

**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 REINIER

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

Eight 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 COMPUTERS (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 THE 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
KAMIONSKY TONY	Thirty-Fourth Respondent

FILING NOTICE

DOCUMENTS FILED HEREWITH: 32nd & 33rd Respondents further supplementary /
replying affidavit.

SIGNED AND DATED AT CAPE TOWN ON THIS THE 19th DAY OF NOVEMBER
2015.

DD DUNSTER
ATTORNEYS · CONVEYANCERS



DUNSTER & ASSOCIATES
R DUNSTER
Attorneys for 32nd & 33rd Respondents
Ref: DYN1-0005
C/O: **SAVAGE JOOSTE & ADAMS**
ATTORNEYS
142 Boshof Street
Brooklyn
PRETORIA
Ref: Mrs Kartoudes/

TO: **THE REGISTRAR**
High Court
PRETORIA

TO: **JACOBS GONYORA INC**
Attorneys for the First to Third Applicants
C/O BARES BASSON ATTORNEYS
Woltemade Building 1st Floor
Paul Kruger Street 118
Pretoria
<mailto:lesley@jgattorneys.co.za>

- 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: **NORTON ROSE FULBRIGHT SOUTH AFRICA**
Attorneys For the Fourth Appellant
15 Alice Lane
Sandton
e-mail: Michael.hart@nortonrosefulbright.com
C/O Friedland Hart Solomon & Nicolson
Suite 301, Block 4
Monument Office Park
79 Steenbok Avenue
Monument Park
PRETORIA
painter@fhsn.co.za
- AND TO: **CLIFFE DEKKER HOFMEYER**
Attorneys for 16th Respondent
By e-mail: Grant.Ford@cdhlegal.com
- AND TO: **CHARTERED EMPLOYEE BENEFITS**
For 19th to 26th, 29th & 30th Respondents
By E-mail: trevor@charteredebe.co.za
- AND TO: **SAINT ANDREWS BROKERS**
For 31st Respondent
By E-mail: ericj@saintandrews.co.za
- AND TO: **HERITAGE GROUP**
For 2nd to 10th, 27th, 28th & 31st Respondents
By e-mail: anthony@heritagegroup.co.za
- AND TO: **CONVISTA CONSULTING (PTY) LTD**
11th Respondent
By e-mail: Sheryl.cooke@convista.com

- AND TO: **IDI TECHNOLOGY SOLUTIONS (PTY) LTD**
12th Respondent
By e-mail: gblunn@idi.co.za
- AND TO: **PROGRESSIVE PACKAGING (PTY) LTD**
13th Respondent
By E-mail: Sonia@hixnet.co.za
- AND TO: **WORLD CARGO SERVICES (PTY) LTD**
14th Respondent
By E-mail: colin@worldcargo.co.za
- AND TO: **CONDUIT RISK AND INSURANCE HOLDINGS (PTY) LTD**
15th Respondent
By E-mail: gavint@conduitcapital.co.za
- AND TO: **THE BRAND UNION (PTY) LTD**
17th Respondent
By E-mail: Manuela.fachin@thebrandunion.com
- AND TO: **ULTRA LITHO (PTY) LTD**
18th Respondent
By E-mail: vaughann@ultra-litho.co.za
- AND TO: **TONY KAMIONSKY**
34th Respondent
Service by e-mail: Tony.kamionsky@gmail.com

**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 REINIER	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	Eight Respondent
HESTICO (PTY) LIMITED	Ninth Respondent
HETTAS CC	Tenth Respondent
CONVISTA CONSULTING (PTY) LIMITED	Eleventh Respondent
IDI TECHNOLOGY SOLUTIONS (PTY) LIMITED	Twelfth Respondent

JPK

PROGRESSIVE PACKAGING (PTY) LIMITED	Thirteenth Respondent
WORLD CARGO SERVICES (PTY) LIMITED	Fourteenth Respondent
CONDUIT RISK AND INSURANCE HOLDINGS (PTY) LIMITED	Fifteenth Respondent
DELL COMPUTERS (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-Eighth Respondent
THE CHURCH OF JESUS CHRIST OF THE 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

BJ
JF/C

IF UMBRELLA PROVIDENT FUND

Thirty-Second
Respondent

IF UMBRELLA PENSION FUND

Thirty-Third
Respondent

KAMIONSKY TONY

Thirty-Fourth
Respondent

**32ND AND 33RD RESPONDENT'S FURTHER SUPPLEMENTARY /
REPLYING AFFIDAVIT**

I, the undersigned,

FRANCISCO JABULANE KHOZA

do hereby make oath and state that:

1. I am an adult male and a member of the board of trustees of the thirty-second respondent; I ceased acting as a member of the board of trustees of thirty-third respondent upon its liquidation on 28 August 2015, which liquidation was instituted by way of voluntary dissolution in terms of section 28 of the Pension Funds Act, 1956.
2. I am duly authorised to depose to this affidavit on behalf of the thirty-second respondent and, as the facts herein relate to the period prior to the liquidation of the thirty-third respondent, I am duly authorised by the

FR
JFK

appointed liquidators to depose to this affidavit on behalf of the thirty-third respondent.

3. The contents of this affidavit are, unless the context indicates otherwise, within my personal knowledge and belief, and are true and correct. To the extent that I may depose to facts which are not within my personal knowledge, I have indicated the source of my information, and I state that I verily believe such facts to be true and correct. To the extent that I may make submissions of a legal nature in this affidavit, I do so on the advice of the Funds' legal representatives, which advice I believe to be correct.

Allegations that the Funds have not been truthful and have deliberately withheld information

4. I depose to this affidavit for similar reasons to the last affidavit to which I deposed in this matter i.e. to place the correct facts on record. This has again become necessary due to the false information and allegations from Kamionsky in his affidavit deposed to on 1 June 2014.
5. It seems that, notwithstanding the extensive background to the insurance situation which I provided in my previous affidavit, Kamionsky is intent on ignoring or misunderstanding this background

SP
JFK

as he pursues his various hobbyhorses. I deal with the most egregious allegations below.

6. Kamionsky states in paragraph 26 of his affidavit that *"the applicants have gone to great lengths to hide the truth about these indemnity policies from the members, from the Adjudicator and from this Court."* He then states in paragraph 27 that *"the applicants and subsequent trustees attempted to block me finding out the truth by refusing to give me copies of insurance policies and by instructing the insured not to give me any information"*, Kamionsky contends that he was compelled to bring an application in the South Gauteng High Court, which was brought under case number 30888/2011 on 14 September 2011, to obtain copies of the policies *"and to get responses from the insurer"*. Later, in paragraph 75 Kamionsky asserts that *"what is noteworthy is that in paragraph 11 of the funds' supplementary affidavit they admit for the first time that the premiums were not paid on insurance policies. The funds however had the opportunity to admit this in their first affidavit but chose not to indicating that they are not being totally honest and open with the Court"*.
7. By these broad statements Kamionsky seeks to suggest that the Funds have, through successive board members (trustees), sought to hide what he perceives as the *"truth"* relating to the non-payment of insurance premiums, and that they only belatedly *"admitted"* this non-payment. This is not correct for the reasons which follow.

JP
JFK

Responses to allegations

8. In paragraph 53 of the Funds' response to the complaint dated 3 August 2011 (annexure "GL 27" to the founding affidavit), the Funds pertinently stated that they were advised by the underwriting managers on 18 March 2011 that the policies had lapsed due to non-payment of premiums, and that cover had been reinstated with effect from 1 June 2011, acting retroactively to 21 November 2006. Paragraph 54 goes on to record that the revised terms of cover also contain exclusions effectively the same as those which had applied.
9. In addition to the extensive references to the issue in the Funds' communication to members dated 24 August 2012 (annexure "FK9" to my supplementary affidavit), in an earlier communication to members, entitled "*Communication to intermediaries, participating employers and members*", made by the Funds on 3 August 2011, extensive reference was made to the insurance position, and it was stated that "*whether or not a claim is paid out under this policy depends on the terms and conditions in force at the time a claim is made. These terms and conditions have varied from time to time depending on what it was possible to buy in the marketplace. The insurers were first notified of the circumstances giving rise to the cost of the rebuild in the insurance period beginning 1 August 2010. The Trustees have opinion from their legal advisers that claims which arise from the rebuild, such as claims by members for their contributions to the cost of the rebuild, are*

BS
OPK

probably excluded under the terms of the policies. This is as a result of the exclusions imposed by the insurers on the renewal of the policy as at 1 August 2010”.

10. As to the non-payment of insurance premiums, the communication of 3 August 2011 stated *“you may have seen comment that the Liability cover lapsed earlier this year. This was so, but the Trustees arranged for reinstatement with no gap in the period of coverage. The current policy will expire on 31 May 2012. At this time legal opinion suggests that the exclusions relating to the reinstated cover are effectively the same as the exclusions that applied to cover prior to the lapse”.*
11. In the above regard I attach a copy of the relevant communication to members dated 3 August 2011 as annexure **“FK10”**.
12. I should also mention that Kamionsky’s suggestion in paragraph 27, which is repeated elsewhere in the papers, that he *“had to bring an application in the Gauteng High Court... to get copies of the policies and to get responses from the insurer”*, is misleading. The Funds were not obliged to provide Kamionsky with copies of the policies, but decided to do so to avoid wasting costs on litigation. As commented by the insurer’s themselves, in their correspondence dated 9 September 2011, annexure **FK8**, Kamionsky did not have an insurable interest that was insured in terms of the policies.

JS
JSR

13. It is also misleading to state, as Kamionsky does in paragraph 28, that it was as a result of the above application that he "*found out about the non-payment of the premiums*". Kamionsky implies that as a former officer of the Funded he had some right to this information. However, this is obviously not the case. (As to persons who did have a right this information *inter alia* terms of section 7D(1)(c) of the Pension Funds Act, 1956, such as members and participating employers, the Funds always provided such persons with such information. The various communications to members and employers to which I have referred in the affidavits submitted by the Funds in this matter testify to this).
14. I also wish to deal particularly with the allegation in paragraph 63 of Kamionsky's further affidavit which states that the Funds "*failed to bring to the attention of the Court that the reason why the insurance cover was qualified was due to the non-payment of the premiums by the applicants leading to the insurance cover lapsing and the insurer was then only prepared to reinstate the policy with this exclusion added in*".
15. It seems from the above that Kamionsky has apparently not read my previous affidavit which I deposed to in October 2013. From paragraphs 9 to 14 of that affidavit it is clear that the exclusions relating to the financial reports for the Funds for the 2006 financial year already applied to policies in respect of which the premiums had not been paid. Thus, even if the premiums had been paid, any claims on the policy

~~83~~
JFK

would have been rejected by the insurer *inter alia* on this basis, as is made clear by the letter from the insurer's attorneys dated 9 September 2011, attached as annexure "FK8" to that affidavit, and in particular paragraphs 21 to 24 thereof. (According to the insurers, the policy would also have been repudiated on the basis of nondisclosure by Kamionsky himself, as is made clear by paragraphs 34 and 35 of that letter. Kamionsky does not deal with this).

16. It is therefore incorrect and misleading for Kamionsky to state in paragraph 63, with reference to the letter from the Funds' attorneys, that "*the insurer was then only prepared to reinstate the policy with this exclusion added in*" (my emphasis), and that "*the exclusions [were only] added into the policies when the policies were reinstated after they had lapsed*". The fact of the matter is that at all relevant times these exclusions were included in the policies which the Funds had in place to respond to third party claims.

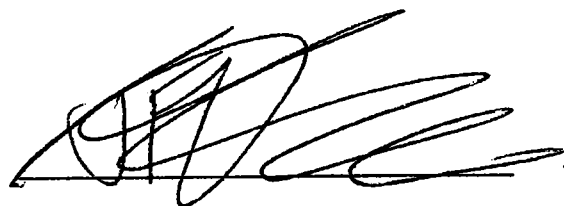
17. The Funds associate themselves with the comments made by the First Applicant in paragraph 62 of the First Applicant's recent affidavit, dated 14 August 2015, in relation to the assertion by Kamionsky in paragraph 64 of his affidavit: that the insurance policies which respond to claims are those in place at the time that the decision to rebuild the records was taken. Kamionsky is incorrect, and his understanding is based on a misreading of the relevant insurance policy. It is clear, as I have previously pointed out, that the relevant policy which must respond to

BP
JFK

claim made under "*Defined Event 1: Negligence*", is the policy which was in place at the time that the notice of claim was given. The relevant extract from the policy (annexure "FK 1" to my supplementary affidavit) reads: "*if during the period of insurance, written notice of a claim against the Insured has been given to the Insurers, then any claim which is subsequently made against the Insured and reported to the Insurers alleging, arising out of, based upon or attributable to the facts alleged in the claim of which such notice has been given or alleging any wrongful act which is the same, related, continuous or repeated wrongful act alleged or contained in such claim, shall be considered made against the Insured and reported to the Insurers at the time such notice of such claim was given*" (my emphasis).

18. The assertion by Kamionsky in paragraph 64 that "*the only reason for the repudiation not in dispute is that the premiums on the policy were not paid*" is incorrect. Whilst it is so that the non-payment of premium may later have caused a repudiation, as intimated by the insurers' attorneys, the relevant policy would in any event not have responded to a claim, and, furthermore, the policy exclusions relating to the 2006 financial report were not inserted as a result of the non-payment of premium, but had been there all along.

~~SP~~
JFK



FRANCISCO JABULANE KHOZA

The deponent has acknowledged to me that he knows and understands the contents of this affidavit which was signed and sworn before me at Johannesburg on the 16th day of November 2015, the regulations contained in Government Notice R1258 of 21 July (as amended) having been complied with.



COMMISSIONER OF OATHS

**BRIGHT FABIEN TIBANE
EX OFFICIO
COMMISSIONER OF OATHS
PRACTISING ATTORNEY
REPUBLIC OF SOUTH AFRICA
165 WEST STREET
SANDTON**

**BRIGHT FABIEN TIBANE
EX OFFICIO
COMMISSIONER OF OATHS
PRACTISING ATTORNEY
REPUBLIC OF SOUTH AFRICA
165 WEST STREET
SANDTON**



IF Umbrella Pension and
Provident Fund



Dynam-ique SA Umbrella
Pension and Provident Fund

3 August 2011

***Dynam-ique SA Umbrella Pension Fund
Dynam-ique SA Umbrella Provident Fund
IF Umbrella Pension Fund
IF Umbrella Provident Fund***

***Communication from the Trustees to intermediaries, participating employers
and members***

Introduction

- The previous communication from the Board was dated 26 April 2011.
- Since then, the Chief Executive of Aon Hewitt has sent a letter to intermediaries and participating employers, dated 15 July 2011, giving an update on the progress of the member level rebuild and setting out the milestone steps in the recovery plan over the next 12 months. A copy of this letter is enclosed.
- This Communication provides an update on other aspects concerning the Funds.

New Trustee

- Ms Stefane Bredenkamp, who heads up the Retirement Funding Administration Services of Aon Hewitt South Africa, has stood down as a trustee of each of the Funds. Ms Bredenkamp has been replaced by Craig Falconer, Executive Head of Aon Hewitt Actuarial, who in terms of the Rules has been nominated by Aon Hewitt and has been approved by the current Board.

Insurance Position

- The current Board of Trustees wish members to be aware of the nature of the insurance held by the Funds.

Registration number: IF Pension (12/8/37464) IF Provident (12/8/37452)
Dynam-ique Pension (12/8/37635) Dynam-ique Provident (12/8/37634)
Registered Address: 1 Sandton Drive, The Place, Sandton, Johannesburg
Trustees: J Rollason (Independent Chairman), R Welham (Independent Trustee),
F Khoza (Independent Trustee), C Stuart (Trustee),
L Wingrove-Gibson (Independent Principal Officer)

- The Funds have held Pension Fund Trustees Liability insurance for the Dynam-ique Funds since November 2006 and for the IF Pension and Provident Funds since August 2004.
- Whether or not a claim is paid out under this policy depends on the terms and conditions in force at the time a claim is made. These terms and conditions have varied from time to time depending on what it was possible to buy in the market place.
- The insurers were first notified of the circumstances giving rise to the cost of the rebuild during the insurance period beginning 1 August 2010. The Trustees have opinion from their legal advisors that claims which arise from the rebuild, such as claims by members for their contributions to the cost of the rebuild, are probably excluded under the terms of the policies. This is as a result of the exclusions imposed by the insurers on the renewal of the policy as at 1 August 2010.
- You may have seen comment that the Liability cover lapsed earlier this year. This was so, but the Trustees arranged for reinstatement with no gap in the period of coverage. The current policy will expire on 31 May 2012. At this time legal opinion suggests that the exclusions relating to the reinstated cover are effectively the same as the exclusions that applied to cover prior to the lapse.

Legal Actions

- The Funds, as discussed in previous communiqués, have instituted action against Dynam-ique, a director of Dynam-ique, and Aon, in order to compensate members as much as possible for the costs of the rebuild. All of these actions are currently defended. Copies of the pleadings in each of the respective matters are available to members on request.
- Regarding action against Aon, the trustees have been in discussion with Aon regarding the claim. The next step in the matter is for Aon to formally file its plea once requested to do so by the Funds. The trustees, in addition to being in discussion with Aon, have sought confirmation from their advisors on certain aspects of the claim which necessitates further investigation before proceeding. It is anticipated that the next step will take place within the next month.
- Regarding action against Dynam-ique Consultants and Actuaries ('Dynam-ique'), the former administrators, Dynam-ique have taken issue with the jurisdiction of the arbitrator, which must still be resolved. The trustees have invited Dynam-ique to discuss possible settlement of this matter with them but have not received a response from Dynam-ique. Further, the Funds have afforded Dynam-ique various opportunities to confirm the process Dynam-ique wishes to follow in dealing with the issue of jurisdiction, but it appears that the Funds will have to approach the Arbitrator directly for directions on this issue.

JP/C

- Regarding action against the director of Dynam-ique, objections have been received to the Funds' particulars of claim from the Defendant's attorney. The Funds have attended to these objections and are of the view that the objections have been addressed. The next step, barring any further objections, will be for the Defendant to file his plea, the Funds should then be in a position to apply for a trial date.
- Foremost in the minds of the trustees is the viability and cost of each of these actions, which are regularly reviewed. The trustees are also reviewing whether recovery may be obtained from any additional parties and members will be updated once such decision is finalised.

Complaint

- The Board is aware of a complaint against the previous Board(s) of Trustees currently being considered by the Pension Funds Adjudicator surrounding the decision to undertake the rebuild and the alleged lack of supervision that led to the need for the rebuild.

Members will be kept informed of any significant developments

JOHN ROLLASON
CHAIRMAN

Not signed sent electronically

LINDY WINGROVE-GIBSON
PRINCIPAL OFFICER

