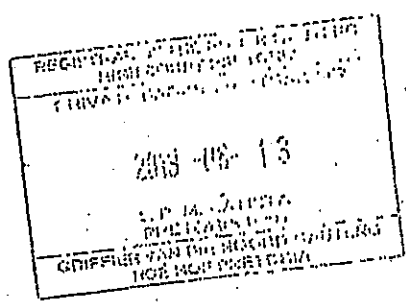


IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

Case No 49616/13

In the matter between:

LE GRELLIER GAIL
BOTH A RENIER
LEPAR DAVID
SMITH CAREL
and

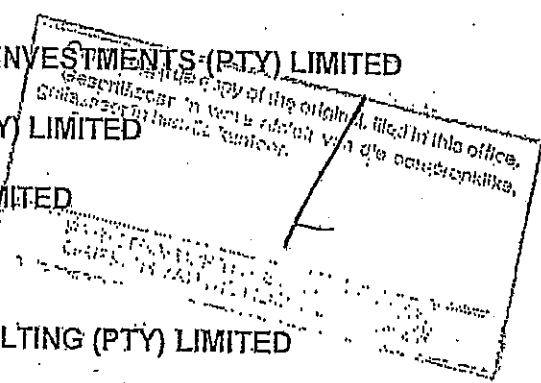


First Applicant
Second Applicant
Third Applicant
Fourth Applicant

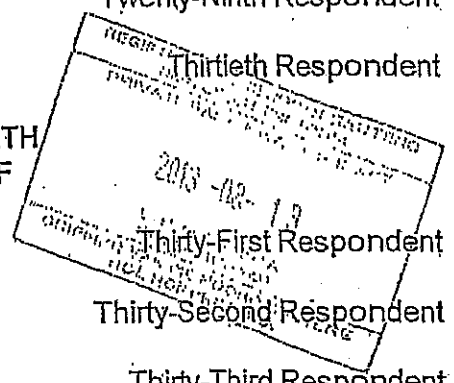
LUKHIMANE M.A. N.O.

AFFIRM MARKETING SERVICES (PTY) LIMITED
BEEFMASTER (PTY) LIMITED
H BIRKENMEYER (PTY) LIMITED
DR GEBKA, HELLIG & KLUG INC.
DR RITZ INC.
ETERNAL FLAME INVESTMENTS (PTY) LIMITED
EXPECTRA 89 (PTY) LIMITED
HESTICO (PTY) LIMITED
HETTAS CC
CONVISTA CONSULTING (PTY) LIMITED
IDI TECHNOLOGY SOLUTIONS (PTY) LIMITED
PROGRESSIVE PACKAGING (PTY) LIMITED
WORLD CARGO SERVICES (PTY) LIMITED
CONDUIT RISK AND INSURANCE
HOLDINGS (PTY) LIMITED

First Respondent
Second Respondent
Third Respondent
Fourth Respondent
Fifth Respondent
Sixth Respondent
Seventh Respondent
Eighth Respondent
Ninth Respondent
Tenth Respondent
Eleventh Respondent
Twelfth Respondent
Thirteenth Respondent
Fourteenth Respondent
Fifteenth Respondent



| | |
|--|---------------------------|
| DELL COMPUTER (PTY) LIMITED | Sixteenth Respondent |
| THE BRAND UNION (PTY) LIMITED | Seventeenth Respondent |
| ULTRA LITHO (PTY) LIMITED | Eighteenth Respondent |
| NEWSCLIP MEDIA MONITORING (PTY) LIMITED | Nineteenth Respondent |
| MIXTEC CC | Twentieth Respondent |
| PETROMARK (PTY) LIMITED | Twenty-First Respondent |
| DEHTEQ (PTY) LIMITED | Twenty-Second Respondent |
| WAVELENGTHS 32 (PTY) LIMITED t/a INSALO COMMUNICATIONS | Twenty-Third Respondent |
| PANORAMIC COMPONENTS (PTY) LIMITED | Twenty-Fourth Respondent |
| CHICKEN MANAGEMENT SERVICES (PTY) LIMITED | Twenty-Fifth Respondent |
| HANSEN TRANSMISSIONS (PTY) LIMITED | Twenty-Sixth Respondent |
| ENABLEMED (PTY) LIMITED | Twenty-Seventh Respondent |
| PRIMESERV GROUP LIMITED | Twenty-Eight Respondent |
| THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS | Twenty-Ninth Respondent |
| JOHANNESBURG CHILD WELFARE SOCIETY | Thirtieth Respondent |
| THE EMPLOYEES OF THE SECOND TO THIRTIETH RESPONDENTS WHO ARE MEMBERS OF THE IF UMBRELLA PROVIDENT FUND AND THE IF UMBRELLA PENSION FUND | Thirty-First Respondent |
| IF UMBRELLA PROVIDENT FUND | Thirty-Second Respondent |
| IF UMBRELLA PENSION FUND | Thirty-Third Respondent |



TAKE NOTICE that the applicants intend making application to this honourable Court for the following order:

1. The first respondent's determination under reference number PFAWE/6292/2011/SM dated 3 July 2013 made in terms of section 30M of the Pension Funds Act 24 of 1956 be set aside ("the first respondent's determination");
2. The first respondent's determination be substituted with an order dismissing the second to thirty-second respondents' complaint filed on 3 May 2011 and dismissing the sixteenth respondent's supplementary complaint dated 7 May 2013, alternatively, the matter be remitted to the first respondent for the hearing of oral evidence;
3. No order as to costs be made, save in the event of any of the respondents opposing this application, in which event such respondent be ordered to pay the costs;
4. Further and/or alternative relief.

TAKE NOTICE FURTHER that the affidavit of the first applicant and the annexures thereto will be used in support hereof.

TAKE NOTICE FURTHER that the applicants have appointed the offices of ROUTLEDGE MODISE INC. c/o Jacobson & Levy Inc. at the address set out below at which they will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER that if the respondents intend opposing the relief sought herein, the respondents are required:

- (a) to notify the applicants' attorneys of their intention to oppose this application, in writing, within five days of this application being served upon them;
- (b) within 15 days after having so given notice of their intention to oppose this application, to file their answering affidavit(s) if any; and
- (c) to appoint in such notification an address referred to in Rule 6(5)(b) at which they will accept notice and service of all documents in these proceedings.

TAKE NOTICE FURTHER that if no such notice of intention to oppose be given, the application will be made on 9 October 2013 at 10h00 or so soon thereafter as counsel may be heard.

SIGNED at PRETORIA on 13th AUGUST 2013

(Sgd) **J. LEVY**

ROUTLEDGE MODISE INC.
Attorneys for the applicants
22 Fredman Drive
Sandton
P.O Box 78333, Sandton City 2147
Docex 7 Sandton Square
Tel: 011 523 6286
Fax: 086 743 2729
Email: hunter@rmlaw.co.za
Ref: I33213/Mr Thyne/Ms D! Siena
c/o Jacobson & Levy
215 Orient Street
Arcadia
Pretoria
J LEVY / DB / L11752

TO: THE REGISTRAR OF THIS
HONOURABLE COURT
PRETORIA

AND TO: M A LUKHIMANE N.O.
The first respondent
Pension Funds Adjudicator
4th Floor
Riverwalk Office Park
Block A,
41 Matroosberg Road
Ashlea Gardens.
Pretoria

AND TO: THE SECOND TO THIRTY-FIRST RESPONDENTS
who by agreement will accept service at the address
of their attorneys at JONATHAN MORT INC
at c/o JONATHAN MORT INC
Attorneys for the second to thirty-first respondents
3A Sir George Grey Street
Oranjezicht
8001

AND TO: THE THIRTY-SECOND AND THIRTY-THIRD RESPONDENTS
3rd Floor, North Wing
Oakhurst
11 St Andrews Street
Parktown
2001

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

Case No _____

In the matter between:

| | |
|-------------------------|------------------|
| LE GRELLIER GAIL | First Applicant |
| BOTHA RENIER | Second Applicant |
| LEPAR DAVID | Third Applicant |
| SMITH CAREL | Fourth Applicant |

and

| | |
|--|------------------------|
| LUKHIMANE M.A. N.O. | First Respondent |
| AFFIRM MARKETING SERVICES (PTY) LIMITED | Second Respondent |
| BEEFMASTER (PTY) LIMITED | Third Respondent |
| H BIRKENMEYER (PTY) LIMITED | Fourth Respondent |
| DR GEBKA, HELBIG & KLUG INC. | Fifth Respondent |
| DR RITZ INC. | Sixth Respondent |
| ETERNAL FLAME INVESTMENTS (PTY) LIMITED | Seventh Respondent |
| EXPECTRA 89 (PTY) LIMITED | Eighth Respondent |
| HESTICO (PTY) LIMITED | Ninth Respondent |
| HETTAS CC | Tenth Respondent |
| CONVISTA CONSULTING (PTY) LIMITED | Eleventh Respondent |
| IDI TECHNOLOGY SOLUTIONS (PTY) LIMITED | Twelfth Respondent |
| PROGRESSIVE PACKAGING (PTY) LIMITED | Thirteenth Respondent |
| WORLD CARGO SERVICES (PTY) LIMITED | Fourteenth Respondent |
| CONDUIT RISK AND INSURANCE | |
| HOLDINGS (PTY) LIMITED | Fifteenth Respondent |
| DELL COMPUTER (PTY) LIMITED | Sixteenth Respondent |
| THE BRAND UNION (PTY) LIMITED | Seventeenth Respondent |
| ULTRA LITHO (PTY) LIMITED | Eighteenth Respondent |

Wester

| | |
|--|---------------------------|
| NEWSCLIP MEDIA MONITORING (PTY) LIMITED | Nineteenth Respondent |
| MIXTEC CC | Twentieth Respondent |
| PETROMARK (PTY) LIMITED | Twenty-First Respondent |
| DEHTEQ (PTY) LIMITED | Twenty-Second Respondent |
| WAVELENGTHS 32 (PTY) LIMITED t/a INSALO COMMUNICATIONS | Twenty-Third Respondent |
| PANORAMIC COMPONENTS (PTY) LIMITED | Twenty-Fourth Respondent |
| CHICKEN MANAGEMENT SERVICES (PTY) LIMITED | Twenty-Fifth Respondent |
| HANSEN TRANSMISSIONS (PTY) LIMITED | Twenty-Sixth Respondent |
| ENABLEMED (PTY) LIMITED | Twenty-Seventh Respondent |
| PRIMESERV GROUP LIMITED | Twenty-Eight Respondent |
| THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS | Twenty-Ninth Respondent |
| JOHANNESBURG CHILD WELFARE SOCIETY | Thirtieth Respondent |
| THE EMPLOYEES OF THE SECOND TO THIRTIETH RESPONDENTS WHO ARE MEMBERS OF THE IF UMBRELLA PROVIDENT FUND AND THE IF UMBRELLA PENSION FUND | Thirty-First Respondent |
| IF UMBRELLA PROVIDENT FUND | Thirty-Second Respondent |
| IF UMBRELLA PENSION FUND | Thirty-Third Respondent |

FOUNDING AFFIDAVIT

I, the undersigned

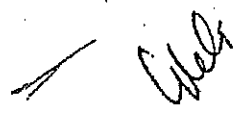
GAIL DENISE LE GRELLIER

do hereby make oath as follows:

11/02

1. I am:
 - 1.1. a major female, former trustee of the 32nd and 33rd respondents, and for purposes of these proceedings care of Routledge Modise Inc. situate at 22 Fredman Drive, Sandown, Sandton, Gauteng;
 - 1.2. the first applicant in this matter and duly authorised to depose to this affidavit on behalf of the second to fourth applicants, as is evident from the confirmatory affidavits annexed hereto marked **GL1** to **GL3** respectively.
2. The facts contained herein fall within my personal knowledge, unless the context indicates otherwise, and are to the best of my belief both true and correct.
3. Legal conclusions arrived at herein are on the advice of the applicants' legal representatives, which I accept as correct.

THE PARTIES

4. The second applicant is Renier Botha ("Botha"), a major male, former trustee of the 32nd and 33rd respondents, and for purposes of these
- 

proceedings care of Routledge Modise Inc. situate at 22 Fredman Drive, Sandown, Sandton, Gauteng.

5. The third applicant is David Lepar ("Lepar"), a major male, former trustee of the 32nd and 33rd respondents, and for purposes of these proceedings care of Routledge Modise Inc. situate at 22 Fredman Drive, Sandown, Sandton, Gauteng.

6. The fourth applicant is Carel Smith ("Smith"), a major male, former trustee of the 32nd and 33rd respondents, and for purposes of these proceedings care of Routledge Modise Inc. situate at 22 Fredman Drive, Sandown, Sandton, Gauteng.

7. The first respondent is M.A. Lukhimane N.O., a major female, cited in her capacity as the pension fund's adjudicator ("the Adjudicator"). The Adjudicator has been appointed as such in terms of section 30C of the Pension Funds Act 24 of 1956 ("the PFA"), employed at 4th Floor, Riverwalk Office Park, Block A, 41 Matroosberg Road, Ashlea Gardens, Pretoria, Gauteng.

8. The second respondent is Affirm Marketing Services (Pty) Limited, a company duly registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered address at 7 Pam Road, Morningside Extension 5, Johannesburg, 2196, Gauteng.

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- 9. The third respondent is Beefmaster (Pty) Limited, a company duly registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered address at 86 Peter Mokaba Avenue, Potchefstroom, 2531, North West Province.

- 10. The fourth respondent is H Birkenmeyer (Pty) Limited, a company duly registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered address at 1st Floor, Willow Grove, Grove City, 196 Louis Botha Avenue, Johannesburg, 2041, Gauteng.

- 11. The fifth respondent is Drs Gebka, Hellig & Klug Inc. a company duly registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered address at 20 Cestrum Avenue, Morningside Extension 40, Johannesburg, 2146, Gauteng.

- 12. The sixth respondent is Dr Ritz Inc. a company duly registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered address at Cedarwood Office Park, Giuricich Bros Building, Mount Lebanon Road, Johannesburg, 2128, Gauteng.

- 13. The seventh respondent is Eternal Flame Investments (Pty) Limited, a company duly registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered address at 24A Taute Street, Ermelo, 2351, Mpumalanga .

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14. The eighth respondent is Expectra 89 (Pty) Limited, a company duly registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered address at 34 Boland Street, Sonnedale, Honeydew, Johannesburg, 2040, Gauteng.
15. The ninth respondent is Hestico (Pty) Limited, a company duly registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered address at 42 Lembombo Street, Ashley Gardens, Menlo Park, Pretoria, 0081, Gauteng.
16. The tenth respondent is Hettas CC, a close corporation whose further details are to the applicants unknown, but has at all material times been represented by Jonathan Mort Inc. with principal place of business at 3A Sir George Grey Street, Oranjezicht, Cape Town, 8001, Western Cape.
17. The eleventh respondent is Convista Consulting (Pty) Limited, a company duly registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered address at Mazars House, Rialto Road, Grand Moorings Precinct, Cape Town, 7441, Western Cape.
18. The twelfth respondent is IDI Technology Solutions (Pty) Limited, a company duly registered and incorporated in accordance with the laws of

the Republic of South Africa, with its registered address at 75 Malibongwe Drive, Linden Extension, Johannesburg, 2194, Gauteng.

19. The thirteenth respondent is Progressive Packaging (Pty) Limited, a company duly registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered address at 5 Linkridge East, John Avenue, Bedford Park, Johannesburg, 2007, Gauteng.
20. The fourteenth respondent is World Cargo Services (Pty) Limited, a company duly registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered address at Suite 7, Denavo House, 15 York Street, Kensington B, Randburg, Johannesburg, 2194, Gauteng.
21. The fifteenth respondent is Conduit Risk and Insurance Holdings (Pty) Limited, a company duly registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered address at Unit 3, Tulbagh, 360 Oak Avenue, Randburg, Johannesburg, 2194, Gauteng.
22. The sixteenth respondent is Dell Computer (Pty) Limited ("Dell"), a company duly registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered address at the Campus,

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Wembley Building, Cnr Main and Sloane Streets, Bryanston, Johannesburg, 2021, Gauteng.

23. The seventeenth respondent is The Brand Union (Pty) Limited, a company duly registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered address at 4th Floor, Aloe Grove, 196 Louis Botha Avenue, Houghton Estate, Johannesburg, 2198, Gauteng.
24. The eighteenth respondent is Ultra Litho (Pty) Limited, a company duly registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered address at 24 Stirrup Avenue, Woodmead Office Park, Woodmead, Johannesburg, 2191, Gauteng.
25. The nineteenth respondent is Newsclip Media Monitoring (Pty) Limited, a company duly registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered address at JG Strydom and Springhaas Road, Weltevreden Park, Johannesburg, 1709, Gauteng.
26. The twentieth respondent is Mixtec CC, a close corporation duly registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered address at 59 Fleming Road, Meadowdale, Kempton Park, Johannesburg, 1401, Gauteng.

27. The twenty-first respondent is Petromark (Pty) Limited, a company duly registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered address at 2 Foreman Road, Spartan Extension 3, Edenvale, Johannesburg, Gauteng.
28. The twenty-second respondent is Dehteq (Pty) Limited, a company duly registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered address at 1st Floor Block D, St Andrews Office Park, Meadowbrook Lane, Johannesburg, 2191, Gauteng.
29. The twenty-third respondent is Wavelengths 32 (Pty) Limited t/a Insalo Communications, a company duly registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered address at Suite 3 Bracken City, Cnr Hennie Alberts and Rae Frankel, Brackenhurst, Johannesburg, 1449, Gauteng.
30. The twenty-fourth respondent is Panoramic Components (Pty) Limited, a company duly registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered address at Unit 4, 27 Linksfield Road, Dunvegan, Johannesburg, 1609, Gauteng.
31. The twenty-fifth respondent is Chicken Management Services (Pty) Limited, a company duly registered and incorporated in accordance with

the laws of the Republic of South Africa, with its registered address at 22 Eland Street, Koedoespoort, Pretoria, 0186, Gauteng.

32. The twenty-sixth respondent is Hansen Transmissions (Pty) Limited, a company duly registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered address at 14 Griffiths Road, Jet Park, Boksburg, 1459, Gauteng.
33. The twenty-seventh respondent is Enabledem (Pty) Limited, a company duly registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered address at EOH Business Park, Gilfooly's View, Osborne Lane, Johannesburg, 2007, Gauteng.
34. The twenty-eighth respondent is Primserv Group Limited, a company duly registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered address at Ground Floor, Venture House, Peter Place Park, 54 Peter Place, Bryanston, Johannesburg, 2021, Gauteng.
35. The twenty-ninth respondent is the Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints, an external company duly registered and incorporated in terms of the laws of the Republic of South Africa, with its registered address at 5a Jubilee Avenue, Parktown, Johannesburg, 2193, Gauteng.



36. The thirtieth respondent is the Johannesburg Child Welfare Society, a non-profit organisation with its principal place of business at 1st Floor, Edura House, 41 Fox Street, Johannesburg, Gauteng.
37. The thirty-first respondent comprises of the employees of the second to thirtieth respondents, who are members of the thirty-second and thirty-third respondents, whose identities and particulars are to the applicants unknown.
38. The thirty-second respondent is the IF Umbrella Provident Fund, a pension fund organisation registered in terms of section 4 of the PFA and consequently a body corporate capable of suing and being sued in its own name.
39. The thirty-third respondent is the IF Umbrella Pension Fund, a pension fund organisation registered in terms of section 4 of the PFA and consequently a body corporate capable of suing and being sued in its own name.
40. For convenience:
- 40.1. the 33rd and 34th respondents will be referred to herein collectively as "the Funds", due to the fact that their board of trustees comprise of the same people, the facts applicable to

each of the Funds are similar and everything that is said in respect of one is generally applicable to the other, unless the context indicates otherwise;

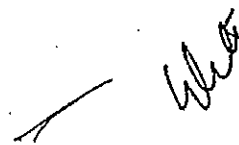
40.2. where it is necessary to refer to the 33rd and 34th respondents individually, I will refer to them as "the IF Umbrella Provident Fund" and "the IF Umbrella Pension Fund" respectively.

41. No costs order is sought against any of the respondents, save in the event of any of them opposing the application, in which event a costs order will be sought against such respondent.

42. The second to twenty-sixth respondents are employers participating in the IF Umbrella Provident Fund. The twenty seventh to thirtieth respondents are employers participating in the IF Umbrella Pension Fund. They, together with the thirty first respondent will, for convenience, be referred to herein as "the complainants".

THE PURPOSE OF THIS APPLICATION

43. On 3 May 2011 the complainants lodged a complaint with the Adjudicator in terms of section 30A of the PFA. This resulted in the Adjudicator, on 31 July 2012, giving a determination against the Funds. On 5 February 2013, the Adjudicator's determination was set aside by this honourable

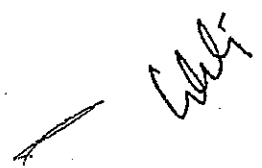


Court and the complaint was remitted to the Adjudicator to *inter alia* enable the complainants to pursue relief against the Fund's former trustees, being the applicants in the present matter.

44. Following this, on 3 July 2013, the Adjudicator gave a determination against the applicants, which forms the subject-matter of this application. The applicants seek an order in terms of section 30P of the PFA for the setting aside of the Adjudicator's determination, and substituting it with an order dismissing the complaint filed on 3 May 2011 and dismissing the sixteenth respondent's supplementary complaint dated 7 May 2013, alternatively, the matter be remitted to the first respondent for the hearing of oral evidence.

JURISDICTION

45. This honourable Court has jurisdiction to hear this matter in that:
- 45.1. the Adjudicator's principal place of business is within the area of jurisdiction of this honourable Court;
- 45.2. the complaint which forms the subject matter of the Adjudicator's determination was a complaint against decisions by the Funds, which were made within the jurisdiction of this Honourable Court;



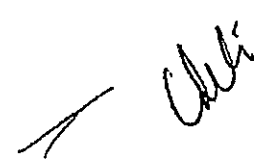
45.3. the Adjudicator made the determination within the jurisdiction of this Honourable Court;

45.4. the Funds are situated within the jurisdiction of this Honourable Court; and

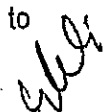
45.5. the second, fourth to sixth, eighth, twelfth to twentieth, twenty-second, twenty-fourth, twenty-sixth, twenty-eighth and twenty-ninth respondents' registered addresses are all within the jurisdiction of this Honourable Court.

FACTUAL MATRIX

46. The Funds were established on 1 January 2004. The Funds fall within the definition of a "defined contribution category of a fund" as defined in the PFA and the Funds' rules are registered with the Financial Services Board ("FSB") and the South African Revenue Service. I annex hereto copies of the Funds' rules, including the three amendments that were effected thereto, marked GL4 and GL5 respectively. In terms of section 13 of the PFA, the Funds' rules are binding on the Funds, their boards of trustees and their members.



47. In terms of sections 4 and 5 of the PFA, the Funds own their own assets in their own names, to the exclusion of their members, boards of trustees, and the employers participating in the Funds.
48. The Funds' assets are monies contributed to the Funds in accordance with their rules and held in the Funds or invested in the Funds' names for the ultimate benefit of the Funds' members.
49. The exact Rand amount held in the Funds for the ultimate benefit of a member at any given moment is known as a member's "*Fund Credit*". A member's Fund Credit is not an asset of a member until the value of the Fund Credit accrues to the Member upon his/her exit from the Funds whether by his/her withdrawal, retirement or death in terms of the Fund rules. The Fund credit is thus a *spes* (a hope) that a member has to a future benefit.
50. A member thus has no claim to any asset of the Funds or the value of his or her Fund Credit while he or she remains a member of the Funds. It is only on the date when a member accrues a benefit, on withdrawal, death or retirement, that a member becomes entitled to a share of the assets of the Funds, namely the value of the Member's Fund Credit.
51. At the time that I became a trustee, the Funds' administrator was Dynam-ique Consultants and Actuaries (Pty) Limited ("Dynam-ique"). Prior to



this, the Funds' administrator had been Integrated Futures (Pty) Limited ("Integrated").

52. From the outset, it is important to note that the applicants were not the first board of trustees of the Funds. As I have mentioned above, the Funds were established on 1 January 2004. Botha was appointed as a trustee on 13 March 2006, 26 months after the Funds were established; I was appointed as a trustee on 22 November 2006, 34 months after the Funds were established; and Lepar and Smith were appointed as trustees on 9 July 2008, 55 months after the Funds were established.

53. Prior to this, Kamionsky, who was also a director and the controlling mind of Dynam-ique, was a trustee. So too was Lorraine Jager ("Jager"), Claire Mol ("Mol"), Tammy Murewa ("Murewa") and Brian Rosen ("Rosen").

54. Prior to my, Lepar and Smith's appointments as trustees, the following was recorded in the minutes of the trustees meeting dated 27 September 2006, a copy of which is annexed hereto marked **GL6**:

"It was brought to the attention of the Trustees that the Financials have not yet been submitted and an extension was originally granted and followed by a blanket extension which was granted to all the schemes. It was suggested that another request should be

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[Handwritten signature]

made for a further short extension although it is understood the chances of getting a new extension were minimal."

55. Insofar as Botha is concerned, I point out, that at that stage, he had been acting as a trustee for merely six months and clearly could not be blamed for the absence of financials. Smith, Lepar and I had yet to be appointed as trustees.

56. The issue pertaining to the lack of financials was thus something which the applicants had inherited, when they were appointed as trustees, and did not arise or result from our term of office.

57. In the first trustees' meeting which I attended on 22 November 2006, the following is recorded:

"[Kamionsky] requested [Murewa] to give an update on how far the auditors were in finalising the 2005/2006 audit... The audit for both the IF Umbrella Pension and Provident Funds were still underway and with these audits [Murewa] had a concern that the auditor was taking too long. [Murewa] advised that the funds were currently enjoying the blanket extension which applies to the 2005/2006 audit period, but she would ensure that the audits are completed as soon as possible..."

OM tabled the Administration Report detailing the following:



a) *Investment Policy Reports as at 31 October 2006*

b) *contributions for the period 1 August 2006 to 31 October 2006*

c) *Schedule of claims paid for the period 1 August 2006 to 31 October 2006*

d) *Schedule of outstanding claims as at 31 October 2006*

e) *Membership Statistics for the period 1 August 2006 to 31 October 2006*

There were some issues relating to the above reports and the trustees needed clarification on them. At this stage Ms Busisiwe Mfusi, the Head of Administration from [Dynam-i-que], was called into the meeting. Busisiwe addressed the queries and informed the trustees that [Dynam-i-que was] implementing a Workflow system in 2007 which would allow for more comprehensive and accurate reporting on the claims paid and the outstanding claims.

The trustees requested that in future the Admin reports across the two sets of umbrella funds be standardised wherever possible. OM will request this from the administrator...

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The Trustees requested that for all future meetings they be given feedback on all the following compliance issues:

- a. Regulation 28 compliance
- b. Audited Financials
- c. Late or non-payment of contributions
- d. Forex reports
- e. [Retirement Funds Tax]"

A copy of the minutes of that meeting is annexed hereto marked GL7.

58. I point out the following in respect of the minutes:

58.1. with the benefit of hindsight, it is apparent that the industry's blanket extension and the consequent lateness of the completion of the financial statements enabled the erstwhile trustees of the Funds and/or the administrators (Integrated and/or Dynam-lque, the applicants are unsure) to mask certain other administrative and/or accounting problems that were causing the non-completion and filing of the Fund's financials with the FSB;

- 58.2. notwithstanding this, the applicants/trustees were promised that the financials would be completed as soon as possible;
- 58.3. after the trustees had interrogated the administration reports, we were advised that a new workflow system that was to be implemented would result in better reporting. We accepted this.
59. At the next meeting held on 22 March 2007 the following is of significance as recorded in the minute for that meeting:

"With regards to the IF Umbrella Funds the Pension Fund audit queries have been resolved by Dynam-ique SA and the documents were ready to be sent to the auditors. The IF Provident Fund was not yet ready and they were expecting it to be ready shortly..."

The Trustees brought up a point regarding whether the Trustees had the authority to change the administrator of these funds. As the Rules stand they do not as the Rules specify the administrator to be Dynam-ique SA as opposed to any registered administrator appointed by the Trustees. The Independent trustees noted their concern with not having the option available of changing administrators..."

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The trustees expressed some dissatisfaction about the way the reports were presented, both in terms of the content (there was missing information) and in terms of the format (the reports had been distributed via e-mail which means the Trustees had to print them)...

The reports should also include contributions paid late and date invested. Bank balances should be made available for all the funds. The Trustees would also like to receive exception reporting wherever possible. In future the Head of Administration should be available to answer queries that trustees may have regarding the reports...

The trustees would like to have [the report on compliance issues] to ensure that the funds were compliant at all times."

A copy of the minutes is annexed hereto marked GL8.

60. It is apparent from the minutes that:

60.1. Botha and I were assured that the IF Umbrella Pension Fund audit queries had been resolved by Dynam-ique and the documents were ready to be sent to the auditors. We were not, however, given details of what the audit queries were, nor were we given copies of the documents which were to be sent

WLS

to the auditors. Although dissatisfied with this, at that stage, we felt that we had no option but to trust what Dynam-ique had told us and that the auditors would resolve any issues;

60.2. Botha and I were advised that the documents required for the audit of the IF Umbrella Provident Fund were not yet ready, but we were promised that Dynam-ique was expecting them to be ready shortly. Once again, in the circumstances and at that stage, we had little option but to accept these assurances;

60.3. we were, however, becoming concerned about Dynam-ique's poor performance and empty promises, which was why we raised our concern about the possibility of changing administrators. Although the minutes do not record this, I recall a much more robust discussion taking place and that I had to explain to Kamionsky in some detail about the separateness of the Funds from the administrator. Kamionsky seemed to be of the view that the administrator somehow "owned" the Funds as its product and that the trustees did not have the power to change those arrangements.

61. Botha and I were also concerned that the administration reporting remained weak and it seemed as if the persons doing the reporting had

Chels

no idea of the norms and standards expected of administrators in the industry.

62. On 24 May 2007, I sent an email to Kamionsky advising him *inter alia* that:

"Our primary duty is to the members of the fund (not the administrator) and as such, we have to act independently of the administrator. I know that this is difficult for you as you are wearing two hats – that is why it is absolutely imperative that myself and Renier know what is going on..."

A copy of my email and Kamionsky's response dated 24 May 2007 is annexed hereto marked **GL9**

63. On 5 July 2007 a special meeting of the trustees was held. The purpose was to address a complaint received by an intermediary, Mr Anthony Cohen, relating to the late allocation of monies in the Funds. I annex hereto a copy of the minutes marked **GL10**, from which the following is recorded:

"[Kamionsky] gave the trustees background to the problems that Dynam-ique SA had recently had on the IF Funds. The staff member looking after these funds had let Dynam-ique SA down and then the replacement staff member also let Dynam-ique SA down.

Cher

There had therefore been delays with the monthly allocations of monies. The situation was being addressed by Dynam-ique SA transferring one of their experienced existing staff members onto the IF Umbrella Funds to look after Anthony Cohen's funds and other intermediary's funds.

[Kamionsky] assured the trustees that he was taking Anthony Cohen's complaints seriously and was making every effort to ensure a smooth administration service is provided to all Dynam-ique SA's clients. In this regard Dynam-ique SA had employed an additional 6 staff members over the last 2 months to beef up their administration, accounting and technical teams.

The trustees pointed out that after the last trustee meeting based on the quality of the information provided they did feel that the administration was not where it should be and that they thought it was a matter of time before they get a complaint from either the fund members or the intermediaries. The Trustees are therefore glad that the problems are being addressed."

64. Botha and I took comfort from the fact that Dynam-ique had employed six new staff members and from the fact that we were assured that corrective action was being taken.

Chels

65. A further trustees' meeting was held in August 2007, but I do not have a copy of the minutes in my possession. I recall, however, that at this point I believed that Dynam-iqne required substantial guidance with the compliance and governance aspects of the Funds. Despite this, I did not believe that it would be in the Funds' best interests if Dynam-iqne was simply fired and replaced with another administrator, and thought that such a move would be premature. I also knew that such a drastic step would also likely be a protracted and confrontational process, given the fact that the board was equally weighted between administrator employed trustees and external/independent trustees. During this period, I resolved to guide the board of trustees mainly on the legal, compliance and governance aspects, which were my areas of expertise.
66. On 21 November 2007 the last regular meeting of trustees with Dynam-iqne as the administrator took place. The minutes, a copy of which is annexed hereto marked GL11, record the following:

"[Murewa] reported that there was still a stalemate with regards to the IF Umbrella Pension and Provident Funds with the problem being unreconciled items from the period that Integrated Futures were the administrator to the Funds. The Trustees expressed their concern at the risks that the Funds were exposed to with these unreconciled items and queried whether Dynam-iqne SA would be liable for any losses as a result of buying Integrated Futures.

WJ

[Kamionsky] advised that Dynam-ique SA took over the administration appointments of Integrated Future and did not buy the company Integrated Futures and hence had not taken over any of the liabilities of integrated futures. Mr Kamionsky advised that there could be a need once all the audits are completed and the related funding checks are completed for the fund to take action against Integrated Futures. The Trustees were of the view that it would be premature to take any legal action at this stage.

[Botha] advised that for this issue to be resolved a Forensic Auditor may need to be brought in... The Trustees instructed [Kamionsky] to get the financials completed as a matter of urgency. [Kamionsky] agreed to revert back to the Trustees within the next two weeks after the meeting with a firm audit plan and deadline...

An administration report had been circulated prior to the trustees meeting however [Botha] felt that the reports were not of the standard required by the trustees and as such it was felt that it was not worth discussing the reports. The trustees insisted that the administrator has to raise the standard and quality of reports for future meetings."

67. I point out the following regarding the minutes:

- 67.1. despite the previous promises and undertakings, there now seemed to be a shift in fact whereby Dynam-ique was blaming the previous administrator, Integrated, for all the accounting problems;
- 67.2. Botha and I started realising that since Dynam-ique did not have the competence and/or desire to resolve the accounting issues, a forensic auditor may be needed to resolve the issues;
- 67.3. Kamionsky never reverted to the trustees within two weeks after the meeting (or at all) with a "*firm audit plan and deadline*" as promised and instead sold Dynam-ique's business (I deal with this below);
- 67.4. the administration reports were still of a poor quality and virtually useless to the trustees, despite Dynam-ique previous promises and undertakings.
68. At that meeting it was also announced that Murewa would be leaving Dynam-ique at the end of the month and would consequently be resigning as a trustee. Kamionsky also suggested that given the need to improve the quality of the administration reporting to the trustees, a new

principal officer should be appointed, who had stronger administration abilities.

69. After this meeting, Botha and I were extremely concerned about Dynam-ique's poor performance and even considered resigning as trustees if it "did not get its act together". Given the fact that at this stage we were unsure of the exact nature and the extent of the accounting issues, were of the view that the most reasonable way of dealing with the administration problems, in the circumstances, was to continue pressuring Dynam-ique to fix the problems, rather than remove Dynam-ique, appoint a new administrator and pay a second time for the same job to be done.

70. As external or independent trustees, Botha and I were in an invidious position, it that there was an equal number of administrator-appointed trustees, which limited our capacity to act. In essence, these administrator-appointed trustees would in all likelihood not have agreed to the termination of Dynam-ique's appointment.

71. Shortly after that meeting, on 6 December 2007, I sent an email to Kamionsky, stating the following:

"It is around 2 weeks since our trustee meeting. We resolved that the administrator must come up with a plan to sort out the IF

Cher

Financials. The plan should include target dates etc. Please could we be advised of that plan (we decided on a deadline of 2 weeks). It is absolutely imperative that we get things going on this issue. It is vital for the membership that the financials are finalized, whatever that takes in order to do it. As I indicated, if Dynam-ique are unable to do the necessary, I suggest you call in Russell Lacey and Ludi Schulze of LSRC to assist you. As a trustee I am not happy with the situation at all and simply cannot allow it to continue. Kindly advise as a matter of extreme urgency."

72. Kamionsky replied to my email on 11 December 2007 as follows:

"I confirm we have now worked through the unreconciled items and have addressed what we can and what remains is not material. We are therefore proceeding with the audits and the unreconciled items will be allocated to an unreconciled account – I have cleared this with the FSB and they have accepted this approach. We therefore just need to put together our working papers which we will now start doing – with the holidays and allowing for some leeway I will look to book the auditors for the end of January. We will therefore make the new FSB blanket extension [date] of [M]arch 2008 and hence there will be no penalties. It is also good news for us as trustees that none of the unreconciled items are material."

Chick

A copy of my email and Kamionsky's response is annexed hereto marked GL12.

73. On 7 February 2008 a special meeting was convened. The trustees were advised that Aon South Africa (Pty) Limited ("Aon") had purchased Dynam-ique's business. This is the first time that Botha and I had been made aware that Dynam-ique had marketed its business for sale and that Aon had in fact purchased it. At this stage we had not had sight of the sale agreement. This news, however, was welcomed as, given the problems with the administration of Dynam-ique, a new reputable international service provider was regarded by us as a step forward for the Funds. A copy of the minute is annexed hereto marked GL13.
74. As I understand it, with effect from 1 February 2008, Aon bought the business of Dynam-ique, which encompassed *inter alia* Dynam-ique's pension fund administration portfolio. The administration of the Funds were thereby transferred from Dynam-ique to Aon, which proceeded to conclude new administration agreements with the Funds. Kamionsky, to the best of my knowledge, resigned as a trustee in February 2008.
75. At the meeting we were given a detailed presentation by Ian Young ("Young") of Aon, who was to become the new principal officer of the Funds and was Aon's head of retirement administration at the time. Kamionsky advised the trustees that the upside for the Funds included

the financial backing that Aon had, which Dynam-ique could not provide. The presentation was impressive, which resulted in the trustees resolving to appoint Aon as the new administrator to the Funds with effect from 1 February 2008. Following the meeting, the trustees also decided to appoint Costas Vakis ("Vakis") from VVR and Company ("VVR") as the new auditor of the Funds.

- 76. The next meeting was held on 9 July 2008. At this meeting Lepar and Smith were appointed by the administrator, Aon, as trustees. The minutes, attached hereto marked GL14, record the following:

"The Trustees requested an update on the status of the audit by VVR and Sponsor advised that they were to start the audit of the funds immediately..."

It was also noted that Mr Kamionsky had undertaken to pay for any errors that occurred prior to the Funds' transfer to Aon and that, the funds had adequate cover through Camargue Underwriters...

Concerns were raised regarding the poor administration and management of the funds by Dynam-ique.

Mr Smith pointed out that, after reviewing the minutes of the meeting held on 27 February 2008, he agreed there were serious problems with the funds. He stressed that stringent measures had to

be put in place to remedy the situation. Mr Smith proposed that the two Independent Trustees establish a committee to monitor the administration and the following was agreed:

- *Gail Grellier would head an administration committee assisted by Mr Botha and Mrs Stollerfoht. Mr Botha would focus on the outstanding audits."*

77. Following this, I immediately became involved in assisting Aon to deal with the issues faced by the Funds. In addition to attending at trustees' meetings, I also met regularly with Young and various administration staff. I point out that my meetings were largely geared at the current administration (and not the historical mess that had been inherited) and ensuring that proper processes and reporting were put in place for the Funds.

78. Aon also retained the services of the Dynam-i-que legal adviser (Cassim Patel). I recall a number of meetings with him where I had to guide him as to how to handle rule amendments, resolutions etc. He did not seem to have any idea how to manage these issues, for example he simply arranged for the internal trustees to sign off amendments to the rules without ensuring that they were appropriately adopted at trustee meetings or via round robin resolution.

Wick

79. I also remained very involved with the death claims and met regularly with Oswald Mokoena (also an ex-Dynam-ique employee) to assist him with the distributions. All of this involvement was above the ordinary oversight functions of a trustee and included dealing with operational matters. I mentioned to Young and other representatives of Aon a few times that they should remove the ex-Dynam-ique staff from involvement with the Funds. I believed that continuing with them resulted in problems not being dealt with as soon as they should have been by Aon.

80. The next meeting was held on 17 September 2008. The minutes record the following:

"Ms le Grellier updated the meeting on the administration process of the funds and confirmed that she was satisfied with the current processes that was put in place by Aon, i.e. moving the claims, updates and accounts to Aon's administration division. Mr Lepar also confirmed that after speaking to the administration staff, he is more comfortable with the administration of the funds..."

Mr Vakis provided the Trustees with feedback on the IF Umbrella Funds' audits and the following was noted:

IF Umbrella Funds

• The fieldwork had been completed on the 2006 audits.

Wes

- *He advised that these unsigned financials (without an opinion) should be submitted to the Financial Services Board as soon as possible to avoid penalties for late submissions.*

It was agreed that the financial drafts be distributed to the Trustees by mid-October for review and that a meeting then be set up with the FSB for the submission of the financials.

It was further agreed that Mr Vakis would provide the Trustees with a Statement of Responsibility for signature by the Trustees that would accompany the financials along with an audit strategy plan that would be provided by Mr Young.

Audit Timelines and Cost Proposal

The Trustees had been provided with a cost and timeline proposal by Mr Vakis for the audits going forward and Mr Young took the Trustees through this.

The proposed timeline and audit costs were reviewed and approved by the Trustees. It was also agreed that Mr Vakis would provide the Trustees with a project plan for the audits. He also confirmed that he would provide monthly updates on the audits.

[Handwritten signature]

Mr le Grellier raised a question as to the liability aspect for paying additional audit costs incurred by the Fund. It was agreed that exorbitant costs would be referred to the relevant liable parties for settlement as identified...

Mr Young presented two resolutions at the meeting for Trustees approval and signature, appointing VVR & Company as auditors to both the Dynam-ique SA and IF Umbrella Funds respectively...

Mr Young suggested that each Participating Employer's investments be reviewed separately in order to quantify existing discrepancies before attempting to reconcile the Umbrella Funds' investments."

A copy of the minutes is annexed hereto marked **GL15**.

81. The next meeting was held on 8 December 2008. The minutes, attached hereto marked **GL16**, record the following:

"Mr Young discussed the VVR audit plan with the Trustees and requested that Mr Botha set up a meeting with the auditors in March 2009 to discuss the audit plan which will then be presented at a meeting with the Financial Services Board early in 2009. It was agreed that Mr Young would liaise with Mr Costas Vakis on this matter as well and that Mr Vakis should attend all future Trustees meetings."

WV

82. At the next meeting held on 30 March 2009, the following was discussed:

"Messrs Vakis and Pillay provided the Trustees with an update on the respective audits as follows:

- *Meeting with Financial Services Board: A meeting was held with the FSB in February 2009 to provide them with an audit plan for the four Funds. Mr Pillay was requested to provide the FSB with a report on timelines for draft annual financial statements for the various Funds by 31 March 2009.*
- *IF Umbrella Funds: The deadlines for the audits were delayed due to unforeseen circumstances and audits would commence this week for both Funds...*
- *Additional Resources: It was confirmed that all junior accounts personnel had been replaced by senior fund accountants to ensure all aspects of the funds are kept up to date...*

Ms le Grellier proposed that an Expense Reserve Account be opened for each Fund which will be used to pay ad-hoc expenses incurred such as FSB levies, audit expenses, etc. After discussion it was agreed that she would forward a draft proposal to Mr Young for review and once the Trustees have approved this, this would be included in the new Rules for each of the Funds."

WJG

A copy of the minutes is annexed hereto marked GL17.

- 83. On 2 July 2009 the next meeting was held. The following is recorded in the minutes, a copy of which is annexed hereto marked GL18:

"Mr Pillay provided the Trustees with an audit schedule for the various audits and the following was noted:

- *IF Umbrella Pension and Provident Funds – 2006: The draft financials would be available to the Trustees for review by 10 July 2009 and these were scheduled for submission by end of July 2009...*

Mr Pillay confirmed that an audit schedule had been submitted to the Surveillance department at the Financial Services Board after the last Trustees meeting. After discussion the Trustees requested that Mr Pillay ensure that both the Surveillance as well as the Extensions departments are kept up to date on the audits' progress to ensure that no unnecessary penalties are incurred."

- 84. The minutes of the next trustees meeting held on 2 October 2009 record the following:

"The Chairman advised that a meeting was held with Aon's legal department and the lawyer that originally drew up the contract

CPD

between Aon and Mr Kamionsky. Ms le Grellier requested the Trustees to approve the appointment of an independent legal party to review the position of both Aon and Dynam-ique to which they agreed...

Mr Botha asked Mr Pillay if all principle issues had been identified in respect of the financial aspects of the Funds. Mr Young confirmed that all the problems had been identified and processes are in place.

The Chairman requested that Mr Pillay and Ms Helen Barton have an internal meeting next week, after which the Chairman would meet with her to ensure that the processes put in place would speed up the audits. It was agreed that a project plan would be provided to the Trustees at the next Trustees meeting by Mr Pillay. This report back would also include confirmation that a revised action plan had been presented and approved by the Financial Services Board...

Ms G le Grellier suggested that a project plan be put in place to determine when the full responsibility of the Funds will become Aon's responsibility. The Chairman confirmed that a draft project plan is being put in place and that there is an Aon Operating Committee in place to monitor the current status of progress made on the various Funds. It was agreed that the project plan would be provided at the next meeting along with a costing model."

Cher

85. Over a period of two years Aon worked on the Funds as administrator and, at different times, applied many different resources at the problems experienced by the Funds. Ms Helen Barton ("Barton") had come out from the United Kingdom to take over as head of administration in early 2010. Over this period the real work of putting together a project plan to fix the Funds began. I recall a meeting with Barton where she provided the trustees with a project plan to fix the problems which were now openly discussed. My recollection is that the project plan produced by Barton would have resulted in many more years of delays.

86. The next meeting was held on 26 May 2010. The minutes, annexed hereto marked GL20, record the following:

"The Chairman advised that he is both a Trustee to the Funds as well as an employee of the administrator of the Funds and that this result in a conflict of interests. In light of this, he requested that he remove himself from the decision-making process in respect of the Adendorffs Asset Liability Match (ALM) proposal. He did however confirm that he would support the majority vote of the remaining Trustees..."

- *Mr Adendorff confirmed that all staff that will be required for the project has extensive experience with pension funds. The data capturers and processors would be provided by Deloitte...*

Wells

In response to a question from Ms le Grellier, Mr Adendorff confirmed that the Compen system utilised by Adendorffs would be able to reconstruct an accurate picture of what should have happened with respect to member records and would then be compared to the Everest system at Aon for comparison on what actually happened...

In response to a question from Mr Lepar on the benefit to be gained from spending a significant amount on a rebuild exercise if the difference in data is minimal the Chairman advised that Ms Barton conducted a 'dirty' ALM on some sample funds and that very little of the data/information matched up, thus not minimal but a substantial difference in data existed...

... The Trustees indicated that they will not approve a project of this nature at the proposed costs as presented. They expressed grave concerns about the costs which they considered to be excessive.

In response to a question from Mr Lepar, Mr Adendorff confirmed that if the data could be sorted out at fund level, financials could be generated for the outstanding year ends but that the financials would still be heavily

Colin

qualified. Mr Botha said that no matter the amount of qualifications, he would suggest that we get the financials finalised and up to date as soon as possible from a regulatory perspective...

- Ms le Grellier said that deliverables and time tables would have to be set without any deviation from the time tables if the Board were to accept the cost proposals and make payment. Mr Adendorff responded that it would not be possible to confirm deliverables and time tables as the Board would have to decide whether they would like to lessen the cost but extend the time frame for the project or vice versa.

- Mr Lepar commented that the following areas were ignored

- Investments into the wrong portfolios
- No interest calculations for late payment or late investment

- Mr Botha asked if only one fund could be rebuilt to establish the overall potential cost implications.

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- *Carel Smith, in his capacity as a representative of Aon, reminded the Trustees that whatever the Board of Trustees decide, it had to be borne in mind that Aon could not participate in the rebuilding project free of charge.*
- *Mr Lepar suggested that the project could be done at a greatly reduced cost if Adendorffs were to ignore a few aspects such as interest on late contribution, late investments, investments into wrong funds etc...*
- *Ms le Grellier challenged why it was the responsibility of the Trustee Board to establish opening values.*

The Chairman stressed that from Aon's perspective, notwithstanding compromising or approaching the process from a different angle, Aon as administrator of the respective funds would require an opening balance per member signed off by the Board of Trustees as at 01.02.2008 as none of the funds' financial statement have been finalised since 2005. He said that if the Board agreed that the values received from Tony Kamionsky (as the previous administrator) were accurate, he would be more than happy to accept those values. The Trustees confirmed that these values were not accurate and could not be

accepted. It was resolved that a rebuild exercise is definitely required, subject to a more reasonable cost.

- The Chairman then asked the Trustees what they would consider to be a reasonable cost. The Trustees confirmed that between R8 - R11 million would be reasonable. The Chairman asked how the Trustees arrived at this cost/budget and Ms le Grellier responded that this was a broad 'thumb suck' extrapolating from another project she was aware of...

Ms Barton took the Trustees through the results of the "dirty" ALM conducted by her on the umbrella funds as at 31.12.2009 and the following was noted:

- Ms Barton stressed to the Trustees that the figures presented were unaudited, were for information only and based on an extract of data from the Everest System as at that point in time and could only be used as a possible indication of the extent of asset mismatch...

The Chairman once again asked how Aon was to obtain opening balances for each individual member at the date of transfer of the umbrella funds to Aon in 2008...

gll

- *Ms le Grellier said that if the cost was less for what was being proposed she would be happy to follow the proposals suggested however, she would not be able to go back to the members to justify the current costs being proposed. Mr Lepar agreed with Ms le Grellier...*

Ms le Grellier asked if an independent firm could be approached to verify Adendorffs' costs that were presented. She proposed forwarding their quote to Brefco but the Chairman said that under no circumstances were Adendorffs proposal to be sent to any entities as that would result in a breach of the confidentiality by the Board of Trustees...

The Trustees confirmed that they would like to get more than one quote on the project in order that they can measure Adendorffs proposal against alternative quotes."

87. I point out that since Aon's appointment, with effect from 31 January 2008 and until approximately May 2010, Aon had, at its own cost, attempted to rectify the data and accounting issues. In this regard I draw this Honourable Court's attention to paragraph 8 of the minutes of the trustees meeting held on 2 July 2009 which reads as follows:

"8.1 *Aon Costs and Risks Letter*

C. Kelly

The Trustees discussed and reviewed the letter sent by Mr Young to the Trustees in respect of the current costs being borne by [Aon].

After discussion it was agreed that the cost of R1.6 million already incurred by Aon will be split as follows:

- *75% to be borne by the Funds, and*
- *25% to be borne by Aon.*

The above split was agreed on the condition that any costs recovered from the claims against Mr Kamionsky would be allocated firstly to the Funds in order to recover the 75% and the balance would be allocated to Aon. Mr Young and Ms le Grellier will process the transfer between the Funds and Aon.

It was agreed that this matter be included in the discussion with Aon's legal department regarding the claims process against Mr Kamionsky."

(annexed hereto as Annexure GL18)

88. It is, however, clear from the minutes of the meeting of 26 May 2012 that Aon, from this point, was effectively washing its hands from assisting the Funds with ensuring the accuracy of the opening balances and was

telling the trustees that they needed to provide that information. From the minutes, it must be concluded, however, that Aon was of the opinion, as administrator of the Funds, that an asset liability matching/rebuild project was necessary. Whilst the trustees were concerned about the costs and wanted Adendorffs' proposal to be forwarded to a third party administrator to verify and comment on the costing, this was denied on the basis that it would amount to a breach of confidentiality.

- 89. The next meeting was held on 1 June 2010. The minutes are annexed hereto marked GL21. They record the following:

"... A subsequent meeting was held between Ms le Grellier, Mr Lepar and Deloitte vis-à-vis an alternative proposal for the rebuild project at Aon offices on the previous day. A formal proposal will be provided to the other Trustees for consideration.

Ms le Grellier gave Mr Williams an update on the proposals received from Adendorffs and Deloitte and raised the question as to where responsibility lies for the ALM project costs. She advised that the Trustees had no problem partnering with Aon and taking responsibility for the project up to a point but felt that the Funds should not bear all the costs involved with the project as the costs would not be justifiable to the members...

In response to a question from Mr Williams, Ms le Grellier indicated that she felt that a cost in the region of R8 – R11 million would be reasonable. This cost would include matching of assets and liabilities and was based on previous exercises that she had been involved with for other Funds.

It was agreed that the Trustees would request quotes from the market based on a revised brief of what the Trustees require...

Following discussion it was agreed that:

- *Mr Stuart, Ms Barton and Ms le Grellier would visit Brefco this week to provide them with a brief in order that they can provide the Trustees with advice on the process and possibly an indication of how they would estimate a quote for such work.*
- *Mr Stuart would document revised terms of reference, circulate them to the trustees for comment, and then forward them to Deloitte and Adendorffs and request new quotes from them.*
- *A further meeting of the trustees would be scheduled before the middle of the month if possible, to consider the new quotes, and thereafter they would put a proposal*

Cher

together to present to Mr Williams for assistance with funding."

90. Following this, a further trustees meeting took place on 15 June 2010. The minutes, annexed hereto marked GL22, record the following:

"The Chairman advised that due to a conflict of interest, he would not take part in any decisions to be made at the meeting as he is part of Aon, the administrator of the Funds, as well as Chairman of the Boards. However he did note that he would support the majority vote on any decisions taken..."

Mr Stuart drew attention to the need to source funds amounting to almost R21 million for the project. He suggested that there should be a levy on current members, who were also members on 31 January 2008, and that the levy be based on the asset values of each member. This would mean that transferred or exited members would not have to be pursued to recover monies, and that members would pay in accordance with the value of their investments.

Trustees indicated that the previous administrator should ultimately be held liable for these expenses and that legal action should be considered with a view to recovering the costs.

Chick

After discussing the pros and cons of the proposals submitted by Deloitte and Adendorffs, the trustees resolved to appoint Deloitte to carry out this project subject to their confirmation that their fees would be the lower of the actual costs incurred, including disbursements and VAT, or R18 162 480 including VAT, and Mr Stuart was requested to obtain this confirmation by 17 June, 2010...

In addition it was agreed that the following items would be actioned:

- *Once we have received feedback from the FSB, the Chairman would set up a meeting with both Aon and the Funds' legal teams to devise an appropriate strategy to recover the costs from the previous administrator."*

91. I pause to mention that prior to appointing Deloitte's we had requested quotes from other service providers, one of which (Brefco) declined to provide the Funds with a quotation. Furthermore, from my experience and in my opinion, the number of service providers which would have the competency, including staff resources and time to complete the rebuild exercise, was limited.

92. I annex hereto marked **GL23**, a copy of Deloitte's appointment dated 1 July 2010, setting out the scope of the reconstruction exercise. I point out

that the reconstruction exercise, as well as the cost thereof, relates not only to the Funds, but to two other funds, namely the Dynam-ique SA Umbrella Pension Fund and the Dynam-ique SA Umbrella Provident Fund.

93. Deloitte charged R18 162 480 to reconstruct the records of the Funds and the Dynam-ique SA Umbrella Pension Fund and the Dynam-ique SA Umbrella Provident Fund from inception (1 January 2004) until 31 January 2008. The applicants took a decision to apportion this amount proportionately between the Funds and other funds affected by the same problem, which equated to approximately 2.5% of the members' fund value. This, I respectfully state, is something which the applicants were entitled to do in terms of the rules. I deal with this in more detail below.

94. On 6 August 2010 Aon advised the Financial Services Board as follows:

"Issues were identified at an early stage and as time passed, Aon has identified more and more concerns with the integrity of the data and historical administration processes. The point has now been reached where, for a significant number of payments and for the production of annual member benefit statements etc, a comprehensive review of members' electronic records against payment receipts and actual investments, needs to be undertaken. This level of data interrogation has forced the Trustees to consider

whether the funds' assets and liabilities are correctly reflected at a member, participating employer and fund level. The trustees decided to appoint Deloitte to reconstruct each participating employers' records at a member level to ensure that the assets are correctly reflected and that no member is being disadvantaged...

You also raised the cost of project at R18m and I explained that the project was very extensive with 160 months of administrative records and transactions to be reconstructed... Aon supported the Trustees' decision to appoint Deloitte, who had already started work on the project."

A copy of Aon's letter is annexed hereto marked **GL24**.

95. Smith left the employ of Aon some time after the meeting on 15 June 2010, which resulted in him resigning as a trustee of the Funds. At the trustee meeting held on 10 December 2010, Clive Stuart was appointed as a replacement trustee. At that meeting, it was also recorded that attorney Ren Dunster was in the process of formulating a claim on behalf of the Funds against Dyanm-iqee. A copy of the minutes is annexed hereto marked **GL25**.

96. On 28 January and 31 January 2001 attorney Ren Dunster issued summons out of this honourable Court on behalf of the Funds (as well as the two other funds previously administered by Dynam-iqee, Dynam-iqee

SA Umbrella Pension Fund and Dynam-ique SA Umbrella Provident Fund) against Aon and Kamionsky respectively. Copies of the summons and particulars of claim in those actions are attached to the complaint (annexure GL26 hereto) marked "F" and "G"). The Funds have since settled the matter with Kamionsky for an amount of R1 million and are still proceeding against Aon.

97. Botha, Lepar and I resigned as trustees with effect from 10 February 2011. Smith resigned with effect from 30 June 2010. The intention behind the resignations was to ensure that a new board of trustees was put in place who could review any action and decisions taken, and either continue with them or abandon them.
98. The new board of trustees was appointed with effect from 10 February 2011, comprising of: John Rollason, Ray Welham, Stefane Bredenkamp and Clive Stuart (who had already been serving as a board member since 10 December 2010). In paragraph 33 of the Fund's reply to the complaint (annexure GL27 hereto) it is recorded that the new trustees considered the need for the reconstruction exercise and have no reason not to endorse the decision made by the applicants.
99. On 3 May 2011 the complainants lodged a complaint with the Adjudicator in terms of section 30A of the PFA, alleging inter alia maladministration by the Funds' board of trustees in debiting the Fund Credits of members

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with the costs of the reconstruction exercise. A copy of the complaint is annexed hereto marked GL28.

100. On 31 July 2012 the Adjudicator upheld the complaint, and made a determination ("the first determination") that *inter alia*:

100.1. the Funds and their previous board of trustees, being the applicants in the present application, were not authorised by the Funds' rules and the PFA to use 2.5% of the members' fund value to fund the costs of the reconstruction exercise; and

100.2. the Funds were ordered to recalculate the members' fund values and credit them with the 2.5% fund values, having regard to the investment returns earned by the Funds during the period that the unauthorised deduction was made and remained outstanding.

A copy of the first determination is annexed hereto marked GL29.

101. This resulted in the Funds launching an application out of this honourable Court on 11 September 2012, which resulted in Mashile AJ making the following order on 5 February 2013:



- 101.1. the first determination was set aside;
- 101.2. the complaint was remitted to the Adjudicator to enable the complainants to pursue relief against the former trustees of the Funds (being the applicants in the present application) for breach of their statutory and fiduciary duties owed to the Funds;
- 101.3. the complainants and any other interested parties were permitted to supplement the complaint with any further submissions they wished to make to the Adjudicator;
- 101.4. the complainants were to serve a copy of the complaint, duly supplemented, on the previous board of trustees against whom they seek relief;
- 101.5. the previous board of trustees were afforded a reasonable opportunity to file a written reply to the supplemented complaint; and
- 101.6. the Adjudicator was to reconsider the supplemented complaint and make a determination in terms of section 30M of the PFA.

A copy of that order is annexed hereto marked GL30.



102. Following this:

102.1. in May 2013, I filed a written response to the complaint, a copy of which is annexed hereto marked **GL31**;

102.2. Botha filed a response to the complaint, a copy of which is annexed hereto marked **GL32**;

102.3. Moi filed a response to the complaint, a copy of which is annexed hereto marked **GL33**;

102.4. Jager filed a response, a copy of which is annexed hereto marked **GL34**;

102.5. Tony Kamionsky ("Kamionsky") filed a response, a copy of which is annexed hereto marked **GL35**;

102.6. Dell filed a supplementary complaint dated 7 May 2013, a copy of which is annexed hereto marked **GL36**;

102.7. Botha and I filed a further reply, a copy of which is annexed hereto marked **GL37**; and

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- 102.8. Dell filed a reply to my response, a copy of which is annexed hereto marked GL38.
103. I point out that Smith did not file a response as the complaint was never brought to his attention. I am informed that it had been emailed to him but somehow found its way to his "junk" email folder.
104. Having received these written submissions, the Adjudicator considered it unnecessary to hold a hearing and proceeded to determine the dispute on the papers. On 3 July 2013 the adjudicator gave her determination ("the second determination") in terms of which:
- 104.1. the Adjudicator found that the applicants did not manage the Funds properly and as a result caused financial loss to the Funds and ultimately to the members;
- 104.2. the Funds were ordered to compute the amount of the financial loss to the Funds and members occasioned by the reconstruction exercise, having regard to the investment returns earned by the Funds, within four weeks of the determination;
- 104.3. the applicants were ordered personally, jointly and severally, to pay the Funds the amount of the financial loss as computed

in paragraph 102.2 above, less the amount of R1 million already paid by Tony Kamlonsky and Dynam-ique, within six weeks of the determination; and

- 104.4. the applicants were ordered to notify the Funds and the Adjudicator of the payment referred to above, within seven weeks of the date of the determination.

A copy of the second determination is annexed hereto marked GL39.

SECTION 30P OF THE PFA

105. Section 30P of the PFA provides as follows:

"(1) Any party who feels aggrieved by a determination of the Adjudicator may, within six weeks after the date of the determination, apply to the division of the High Court which has jurisdiction, for relief, and shall at the same time give written notice of his or her intention so to apply to the other parties to the complaint.

(2) The division of the High Court contemplated in subsection (1) may consider the merits of the complaint made to the Adjudicator under section 30A(3) and on which the Adjudicator's determination was based, and may make any order it deems fit.

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(3) Subsection (2) shall not affect the court's power to decide that sufficient evidence has been adduced on which a decision can be arrived at, and to order that no further evidence shall be adduced."

106. The applicants respectfully state that the Adjudicator's second determination is wrong. The applicants thus seek an order, in the first instance, setting the second determination aside. In the second instance, the applicant's seek an order substituting the second determination with an order that the complaint and supplementary complaint be dismissed, alternatively, that the complaint and supplementary complaint be remitted to the Adjudicator for the hearing of oral evidence.

107. The complaint comprises of two legs:

107.1. first, it is alleged that the applicants' decision to effect the reconstruction exercise was an improper exercise of their powers as trustees of the Funds;

107.2. second, it is alleged that the complainants have sustained or may sustain prejudice in consequence of the maladministration of the Funds, whether by act or omission.

108. The supplementary complaint (comprising of a mere two and a half pages) is based on the bald allegation that the applicants were reckless and grossly negligent in authorising the reconstruction exercise.

109. I will first deal with the first leg of the complaint. Thereafter I will deal with the second leg of the complaint and the supplementary complaint together under a separate heading.

Was the decision to effect the reconstruction exercise an improper exercise by the applicants of their powers as trustees of the Funds?

110. Sections 7C and 7D of the PFA set out the object and duties of the board of a pension fund. Section 7D(a) provides that the duty to ensure that *"proper registers, books and records of the operations of the fund are kept, inclusive of proper minutes of all resolutions passed by the board"* rests with the board. Furthermore, section 7D(b) imposes upon the board a duty to ensure that *"proper control systems are employed by or on behalf of the board."*

111. It is, however, widely accepted that it would be impossible for the board of a pension fund organisation, as defined in the PFA, to take every decision and to perform every act required for the fund's management. Therefore, boards usually elect to delegate their powers and duties to third party administrators approved in terms of section 13B of the PFA.

Provided the rules of the fund permit such delegation, this is wholly proper. In doing so, however, the board is not entitled to abdicate its responsibilities but must supervise the conduct of its affairs by the administrator.

112: In the present case, clause 14 of the IF Umbrella Provident Fund rules expressly provide that:

"14.1 The FUND shall be administered by the ADMINISTRATORS appointed by, and acting on the instructions of the TRUSTEES...

14.6 The ADMINSTRATORS shall keep full and true accounts of the FUND as required in terms of 13.4."

113. The IF Umbrella Pension Fund rules also permit the delegation of the trustees powers and duties to an administrator in that they:

113.1. define the administrator as the person appointed by the trustees from time to time to attend to the day-to-day administration of the fund (clause 2.6.2); and

113.2. provide that the fund will be managed by a board of trustees who are responsible for performing the functions and duties set out in the PFA and in the rules.

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114. I also wish to emphasise (as I eluded to above) that the Funds, when the applicants became trustees of the Funds, were, initially, administered by Integrated and thereafter by Dynam-ique. The applicants played no role in the appointment of Integrated or Dynam-ique as administrators. We, however, took comfort from the fact that Integrated and Dynam-ique were approved by the Registrar in terms of section 13B(1) of the PFA and, at least in so far as Dynam-ique is concerned, would have had to comply with section 13B(5) of the PFA.
115. When the applicants became concerned that the records held by the Funds in respect of their members and their Fund Credits may not be accurate in that some Fund Credits may have been understated and others may have been overstated, they were not prepared to run the risk of the Funds continuing to operate on the basis of incorrect and inaccurate data and, having considered all other alternatives (as is apparent from the minutes referred to above), we took a decision to appoint Deloitte's to reconstruct the Funds' records.
116. The applicants could not allow the Funds to continue operating on the basis of incorrect and inaccurate member records. That would not only be unlawful, but would amount to a breach of our duties in terms of section 7C and 7D of the PFA, as well as our duties to provide the members with accurate benefit statements.

117. The decision to carry out the reconstruction exercise was thus in accordance with our statutory duties in terms of section 7C and 7D and other provisions of the PFA to:

117.1. protect the interests of the members by ensuring that they are paid the correct benefits when they exit the funds;

117.2. act with due care, diligence and good faith by making sure that no member is paid more than, or less than, what they are entitled to;

117.3. providing the statutory authorities with accurate records and information about the assets and liabilities of the funds; and

117.4. providing the members with correct and accurate benefit statements setting out their illustrative values.

118. With effect from 1 July 2009, a definition of "AD HOC EXPENSES" was included as rule 2.6.2(a), providing as follows:

"AD HOC EXPENSES" means costs and expenses, other than EXPENSES, that are not necessarily payable monthly and are not necessarily capable of being predetermined and will include, inter alia, fees, taxes and levies paid and accrued to service providers, the

regulatory authorities, TRUSTEES, premiums in respect of professional indemnity and fidelity guarantee insurance, and audit fees;"

119. The cost of the reconstruction exercise qualifies as an "ad hoc expense" under the category of "fees paid to service providers", in that Deloitte's is not an "administrator" and its fees thus did not constitute "administration services" as contemplated in the definition of "EXPENSES"
120. With effect from 1 July 2009, the following rule 4.6 was added to the rules:

"4.6 EXPENSES

4.6.1 EXPENSES and AD HOC EXPENSES will be borne by the FUND. EXPENSES will be funded for by the contributions made by the EMPLOYERS to the FUND. The cost of AD HOC EXPENSES will be deducted from the MEMBERS' FUND CREDITS on such basis as may be determined by the TRUSTEES from time to time. AD HOC EXPENSES need not have accrued for an appropriate deduction to be made from the MEMBERS' FUND CREDITS and the TRUSTEES may deduct in respect of provisions that they make to ensure impartiality among the MEMBERS of the FUND. Should the amounts deducted from MEMBERS'

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FUND CREDITS be in excess of the amounts required to fund AD HOC EXPENSES, an appropriate credit will be made to the MEMBERS' FUND CREDITS. AD HOC EXPENSES may furthermore be funded by way of interest earned on contributions paid to the FUND prior to the investment of such contributions.

4.6.2. The FUND will be entitled to make payments in respect of EXPENSES and AD HOC EXPENSES to service providers and other creditors."

121. In the circumstances, the rules clearly authorised and permitted the applicants to pay for the reconstruction costs in the manner that we did. By doing so, we ensured that we did not abdicate our responsibilities as trustees and did the best that we reasonable could in the circumstances to supervise and eventually correct Dynam-ique's and/or Integrated's conduct.

122. The rules were registered by the Registrar of Pension Funds, who, by registering them, signified his satisfaction that the rules were not inconsistent with any law and were financially sound.

123. We used the assets of the Funds to pay for legitimate and necessary fund expenses, as we were obliged to do in terms of the rules. It is thus,

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with respect, clear that our decision to effect the reconstruction exercise was a proper exercise by us of our powers as trustees of the Funds.

- 124. The first leg of the complaint is therefore without merit and ought to have been dismissed by the Adjudicator.

Has there been any maladministration of the Funds by the applicants, whether reckless and grossly negligent or otherwise?

- 125. Before deciding whether the complainants have or may sustain prejudice, it first needs to be determined whether the applicants' conduct constitutes maladministration of the Funds, whether recklessly and grossly negligently or otherwise. If this is not established then it matters not whether the complainants have or may sustain prejudice as the applicants cannot be held liable for this.

- 126. As a starting point, rule 12.8.1 of the IF Umbrella Provident Fund provides that:

"12.8.1 The TRUSTEES and the PRINCIPAL OFFICER of the FUND shall be indemnified by the FUND against all proceedings, costs and expenses incurred by reason of any claim in connection with the FUND not arising from their gross negligence dishonesty or fraud."

127. Similarly, rule 6.17.1 of the IF Umbrella Pension Fund provides that:

"6.17.1 The TRUSTEES, officers of the FUND and persons to whom they have delegated their functions will not be personally liable for decisions taken or actions authorized except if such decisions or actions constitute gross negligence, dishonesty, fraud or a breach of trust."

128. Presumably, the reason for the formulation of the supplementary complaint was because in May 2013 Dell became alive to these rules.

129. From the detailed exposition of the factual matrix above, I respectfully state that there is not a shred of evidence to suggest that the applicants were grossly negligent, dishonest, fraudulent, or committed a breach of trust.

130. That, with respect, ought to be the end of the second leg of the complaint and the supplementary complaint, both of which ought to have been dismissed by the Adjudicator.

131. In any event, and even if these rules were ignored (as they seem to have been by the Adjudicator), there was no evidence placed before the Adjudicator (nor is there any) indicating that the applicants were negligent or guilty of maladministration. I say so for the following reasons:

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131.1. the applicants were not responsible for appointing Integrated or Dynam-ique as administrators. That was done by the previous trustees;

131.2. when Botha and I were appointed as trustees in 2006, there were already historic problems with the financials, which we had no oversight or dealings with. Once again this falls within the domain of the previous trustees. Lepar and Smith were only appointed as trustees in 2008 and thus likewise cannot be blamed for this;

131.3. as the minutes reflect, we did not sit idly back when the financials were not forthcoming. We robustly interrogated Dynam-ique and were given numerous promises and undertakings, all of which were unfortunately not met. We acted as any other reasonable trustee would have in the circumstances by engaging with Dynam-ique and giving it an opportunity to rectify the mess. It would have been reckless of us to have simply removed Dynam-ique (assuming that we would have been able to obtain the necessary majority to do, which, as I have said above, is highly doubtful), especially in circumstances where, at that stage, we did not know even know the nature and extent of the problems;

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131.4. when Aon replaced Dynam-ique as administrator we assisted it and acted as reasonably as we could have been expected to in the circumstances;

131.5. it cannot seriously be disputed that the decision to carry out the reconstruction exercise was the only viable option in the circumstances. For the Funds to be able to pay a member a correct benefit when he or she eventually exits the Funds, the Funds must have proper records detailing the exact amount to which a member is entitled upon exit, otherwise the benefit paid to the member will be incorrect. That state of affairs can never be said to be in the interests of the Funds or the members;

131.6. there is no evidence to suggest that the work done by Deloitte and the costs incurred in respect thereof was unreasonable;

131.7. if it is accepted that the reconstruction exercise was unavoidable (which, in the light of the evidence, it must), there is no evidence to suggest that these costs would have been less had the decision to appoint Deloitte been taken earlier.

132. In addition, and in any event, the costs of the reconstruction exercise did not only relate to the reconstruction of the Funds' data and financials but

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Included the costs of reconstructing the data and financials of the Dynam-ique SA Umbrella Pension Fund and the Dynam-ique SA Umbrella Provident Fund.

133. The second leg of the complaint and the supplementary complaint are thus both without merit and ought to have been dismissed by the Adjudicator.

134. I respectfully state that there is sufficient evidence before this honourable Court to dismiss the complaint and the supplementary complaint and that it would be an exercise in futility to remit the matter to the Adjudicator. However, insofar as this honourable Court may determine that there are irresoluble disputes of fact which cannot be determined on the papers, I respectfully state that in those circumstances, the matter will have to be remitted to the Adjudicator to hear oral evidence.

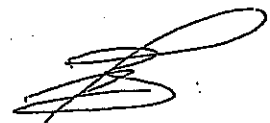
WHEREFORE the applicants pray for an order in terms of the notice of motion to which this affidavit is annexed.


GAIL LE GRELLIER

I HEREBY CERTIFY THAT THE DEPONENT HAS ACKNOWLEDGED THAT SHE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, WHICH WAS SIGNED AND SWORN TO BEFORE ME AT Sandton



ON THIS THE 13 DAY OF AUGUST 2013,
THE REGULATIONS CONTAINED IN GOVERNMENT NOTICE NO 3619 OF 21
JULY 1972 AND NO 1648 OF 19 AUGUST 1977 HAVING BEEN COMPLIED
WITH.



COMMISSIONER OF OATHS

PATRICIA FREDA BLAAUW
Commissioner of Oaths
Reference 107/7/10 Randburg 05/07/2010
22 Fredman Drive
Sandton

P. Blaauw

G L I

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

Case No _____

In the matter between:

LE GRELLIER GAIL

First Applicant

BOTHA RENIER

Second Applicant

LEPAR DAVID

Third Applicant

SMITH CAREL

Fourth Applicant

and

LUKHIMANE M.A. N.O.

First Respondent

AFFIRM MARKETING SERVICES (PTY) LIMITED

Second Respondent

BEEFMASTER (PTY) LIMITED

Third Respondent

H BIRKENMEYER (PTY) LIMITED

Fourth Respondent

DR GEBKA, HELLIG & KLUG INC.

Fifth Respondent

DR RITZ INC.

Sixth Respondent

ETERNAL FLAME INVESTMENTS (PTY) LIMITED

Seventh Respondent

EXPECTRA 89 (PTY) LIMITED

Eighth Respondent

HESTICO (PTY) LIMITED

Ninth Respondent

HETTAS CC

Tenth Respondent

CONVISTA CONSULTING (PTY) LIMITED

Eleventh Respondent

IDI TECHNOLOGY SOLUTIONS (PTY) LIMITED

Twelfth Respondent

PROGRESSIVE PACKAGING (PTY) LIMITED

Thirteenth Respondent

WORLD CARGO SERVICES (PTY) LIMITED

Fourteenth Respondent

CONDUIT RISK AND INSURANCE

HOLDINGS (PTY) LIMITED

Fifteenth Respondent

DELL COMPUTER (PTY) LIMITED

Sixteenth Respondent

THE BRAND UNION (PTY) LIMITED

Seventeenth Respondent

ULTRA LITHO (PTY) LIMITED

Eighteenth Respondent

NEWSCLIP MEDIA MONITORING (PTY) LIMITED

Nineteenth Respondent

MIXTEC CC

Twentieth Respondent

PETROMARK (PTY) LIMITED

Twenty-First Respondent

DEHTEQ (PTY) LIMITED

Twenty-Second Respondent

| | |
|--|---------------------------|
| WAVELENGTHS 32 (PTY) LIMITED t/a INSALO COMMUNICATIONS | Twenty-Third Respondent |
| PANORAMIC COMPONENTS (PTY) LIMITED | Twenty-Fourth Respondent |
| CHICKEN MANAGEMENT SERVICES (PTY) LIMITED | Twenty-Fifth Respondent |
| HANSEN TRANSMISSIONS (PTY) LIMITED | Twenty-Sixth Respondent |
| ENABLEMED (PTY) LIMITED | Twenty-Seventh Respondent |
| PRIMESERV GROUP LIMITED | Twenty-Eight Respondent |
| THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS | Twenty-Ninth Respondent |
| JOHANNESBURG CHILD WELFARE SOCIETY | Thirtieth Respondent |
| THE EMPLOYEES OF THE SECOND TO THIRTIETH RESPONDENTS WHO ARE MEMBERS OF THE IF UMBRELLA PROVIDENT FUND AND THE IF UMBRELLA PENSION FUND | Thirty-First Respondent |
| IF UMBRELLA PROVIDENT FUND | Thirty-Second Respondent |
| IF UMBRELLA PENSION FUND | Thirty-Third Respondent |

CONFIRMATORY AFFIDAVIT

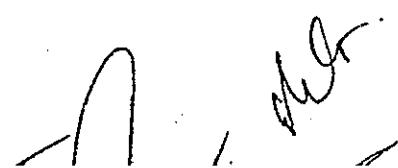
I, the undersigned

RENIER BOTHA

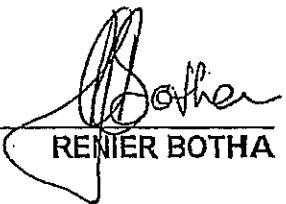
do hereby make oath as follows:

1. I am:

1.1 a major male, former trustee of the 32nd and 33rd respondents and for the purposes of these proceedings care of Routledge Modise Inc. situate at 22 Fredman Drive, Sandown, Sandton; and

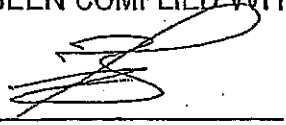


- 1.2 the second applicant in this matter.
- 2. The facts contained herein fall within my personal knowledge, unless the context indicates otherwise, and are to the best of my belief both true and correct.
- 3. I have read the affidavit of Gail le Grellier ("le Grellier") and confirm:
 - 3.1 that she is duly authorised to bring this application on my behalf; and
 - 3.2 the correctness thereof in so far it relates to me.



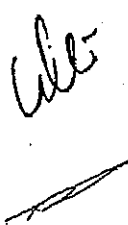
 RENIER BOTHA

I HEREBY CERTIFY THAT THE DEPONENT HAS ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, WHICH WAS SIGNED AND SWORN TO BEFORE ME AT Sandton ON THIS THE 13 DAY OF AUGUST 2013 THE REGULATIONS CONTAINED IN GOVERNMENT NOTICE NO 3619 OF 21 JULY 1972 AND NO 1648 OF 19 AUGUST 1977 HAVING BEEN COMPLIED WITH.



 COMMISSIONER OF OATHS

PATRICIA FREDA BLAAUW
 Commissioner of Oaths
 Reference 107/7/10 Randburg 05/07/2010
 22 Fredman Drive
 Sandton



GL2

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

Case No _____

In the matter between:

| | |
|------------------|------------------|
| LE GRELLIER GAIL | First Applicant |
| BOTHA RENIER | Second Applicant |
| LEPAR DAVID | Third Applicant |
| SMITH CAREL | Fourth Applicant |
| and | |

| | |
|--|--------------------------|
| LUKHIMANE M.A. N.O. | First Respondent |
| AFFIRM MARKETING SERVICES (PTY) LIMITED | Second Respondent |
| BEEFMASTER (PTY) LIMITED | Third Respondent |
| H BIRKENMEYER (PTY) LIMITED | Fourth Respondent |
| DR GEBKA, HELLIG & KLUG INC. | Fifth Respondent |
| DR RITZ INC. | Sixth Respondent |
| ETERNAL FLAME INVESTMENTS (PTY) LIMITED | Seventh Respondent |
| EXPECTRA 89 (PTY) LIMITED | Eighth Respondent |
| HESTICO (PTY) LIMITED | Ninth Respondent |
| HETTAS CC | Tenth Respondent |
| CONVISTA CONSULTING (PTY) LIMITED | Eleventh Respondent |
| IDI TECHNOLOGY SOLUTIONS (PTY) LIMITED | Twelfth Respondent |
| PROGRESSIVE PACKAGING (PTY) LIMITED | Thirteenth Respondent |
| WORLD CARGO SERVICES (PTY) LIMITED | Fourteenth Respondent |
| CONDUIT RISK AND INSURANCE HOLDINGS (PTY) LIMITED | Fifteenth Respondent |
| DELL COMPUTER (PTY) LIMITED | Sixteenth Respondent |
| THE BRAND UNION (PTY) LIMITED | Seventeenth Respondent |
| ULTRA LITHO (PTY) LIMITED | Eighteenth Respondent |
| NEWSCLIP MEDIA MONITORING (PTY) LIMITED | Nineteenth Respondent |
| MIXTEC CC | Twentieth Respondent |
| PETROMARK (PTY) LIMITED | Twenty-First Respondent |
| DEHTEQ (PTY) LIMITED | Twenty-Second Respondent |

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|--|---------------------------|
| WAVELENGTHS 32 (PTY) LIMITED t/a INSALO COMMUNICATIONS | Twenty-Third Respondent |
| PANORAMIC COMPONENTS (PTY) LIMITED CHICKEN MANAGEMENT | Twenty-Fourth Respondent |
| SERVICES (PTY) LIMITED | Twenty-Fifth Respondent |
| HANSEN TRANSMISSIONS (PTY) LIMITED | Twenty-Sixth Respondent |
| ENABLEMED (PTY) LIMITED | Twenty-Seventh Respondent |
| PRIMESERV GROUP LIMITED | Twenty-Eight Respondent |
| THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS | Twenty-Ninth Respondent |
| JOHANNESBURG CHILD WELFARE SOCIETY | Thirtieth Respondent |
| THE EMPLOYEES OF THE SECOND TO THIRTIETH RESPONDENTS WHO ARE MEMBERS OF THE IF UMBRELLA PROVIDENT FUND AND THE IF UMBRELLA PENSION FUND | Thirty-First Respondent |
| IF UMBRELLA PROVIDENT FUND | Thirty-Second Respondent |
| IF UMBRELLA PENSION FUND | Thirty-Third Respondent |

CONFIRMATORY AFFIDAVIT

I, the undersigned

DAVID LEPAR

do hereby make oath as follows:

1. I am:
 - 1.1 a major male, former trustee of the 32nd and 33rd respondents and for the purposes of these proceedings care of Routledge Modise Inc. situate at 22 Fredman Drive, Sandown, Sandton; and



- 1.2 the third applicant in this matter.
2. The facts contained herein fall within my personal knowledge, unless the context indicates otherwise, and are to the best of my belief both true and correct.
3. I have read the affidavit of Gail Je Grellier ("Je Grellier") and confirm:
 - 3.1 that she is duly authorised to bring this application on my behalf;
and
 - 3.2 the correctness thereof in so far it relates to me.

DAVID LEPAR

I HEREBY CERTIFY THAT THE DEPONENT HAS ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, WHICH WAS SIGNED AND SWORN TO BEFORE ME AT _____ ON THIS THE _____ DAY OF _____, THE REGULATIONS CONTAINED IN GOVERNMENT NOTICE NO 3619 OF 21 JULY 1972 AND NO 1648 OF 19 AUGUST 1977 HAVING BEEN COMPLIED WITH.

COMMISSIONER OF OATHS

W. J. Grellier

GL3

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

Case No 49616/13

In the matter between:

LE GRELLIER GAIL

First Applicant

BOTHA RENIER

Second Applicant

LEPAR DAVID

Third Applicant

SMITH CAREL

Fourth Applicant

and

LUKHIMANE M.A. N.O.

First Respondent

AFFIRM MARKETING SERVICES (PTY) LIMITED

Second Respondent

BEEFMASTER (PTY) LIMITED

Third Respondent

H BIRKENMEYER (PTY) LIMITED

Fourth Respondent

DR GEBKA, HELLIG & KLUG INC.

Fifth Respondent

DR RITZ INC.

Sixth Respondent

ETERNAL FLAME INVESTMENTS (PTY) LIMITED

Seventh Respondent

EXPECTRA 89 (PTY) LIMITED

Eighth Respondent

HESTICO (PTY) LIMITED

Ninth Respondent

HETTAS CC

Tenth Respondent

CONVISTA CONSULTING (PTY) LIMITED

Eleventh Respondent

IDI TECHNOLOGY SOLUTIONS (PTY) LIMITED

Twelfth Respondent

PROGRESSIVE PACKAGING (PTY) LIMITED

Thirteenth Respondent

WORLD CARGO SERVICES (PTY) LIMITED

Fourteenth Respondent

CONDUIT RISK AND INSURANCE

HOLDINGS (PTY) LIMITED

Fifteenth Respondent

DELL COMPUTER (PTY) LIMITED

Sixteenth Respondent

THE BRAND UNION (PTY) LIMITED

Seventeenth Respondent

ULTRA LITHO (PTY) LIMITED

Eighteenth Respondent

NEWSCLIP MEDIA MONITORING (PTY) LIMITED

Nineteenth Respondent

MIXTEC CC

Twentieth Respondent

PETROMARK (PTY) LIMITED

Twenty-First Respondent

DEHTEQ (PTY) LIMITED

Twenty-Second Respondent

| | |
|--|---------------------------|
| WAVELENGTHS 32 (PTY) LIMITED t/a INSALO COMMUNICATIONS | Twenty-Third Respondent |
| PANORAMIC COMPONENTS (PTY) LIMITED | Twenty-Fourth Respondent |
| CHICKEN MANAGEMENT SERVICES (PTY) LIMITED | Twenty-Fifth Respondent |
| HANSEN TRANSMISSIONS (PTY) LIMITED | Twenty-Sixth Respondent |
| ENABLEMED (PTY) LIMITED | Twenty-Seventh Respondent |
| PRIMESERV GROUP LIMITED | Twenty-Eight Respondent |
| THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS | Twenty-Ninth Respondent |
| JOHANNESBURG CHILD WELFARE SOCIETY | Thirtieth Respondent |
| THE EMPLOYEES OF THE SECOND TO THIRTIETH RESPONDENTS WHO ARE MEMBERS OF THE IF UMBRELLA PROVIDENT FUND AND THE IF UMBRELLA PENSION FUND | Thirty-First Respondent |
| IF UMBRELLA PROVIDENT FUND | Thirty-Second Respondent |
| IF UMBRELLA PENSION FUND | Thirty-Third Respondent |

CONFIRMATORY AFFIDAVIT

I, the undersigned

CAREL PETRUS SMITH

do hereby make oath as follows:

1. I am:
 - 1.1 a major male, former trustee of the 32nd and 33rd respondents and for the purposes of these proceedings care of Routledge Modise Inc. situate at 22 Fredman Drive, Sandown, Sandton; and



- 1.2 the fourth applicant in this matter.

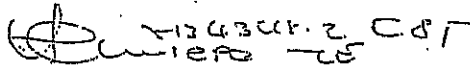
- 2. The facts contained herein fall within my personal knowledge, unless the context indicates otherwise, and are to the best of my belief both true and correct.

- 3. I have read the affidavit of Gail le Grellier ("le Grellier") and confirm:
 - 3.1 that she is duly authorised to bring this application on my behalf; and

 - 3.2 the correctness thereof in so far it relates to me.


 CAREL SMITH

I HEREBY CERTIFY THAT THE DEPONENT HAS ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, WHICH WAS SIGNED AND SWORN TO BEFORE ME AT Dretonia ON THIS THE 13TH DAY OF August 2013, THE REGULATIONS CONTAINED IN GOVERNMENT NOTICE NO 3619 OF 21 JULY 1972 AND NO 1648 OF 19 AUGUST 1977 HAVING BEEN COMPLIED WITH.


 COMMISSIONER OF OATHS

SUID-AFRIKAANSE POLISIEDIENS
 GARSFONTEIN

 2013-08-13
 STATION COMMANDER
 SOUTH AFRICAN POLICE SERVICE



GL4

IF UMBRELLA PENSION FUND

Resolution of the Trustees of the IF Umbrella Pension Fund:

Resolved:

That the IF Umbrella Pension Fund will commence with effect from 1 January 2004.

Certified:

That these are the Rules of the IF Umbrella Pension Fund which will become effective from 1 January 2004.

Militer
.....
Chairman of Trustees

J. J. J.
.....
Trustee

C. J. J.
.....
Principal Officer

Deur my voorlopig gereguleer op heeds die
Registered provisionally by me on this the
.....
dag van *04*
day of *October, 2004*
.....
REGISTRAR OF PENSION FUNDS

so
1/1/04

IF UMBRELLA PENSION FUND

Resolution of the Trustees of the IF Umbrella Pension Fund:


Resolved:

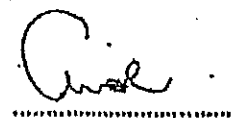
That the IF Umbrella Pension Fund will commence with effect from 1 January 2004.

Certified:

That these are the Rules of the IF Umbrella Pension Fund which will become effective from 1 January 2004.


Chairman of Trustees


Trustee


Principal Officer

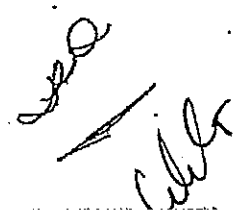


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IF Umbrella Pension Fund

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