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RISK MANAGEMENT COLUMN

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RISK MANAGEMENT COLUMN

RAF related litigation

Claims arising from the conduct of Road Accident Fund (RAF) related matters continue to be the greatest risk faced by the Legal Practitioners Indemnity Insurance Fund NPC (LPIIF), both in terms of the number of claims notified (frequency) and the value of such claims paid (severity). Prescribed or under-settled claims are common risks flowing from this type of work. Over the years we have published extensive mitigation measures that practices can implement to mitigate these risks. Against that background, matters of interest to personal injury lawyers pursuing RAF related claims are extensively covered in this edition of the Bulletin.

Some of the recent judgments that may be of interest to practitioners are summarised below.

The *Risk Alert Bulletin* is written by Thomas Harban, General Manager, LPIIF

These are just a sample drawn from the plethora of judgments regarding the RAF's litigation strategy in recent years. In *MMK obo MK v Road Accident Fund* (497/2024) [2025] ZASCA 136 (25 September 2025) , Goosen JA noted that:

"[34] When the RAF does not participate in the process of adjudicating matters to finality, the courts seized with the case are placed in an invidious position. They are required to bring special care to bear, lest an order is made which compels the RAF to pay damages not proved. It is simply not in the interests of justice that this should occur. It is to be hoped that the RAF, as an organ of state managing public funds, will take reasonable steps to avoid recurrences of what occurred here."

However, sometimes practitioners acting for plaintiffs in claims against the RAF also fall short of the expected conduct standards or their duties of care, as will be gleaned, for example, from professional liability related claims, disciplinary matters dealt with by the Legal Practice Council and theft of trust fund claims lodged with the Legal Practitioners' Fidelity Fund, respectively.

In *Mthimkhulu v Road Accident Fund* (2608/2024) [2026] ZAMPMBHC 27 (11 March 2026) the RAF's special plea of non-compliance with section 24 of the RAF Act was dismissed with costs. The RAF contended in its special plea that the plaintiff's claim for some of the heads of damages was not substantially compliant as those had not been completed on the claim form submitted. The court considered the authorities on substantial compliance and found that the plaintiff had met the requirements for a valid claim. The RAF's contentions regarding the need for the claim form to be stamped were found to be internal administrative processes within its exclusive control, and that it could not rely on non-compliance with its own internal administrative processes to defeat a claim. The special plea was thus dismissed with costs.

Seboko v Road Accident Fund (1683/24) [2026] ZANWHC 48 (10 March 2026)

Having been injured in a motor vehicle accident, the plaintiff lodged a claim with the RAF for compensation. The RAF did not object to the validity of the claim within 60 days as provided for in section 24(5) of the Road Accident Fund Act 56 of 1996 (the RAF Act) and "remained silent on the question of whether the RAF1 form has been completed in all material respects." (paragraph 4). The plaintiff subsequently issued summons against the RAF and her particulars of claim included claims for general damages (which were settled between the parties) and past loss of earnings.

The RAF defended the action and, subsequently, filed a special plea contending that the plaintiff's claim for loss of earnings had never been lodged, and that summons in respect of that head of damages was thus premature. Before issuing summons, the plaintiff did not submit an amended RAF1 form setting out a claim for loss of earnings. The RAF's contentions were that:

- as the plaintiff had not lodged a claim for loss of earnings with it before issuing summons, she was therefore required to observe the 120 day moratorium period prescribed in section 24(6) of the RAF Act before issuing summons. As she failed to do so, her summons was thus premature and the claim for loss of earnings should be dismissed;
- the provisions of section of 24 the RAF Act are peremptory and constitute jurisdictional prerequisites to litigation;
- the plaintiff cannot fall foul of the statutory scheme by introducing a new head of damages in the summons that had not been lodged as prescribed by section 24 of the RAF Act; and
- in the circumstances, the special plea be upheld and the claim loss of earnings be dismissed.

In opposing the RAF's special plea, the plaintiff argued that:

- the RAF had failed to ob-

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ject to her lodgement within the 60 day period prescribed in section 24(5), and that it could not now raise an objection to the sufficiency of the RAF1 form;

- her cause of action was single and conjoined, arising from a single motor vehicle accident. The subsequent loss of earning claims did not require the lodgement of an amended claim form. It was thus competent to include this head of damages in the summons;
- the decision in *Nonkwali v Road Accident Fund* 2009 (4) SA 333 (SCA) supported her case; and
- the special plea was legally unsustainable and should be dismissed.

The court considered the wording of section 24(5) and found that by not objecting within 60 days to the plaintiff's claim lodged with it, that claim was deemed to be valid in all respects. The court held that:

> "[17] The RAF1 completed by Seboko on 20 November 2023 set out with sufficient particularity the details of the claim, the details of the accident, and the injuries sustained. The RAF has taken issue with the fact that Seboko did not specifically claim loss of earnings. Seboko does not dispute that the RAF1 form may not have quantified or specifically claimed loss of earnings. Seboko opines that the RAF1 form gave notice of the accident and the injuries sustained. Aside from the latter, Seboko reasons that the loss of earnings is a natural consequence of those injuries.
>
> [18] To my mind, the RAF's contention is a textbook example of elevating form over substance. The purpose of lodging a claim under s 24 has three fundamental objects, first is to notify the RAF of the accident, second, to disclose the nature of the claim, and third, to provide the RAF with an opportunity to investigate the claim before litigation is instituted. It follows as a matter of course that once the RAF has been notified of the accident and the injuries sustained, and has had an opportunity to investigate, the statutory purpose has been served.
>
> [21] It stands to reason that the subsequent inclusion by Seboko of a claim for loss of earnings in the summons does not introduce a new cause of action. It merely amplifies the existing cause of action by quantifying a further head of damage arising from the same accident. Seboko was not required to lodge an amended claim form before including this head of damage in her summons.
>
> [22] Moreover, had the RAF entertained any doubt about whether the RAF1 had been completed in all material respects, it was afforded a statutory remedy in s 24(5) to raise an objection within 60 days. It failed to do so. The consequences of same have been dealt with in conjunction with the effect of the deeming provision as evinced in s 24(5). From my standpoint, the RAF now appears through the vehicle of a special plea to achieve precisely what it is precluded from doing directly, namely, objecting to the sufficiency of the claim form."

The RAF's special plea that the summons was premature was thus dismissed with costs.

I read, downloaded and printed the *Seboko* judgment on 12 March 2026. The citation given in that version of the judgment (see footnote 2) for *Nonkwali* does not correspond with the citation in either the South African Law Reports, the judgments on the SCA website or SAFLII. In paragraph 19, the Seboko judgment quotes a passage it states is taken from paragraph 10 of the *Nonkwali*. I

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have read the *Nonkwali* judgment as it appears in the South African Law Reports, on the SCA website and SAFLII. The text on all three platforms is identical, but is not what is quoted in paragraph 19 of *Seboko* and ascribed to the SCA judgment. It is unclear which version of *Nonkwali* the court drew the quoted passage from.

Mpangane v Road Accident Fund (28705/2021) [2026] ZAGPJHC 217 (4 March 2026)

The plaintiff was injured in a motor vehicle collision. She lodged a claim for compensation with the RAF. The RAF acknowledged receipt of her claim and issued a letter repudiating liability, stating that it would defend any action instituted against it and bring the letter to the attention of the presiding officer for consideration when making a costs order. The RAF's repudiation letter stated that the reason for the repudiation was "no nexus". The plaintiff then issued summons and the RAF was duly served. A notice of intention to defend was served by the State Attorney nine months after the summons was served. The plaintiff's attorney served a notice of bar because the RAF did not plead. A year after serving the notice of bar, the plaintiff's attorneys served a notice on the RAF's attorneys indicating their intention to apply for default judgment as the plea had not been filed. The notice of set down set down in respect of the application for default judgment was served on the RAF's attorneys, but that did not trigger the latter into taking any action. When the default judgment was first heard, the RAF's legal representative from the State Attorney appeared and, after her address, the court granted the RAF an indulgence of 15 days to, presumably, remove the bar and file its plea. The default judgment application was postponed *sine die*. The 15 day period lapsed without the RAF taking any action, and the plaintiff then again set the default judgment application down for hearing. At the second hearing of the default judgment application, the RAF's attorney again requested more time. The court, again, gave the RAF an indulgence and directed that the RAF file a substantive application. A manager in the RAF's Merits Determination department deposed to an affidavit in support of the application. The affidavit, claiming that the failure to file a plea was not wilful, blamed the volumes of litigious matters the RAF deals with on a daily basis for the delay. The State Attorney did not file a confirmatory affidavit. In so far as the merits of the claim were concerned, the deponent stated that as far back as 2020 material discrepancies in the claim had been discovered and that lead to the repudiation letter being issued. The alleged discrepancies related to the description of the motor vehicle and the time when the accident happened. The RAF's representative alleged that the information provided by the plaintiff to the police and the hospital was a "fabrication". The RAF thus concluded that the plaintiff had no prospects of success in the action. Despite this conclusion reached by the RAF in 2020 in respect of this claim, it had not, over a 6 year period, filed a plea or explained its failure to do so. It did not explain the "administrative challenges" it purportedly had. Its affidavit did not set out the merits to enable the court to weigh the prospects of success. The court pointed out (paragraph 23) that, despite being furnished with details of the motor vehicle, the RAF did nothing to trace the owner and get a statement from such person. There was thus no evidence to dispute what was stated in the plaintiff's affidavit.

The court concluded that the RAF had, on many occasions until the two instances where the matter was set down for default judgment, failed to set out reasons for the delay and omission. The flagrancy in ignoring the order granted on the first occasion that the default judgment was set down for hearing was an aggravation that warranted a punitive costs order against the RAF.

The application for condonation and removal of the bar were thus dismissed, and the RAF ordered to pay the costs of the application on the attorney and client scale.

Board Notice 271 of 2022

The Road Accident Fund (RAF) has appealed against the judgment handed down by the full court in favour of the Legal Practitioners Indemnity Insurance Fund NPC (LPIIF) in respect of Board Notice 271 of 2022 (the Board Notice) and the claim form issued in relation to that Board Notice. The full court's judgment is reported at *Legal Practitioners Indemnity Insurance Fund NPC and Others v Road Accident Fund and Others* 2024 (4) SA 594 (GP) (the LPIIF case). The SCA heard the appeal on 17 February 2026. Judgment has been reserved. At the time of writing, judgment has not been handed down. When the judgment is handed down, we will share it with the profession and other interested parties.

The Bulletins published since July 2022 have extensively covered judgments regarding the Board Notice. Practitioners facing a persistent reliance by the RAF on the impugned Board Notice can have regard to what has been previously published. Our call still stands that practitioners not contact the LPIIF seeking individual reports on the status of the litigation (despite our regular published reports), wanting to have philosophical debates about the arguments advanced by the company or enquiring when the SCA will hand down its judgments and what the judgment will say. Astonishingly, we have had several practitioners who supposedly specialise in litigation call us and ask what it means that the judgment is reserved. As previously stated, the enquiries by individual practitioners puts additional strain on our limited resources.

We are aware that a multitude of cases will be affected by the outcome of the RAF's appeal. The wide interest is thus understandable. The LPIIF has provided figures for the number of Board Notice related claims that have been notified to it. Various other parties, including the RAF, also provided relevant statistics to the SCOPA enquiry.

In the affected litigation, some courts have postponed the adjudication of the RAF's special pleas based on the Board Notice, and others have dismissed similar special pleas. In *Faso v RAF* (3901/2024) [2025] ZAFSHC 380 (27 November 2025), Daffue J noted that:

> "[9] …. The Supreme Court of Appeal will hopefully pronounce, rather sooner than later, on its [the Board Notice's] legality. I may just say that, if this case had to be postponed awaiting the outcome of the judgment of the Supreme Court of Appeal and possibly a further appeal to the Constitutional Court, it would cause an undesirable delay. Thousands of cases are apparently pending before the courts and cannot proceed due to the uncertainty created by the RAF's new stance. It is necessary to provide reasons for my order, particularly bearing in mind the apparent differences of opinion amongst the judges of this Division. On the one hand, colleagues such as Van Rhyn J, Naidoo J and Reinders ADJP have postponed third-party claims in the face of special pleas having been filed as in *casu*, instead of adjudicating the special pleas.

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I am not prepared to follow suit. My colleagues, Loubser J and Mhlambi J, have already dismissed similar special pleas and provided detailed reasons for their conclusions. I agree with their approach and reasoning."

The LPIIF's submissions to the Standing Committee on Public Accounts (SCOPA) enquiry into the RAF were made on 15 October 2025. A record of the proceedings is available on the parliamentary YouTube channel. We have had sight of the draft framework for SCOPA report that was presented at the Committee's last meeting on the matter. Those proceedings can be viewed at https://www.youtube.com/watch?v=COaxmv6QSCU The draft report is now awaited. If required and permitted, we will make comments on the draft and final reports.

Since our last publication, the judgments summarised below have been handed down in respect of the Board Notice.

In Mongalo v Road Accident Fund (6182/2022) [2026] ZAFSHC 10 (15 January 2026), the RAF had initially relied on special pleas that the plaintiff had not complied with section 24 of the RAF, read with the requirements of the Board Notice. The special pleas were, however, eventually withdrawn.

Mophuting v Road Accident Fund; Mabasa v Road Accident Fund (239/2024; 8552/2023) [2025] ZALMPPHC 242; [2026] 1 All SA 356 (LP) (9 December 2025)

This was a consolidated hearing of two matters where the RAF had raised special pleas. The special pleas alleged that the respective plaintiffs had not complied with the provisions of section 24 of the RAF Act. The RAF's rejection letter listed documents that the respective plaintiffs were called upon to submit. Both plaintiffs issued summons against the RAF after receiving its rejection letters. In the *Mothuping* matter, the RAF's rejection letter was written more than 60 days after the claim was lodged. The rejection was thus outside of the period stipulated in the RAF Act and the claim thus deemed valid.

The RAF's objections were based on the Board Notice. The court noted that:

"[25] What must be kept in mind is that the legislation is intended to compensate the qualifying victims of motor vehicle accidents. It is not intended to disentitle them, by being overly technical, from being fairly compensated for the damages sustained as a result of the motor vehicle accidents. Where there is substantial compliance, the Fund ought not reject valid claims only because the information that it has been provided with is insufficient. Moreover, the Act envisages the submission of a claim form that is fully completed with available information.

[26] On behalf of the Fund it was argued that submission of the documents is peremptory. I am not persuaded by this argument. A duly completed form is one which, on its face, has answers to the questions posed in it. The submission of additional documents is distinct from what a duly completed form is, in my view. More so if one has regard to the fact that the form has a portion for completion of a medical report on it. Thus, the Fund's ability to make a decision is not dependent on the submission of the actual medical documents from hospital.

[27] Much of the information is already there on the rejected forms, including medical reports which were provided on the forms and completed by qualifying medical practitioners. To

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> demand that the medical records, which must still be obtained from hospitals must be submitted simultaneously with the prescribed form may leave many claimants without recourse. That is not what the statute envisages."

The RAF's points in *limine* based on the Board Notice were dismissed with costs in both cases.

One of the lessons from this case is that practitioners must keep a careful watch on the RAF's compliance with timelines for objecting to the validity of claims. Objections raised after the expiry of the 60 day period must be challenged. To be prudent, start working on the summons and particulars of claim before the expiry of the 120 day period. The summons can be issued and served as soon as possible after the 120 days expire and, in that way, mitigate the risk of the RAF belatedly raising an objection based on either the impugned Board Notice or any other purported reason. This approach will go a long way in mitigating the risk of prescription and also assist in advancing the plaintiff's interests as soon as possible. The RAF will then be placed in a position where any points of law will have to be raised in a special plea.

Faso v RAF

The plaintiff in this case did not attack the lawfulness of the Board Notice. The court thus adjudicated the matter on the assumption that the Board Notice is a lawful document. The RAF had raised three special pleas. For current purposes, the relevant special pleas are those alleging that:

(i) the plaintiff had failed to substantially comply with section 24(4) of the RAF Act;
(ii) the RAF had formally objected to the validity of the claims on the grounds that the plaintiff had failed to substantially comply with section 24(5) of the RAF;
(iii) the plaintiff had failed to cure the objection to the validity and proceeded to issue summons though he had failed to lodge a substantially compliant, valid and enforceable claim;
(iv) in the circumstances, summons had been prematurely issued; and
(v) the effect of the first two special pleas is that the claim had prescribed because the plaintiff had failed to cure the objection to the validity of his claim before the three-year period set out in section 23(1) of the RAF Act expired.

The RAF did not lead any evidence to substantiate the facts averred in its special pleas, or submit a stated case for consideration. It thus had the onus to prove its defences. The court considered whether the plaintiff's claim had substantially complied with the RAF Act. After considering the authorities on substantial compliance and the facts in *casu*, the court concluded that:

> "[18] It is one thing to allege certain facts, but a different matter to prove those facts. As mentioned, the *facta probantia* to be relied upon by the RAF are missing. The three special pleas were dismissed for the reasons advanced herein."

Caster v Road Accident Fund (224/2024) [2025] ZAECQBHC 42 (30 October 2025)

The plaintiff's husband had been killed in a motor vehicle accident. She submitted a claim, on behalf of herself and her two minor children, to the RAF for loss of maintenance and support. The RAF objected to the claim and the plaintiff instituted action against it. The RAF contended that the plaintiff's claim against it had prescribed.

The issues for determination were whether the :
(i) plaintiff had lodged documents including the deceased's identity document; and

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(ii) claim was non-compliant because an actuarial report had not been included.

The RAF was not in a position to dispute that the deceased's identity document had been submitted. The question in (i) was thus disposed of.

The plaintiff's case was that:
- it is not a valid requirement that an actuarial report be furnished with the lodgement of claim documents;
- the Board Notice had been declared invalid in the *LPIIF* case;
- the Board Notice related RAF1 form had been reviewed, declared unlawful and set aside;
- therefore, the 2008 RAF1 prescribed form contemplated in section 24(1)(a) of the RAF Act was deemed to be the appropriate form. That form made no mention of the requirement to submit an actuarial report; and
- she had substantially complied with section 24 of the RAF Act.

The RAF's submissions were that the:
- plaintiff had not complied with section 24 of the RAF Act;
- requirements are that a claim for compensation and the accompanying medical report under section 17(1)(a) be set out in the prescribed form, completed in all its particulars;
- plaintiff's claim was invalid because it was not substantially compliant; and
- plaintiff ought to have cured the objection before the claim prescribed.

The court:
- agreed with the full court's reasoning and finding in the *LPIIF* case that the Board Notice linked RAF1 form is unlawful and set aside;
- expressed similar sentiments in respect of the Board Notice;
- had regard to *Road Accident Fund v Busuku* 2023 (4) SA 507 (SCA) at paragraph 16, and concluded that:

> "[13]… Having had regard to the omission of the Actuarial report by the plaintiff under the circumstances, I cannot non-suited (sic) the plaintiff. The plaintiff has through the other documentation or information attached substantially complied with the provisions of section 24 of the Act. The Actuarial calculation is only relevant to the quantum. It has nothing to do with the investigation of the claim. The plaintiff has therefore substantially complied with the requirements of the Act."

The special plea was thus dismissed with costs.

Board Notice 58 of 2021

In addition to the litigation in the *LPIIF* case, the tranche of litigation relating to Board Notice 58 of 2021 is still ongoing. The RAF was granted leave to appeal in that case (*Road Accident Fund & Others v Mautla and Others* (414/2024) [2025] ZASCA 200 (19 December 2025)). The same legal teams are involved in both matters (*LPIIF* and *Mautla*). The *Mautla* matter has not been heard yet by the SCA. We will also keep the profession appraised on how this tranche of litigation unfolds.