier Kok Lemabo Molefe Raphael Pswa
Chief Operating Officer Dave Forbes Level 4 BBBEE Contributor rating

1. We act as the attorneys of record of the first to seventh applicants in the pending applications under case numbers 2021/26302 and 2021/29459.

2. We act further on behalf of the Legal Practitioners Indemnity Insurance Fund (NPC) ("*the LPIIF*").

3. On 15 June 2021, the Honourable Mr Justice Davis granted an interim interdict prohibiting the Road Accident Fund, the Minister of Transport, the Chair of the Board of the Road Accident Fund and the Fund's CEO, Mr Collins Letsoalo, from enforcing inter alia *"BOARD NOTICE 58 OF 2021"* with description *"Road Accident Fund Stipulation of Terms and Conditions upon which Claims for the Compensation shall be Administered"* published in the Government Gazette of 4 June 2021 and any directives of instructions issued in terms thereof as a peremptory requirement for the lodgement of any claim with the Road Accident Fund.

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4. The relief granted in terms of the Court order dated 15 June 2021 remains operative pending the finalisation of the opposed review application under case number 29459/2021.

5. On 6 May 2022, the Road Accident Fund published *"Board Notice 271 of 2022"* in Government Gazette volume 683, number 46322.

6. The introductory part of Board Notice 271 reads as follows:

"ROAD ACCIDENT FUND

TERMS AND CONDITIONS UPON WHICH CLAIMS FOR COMPENSATION SHALL BE ADMINISTERED

The Road Accident Fund hereby, in accordance with section 4(1)(a) of the Road Accident Fund Act, No 56 of 1996, stipulates the terms and conditions upon which claims for compensation shall be administered, as set out in the schedule hereto.

The implementation of these terms and conditions shall be affected with the due and necessary amendment of the RAF 1 claim form, as provided for in regulation 7(1) of the Road Accident Fund regulations, 2008."

7. The schedule to Board Notice 271 is *mutatis mutandis* identical to Board Notice 58 of 2021, save for deletion of paragraphs 2.3.2.6, 2.6, 2.3.3 (including 2.3.3.1 to 2.3.3.4) and paragraph 3 of Board Notice 58 of 2021.

8. Unlike the publication of Board Notice 58 of 2021, notice was not given of a *"SUBSTITUTION OF RAF 1 CLAIM FORM".*

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PRETORIA

9. In terms of section 11 of the Act, the Board may make recommendations to the Minister in respect of any regulation to be made under the Act. Section 26 of the Act further provides that the Minister may make regulations regarding any matter that shall or may be prescribed in terms of the Act or which it is necessary or expedient to prescribe in order to achieve or promote the object of the Act.

10. In terms of regulation 7, a claim for compensation and accompanying medical report referred to in section 24(1)(a) of the Act shall be in the form of an RAF 1 claim form attached to the regulations as annexure "A", or such amendment or substitutions thereof as the Fund may from time to time give notice of in the Gazette.

11. Board Notice 271 of 2022 is null and void and of no legal binding force in that:

11.1. Only the Minister can regulate and not the Chief Executive Officer or the Board;

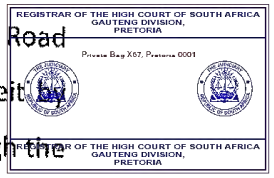
11.2. The Board may advise the Minister regarding the management of the claim procedure but cannot unilaterally dictate it;

11.3. The RAF's CEO and Board's issuing and implementation of the Board Notice are ultra vires.

11.4. Notice has not been given of a substituted RAF1 Claim form in terms of the Regulations.

12. The Board Notice is prejudicial in that it unreasonably frustrates and prevents our clients and other victims of motor vehicle collisions from exercising their constitutional right to seek compensation. It further exposes victims of motor vehicle collisions and the legal practitioners acting on their behalf to the danger of claims prescribing at risk to the, *inter alia*, LPIIFF.

13. We hereby formally request the Chief Executive Office to immediately confirm that the Road Accident Fund shall in no way attempt to enforce Board Notice 271 of 2022, albeit by insisting upon compliance with the requirements listed in the schedule to it or through the publication of a substituted RAF1 claim form pending finalisation of the review application under case number 29459/2021.



14. The crisp legal principles at play regarding the publication of both notices are mutatis mutandis.

15. However, the publication of Board Notice 271 of 2022 constitutes a separate administrative decision. Our clients' rights remain reserved to see substantive relief in this regard.

16. We place on record that the publication of the latest Board Notice does not consider the prescription of claims in instances where claimants do not possess the supporting documents listed in the schedule and the potential prejudice to prospective claimants in this regard. Even if the RAF's CEO or the Board had the authority to unilaterally change the principles regarding substantive compliance, which is denied, one would expect that due notice would have been afforded to claimants regarding the implementation date of the Board Notice to enable them to comply with the prescripts thereof.

17. The Road Accident Fund exists to protect and service one of the most fundamental rights of all South Africans, which is the right to bodily integrity. The Board directive, should the Road Accident Fund continue to enforce the prescripts thereof, will effectively deprive claimants,

who are legally entitled to claim compensation from the Road Accident Fund, of their right to compensation which is constitutionally guaranteed.

18. We look forward to receiving your written undertaking in this regard before the close of business on Wednesday, 1 June 2022, at 16h30, failing which our clients have instructed us to institute proceedings on an urgent basis to protect and implement our clients' rights.

19. You are hereby notified that should we be forced to proceed with such action, a copy of this letter will be presented to the Judge, hearing the application in support of a request for a punitive cost order to be granted.

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GAUTENG DIVISION,
PRETORIA

20. We nonetheless trust that such an application can be avoided and look forward to hearing from you.

Yours faithfully
ADAMS & ADAMS

JEAN-PAUL RUDD

Jevonne Le Roux

From: Jevonne Le Roux
Sent: Wednesday, 25 May 2022 15:04
To: johnm@raf.co.za; victors@raf.co.za; phathutshedzol@raf.co.za; prudencema2@raf.co.za; gontseb@raf.co.za; justicem@raf.co.za; 'collinsl@raf.co.za'; Ministry Transport; info@dot.gov.za
Cc: Jean-Paul Rudd
Subject: P5272 BOARD NOTICE 271 OF 2022
Attachments: Scanned from a Xerox Multifunction Printer.pdf

Importance: High

Tracking:

Recipient	Delivery	Read
johnm@raf.co.za		
victors@raf.co.za		
phathutshedzol@raf.co.za		
prudencema2@raf.co.za		
gontseb@raf.co.za		
justicem@raf.co.za		
'collinsl@raf.co.za'		
Ministry Transport		
info@dot.gov.za		
Jean-Paul Rudd	Delivered: 2022/05/25 15:04	Read: 2022/05/25 15:10

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GAUTENG DIVISION,
PRETORIA

Jevonne Le Roux
Senior Associate

Adams & Adams

T +27 12 432 6102
E Jevonne.LeRoux@adams.africa

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MALATJI & CO
ATTORNEYS

"FA18"

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Tel: 011 072 2600
Fax: 087 220 1075

Postnet Suite 104, Private Bag 9976, Sandton, 2146
Email: info@mcinc.africa
Web: www.mcinc.africa

Our Ref: T MALATJI/S ELOFF
Direct Email: seloff@mcinc.africa

Your Ref: JP RUDD
Direct Tel: 011 072 2605

Date: 26 May 2022

ADAMS & ADAMS
PRETORIA

BY EMAIL



Dear Sir,

ROAD ACCIDENT FUND – BOARD NOTICE 271 OF 2022

1 We act herein on behalf of the Road Accident Fund. We confirm receipt of your letter of 25 May 2022.

2 It is our instructions that the Government Gazette of 27 May 2022 will contain a notice by the RAF to amend the RAF1 claim form.

3 The RAF has decided to withdraw the said notice. Unfortunately, the Government Gazette has already gone to print and it was not possible to withdraw the notice from publication. However, it is our instructions that immediate upon publishing, the RAF will formally withdraw the notice.

4 We trust that no further action will be required in this regard.

Yours faithfully,

MALATJI & CO
PER: T Malatji & S Eloff
Electronically transmitted and thus unsigned

Directors: Tebogo Malatji ¦ Sunelle Eloff | Bonang Masia | Luise von Durkheim-Botes (Notary) | Sayi Nindi | Ally Makgopa
Practising Consultants: Willie van Wyk ¦ Osborne Molatudi | Jones Ditsela | Molatelo Mathikithela (Notary & Conveyancer)
Senior Associate: Itumeleng Ledwaba ¦ Samuel Masombuka
Associates: Lehlogonolo Makgalwa | Mbali Mtshali | Pilgrim Ngongo
Office Manager: Tummy Seboko

Reg No: 2018/261984/21
Vat No: 4920281922

Jevonne Le Roux

From: Sunelle Eloff <seloff@mcinc.africa>
Sent: Thursday, 26 May 2022 21:37
To: Jevonne Le Roux
Cc: Jean-Paul Rudd; Tebogo Malatji
Subject: RE: P5272 BOARD NOTICE 271 OF 2022
Attachments: 20220526_letter_adams_gazetted notice.pdf

Importance: High

Dear Jevonne,

Please find attached hereto correspondence for your urgent attention.

Regards,

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

MALATJI & CO
ATTORNEYS

Sunelle Eloff | Director

T: 011 072 2605 | **M:** 083 629 8199
E: seloff@mcinc.africa | **W:** https://mcinc.africa | **F:** 087 220 1075

A: Suite 39, 5th floor, Katherine & West building, 114 West Street, Sandton.
P: Postnet Suite 104, Private Bag 9976, Sandton, 2146.

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From: Jevonne Le Roux <Jevonne.LeRoux@adams.africa>
Sent: Wednesday, 25 May 2022 15:06
To: Sunelle Eloff <seloff@mcinc.africa>; Tebogo Malatji <tmalatji@mcinc.africa>; Mr Melton Mahloko <memahloko@justice.gov.za>
Cc: Jean-Paul Rudd <jp.rudd@adams.africa>
Subject: FW: P5272 BOARD NOTICE 271 OF 2022
Importance: High

Dear Sirs

Please see the attached email directed to your respective clients.

Kind regards

Jevonne Le Roux
Senior Associate

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"FA 19"

BOARD NOTICE 280 OF 2022

ROAD ACCIDENT FUND

SUBSTITUTION OF RAF 1 THIRD PARTY CLAIM FORM AND

EFFECTIVE DATE FOR TERMS AND CONDITIONS UPON WHICH CLAIMS FOR COMPENSATION SHALL BE ADMINISTERED

The Road Accident Fund hereby, in accordance with Regulation 7(1) of the Road Accident Fund Regulations, 2008 substitutes for the RAF 1 Third Party Claim Form published in GNR.770 of 21 July 2008: Road Accident Fund Regulations, 2008 (Government Gazette No. 31249) the RAF 1 Third Party Claim Form set out in the Schedule.

The substitution of the RAF 1 Third Party Claim Form and the terms and conditions upon which claims for compensation shall be administered, as set out in Board Notice 271 of 2022 published on 6 May 2022 in Government Gazette No. 46322, shall come into effect on 1 June 2022.

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SCHEDULE

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RAF 1 FORM

Road Accident Fund

Important Information

a. This is a Form to be completed for claims for compensation under section 17 of the Road Accident Fund Act as prescribed in section 24(1)(a) and regulation 7.
b. This Form must be completed in its full particulars and in instances where there are asterisks indicating that supporting documents will be required, such must be included for completeness.
c. Your attention is drawn to the provision of section 24(4)(a) that any Form that is not completed in its full particulars shall not be acceptable as a claim.
d. Consequently, your submitted Form would not interrupt prescription as provided for in section 23 of the Act
e. The RAF reserves the right not to accept an incomplete Form.
f. The Form and relevant supporting documents can be sent to us by registered mail or delivered by hand to any of our regional offices
g. This Form consists of three sections, Section A, B and C.
h. Complete Section A and B if claiming for injury benefits and section A and C for death benefits.

Section A

1. Capacity

Unrepresented	
Represented *Attach power of attorney	
Representative Name & Surname	
Name of Firm	
Bank Name	
Branch Number	
Account Number	
Name of Account Holder	

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2. Personal Information

Title		Date of Birth	
Name and Surname			
ID Number / Passport Number			
Residential Address	Complex		
	Street		
	Town		
	Province		
	Postal Code		
Postal Address	Complex		
	Street		
	Town		
	Province		
	Postal Code		
Home Telephone Number		Work Telephone Number	
Cellular Number		Email	

Preferred method of communication	✓	Email	SMS	Post	Tel /Cell
Home / Preferred Language of Communication					
Ethnicity / Race		Country of Birth			
Country of Residence					
Relationship to the Injured /Deceased					
Sex	✓	Male		Female	

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Title		**Name and Surname**	
Date of Birth		**ID Number / Passport Number**	**Attach a certified copy of ID, unabridged birth certificate or passport*
Residential Address		Complex	
		Street	
		Town	
		Province	
		Postal Code	
Postal Address		Complex	
		Street	
		Town	
		Province	
		Postal Code	
Home Telephone Number		**Work Telephone Number**	
Cellular Number		**Email**	
Preferred method of communication	✓	Email	SMS / Post / Tel /Cell
Home / Preferred Language of Communication		**Marital Status**	
Ethnicity / Race		**Country of Birth**	
Country of Residence			
Sex	✓	Male	Female

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Title		**Name and Surname**	
Date of Birth		**Date of Death**	**Attach a certified copy of death certificate*
Residential Address		Complex	
		Street	
		Town	
		Province	
		Postal Code	
Time of Death		**ID Number /**	**Attach a certified copy of ID or passport*
		Passport Number	
Country of Birth			
Country of Residence			
Sex	✓	Male	Female

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24 Personal Details of Dependants (1st)	
Title	
Name and Surname	
Date of Birth	
ID Number / Passport Number	* certified marriage certificate/ unabridged birth certificate/Affidavit confirming relationship
Ethnicity / Race	
Country of Birth	
Country of Residence	
Sex (Male/Female)	
Relationship to the Deceased	
Reason for dependence	
Marital Status	

24 Personal Details of Dependants (2nd)	
Title	
Name and Surname	
Date of Birth	
ID Number / Passport Number	* certified marriage certificate/ unabridged birth certificate/Affidavit confirming relationship
Ethnicity / Race	
Country of Birth	
Country of Residence	
Sex (Male/Female)	
Relationship to the Deceased	
Reason for dependence	
Marital Status	

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24 Personal Details of Dependants (3rd)	
Title	
Name and Surname	
Date of Birth	
ID Number / Passport Number	* certified marriage certificate/ unabridged birth certificate/Affidavit confirming relationship
Ethnicity / Race	
Country of Birth	
Country of Residence	
Sex (Male/Female)	
Relationship to the Deceased	
Reason for dependence	
Marital Status	

24 Personal Details of Dependants (4th)	
Title	
Name and Surname	
Date of Birth	
ID Number / Passport Number	* certified marriage certificate/ unabridged birth certificate/Affidavit confirming relationship
Ethnicity / Race	
Country of Birth	
Country of Residence	
Sex (Male/Female)	
Relationship to the Deceased	
Reason for dependence	
Marital Status	

Complete additional pages in case of more than four dependants

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Title	Name and Surname		
Home Telephone Number		Work Telephone Number	
Cellular Number		Email	
Relationship to Claimant/Injured			

3. Accident Details

Date of Accident		
Time of Accident		
Place of accident	Street	
	Town	
	Province	
	Postal Code	
Name and Address of Police Station were the accident was reported	Name	
	Town	
	Province	
	Postal Code	
Contact details of SAPS station		*Attach SAPS Accident Report
Name of investigating officer		*Attach a docket
Accident Report Number (AR number)		
Case Number (CR number)		
Post mortem results relating to the deceased		*Post-mortem report/ inquest record/ charge sheet/other documents proving that the deceased was killed in the accident

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Capacity in Accident ✓	Driver	Motorcyclist	Passenger	Cyclist	Pedestrian	
Vehicle Registration Number						
Driver Name & Surname						
Vehicle Make and Model						
Please indicate if the vehicle claimed against is a public transport vehicle ✓				Yes		No
Driver Physical Address	Complex					
	Street					
	Town					
	Province					
	Postal Code					
Driver cell phone number						

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To be completed where the injured or deceased was a pedestrian or cyclist

	✓
Crossing a road with poor visibility & unobstructed view of oncoming traffic	
Crossing the road at a robot controlled intersection/pedestrian crossing/robot controlled pedestrian crossing	
Crossing in front or behind a stationary vehicle	
Crossing a highway	
Running/Cycling across the road	
Pedestrian standing on the centre line/painted island/centre island	
Was the injured pedestrian or cyclist under 7 year at the time of accident?	
Was the injured pedestrian or cyclist between 7 and 14 years at the time of accident?	

To be completed where the injured or deceased was a driver or motorcyclist

Vehicle Registration Number				
Vehicle type				
Vehicle Owner Name & Surname				
Vehicle Owner Telephone Number				
Vehicle Owner Cell Number				
Vehicle Owner Physical Address	Complex			
	Street			
	Town			
	Province			
	Postal Code			
Drivers Licence number				
Category of licence and restrictions				
Date of issue				
Valid	From		To	
Insurance details (Include all details of claim)				

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3.4 Accident type (Tick relevant)		
Head on collision	Yes	No
Rear end collision	Yes	No
Stop street controlled intersection (4 way, T junction, opposing stop streets)	Yes	No
Robot controlled intersection	Yes	No
Tyre burst	Yes	No
Collision with animal	Yes	No
Single vehicle accident	Yes	No
Accident with object	Yes	No
Poor visibility/dust cloud/smoke	Yes	No
Right turn	Yes	No
Overtaking	Yes	No
Lane change	Yes	No
T junction	Yes	No
Merging/ joining/yield sign	Yes	No
Traffic circle	Yes	No
Stationary vehicle	Yes	No
Reversing	Yes	No

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3.5 Particulars of other vehicle(s) involved in the accident	
Vehicle Registration Number	*All vehicles involved*
Vehicle make and model	
Driver Contact Details	*All vehicles involved*
Unidentified Motor Vehicle	Yes / No
Complete additional pages in case of more than one vehicle	

3.6 Witnesses		
Any Witnesses to the Accident?	Yes	No
Witness Name and Surname		
Witness Address		
Witness Telephone Number		
Witness Cell Number		
Complete additional pages in case of more than one witness		

3.8 Safety Measures				
Was the seatbelt worn at time of accident or helmet?	Yes		No	
Blood alcohol tested	Yes		No	
Results	*If Yes Attach results*		Yes	No

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Section B
Injury Benefits

4. Benefits Claimed

Past loss of earnings	R _____
Future loss of earnings	R _____
General Damages	R _____
Past Medical Expenses	R _____
Future Medical Expenses	R _____

5. Employment Information

5.1 Compensation for Occupational Injuries and Diseases Act, 1993 (if applicable)

MVA under Compensation for Occupational Injuries and Diseases Act, 1993	Yes	No
Claim Lodged with the Compensation Fund?	Yes	No
Compensation Fund Reference Number		
Amount Received		
Final Award **Attach final award*	Yes	No

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5.2 Employment Status

Status	✓	Employed	Self-Employed	Unemployed

Employment Sector Category	✓ *or not applicable*
Self-employed	
Public Servant	
Formal Regulated Industry	
Informal Unregulated Industry	

Employment Sector	
Agriculture, Food and Natural Resources	
Architecture and Construction	
Arts, Audio/Video Technology and Communications	
Business Management and Administration	
Education and Training	
Finance	
Government and Public Administration	
Health Science	
Hospitality and Tourism	
Human Services	
Information Technology	
Law, Public Safety, Corrections and Security	
Manufacturing	
Marketing, Sales and Service	
Science, Technology, Engineering and Mathematics	
Transportation, Distribution and Logistics	
Other (specify)	

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Occupation				
Annual Remuneration (pre accident)				
Annual Remuneration (post accident)				
Highest Qualification and NQF Level				
Was the injured required to take time of duty?				
If yes , please specify the dates				
Number of work days absent				
Did you receive any remuneration while away from work?				
State amount received				
Nature of Payment Received	✓	Employment Contract		Ex-gratia

Name of Employer				
Postal Address				
Telephone Number				
Contact Person				
Employee Number				
Basis of Employment	✓	Permanent	Temporary	Casual / Contract
Period of Temporary / Contract / Casual Employment				

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Payslips		Tax Return		Declaration to give RAF consent to validate any income	Agree ✓
Printout of Payments from Employer		Bank Statements			
Other (Specify)					
Tax Reference Number					

Business Name				
Nature of Business				
Business Address				
Type of Business Entity	✓	Sole Trader	Partnership	Trust
		Company	Close Corporation	Other

Level of education at the time of accident	
Age at the time of accident	
Level of education at the time of submitting the claim	
Age at the time of submitting claim	
School /university report pre - accident	* minimum 3 years' report
School /university report post - accident	

6. Injury Details

Type(s) of Injuries	
Severity of Injuries	
List of Injuries	
Hospital	
Address of Hospital	
Person who treated the deceased	

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	✓
Standard documents	
Statutory Medical Report	
Amount Claimed as Compensation	
Certified copy of Claimant's ID (If claimant is a foreigner, proof of identity must be accompanied by documentary proof that the claimant was legally in South Africa at the time of the accident)	
Certified copy of Injured Identity Document (if different from Claimant) (If claimant is a foreigner, proof of identity must be accompanied by documentary proof that the claimant was legally in South Africa at the time of the accident)	
Unabridged birth certificate (if a natural guardian is claiming on behalf of a minor). If it's the legal guardian claiming on behalf of minor they must submit a court order or certified copies of Masters Letters of appointment	
Officers Accident Report or Case Docket and Sketch Plan	
Permission for the Fund to obtain and inspect hospital and medical records in terms of s19 (e)(ii) and 19 (e)(iii)	
Consent for RAF to obtain and inspect financial and earnings information	
Power of Attorney (if Represented)	
Affidavit in terms of Section 19 (f) (i)	
All statements and documents in claimant's possesion as outlined in s19 (f)(ii)	
Loss of Earnings	
Copies of all medical and hospital records, including photographs of the injuries	
Employer's certificate showing nature of employment, the period of service, remuneration, prospects of advancement and retirement age	
Proof of any other income (If applicable)	
Claimant's income tax returns submitted to SARS for the period during which the claimant was required to submit income tax returns, limited to the most recent three tax years, as applicable. (If not applicable, communication from SARS that the claimant is / was not registered as a taxpayer with SARS, in which case bank statements for the most recent three years preceding the date of accident will be required, as applicable.)	
Payslips pre and post-accident	
Copies of all hospital and medical accounts	
Medical reports or documentation establishing or substantiating claimant's temporary/ permanent disability and the loss of earnings claimed	
Official confirmation of remuneration / compensation received from other sources	
Official documentation confirming any disability grant	
Official confirmation of the Compensation Fund's award (if claimant was injured during the course and scope of employment)	
Past Medical Expenses	
An itemised tax invoice from a registered medical provider/or hospital for past medical expenses	
Proof of payment of medical expenses	
Copies of all medical and hospital records	

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7. Medical Report

Section 24(2)(a) provides that this report shall be completed by the medical practitioner who treated the injured or deceased person for the bodily injuries sustained by him/her in the accident from which this claim arises or by the superintendent (or his representative) of the hospital in which the injured or deceased person was treated for such bodily injuries.

Patient Name and Surname	
Patient ID Number	
Patient Date of Birth	
Have you verified that this is the person mention in the injured section of the claim form using ID or Passport	
Date when first seen after the accident	
Did you treat the patient any time before?	
If yes, give date of last such treatment and nature of correct ailment	
Give full details of the nature of the injuries and any complications (e.g. fractured rib with haemothorax, contusion of the heart, compound fracture etc.)	

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Parts of the body injured and degree

	Head	CNS	Chest	Neck	Abdomen	Back	Upper Limbs	Lower Limbs	Pelvis	Musculo-skeletal & skin
Minor										
Moderate										
Severe										

ICD 10 CODE	PROCEDURE	TREATMENT PLAN

8. Level of care and duration

Level of care	Duration
ICU	
High Care	*Attach any clinical notes
Ward	
Step-down / Rehabilitation	

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Any other treatment give to date		
If no, has the condition stabilised		
Is there any future/ongoing medical treatment e.g. specialist, physiotherapy etc.?	Yes	No
If yes, provide name and address of treating service provider		
Any other treatment give to date?		
Is there any current or future permanent disability?	Yes	No
If yes, provide details		
If no, has the condition stabilised		
Is there any future/ongoing medical treatment e.g. specialist, physiotherapy etc.?	Yes	No
If yes, provide name and address of treating service provider		
What is the nature of such treatment?		
Is hospitalisation foreseen in connection with future treatment referred to above?	Yes	No
What are the pre-existing conditions?		
Have the injuries aggravated any pre-existing pathological condition?	Yes	No
If yes, please give details		
Has any such pre-existing pathological conditions aggravated the effects of trauma?	Yes	No
If yes, please give details		
Has the patient been confined to a hospital/rehab centre/ stepdown facility?	Yes	No
Date of admission		
Name and address and practice number of facility		
Hospital reference number		
Date of discharge or when discharge is expected		
If in employment at date of accident, state date when return to employment is expected		
9. Medical Report - Medical Practitioner's Details		
Name and Surname		
Speciality		
Practice Number (HPCSA and/or BHF)		
Telephone Number		
E-mail Address		
Cell Number		
Postal Address		
Physical Address		

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Section C
Death Benefits

Funeral Expenses	R _____	*Specified Voucher (Tax invoice for funeral expenses) *Proof of Income *Specified vouchers and proof of payment
Past Loss of Support	R _____	
Future Loss of Support	R _____	
Past Medical Expenses	R _____	

10. Employment Details

MVA under Compensation for Occupational Injuries and Diseases Act	Yes	No
Claim Lodged with the Compensation Fund?	Yes	No
Compensation Fund Reference Number		
Amount Received		
Final Award *Attach final award*	Yes	No

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Status	✓	Employed	Self-Employed	Unemployed

Employment Sector Category	✓ or not applicable
Self-employed	
Public Servant	
Formal Regulated Industry	
Informal Unregulated Industry	

Employment Sector	
Agriculture, Food and Natural Resources	
Architecture and Construction	
Arts, Audio/Video Technology and Communications	
Business Management and Administration	
Education and Training	
Finance	
Government and Public Administration	
Health Science	
Hospitality and Tourism	
Human Services	
Information Technology	
Law, Public Safety, Corrections and Security	
Manufacturing	
Marketing, Sales and Service	
Science, Technology, Engineering and Mathematics	
Transportation, Distribution and Logistics	
Other (specify)	

Final Award	YES	NO

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11. Deceased's Employment Details

Annual Remuneration (Pre Accident)	
Annual Remuneration (Post Accident)	
Highest Qualification and NQF Level	

Name of Employer	
Postal Address	
Telephone Number	
Contact Person	
Employee Number	

Basis of Employment	✓	Permanent	Temporary	Casual / Contract
Period of Temporary / Contract / Casual Employment				

Payslips		Tax Return		Declaration to give RAF consent to validate any income: Agree ✓
Printout of Payments from Employer		Bank Statements		
Other (Specify)				
Tax Reference Number				

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Business Name	
Nature of Business	
Business Address	

Legal Entity of Business	Sole Trader	Partnership	Trust
	Company	Close Corporation	Other

Occupation	
Employer	
Annual Renumeration	
Payslip	
Tax Reference Number	
Declaration to give RAF consent to validate any income: Agree ✓	

12. Injury Details (Only where the deceased did not die at the scene of the accident)

Type(s) of Injuries	
Severity of Injuries	
List of Injuries	
Hospital	
Address of Hospital	
Person who treated the deceased	

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	✓
Standard documents	
Completed Statutory Medical Report (Only applicable if the deceased did not die at the scene)	
Hospital and medical records (Only applicable if the deceased did not die at the scene)	
Amount Claimed as Compensation	
Certified copy of Claimant's ID (If claimant is a foreigner, proof of identity must be accompanied by documentary proof that the claimant was legally in South Africa at the time of the accident)	
Certified copy of Dependants ID	
Certified copy of Deceased ID	
Certified copy of Death Certificate	
Unabridged birth certificate (if a natural guardian is claiming on behalf of a minor). If it's the legal guardian claiming on behalf of minor they must submit a court order	
Officers Accident Report or Docket and Sketch Plan	
Consent for RAF to obtain and inspect hospital and medical records in terms of section 19 (e)(ii) and 19 (e)(iii)	
Court Order or Masters' letter of appointment (If Curator submitting on behalf of minor – LoS (Loss of Support) (If applicable) or certified copies of Masters Letters of appointment	
Power of Attorney (if Represented)	
Affidavit in terms of Section 19 (f) (i)	
Any other statements/documents in accordance with section 19 (f) (ii)	
Post Mortem/ Inquest Report/Charge sheet and/or any other document(s) proving that the deceased was killed in the collision or as a result of the collision	
Funeral	
Specified Voucher (Tax invoice for funeral expenses)	
Proof of Payment of funeral expenses	
Proof of relationship to deceased (certified marriage certificate/unabridged birth certificate/affidavit confirming relationship)	
Loss of Support	
Certified copy of marriage certificate/Certificate proving customary marriage/un-abridged birth certificate	
If not married, an affidavit setting out the legal basis of claimant's dependency on deceased	
Employer's certificate of deceased's service showing nature of employment, the period of service, remuneration, prospects of advancement and compensation and retirement age	
Payslips	
Copy of maintenance order, if any	
The child support grant official documents (if appicable)	
Deceased tax records (if not available, communication from SARS that Claimant is not registered for tax, in which case a bank statement for three years preceding death must be submitted)	
Offical proof of additional income (if applicable)	
Copy of Liquidation and Distribution account (if applicable)	
Employer's certificate of surviving spouse indicating period of employment, remuneration, prospects of advancement	
Proof of Guardianship (if claimant not biological parent)	
Academic records in respect of minor dependents	
Actuarial report	
Post Mortem Report/Inquest record/change sheet/ other documents proving that the deceased was killed in the accident	
Deceased's medical and hospital records (if applicable)	
Official confirmation of the Compensation Fund's award if the deceased died in the course and scope of employment	
Past Medical Expenses	
An itemised tax invoice from a registered medical provider/or hospital for past medical expenses with proof of payment	

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13. Medical Report (only applicable where the Deceased did not die at the scene)

Section 24(2)(a) provides that this report shall be completed by the medical practitioner who treated the injured or deceased person for the bodily injuries sustained by him/her in the accident from which this claim arises or by the superintendent (or his representative) of this hospital in which the injured or deceased person was treated for such bodily injuries.

Patient Name and Surname	
Patient ID Number	
Patient Date of Birth	
Have you verified that this is the person mention in the injured section of the claim form using ID or Passport	
Date when first seen after the accident	
Did you treat the patient any time before?	
If yes, give date of last such treatment and nature of correct ailment	
Give full details of the nature of the injuries and any complications (e.g. fractured rib with haemothorax, contusion of the heart, compound fracture etc.)	

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Parts of body injured and degree

	Head	CNS	Chest	Neck	Abdomen	Back	Upper Limbs	Lower Limbs	Pelvis	Musculo-skeletal & skin
Minor										
Moderate										
Severe										

ICD 10 CODE	PROCEDURE	TREATMENT PLAN

Level of care and duration	
Level of care	Duration
ICU	
High Care	
Ward	
Step-down / Rehabilitation	
Ward	

*Attach any clinical notes

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Medical Report continued		
Any other treatment given to date		
If no, has the condition stabilised?	Yes	No
Is there any future/ongoing medical treatment e.g. specialist, physiotherapy etc.?	Yes	No
If yes, provide name and address of treating service provider		
Any other treatment give to date?		
Is there any current or future permanent disability?	Yes	No
If yes, provide details		
If no, has the condition stabilised?		
Is there any future/ongoing medical treatment e.g. specialist, physiotherapy etc.?		
If yes, provide name and address of treating service provider		
What is the nature of such treatment?		
Is hospitalisation foreseen in connection with future treatement reffered to above?	Yes	No
What are the pre-existing conditions?		
Have the injuries aggravated any pre-existing pathological condition?	Yes	No
If yes, please give details		
Has any such pre-existing pathological conditions aggravated the effects of trauma?	Yes	No
If yes, please give details		
Has the patient been confined to a hospital/rehab centre/ stepdown facility?	Yes	No
Date of admission		
Name and address and practice number of Facility		
Hospital reference number		
Date of discharge or when discharge is expected		
If in employment at date of accident, state date when return to employment is expected		
15.2 Medical Report – Medical Practitioners Details		
Name and Surname		
Speciality		
Practice Number (HPCSA and/or BHF)		
Telephone Number		
E-mail address		
Cell Number		
Postal Address		
Physical Address		

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14. Mandatory information / documentation to be submitted for claims payments

To ensure that payments are processed in line with the settlement agreements concluded and / in compliance with court orders, the following documents must accompany any requests for payment:

1. Stamped Court Order / duly signed discharge form or settlement agreement.
2. Duly signed Power of Attorney.
3. Tax clearance certificate, which shall be submitted by the claimants' attorneys at least once a year.
4. Proof of banking details / confirmation of Banking Details (Trust Account).
5. Copy of the Contingency Fee Agreement concluded with the claimant and Proof of Compliance with section 4 of the Contingency Fee Act, altenatively, the attorney must submit an affidavit to confirm that there is no contigency fee agreement.

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15. Declaration and Consent:

The Consent granted to the Road Accident Fund (RAF) in this paragraph authorises the RAF to obtain copies of any records and to access any information which relates to this claim for compensation and to contact any person or entity for purposes of obtaining or verifying such information and /or documentation.

I, _____ (name and surname of claimant), declare that, to the best of my knowledge, the information provided in this Third Party Claim Form is true and correct in every respect; and

I confirm that I am claiming compensation:

In my personal capacity as a result of injuries I sustained in the accident; alternatively

In my personal and / or representative capacity as _____

(state capacity) on behalf of _____ (name and surname of injured) who sustained injuries in the accident; alternatively

In my personal and / or representative capacity as _____ (state capacity)

of _____ (state name of the deceased) who died as a result of the injuries sustained in the accident.

(Indicate, and if applicable complete, the applicable statement above)

I hereby consent to the release, to the Road Accident Fund, of copies of all documentation and /or information, including, but not limited to, documentation and /or information of a medical or financial nature, in the possession of any person or entity, which documentation or information, in any way, relates to this claim for compensation arising from the motor vehicle accident detailed in the claim form

I further consent to, and authorise, the Road Accident Fund to contact any person or entity for purposes of obtaining or verifying such information and /or documentation.

_____

Signature of the Claimant

_____

Signature of the Witness

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"FA20"

BOARD NOTICE 281 OF 2022

ROAD ACCIDENT FUND

WITHDRAWAL OF THE SUBSTITUTION OF THE RAF 1 THIRD PARTY CLAIM FORM

The Road Accident Fund in Board Notice 280 of 2022, published on 27 May 2022 in Government Gazette No. 46422, substituted the RAF 1 Third Party Claim Form and provided that the aforementioned substitution and the terms and conditions upon which claims for compensation shall be administered, as set out in Board Notice 271 of 2022 published on 6 May 2022 in Government Gazette No. 46322, shall come into effect on 1 June 2022. The Road Accident Fund hereby withdraws Board Notice 280 of 2022.

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BOARD NOTICE 302 OF 2022

DEPARTMENT OF TRANSPORT

ROAD ACCIDENT FUND ACT, 1996 (ACT NO. 56 of 1996)

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Form RAF 1

The Minister of Transport, in terms of section 26 of the Road Accident Fund Act, 1996 (Act No. 56 of 1996) herewith prescribe the RAF Form 1 in the Schedule.

Mr F A Mbalula
Minister of Transport
30/06/2022

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SCHEDULE

FORM RAF 1





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RAF 1 FORM

Road Accident Fund

Important information

a. This is a Form to be completed for claims for compensation under section 17 of the Road Accident Fund Act as prescribed in section 24(1)(a) and regulation 7.
b. This Form must be completed in its full particulars and in instances where there are asterisks indicating that supporting documents will be required, such must be included for completeness.
c. Your attention is drawn to the provision of section 24(4)(a) that any Form that is not completed in its full particulars shall not be acceptable as a claim.
d. Consequently, your submitted Form would not interrupt prescription as provided for in section 23 of the Act
e. The RAF reserves the right not to accept an incomplete Form.
f. The Form and relevant supporting documents can be sent to us by registered mail or delivered by hand to any of our regional offices
g. This Form consists of three sections, Section A, B and C.
h. Complete Section A and B if claiming for Injury benefits and section A and C for death benefits.

Section A

1. Capacity

Unrepresented	
Represented *Attach power of attorney	

Representative Name & Surname	
Name of Firm	

Bank Name	
Branch Number	
Account Number	
Name of Account Holder	

2. Personal Information

Title		Date of Birth	
Name and Surname			
ID Number / Passport Number			
Residential Address	Complex		
	Street		
	Town		
	Province		
	Postal Code		
Postal Address	Complex		
	Street		
	Town		
	Province		
	Postal Code		
Home Telephone Number		Work Telephone Number	
Cellular Number		Email	

Preferred method of communication	✓	Email	SMS	Post	Tel /Cell	
Home / Preferred Language of Communication						
Ethnicity / Race		Country of Birth				
Country of Residence						
Relationship to the Injured /Deceased						
Sex	✓	Male		Female		

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2.2 Personal Details of the Deceased (complete only if the Deceased is a South African)

Title		**Name and Surname**			
Date of Birth		**ID Number / Passport Number**			*Attach a certified copy of ID, unabridged birth certificate or passport
Residential Address		Complex			
		Street			
		Town			
		Province			
		Postal Code			
Postal Address		Complex			
		Street			
		Town			
		Province			
		Postal Code			
Home Telephone Number			**Work Telephone Number**		
Cellular Number			**Email**		
Preferred method of communication	✓	Email	SMS	Post	Tel / Cell
Home / Preferred Language of Communication			**Marital Status**		
Ethnicity / Race			**Country of Birth**		
Country of Residence					
Sex	✓	Male		Female	

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2.3 Personal Details of the Deceased (complete only if the Deceased is not a South African)

Title		**Name and Surname**			
Date of Birth		**Date of Death**			*Attach a certified copy of death certificate
Residential Address		Complex			
		Street			
		Town			
		Province			
		Postal Code			
Time of Death		**ID Number /**			*Attach a certified copy of ID or passport
		Passport Number			
Country of Birth					
Country of Residence					
Sex	✓	Male		Female	

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23 Personal Details of Dependant No 2	
Title	
Name and Surname	
Date of Birth	
ID Number / Passport Number	* certified marriage certificate/ unabridged birth certificate/Affidavit confirming relationship
Ethnicity / Race	
Country of Birth	
Country of Residence	
Sex (Male/Female)	
Relationship to the Deceased	
Reason for dependence	
Marital Status	

24 Personal Details of Dependant No 3	
Title	
Name and Surname	
Date of Birth	
ID Number / Passport Number	* certified marriage certificate/ unabridged birth certificate/Affidavit confirming relationship
Ethnicity / Race	
Country of Birth	
Country of Residence	
Sex (Male/Female)	
Relationship to the Deceased	
Reason for dependence	
Marital Status	

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25 Personal Details of Dependant No 4	
Title	
Name and Surname	
Date of Birth	
ID Number / Passport Number	* certified marriage certificate/ unabridged birth certificate/Affidavit confirming relationship
Ethnicity / Race	
Country of Birth	
Country of Residence	
Sex (Male/Female)	
Relationship to the Deceased	
Reason for dependence	
Marital Status	

Complete additional pages in case of more than four dependants

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Title	**Name and Surname**		
Home Telephone Number		**Work Telephone Number**	
Cellular Number		**Email**	
Relationship to Claimant/Injured			

3. Accident Details

Date of Accident		
Time of Accident		
Place of accident	Street	
	Town	
	Province	
	Postal Code	
Name and Address of Police Station were the accident was reported	Name	
	Town	
	Province	
	Postal Code	
Contact details of SAPS station		**Attach SAPS Accident Report*
Name of investigating officer		**Attach a docket*
Accident Report Number (AR number)		
Case Number (CR number)		
Post mortem results relating to the deceased		** Post-mortem report/ Inquest record/ charge sheet/other documents proving that the deceased was killed in the accident*

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Capacity in Accident ✓	Driver	Motorcyclist	Passenger	Cyclist	Pedestrian
Vehicle Registration Number						
Driver Name & Surname						
Vehicle Make and Model						
Please indicate if the vehicle claimed against is a public transport vehicle ✓				**Yes**		**No**
Driver Physical Address	Complex					
	Street					
	Town					
	Province					
	Postal Code					
Driver cell phone number						

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To be completed where the injured or deceased was a pedestrian or cyclist

	✓
Crossing a road with poor visibility & unobstructed view of oncoming traffic	
Crossing the road at a robot controlled intersection/pedestrian crossing/robot controlled pedestrian crossing	
Crossing in front or behind a stationary vehicle	
Crossing a highway	
Running/Cycling across the road	
Pedestrian standing on the centre line/painted island/centre island	
Was the injured pedestrian or cyclist under 7 year at the time of accident?	
Was the injured pedestrian or cyclist between 7 and 14 years at the time of accident?	

To be completed where the injured or deceased was a driver or motorcyclist

Vehicle Registration Number		
Vehicle type		
Vehicle Owner Name & Surname		
Vehicle Owner Telephone Number		
Vehicle Owner Cell Number		
Vehicle Owner Physical Address	Complex	
	Street	
	Town	
	Province	
	Postal Code	
Drivers Licence number		
Category of licence and restrictions		
Date of issue		
Valid	From	To
Insurance details (Include all details of claim)		

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	✓	
Head on collision	Yes	No
Rear end collision	Yes	No
Stop street controlled intersection (4 way, T junction, opposing stop streets)	Yes	No
Robot controlled intersection	Yes	No
Tyre burst	Yes	No
Collision with animal	Yes	No
Single vehicle accident	Yes	No
Accident with object	Yes	No
Poor visibility/dust cloud/smoke	Yes	No
Right turn	Yes	No
Overtaking	Yes	No
Lane change	Yes	No
T junction	Yes	No
Merging/ joining/yield sign	Yes	No
Traffic circle	Yes	No
Stationary vehicle	Yes	No
Reversing	Yes	No

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Vehicle Registration Number		*All vehicles involved*
Vehicle make and model		
Driver Contact Details		*All vehicles involved*
Unidentified Motor Vehicle	Yes	No
Complete additional pages in case of more than one vehicle		

Any Witnesses to the Accident?	Yes	No
Witness Name and Surname		
Witness Address		
Witness Telephone Number		
Witness Cell Number		
Complete additional pages in case of more than one witness		

Was the seatbelt worn at time of accident or helmet?	Yes		No	
Blood alcohol tested	Yes		No	
Results		*If Yes Attach results*	Yes	No

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Section B
Injury Benefits

4. Benefits Claimed

Past loss of earnings	R _____
Future loss of earnings	R _____
General Damages	R _____
Past Medical Expenses	R _____
Future Medical Expenses	R _____

5. Employment Information

MVA under Compensation for Occupational Injuries and Diseases Act, 1993	Yes	No
Claim Lodged with the Compensation Fund?	Yes	No
Compensation Fund Reference Number		
Amount Received		
Final Award **Attach final award*	Yes	No

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Status	✓	Employed	Self-Employed	Unemployed ✓ *or not applicable*
Employment Sector Category				
Self-employed				
Public Servant				
Formal Regulated Industry				
Informal Unregulated Industry				

Employment Sector	
Agriculture, Food and Natural Resources	
Architecture and Construction	
Arts, Audio/Video Technology and Communications	
Business Management and Administration	
Education and Training	
Finance	
Government and Public Administration	
Health Science	
Hospitality and Tourism	
Human Services	
Information Technology	
Law, Public Safety, Corrections and Security	
Manufacturing	
Marketing, Sales and Service	
Science, Technology, Engineering and Mathematics	
Transportation, Distribution and Logistics	
Other (specify)	

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Occupation				
Annual Remuneration (pre accident)				
Annual Remuneration (post accident)				
Highest Qualification and NQF Level				
Was the injured required to take time of duty?				
If yes , please specify the dates				
Number of work days absent				
Did you receive any remuneration while away from work?				
State amount received				
Nature of Payment Received	✓	Employment Contract		Ex-gratia

Name of Employer				
Postal Address				
Telephone Number				
Contact Person				
Employee Number				
Basis of Employment	✓	Permanent	Temporary	Casual / Contract
Period of Temporary / Contract / Casual Employment				

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Payslips		Tax Return		Declaration to give RAF consent to validate any income
Printout of Payments from Employer		Bank Statements		Agree ✓
Other (Specify)				
Tax Reference Number				

Business Name				
Nature of Business				
Business Address				
Type of Business Entity	✓	Sole Trader	Partnership	Trust
		Company	Close Corporation	Other

Level of education at the time of accident	
Age at the time of accident	
Level of education at the time of submitting the claim	
Age at the time of submitting claim	
School /university report pre - accident	*minimum 3 years' report
School /university report post - accident	

6. Injury Details

Type(s) of Injuries	
Severity of Injuries	
List of Injuries	
Hospital	
Address of Hospital	
Person who treated the deceased	

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	✓
Standard documents	
Statutory Medical Report	
Amount Claimed as Compensation	
Certified copy of Claimant's ID (If claimant is a foreigner, proof of identity must be accompanied by documentary proof that the claimant was legally in South Africa at the time of the accident)	
Certified copy of Injured Identity Document (if different from Claimant) (If claimant is a foreigner, proof of identity must be accompanied by documentary proof that the claimant was legally in South Africa at the time of the accident)	
Unabridged birth certificate (if a natural guardian is claiming on behalf of a minor). If it's the legal guardian claiming on behalf of minor they must submit a court order or certified copies of Masters Letters of appointment	
Officers Accident Report or Case Docket and Sketch Plan	
Permission for the Fund to obtain and inspect hospital and medical records in terms of s19 (e)(ii) and 19 (e)(iii)	
Consent for RAF to obtain and inspect financial and earnings information	
Power of Attorney (if Represented)	
Affidavit in terms of Section 19 (f) (i)	
All statements and documents in claimant's possesion as outlined in s19 (f)(ii)	
Loss of Earnings	
Copies of all medical and hospital records, including photographs of the injuries	
Employer's certificate showing nature of employment, the period of service, remuneration, prospects of advancement and retirement age	
Proof of any other income (If applicable)	
Claimant's income tax returns submitted to SARS for the period during which the claimant was required to submit income tax returns, limited to the most recent three tax years, as applicable. (If not applicable, communication from SARS that the claimant is / was not registered as a taxpayer with SARS, in which case bank statements for the most recent three years preceding the date of accident will be required, as applicable.)	
Payslips pre and post-accident	
Copies of all hospital and medical accounts	
Medical reports or documentation establishing or substantiating claimant's temporary/ permanent disability and the loss of earnings claimed	
Official confirmation of remuneration / compensation received from other sources	
Official documentation confirming any disability grant	
Official confirmation of the Compensation Fund's award (if claimant was injured during the course and scope of employment)	
Past Medical Expenses	
An itemised tax invoice from a registered medical provider/or hospital for past medical expenses	
Proof of payment of medical expenses	
Copies of all medical and hospital records	

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7. Medical Report

Section 24(2)(a) provides that this report shall be completed by the medical practitioner who treated the injured or deceased person for the bodily injuries sustained by him/her in the accident from which this claim arises or by the superintendent (or his representative) of the hospital in which the injured or deceased person was treated for such bodily injuries.

Patient Name and Surname	
Patient ID Number	
Patient Date of Birth	
Have you verified that this is the person mention in the injured section of the claim form using ID or Passport	
Date when first seen after the accident	
Did you treat the patient any time before?	
If yes, give date of last such treatment and nature of correct ailment	
Give full details of the nature of the injuries and any complications (e.g. fractured rib with haemothorax, contusion of the heart, compound fracture etc.)	

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Parts of the body injured and degree

	Head	CNS	Chest	Neck	Abdomen	Back	Upper Limbs	Lower Limbs	Pelvis	Musculo-skeletal & skin

ICD 10 CODE	PROCEDURE	TREATMENT PLAN

8. Level of care and duration

Level of care	Duration
ICU	
High Care	
Ward	
Step-down / Rehabilitation	

*Attach any clinical notes

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Any other treatment give to date		
If no, has the condition stabilised		
Is there any future/ongoing medical treatment e.g. specialist, physiotherapy etc.?	Yes	No
If yes, provide name and address of treating service provider		
Any other treatment give to date?		
Is there any current or future permanent disability?	Yes	No
If yes, provide details		
If no, has the condition stabilised		
Is there any future/ongoing medical treatment e.g. specialist, physiotherapy etc.?	Yes	No
If yes, provide name and address of treating service provider		
What is the nature of such treatment?		
Is hospitalisation foreseen in connection with future treatment referred to above?	Yes	No
What are the pre-existing conditions?		
Have the injuries aggravated any pre-existing pathological condition?	Yes	No
If yes, please give details		
Has any such pre-existing pathological conditions aggravated the effects of trauma?	Yes	No
If yes, please give details		
Has the patient been confined to a hospital/rehab centre/ stepdown facility?	Yes	No
Date of admission		
Name and address and practice number of facility		
Hospital reference number		
Date of discharge or when discharge is expected		
If in employment at date of accident, state date when return to employment is expected		
9. Medical Report - Medical Practitioner's Details		
Name and Surname		
Speciality		
Practice Number (HPCSA and/or BHF)		
Telephone Number		
E-mail Address		
Cell Number		
Postal Address		
Physical Address		

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Section C
Death Benefits

Funeral Expenses	R _____	*Specified Voucher (Tax invoice for funeral expenses) *Proof of Income *Specified vouchers and proof of payment
Past Loss of Support	R _____	
Future Loss of Support	R _____	
Past Medical Expenses	R _____	

10. Employment Details

MVA under Compensation for Occupational Injuries and Diseases Act	Yes	No
Claim Lodged with the Compensation Fund?	Yes	No
Compensation Fund Reference Number		
Amount Received		
Final Award **Attach final award*	Yes	No

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Status	✓	Employed	Self-Employed	Unemployed
Employment Sector Category				✓ or not applicable
Self-employed				
Public Servant				
Formal Regulated Industry				
Informal Unregulated Industry				
Employment Sector				
Agriculture, Food and Natural Resources				
Architecture and Construction				
Arts, Audio/Video Technology and Communications				
Business Management and Administration				
Education and Training				
Finance				
Government and Public Administration				
Health Science				
Hospitality and Tourism				
Human Services				
Information Technology				
Law, Public Safety, Corrections and Security				
Manufacturing				
Marketing, Sales and Service				
Science, Technology, Engineering and Mathematics				
Transportation, Distribution and Logistics				
Other (specify)				

Final Award	YES	NO

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11. Deceased's Employment Details

Annual Remuneration (Pre Accident)	
Annual Remuneration (Post Accident)	
Highest Qualification and NQF Level	

Name of Employer	
Postal Address	
Telephone Number	
Contact Person	
Employee Number	

Basis of Employment	✓	Permanent	Temporary	Casual / Contract
Period of Temporary / Contract / Casual Employment				

Payslips		Tax Return		Declaration to give RAF consent to validate any income Agree ✓
Printout of Payments from Employer		Bank Statements		
Other (Specify)				
Tax Reference Number				

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Business Name			
Nature of Business			
Business Address			
Legal Entity of Business	Sole Trader	Partnership	Trust
	Company	Close Corporation	Other

Occupation	
Employer	
Annual Renumeration	
Payslip	
Tax Reference Number	
Declaration to give RAF consent to validate any income Agree ✓	

12. Injury Details (Only where the deceased did not die at the scene of the accident)

Type(s) of Injuries	
Severity of Injuries	
List of Injuries	
Hospital	
Address of Hospital	
Person who treated the deceased	

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	✓
Standard documents	
Completed Statutory Medical Report (Only applicable if the deceased did not die at the scene)	
Hospital and medical records (Only applicable if the deceased did not die at the scene)	
Amount Claimed as Compensation	
Certified copy of Claimant's ID (If claimant is a foreigner, proof of identity must be accompanied by documentary proof that the claimant was legally in South Africa at the time of the accident)	
Certified copy of Dependants ID	
Certified copy of Deceased ID	
Certified copy of Death Certificate	
Unabridged birth certificate (if a natural guardian is claiming on behalf of a minor). If it's the legal guardian claiming on behalf of minor they must submit a court order	
Officers Accident Report or Docket and Sketch Plan	
Consent for RAF to obtain and inspect hospital and medical records in terms of section 19 (e)(ii) and 19 (e)(iii)	
Court Order or Masters' letter of appointment (If Curator submitting on behalf of minor – LoS (Loss of Support) (If applicable) or certified copies of Masters Letters of appointment	
Power of Attorney (if Represented)	
Affidavit in terms of Section 19 (f) (i)	
Any other statements/documents in accordance with section 19 (f) (ii)	
Post Mortem/ Inquest Report/Charge sheet and/or any other document(s) proving that the deceased was killed in the collision or as a result of the collision	
Funeral	
Specified Voucher (Tax invoice for funeral expenses)	
Proof of Payment of funeral expenses	
Proof of relationship to deceased (certified marriage certificate/unabridged birth certificate/affidavit confirming relationship)	
Loss of Support	
Certified copy of marriage certificate/Certificate proving customary marriage/un-abridged birth certificate	
If not married, an affidavit setting out the legal basis of claimant's dependency on deceased	
Employer's certificate of deceased's service showing nature of employment, the period of service, remuneration, prospects of advancement and compensation and retirement age	
Payslips	
Copy of maintenance order, if any	
The child support grant official documents (if applicable)	
Deceased tax records (if not available, communication from SARS that Claimant is not registered for tax, in which case a bank statement for three years preceding death must be submitted)	
Offical proof of additional income (if applicable)	
Copy of Liquidation and Distribution account (if applicable)	
Employer's certificate of surviving spouse indicating period of employment, remuneration, prospects of advancement	
Proof of Guardianship (if claimant not biological parent)	
Academic records in respect of minor dependents	
Actuarial report	
Post Mortem Report/Inquest record/change sheet/ other documents proving that the deceased was killed in the accident	
Deceased's medical and hospital records (if applicable)	
Official confirmation of the Compensation Fund's award if the deceased died in the course and scope of employment	
Past Medical Expenses	
An itemised tax invoice from a registered medical provider/or hospital for past medical expenses with proof of payment	

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13. Medical Report (only applicable where the Deceased did not die at the scene)

Section 24(2)(a) provides that this report shall be completed by the medical practitioner who treated the injured or deceased person for the bodily injuries sustained by him/her in the accident from which this claim arises or by the superintendent (or his representative) of this hospital in which the injured or deceased person was treated for such bodily injuries.

Patient Name and Surname	
Patient ID Number	
Patient Date of Birth	
Have you verified that this is the person mention in the injured section of the claim form using ID or Passport	
Date when first seen after the accident	
Did you treat the patient any time before?	
If yes, give date of last such treatment and nature of correct ailment	
Give full details of the nature of the injuries and any complications (e.g. fractured rib with haemothorax, contusion of the heart, compound fracture etc.)	

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Parts of body injured and degree

	Head	CNS	Chest	Neck	Abdomen	Back	Upper Limbs	Lower Limbs	Pelvis	Musculo-skeletal & skin

ICD 10 CODE	PROCEDURE	TREATMENT PLAN

ICU	
High Care	*Attach any clinical notes
Ward	
Step-down / Rehabilitation	
Ward	

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Medical Report continued		
Any other treatment given to date		
If no, has the condition stabilised?	Yes	No
Is there any future/ongoing medical treatment e.g. specialist, physiotherapy etc.?	Yes	No
If yes, provide name and address of treating service provider		
Any other treatment give to date?		
Is there any current or future permanent disability?	Yes	No
If yes, provide details		
If no, has the condition stabilised?		
Is there any future/ongoing medical treatment e.g. specialist, physiotherapy etc.?		
If yes, provide name and address of treating service provider		
What is the nature of such treatment?		
Is hospitalisation foreseen in connection with future treatement reffered to above?	Yes	No
What are the pre-existing conditions?		
Have the injuries aggravated any pre-existing pathological condition?	Yes	No
If yes, please give details		
Has any such pre-existing pathological conditions aggravated the effects of trauma?	Yes	No
If yes, please give details		
Has the patient been confined to a hospital/rehab centre/ stepdown facility?	Yes	No
Date of admission		
Name and address and practice number of Facility		
Hospital reference number		
Date of discharge or when discharge is expected		
If in employment at date of accident, state date when return to employment is expected		

10.2 Medical Report – Medical Practitioners details	
Name and Surname	
Speciality	
Practice Number (HPCSA and/or BHF)	
Telephone Number	
E-mail address	
Cell Number	
Postal Address	
Physical Address	

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14. Mandatory information / documentation to be submitted for claims payments

To ensure that payments are processed in line with the settlement agreements concluded and / in compliance with court orders, the following documents must accompany any requests for payment:

1. Stamped Court Order / duly signed discharge form or settlement agreement.
2. Duly signed Power of Attorney.
3. Tax clearance certificate, which shall be submitted by the claimants' attorneys at least once a year.
4. Proof of banking details / confirmation of Banking Details (Trust Account).
5. Copy of the Contingency Fee Agreement concluded with the claimant and Proof of Compliance with section 4 of the Contingency Fee Act, altenatively, the attorney must submit an affidavit to confirm that there is no contigency fee agreement.

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15. Declaration and Consent:

The Consent granted to the Road Accident Fund (RAF) in this paragraph authorises the RAF to obtain copies of any records and to access any information which relates to this claim for compensation and to contact any person or entity for purposes of obtaining or verifying such information and /or documentation.

I, _____ (name and surname of claimant), declare that, to the best of my knowledge, the information provided in this Third Party Claim Form is true and correct in every respect; and

I confirm that I am claiming compensation:

In my personal capacity as a result of injuries I sustained in the accident; alternatively

In my personal and / or representative capacity as _____

(state capacity) on behalf of _____ (name and surname of injured) who sustained injuries in the accident; alternatively

In my personal and / or representative capacity as _____ (state capacity)

of _____ (state name of the deceased) who died as a result of the injuries sustained in the accident.

(Indicate, and if applicable complete, the applicable statement above)

I hereby consent to the release, to the Road Accident Fund, of copies of all documentation and /or information, including, but not limited to, documentation and /or information of a medical or financial nature, in the possession of any person or entity, which documentation or information, in any way, relates to this claim for compensation arising from the motor vehicle accident detailed in the claim form

I further consent to, and authorise, the Road Accident Fund to contact any person or entity for purposes of obtaining or verifying such information and /or documentation.

_____

Signature of the Claimant

_____

Signature of the Witness

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REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID AFRIKA

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AIDS HELPLINE: 0800-0123-22 Prevention is the cure

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Management Directive

Road Accident

image1.png

File Plan # 1/1/1

From	:	Maria Rambauli: Acting Chief Claims Officer
Title	:	Claims Administration Compliance: New RAF 1 Form
Date	:	12 July 2022
Audience	:	All Claims Staff
Directive	:	Implementation of the New RAF 1 Form

As communicated in the Internal Communique issued on the 05 of July 2022 regarding the Claims Administration Terms and Conditions, all personal claims lodged as of the 04 of July 2022 should be

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"FA22"

11/11/2022-10:31:52 AM

Road Accident Fund

RAF Contact Number: 0860 23 55 23

Attorney

2022

CLAIMANT :

YOUR REFERENCE :

Dear Madam/Sir

1. We acknowledge receipt of the above claim for compensation, lodged on _____.

2. To administer claims effectively and efficiently lodged with the Road Accident Fund (the RAF), pursuant to section 4(1)(a) of the Act, in Board Notice 271 of 2022 (the Notice), published in Government Gazette No. 46322 on 6 May 2022, stipulated terms and conditions upon which claims for compensation shall be administered. These terms and conditions, read with section 24 of the Act, stipulate documents which must be included and form part of the supporting documents when lodging a claim for compensation with the RAF, to ensure that a substantially compliant and valid claim is lodged.

3. We have pre-assessed the claim for substantial compliance with section 24 of the Act and wish to bring to your attention that the claim does not meet the following requirement(s) and we therefore object to same in terms of Sub-section 24(5) of the Act:

3.1 _____

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Claims already received and stamped with the date of 04 July and later, where compliance was not checked in terms of the new RAF1 Form, and Claims Administration Terms and Conditions must be processed again to ensure compliance.

Required

Outcome: 100% compliance with the Directive: Implementation of the new RAF 1 Form Gazzetted.

Due date: Effective Immediately.

Comments: None.

Name of responsible

Head **Gontse Baloyi: Acting Head Legal Service**

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submitted using the new RAF1 Form (RAF 1 Form July 2022.pdf) .

All RAF offices are required to enforce compliance with the new RAF 1 Form. All lodgements received on or after the 04 of July 2022 must be submitted using the New RAF 1 Form. Claims lodged on the old RAF 1 Form must be objected to, using the prepared template objection letters, citing the reason for the objection as utilisation of the old RAF 1 Form. The matters must be pre-assessed and captured on the pre-assessment system, but not registered.

In instances where the lodgement was submitted via registered mail, the regions must check the postal date stamp and if the date stamp is before the 04 of July 2022, the old RAF 1 Form can be accepted.

However if the postal date stamp is on or after the 04 of July 2022, the regions must object, using the prepared template objection letters, citing the reason for the objection as utilisation of the old RAF 1 Form.

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Head : Gontse Baloyi: Acting Head Legal Service

Signature : G Baloyi

G Baloyi (Jul 12, 2022 15:15 GMT+2)

Name of responsible

Executive : Maria Rambaull: Acting Chief Claims Officer

Signature :

Maria Rambaull

https://adobesign.com/verifier?tx=CBJCHBCAABAAugb25b0Jek3bE-vv-e2-M6L2e9E_-2pk

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3.1. ... (specify or state Not applicable)

4. The claim as lodged is for the following product(s): _____. We have pre-assessed the claim and products for compliance with the Notice and wish to bring to your attention that the claim does not meet the following requirement(s) and we therefore object to same in terms of Sub-section 24(5) of the Act:

4.1. ... (specify or state Not applicable)

5. We reserve the right to pre-assess additional product(s) introduced after lodgment of the claim not already listed in paragraph 4, and to object to any invalidity in respect of such newly introduced product(s) *mutatis mutandis* within the ambit of sub-section 24(5) of the Act.

6. Please take note that prescription will only be interrupted once the defect(s) which render the claim invalid, in

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whole, or in part, is cured.

7. Should you proceed to issue summons against the RAF despite not having resubmitted a compliant form, the RAF will bring this fact to the attention of the courts and contend that your claim is not only premature but that you should pay the legal costs even in the event that your claim is ultimately settled by the RAF, alternatively, that you should not be entitled to claim legal costs.

8. You are therefore requested to submit the required document(s) for substantial compliance for the further processing of the claim as a whole and, or, the specified product(s), as specified above.

Kind regards,

11/11/2022-10:31:52 AM

V.REA & ASSOCIATES ATTORNEYS "FA23.1"

YOUR REF: **NEW CLAIM**

OUR REF: **V REA/S EVERSON/AR244/ar**

3 AUGUST 2022

ROAD ACCIDENT FUND
38 Ida Street
Menlo Park
0081

BY HAND

Dear Sir/Madam,

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

CLAIMANT	:	**SHERLEY ADAM RADEBE**
IDENTITY NUMBER	:	**581014 5744 08 9**
DATE OF ACCIDENT	:	**10 AUGUST 2019**

With reference to the above, we enclose herewith the original new RAF 1 form as well as the old RAF 1 form together with the medical report as well as the following annexures thereto:

ANNEXURE SAR1	:	Copy of ID: Sherley Adam Radebe
ANNEXURE SAR2	:	Notice of Consent;
ANNEXURE SAR3.1 – SAR3.2	:	Power of Attorney;
ANNEXURE SAR4	:	Notice of Consent ito S19(e)(ii) & 19(e)(iii)
ANNEXURE SAR5.1 – SAR5.4	:	Accident Report;
ANNEXURE SAR6	:	Affidavit: Shirley Adam Radebe
ANNEXURE SAR7.1 – SAR7.6	:	Photo Bundle of Scene of Accident;
ANNEXURE SAR8	:	Expired Driving Licence;
ANNEXURE SAR9	:	Temporary Driving Licence;
ANNEXURE SAR10	:	Certificate in Manhole Construction;
ANNEXURE SAR11	:	Closed Corporation registration documents;
ANNEXURE SAR12	:	SARS Tax Compliance Status Zikeleza Builders
ANNEXURE SAR13.1 – SAR13.13	:	Pre- and Post-Accident Bank Statements;
ANNEXURE SAR14.1 – SAR14.12	:	Hospital Records.

VINCENZO REA
4th Floor Suite 415, Protea Towers, Cnr Paul Kruger & Pretorius Streets, Pretoria
P O Box 4537, Pretoria, 0001
Tel: +27 (12) 325 5651 / 321 5344 / 325 5674
Fax to email: 086 616 6987 / +27 (12) 326 2557
Email: reception@vrea.co.za · legal@vrea.co.za · lilly@vrea.co.za

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We trust you do find the above in order.

Please acknowledge receipt of lodgement.

Yours faithfully,

Vincenzo Rea

V REA & ASSOCIATES
Per. V Rea



Road Accident Fund

RAF Contact Number: 0860 23 55 23

2022/09/07

ATTORNEY	: **V.REA & ASS ATT.**
CLAIMANT	: **RADEBE SA**
YOUR REFERENCE	: **V REA/S EVERSON/AR244/ar**
RAF CLAIM NUMBER	: **JFA101856047/GD/LI/FME/PME/0/0**
LINK NO	: Click or tap here to enter text.

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Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

Dear Madam/Sir

1. We acknowledge receipt of the above claim for compensation in terms of section 17 of the Road Accident Fund Act, No. 56 of 1996 (the Act), lodged on 2022/08/05

2. To administer claims effectively and efficiently lodged with the Road Accident Fund (the RAF), pursuant to section 4(1)(a) of the Act, in Board Notice 271 of 2022 (the Notice), published in Government Gazette No. 46322 on 6 May 2022, stipulated terms and conditions upon which claims for compensation shall be administered. These terms and conditions, read with section 24 of the Act, stipulate documents which must be included and form part of the supporting documents when lodging a claim for compensation with the RAF, to ensure that a substantially compliant and valid claim is lodged.

3. We have pre-assessed the claim for substantial compliance with section 24 of the Act and wish to bring to your attention that the claim does not meet the following requirement(s) and we therefore object to same in terms of Sub-section 24(5) of the Act:

3.1 An itemized tax invoice from a registered medical provider/ or hospital for past medical expenses

4. The claim as lodged is for the following product(s):
   - ☒ Future Medical Expenses
   - ☐ Past Medical Expenses
   - ☒ General Damages
   - ☒ Loss of Earnings

We have pre-assessed the claim and products for compliance with the Notice and wish to bring to your attention that the claim does not meet the following requirement(s) and we therefore object to same in terms of Sub-section 24(5) of the Act:

Loss of Earnings

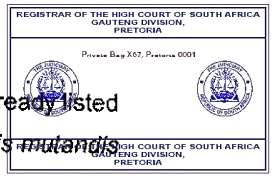
Medical reports or documentation establishing, or substantiating claimant's temporary/ permanent disability and the loss of earnings claimed (Medico legal reports)

Official documentation confirming any disability grant

Past Medical

Proof of payment of medical expenses

An itemized tax invoice from a registered medical provider/or hospital for past medical expenses



5. We reserve the right to pre-assess additional product(s) introduced after lodgment of the claim not already listed in paragraph 4, and to object to any invalidity in respect of such newly introduced product(s) *mutatis mutandis* within the ambit of sub-section 24(5) of the Act.

6. Please take note that prescription will only be interrupted once the defect(s) which render the claim invalid, in whole, or in part, is cured.

7. A special plea shall be raised should summons be issued against the RAF.

8. You are therefore requested to submit the required document(s) for substantial compliance for the further processing of the claim as a whole and, or, the specified product(s), as specified above.

Kind regards,

Reception

From: Humphrey Rapetsoa <humphreyr@raf.co.za>
Sent: 19 September 2022 11:17
To: 'reception@vrea.co.za'
Subject: RE: JFA101856047/VO
Attachments: BN - PARTIALLY COMPLIANT PRODUCTS LETTER 20220721.pdf

Good day

Kindly take note that we withdraw our letter dated 07 September 2022

Kindly find attached corrected letter for your attention

Regards

Humphrey Rapetsoa
012 429 5171

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REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
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PRETORIA

From: Humphrey Rapetsoa
Sent: 07 September 2022 2:56 PM
To: 'reception@vrea.co.za' <reception@vrea.co.za>
Subject: JFA101856047/VO

1

Road Accident Fund

RAF Contact Number: 0860 23 55 23

2022/09/19

ATTORNEY	**: V REA & ASSOCIATES ATTORNEYS**
CLAIMANT	**: RADEBE SA**
YOUR REFERENCE	**: V REA/S EVERSON/AR244/ar**
RAF CLAIM NUMBER	**: JFA101856047/GD/LI/FME/PME/0/0**
LINK NO	:Click or tap here to enter text.

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PRETORIA

Dear Madam/Sir

1. We acknowledge receipt of the claim lodged on 2022/08/04

2. The claim as lodged is for the following product(s):

☐ Past Medical Expenses
☐ General Damages
☐ Loss of Earnings
☐ Future Medical Expenses

3. We have pre-assessed the claim for substantial compliance with section 24 of the Act and wish to bring to your attention that the claim is compliant.

4. We have pre-assessed the claim for compliant products and wish to bring to your attention that the following product(s) meet the requirements in Board Notice 271 of 2022 (the Notice), published in Government Gazette No. 46322 on 6 May 2022, pursuant to section 4(1)(a) of the Act:

   Future Medical Expenses
   General Damages

5. We however confirm that the following documents for the compliant products are still outstanding to enable the RAF to investigate and administer the claim within 120 days from date of lodgement.

   Proof of injury. RAF 4 form for serious injury report duly completed in line with AMA guides

Pieter Skein
PROKUREURS
Prokureurs | Aktebesorgers | Notarisse
Attorneys | Conveyancers | Notaries
Sedert 2015

"FA23.2"

Integriteit bo alles

T: (051) 4300 947
E: info@skein.org.za | www.skein.org.za
Docex 34, Kaptein Proctorstraat 22, Brandwag, Bloemfontein
Postnet Suite 167, Private Bag x01, Brandhof, 9324
VAT Nr. 4450 270724

U Verw / Your Ref: **NEW CLAIM**
Ons Verw / Our Ref: **SCO6/0522/BA/PL SKEIN**
Datum / Date: **12 July 2022**

BY REGISTERED MAIL

ROAD ACCIDENT FUND
PRIVATE BAG X178
CENTURION
0046

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GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Dear Sir/Madam

NEW CLAIM: MATHONE MAGDALINA TSOEHLESI [THIBELETSA]
IDENTITY NUMBER : 701105 0612 084
DATE OF ACCIDENT: 21 JULY 2019

We refer to the above-mentioned and attach hereto our client's claim form and attachments.

Kindly acknowledge receipt hereof and should there be any further enquiries and/or requirements, please do not hesitate to contact writer hereof.

Included in the claim documents, is a RAF4 serious injury assessment report completed by Dr JF Ziervogel, Orthopaedic Surgeon (see 5.1 and the 3rd item in the Index of the Claim documents)

We request you herewith to, within 90(ninety) days, confirm in writing that you are satisfied that the injury has been correctly assessed and that you either accept or reject the RAF4 serious injury assessment report.

If you fail to accept or reject the assessment report, the Plaintiff will have no option, but to invoke the Provisions of the Promotion of Administrative Justice Act, Act 3 of 2000, in order to compel you to a response.

We reserve our client's rights to amend her claim.

Yours faithfully

PIETER SKEIN ATTORNEYS
Brechtje Aucamp Secretary
Office number 051 430 0947
Fax number 051 430 0269
Docex 34 Bloemfontein
Email address breggie@skein.org.za

Road Accident

RAF Contact Number: 0860 23 55 23

2022/09/14

ATTORNEY	**: PIETER SKEIN ATTORNEYS**
CLAIMANT	**: MATHONE MAGDALINA TSOEHLESI**
YOUR REFERENCE	**: SCO6/0522/BA/PL SKEIN**
RAF CLAIM NUMBER	**: JFA101860206**
LINK NO	:Click or tap here to enter text.

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Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

Dear Madam/Sir

1. We acknowledge receipt of the claim lodged on 2022/07/13

2. The claim as lodged is for the following product(s):

☐ Future Medical Expenses
☐ General Damages
☐ Loss of Earnings

3. We confirm that we have pre-assessed your claim for all required documents in support of your claim against the RAF.

4. The following claim requirements are outstanding in terms of Sect 24 of the Act:

Incorrect RAF 1 Form used
Certified copy of Claimant's ID

Pretoria: 38 Ida Street Menlo Park Pretoria 0081 | Private Bag X2003 Menlyn 0063
T +27 12 429 5000 | www.raf.co.za

Board Members: Ms Thembelihle Msibi (Chairperson), Dr Nomonde Mabuya-Moloele (Vice Chairperson), Mr Hilmi Daniels, Ms Lorraine Francois, Mr Khotso Mothobi, Mr Moses Nyama, Dr Maria Peenze, Mr Thulani Tshabalala, Mr Mokoditloa Moemi (Director General of Transport)

5. The following product requirements are outstanding in terms of section 4(1)(a) of the Act in Board Notice 271 of 2022 (the Notice), published in Government Gazette No. 46322 on 6 May 2022:

Loss of Earnings

- Employer's certificate of Injured' service showing nature of employment, the period of service, remuneration, prospects of advancement and compensation and retirement age
- Copies of all hospital and medical accounts
- Medical reports or documentation establishing, or substantiating claimant's temporary/ permanent disability and the loss of earnings claimed (Medico legal reports)
- Official documentation confirming any disability grant
- Payslips pre- and post-accident

Past Medical

- An itemised tax invoice from a registered medical provider/or hospital for past medical expenses
- Proof of payment of medical expenses

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PRETORIA

6. To enable the RAF to investigate and administer the claim within 120 days we request the following additional documentation for claims processing to be submitted:
   - Any other medical or clinical records (if applicable)

7. We reserve the right to pre-assess additional product(s) introduced after lodgment of the claim not already listed in paragraph 2, and to object to any invalidity in respect of such newly introduced product(s) *mutatis mutandis* within the ambit of sub-section 24(5) of the Act.

Kind regards,

Kind regards,