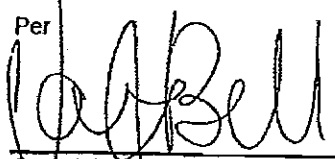


cost of the rebuild exercise from Aon, Dynamique and/or Tony Kamlonsky. To the extent that this is irrecoverable, it will be an insurance loss as opposed to a loss that the IF Funds and its members must suffer.

- 38. An order is requested that the First Respondents, alternatively the First and Second Respondents be held accountable for the cost of the rebuild exercise and that the loss suffered by the Complainants be made good by the crediting of their member shares in the IF Funds in the amount of 2.5% together with fund return, alternatively interest at the prescribed rate of 15.5%, from date of the debit of their fund credits until date of crediting of their member shares.

DATED AT *Cape Town* ON THIS *28th* DAY OF *April* 2011

JONATHAN MORT INC
 Per 
 Complainants' Attorney
 3A Sir George Grey Street
 Oranjezicht
 CAPE TOWN
 (REF: VB/rf/CHAR1001.1)

TO: THE PENSION FUNDS ADJUDICATOR
 Ground & 1st floors
 Corporation Place
 Cnr. Fredman Drive & Sundown Valley Crescent
 SANDTON
 2196

AND TO: The Respondents
 c/o DUNSTER & ASSOCIATES ATTORNEYS
 4th Floor,
 Suite 405
 402 Keerom Street
 CAPE TOWN
 8001
 (Ref: RD/CR/DYN1-001)
 (Per email: ren@dunster.co.za)

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ANNEXURE A

Dynam-ique

1 November 2010

COMMUNICATION FROM THE BOARD OF TRUSTEES

Rebuild of Funds

In July 2010 the board of trustees of the above funds appointed Deloitte to perform a member level rebuild of the funds. The reasons for making the decision to undertake this exercise was that the data held in respect of the funds was questionable and the trustees and current administrator were not convinced that it was entirely accurate. The funds have been administered by two different administrators (and in the case of the Integrated Futures funds by three) since inception. They are currently administered by Aon. Due to the potential inaccuracy of the data it was decided that in order to ensure the efficient running of the funds going forward, a total rebuild of the fund would need to be undertaken from inception date to 31 January 2008.

The trustees obtained two formal quotes before appointing Deloitte and debated the reconstruction exercise with other providers currently undertaking similar exercises within the industry. In addition the trustees debated the need for a rebuild extensively among themselves. The cost of the rebuild exercise will be approximately R20 million. This involves a rebuild for each and every member at member level. The trustees had to charge the cost of the rebuild to the funds as the rebuild exercise falls outside the scope of day to day administration of the funds. In any event the current administrator would not have had the time or resources to undertake such a vast exercise. Prior to making this decision, the trustees took legal advice regarding their right to debit the funds with the cost of the rebuild and the method of allocation of the cost among the assets of the fund. The following conclusions were reached –

- The assets of a fund belong to the fund (not to the members or the employers) and it is only when a member leaves the fund that such member becomes entitled to a part of the fund assets, in the form of a benefit. Thus the trustees, on behalf of a fund, may incur such costs as are reasonable and necessary to ensure that the fund is managed and administered accurately and that all the

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: G Le Grellier (Independent Chairman), R Botha (Independent Trustee),
 C Smith (Trustee), D Lepor (Trustee),
 L Wingrove-Gibson (Independent Principal Officer)

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requirements of legislation are met. The trustees do not need to seek the approval of members, employers, brokers or consultants in order to incur these costs.

- The trustees debated the method of allocation of the costs among the funds and members and were inclined to try to use some methodology that related the costs of the project to the members who had potentially been affected at the time. This raised numerous further queries and issues which we will not go into, save to say that it would have been very difficult to isolate the debit in a way that everyone would agree was equitable. After debating the issue with the lawyers, taking into account that the assets of the fund belong to the fund, that the rules provide for the incurring of these costs, and that the funds would continue to be paralysed if the rebuild was not properly done, the trustees decided that the funds would be debited with these costs during the course of September 2010. It is also important to note that all members would be impacted if the funds were to continue to be paralysed. This means that it would have been very difficult to produce annual financial statements and accurate benefit statements. In addition the potential for incorrect payments that could prejudice the remaining members of the funds would continue to exist.

In order to provide for the cost of the rebuild, the trustees have debited each member's share with approximately 2.5% of asset value. The money required to pay for the rebuild of the funds has been disinvested from the market and placed in an interest bearing account in the name of the funds. Only as invoices are approved are moneys actually paid out of the fund.

As is clear from what is set out above, there are questions around the accuracy of fund data and for that reason, the trustees have taken a decision not to issue benefit statements until such time as the rebuild has been completed. All Section 14's transferring out of the funds will be suspended. The trustees have directed AON to inform the Financial Services Board of their intention not to pay Section 14's.


Please note that representatives of the FSB have been made aware of the situation (in a meeting as well as via subsequent correspondence), and while they are unable to endorse the process they have not raised any concerns. They are being kept abreast of the progress of the project.

Regarding the question of recovery of the costs incurred in this project, the trustees have taken legal advice on the various options available to recover costs. We cannot discuss the merits of any legal action as this matter is *sub judice*. Any costs recovered will be for the benefit of the funds.

While we sympathise with the extreme frustration and anger that has arisen from the ongoing problems with the funds and also from this latest decision, we stand firmly by our decision and remain committed to seeing the project through to a favourable conclusion. The rebuild is due for completion in June 2011. The trustees are having regular meetings with Deloitte and thus far the progress of the project is well

within the time lines given. Further communication will be provided during the course of the rebuild and once the project is complete.

Should you wish to contact the trustees directly, all correspondence can be sent to



Gail Le Grollier
Chairman

Lindy Wingrove-Gibson
Principal Officer



ANNEXURE "B"
jonathan mort INC.
PENSION FUND ATTORNEYS

To: The Trustees of IF Umbrella Pension Fund and Provident Funds
c/o Aon South Africa (Pty) Ltd
Fax: 011 944 8000
Email: alm@Aon.co.za
Our Ref: JM/vlo/CHAR1001.1)
Your ref:
Date: 8 December 2010

Dear Sirs

Re: The IF Umbrella Pension and Provident Funds – rebuild exercise

1. We are instructed by Chartered Employee Benefits, who represent the members of ten of their clients who participate in the IF Umbrella Pension and Provident Funds ("the Funds").
2. We have considered the correspondence that has been distributed by the Funds and Aon South Africa (Pty) Ltd ("Aon"), as the Funds' administrator, to members of the Funds and/or their brokers regarding the cost of the rebuild exercise of approximately R20 million. The trustees of the Funds ("the trustees") made a decision to fund the cost of the exercise by means of a 2.5% once-off deduction from the assets of the Funds in August 2010. All members' share accounts were debited by this percentage amount.
3. We are instructed to advise you, on behalf of the members whom we represent, that they are not satisfied with what has been communicated to them to date by the Funds and/or Aon in this regard. We are accordingly instructed to state what we consider the position of the members to be as follows: -
 - 3.1. The members have suffered a loss as a result of the negligence or maladministration or both at the hands of one or more of the Funds' previous administrators, the Funds' current administrators or the trustees.
 - 3.2. The members will not accept anything less than full reimbursement of the costs of the rebuild exercise. Despite the contention that the trustees are authorized to deduct this cost from the assets belonging to the Funds this does not change the fact that a loss has been suffered and this must be made good.

T +27 (0)21 402 5207 F +27 (0)21 451 0717
3/A Sir George Grey Street, Oranjezicht E001
PO Box 12144, Mill Street E010, South Africa
jmort@mortlaw.net vbef@mortlaw.net pm@mortlaw.net
www.mortlaw.net
Directors Jonathan Mort Vanessa Joff
Incorporated in South Africa
Registration Number 2007/052416/01 VAT No: 4547052174

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- 4. The members are accordingly entitled to lodge a complaint in terms of the Pension Funds Act, No.24 of 1956, relating to the maladministration of the Funds in consequence of which prejudice has been sustained or may be sustained as a result of such maladministration of the Funds by the parties concerned.
- 5. The members are not satisfied with the information that they have received to date regarding the actions to be taken to recover the loss. Thus far, the members have been advised that the trustees "will take all necessary action to try and prevent any loss being suffered by the Funds" but that the merits of any legal action cannot be discussed as the matter is "sub judice".
- 6. The members require an undertaking that the costs of the rebuild exercise will be restored in full and that they will be put back in the same position had the rebuild exercise not taken place.
- 7. The matter is not *sub judice* unless a summons has been issued or legal proceedings have been instituted and if this has been done, the members require this to be confirmed with details of the parties cited in any action or application and details of the forum in which such action or application has been brought. Furthermore, it is not acceptable that the trustees will try to recover the loss. As stated above, the members will not accept anything less than an undertaking for full reimbursement of the costs of the rebuild exercise. In addition, the members require confirmation that any claim against any entity that may be responsible for the loss has not prescribed in terms of the Prescription Act, No.68 of 1969.
- 8. If the costs of the rebuild exercise are not recoverable, the members require an assurance that a claim against the Funds and/or their current or previous administrator's PI insurance cover will be made. If adequate PI cover is not held to cover this claim, this will further indicate the negligence of the parties responsible for the loss.
- 9. The members do not believe that the trustees and the administrator(s) to the Funds have observed the utmost good faith and have exercised proper care and diligence in dealing with the Funds' assets. In the circumstances, section 2 of the Financial Institutions (Protection of Funds) Act, No.28 of 2001 ("the FI Act"), may be resorted to by the members to hold the trustees and/or the directors and employees of the administrators liable, as this section of the FI Act, and makes these person personally liable for the loss. In terms of section 10 of the FI Act a Court may, in addition to any penalty, order compensation for damages suffered and the members reserve their right to proceed in terms of this.
- 10. As stated above, the members have suffered a loss, and are seeking full reimbursement of the loss and will take whatever action is appropriate if the loss is not made good by the responsible parties.

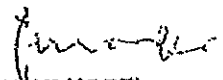
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jonathan mort INC.
PENSION FUND ATTORNEYS

- 11. We are instructed to record that the members' rights are reserved and their taking further action will depend on whether the assurances referred to above are received or not.

- 12. Kindly revert to us in this regard on or before 24 December 2010.

Yours faithfully
JONATHAN MORT INC


(J W T MORT)

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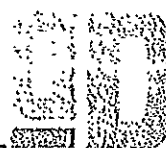
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ANNEXURE "C"

T +27 (0)21 422 3020

F +27 (0)86 601 2142

E ren@dunster.co.za



DUNSTER
& associates
attorneys conveyancers

Your ref: JM/VLO/CHAR1001.1

Our ref: RD/CR/DYN1-0001

Date: 24 JANUARY 2011

JONATHAN MORT INC
ATTENTION: JONATHAN MORT
EMAIL: jmort@mortlaw.net

Dear Sirs,

THE IF UMBRELLA PENSION AND PROVIDENT FUNDS – REBUILD EXERCISE

1. We act on behalf of the Funds. Your correspondence dated 8 December 2010 refers.
2. We note your comment at paragraph 4 that "the members are accordingly entitled to lodge a complaint in terms the Pension Funds Act, No 24 of 1956 (*"the Act"*)".
3. We are uncertain whether your correspondence is indeed actually intended to be a complaint in terms of section 30A(1) of the Act, as it is difficult to ascertain with certainty the substance of the complaint, and which specific issues you wish the Funds to respond to. Furthermore, your correspondence seeks information which is not contemplated in the definitions section of the Act pertaining to complaints. (We also draw your attention to the definitions section of the Act, which requires a complaint to relate to a specific complainant in order to constitute a complaint. Please can you kindly identify who the complainants are as their details are not evident from your correspondence).
4. To the extent that your correspondence contains a complaint, it appears to be framed in terms of paragraph (b) under the meaning of "complaint" in the definitions section of the Act, i.e. that a complainant has sustained or may sustain prejudice in consequence of the maladministration of the Fund.
5. The substance of your clients' complaint appears to be at paragraph 3.1: "The members have suffered a loss as a result of the negligence or maladministration or both at the hands of one or more of the Funds' previous administrators, the Funds' current administrators or the trustees."
6. In this regard we point out that the trustees are taking all action necessary to recover the costs of the rebuild and the Funds' attorneys have identified parties who may be liable for the loss and

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A handwritten signature in black ink, appearing to be 'CE' followed by a stylized flourish.

against whom summonses will shortly be issued, which will interrupt prescription. We will provide you with copies of the summonses and case numbers once they have commenced. However, we advise that no actions have yet been instituted.

7. To the extent that your clients nevertheless intend to pursue legal proceedings notwithstanding the above, we point out that members or employers will only have claims, if at all, when they become entitled to payment of a benefit in terms of the Funds' rules. Should any claims arise they will be passed onto the Funds' insurers.
8. Please note that any failure to deal with a specific allegation or contention must not be construed as an admission thereof and the Funds reserve their rights to deal with such at a later stage. Should you still require further information please advise accordingly.

Yours faithfully
DUNSTER & ASSOCIATES

[Faint signature]

REN DUNSTER

CE
[Handwritten signature]

BY EMAIL

Dunster & Associates
 Attn.: Ren Dunster
 Email: ren@dunster.co.za

Our Ref: V Bell/rf/CHAR1001.1
 Your ref: RD/CR/DYN1-001
 Date: 2 February 2011

WITHOUT PREJUDICE

Dear Sirs

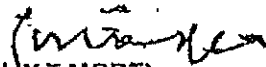
RE: THE IF UMBRELLA PENSION AND PROVIDENT FUNDS – REBUILD EXERCISE

1. We refer to the above matter and to your letter dated 24 January 2011.
2. Our letter dated 8 December 2010 was an attempt to avoid having to lodge a complaint with the Pension Funds Adjudicator ("the Adjudicator") by giving your clients the opportunity to properly address and answer the issues raised therein. The information sought does not have to be contemplated in the definition section of the Act pertaining to complaints in order for our clients' to lodge a complaint that your clients' failure to adequately communicate and supply the requested information is prejudicial to them or may cause them to sustain prejudice.
3. You correctly state that the complaint against the Funds is framed in terms of paragraph (b) under the meaning of "complaint" in the Act.
4. There is no reason why details of the Funds' and the administrators' indemnity insurance cover cannot be provided. The details of the extent of the PI Insurance Cover and confirmation that it is in place, is an assurance that we expected could readily be given.
5. You have indicated in your letter under reply that the trustees of the Funds are taking action to recover the costs of the re-build exercise, but that no summons has yet been issued. Our clients' believe that the trustees must have been aware of the data problems from at least January 2008 when the administration of the Funds was transferred to the current administrator. The fact that you have indicated that a summons has still not been issued causes great concern

that the claim/s may have prescribed. The dilatory action on the part of the trustees is in itself cause for complaint in respect of the potential prejudice that the members may suffer.

6. Although the members and employees may only have claims when they become entitled to payment of a benefit in terms of the Funds' rules, this does not detract from the fact that a complaint presently exists arising from the maladministration of the Funds which has caused prejudice or may continue to cause prejudice.
7. We had hoped that the information requested would be provided and the assurances sought would be given to avoid having to lodge a formal complaint with the Adjudicator. In view of the fact that this has not been done, our clients will proceed accordingly.

Yours faithfully
JONATHAN MORT INC


(J.W.T MORT)

ANNEXURE E

SCHWARZ - NORTH

INC.

TELEPHONE +27 11 325-4846
 FACSIMILE: +27 11 325-4244/5257/5900
 P O BOX 411 670, CRAIGHALL, 2024
 DOCEX 256, RANDBURG

ATTORNEYS

HYDE PARK LAW CHAMBERS
 7 ALBURY PARK
 CNR ALBURY ROAD AND JAN SMUTS AVENUE
 HYDE PARK, 2196

JONATHAN MORT INC. PENSION FUND
 ATTORNEYS

BY FAX: 021 461 9717

Our Reference Mr H North/M North

Your Reference JMVlo/CHAR1001.1

Email mph@hydeparklaw.co.za

Date 24 December 2010


Dear Sirs

RE: THE IF UMBRELLA PENSION AND PROVIDENT FUNDS – REBUILD EXERCISE

1. We act for Aon South Africa (Pty) Ltd.
2. Our client has sent a copy of your letter dated 8 December 2010 to the trustees of the IF Umbrella Pension and Provident Fund ("the funds") for their attention and reply.
3. Aside from what is set out below, our client does not intend responding to each and every allegation contained in your letter under reply. Our client's failure to do so is not to be construed as an admission of any issue not pertinently dealt with and all rights vested in our client to deal therewith in due course and in the appropriate forum are reserved.
4. On your client's own version, the decision to fund the rebuilding exercise was a decision taken by the trustees of the funds and not our client. Any loss purportedly suffered by your client is a loss that has been suffered at the hands of the trustees of the funds.

5. Our client did not assume any of the liabilities or obligations of Dynamique SA Consultants and Actuaries (Pty) Ltd ("Dynamique"). The rebuilding exercise relates to irregularities that arose during Dynamique's administration of the funds.
6. Our client has advised and continues to advise the trustees of the funds and Dynamique of the Irregularities in Dynamique's administration of the funds. It was pursuant to our client notifying the trustees of the funds of these Irregularities that the trustees resolved to embark upon the rebuilding exercise.
7. To the extent that you allege that the members of the funds have suffered a loss, our client disputes that any such loss is occasioned as a result of its negligence or maladministration of the funds.
8. To the extent that your client alleges that our client is in any way liable to reimburse your client for the costs of the rebuilding exercise embarked upon by the trustees of the funds, those allegations are denied.
9. Any undertakings sought by your client regarding the costs of the rebuilding exercise should be sought from the trustees of the funds.
10. Any action instituted by your client against our client will be defended.
11. Any assurances sought by your client under cover of your letter of 8 December 2010 should be sought directly from the trustees of the funds.
12. Our client's rights remain reserved.

Yours faithfully,


HP NORTH
SCHWARZ - NORTH INC



ANNEXURE "F"

IN THE HIGH COURT OF SOUTH AFRICA
(SOUTH GAUTENG HIGH COURT, JOHANNESBURG)

Case No: 3904/2011

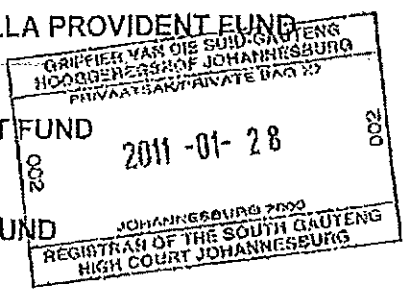
In the matter between:-

DYNAM-IQUE SA UMBRELLA PENSION FUND First Plaintiff

DYNAM-IQUE SA UMBRELLA PROVIDENT FUND Second Plaintiff

IF UMBRELLA PROVIDENT FUND Third Plaintiff

IF UMBRELLA PENSION FUND Fourth Plaintiff



and

AON SOUTH AFRICA (PTY) LTD Defendant

To the Sheriff or his deputy:-

INFORM

AON SOUTH AFRICA (PTY) LTD, a private company duly registered in terms of the company laws of the Republic of South Africa and having its principal place of business and *domicilium* address at 1 Sandton Drive, Sandhurst, Sandton, Johannesburg (hereinafter called the Defendant), that

Ramsay Webber
Elton Anderson
011 778 0624

SHERIFF SANDTON
- MIDRAND
2011 -01- 28
TEL: 011 781 3445

DYNAM-IQUE SA UMBRELLA PENSION FUND, a pension fund organisation registered in terms of the Pension Funds Act 24 of 1956 (*"the PFA"*) and having its registered head office and *domicilium* address at *"The Place"*, 1 Sandton Drive, Sandton, Johannesburg, and which in terms of section 5 of the PFA is capable of suing and of being sued in its own name,

(hereinafter called the First Plaintiff) and

DYNAM-IQUE SA UMBRELLA PROVIDENT FUND, a pension fund organisation registered in terms of the PFA and having its registered head office and *domicilium* address at *"The Place"*, 1 Sandton Drive, Sandton, Johannesburg, and which in terms of section 5 of the PFA is capable of suing and of being sued in its own name,

(hereinafter called the Second Plaintiff) and

IF UMBRELLA PROVIDENT FUND, a pension fund organisation registered in terms of the PFA and having its registered head office and *domicilium* address at 3rd Floor, North Wing, Oakhurst Office Park, 11 St Andrews Road, Parktown, Johannesburg, which in terms of section 5 of the PFA is capable of suing and of being sued in its own name,

(hereinafter called the Third Plaintiff) and

IF UMBRELLA PENSION FUND, a pension fund organisation registered in terms of the PFA and having its registered head office and *domicilium* address at 3rd Floor, North Wing, Oakhurst Office Park, 11 St Andrews Road, Parktown, Johannesburg, which in terms of section 5 of the PFA is capable of suing and of being sued in its own name,

(hereinafter called the Fourth Plaintiff)

hereby institute action against the Defendant in which the Plaintiffs claim the relief on the grounds as set out in the particulars annexed hereto.

INFORM the Defendant further that if it disputes the claim and wishes to defend the action it shall:-

- a) within ten (10) days of the service of this Summons file with the Registrar of the Court at Corner Von Brandis and Pritchard Streets, Johannesburg a notice of intention to defend and serve a copy thereof on the Plaintiffs' attorney, which notice shall have an address (not being a post office box or *poste restante*) referred to in Rule 19(3) for the service upon the Defendant of all notices and pleadings in the action.
- b) thereafter, and within 20 (twenty) court days after filing and serving notice of intention to defend as aforesaid, file with the Registrar and serve upon the Plaintiffs a plea, exception, notice to strike out, with or without a claim in reconvention.

INFORM the Defendant further that if it fails to file and serve notice as aforesaid judgment as claimed may be given against it without further notice to it or if, having filed and served such notice, it fails to plead, except, or to counterclaim, judgment may be given against it.


AND immediately thereafter serve on the Defendant a copy of this Summons and return same to the Registrar with whatsoever you have done thereupon.

DATED AT CAPE TOWN THIS 28th DAY OF JANUARY 2011

REGISTRAR OF THE HIGH COURT

SGD: E G ANDERSON

DUNSTER AND ASSOCIATES
Attorneys for the First, Second, Third and Fourth Plaintiff
4th Floor, Suite 405, 42 Keerom Street
Cape Town
Ref: Ren Dunster
021 422 3020
C/o RAMSAY WEBBER
269 Oxford Road
Illovo
Johannesburg
Ref: Elton Anderson
011 778 0624



ANNEXUREPLAINTIFFS' PARTICULARS OF CLAIM

1. The First Plaintiff is the DYNAM-IQUE SA UMBRELLA PENSION FUND, a pension fund organisation registered in terms of the Pension Funds Act 24 of 1956 (*the PFA*) and having its registered head office and *domicilium* address at "*The Place*", 1 Sandton Drive, Sandton, Johannesburg, and which in terms of section 5 of the PFA is capable of suing and of being sued in its own name.
2. The Second Plaintiff is the DYNAM-IQUE SA UMBRELLA PROVIDENT FUND, a pension fund organisation registered in terms of the PFA and having its registered head office and *domicilium* address at "*The Place*", 1 Sandton Drive, Sandton, Johannesburg, and which in terms of section 5 of the PFA is capable of suing and of being sued in its own name.
3. The Third Plaintiff is the IF UMBRELLA PROVIDENT FUND, a pension fund organisation registered in terms of the PFA and having its registered head office and *domicilium* address at 3rd Floor, North Wing, Oakhurst Office Park, 11 St Andrews Road, Parktown, Johannesburg, which in terms of section 5 of the PFA is capable of suing and of being sued in its own name.
4. The Fourth Plaintiff is the IF UMBRELLA PENSION FUND, a pension fund organisation registered in terms of the PFA and having its registered head office and *domicilium* address at 3rd Floor, North Wing, Oakhurst Office Park, 11 St Andrews Road, Parktown, Johannesburg, which in terms of



section 5 of the PFA is capable of suing and of being sued in its own name.

5. The Defendant is AON SOUTH AFRICA (PTY) LTD, a private company duly registered in terms of the company laws of the Republic of South Africa and having its principal place of business and *domicilium* address at 1 Sandton Drive, Sandton, Sandhurst, Johannesburg.
6. At all material times the Plaintiffs owned and/or bore all risk of loss of the investments and monies under administration referred to in these particulars of claim.
7. Between 5 September 2006 and 1 March 2007, and at Johannesburg the Plaintiffs (duly represented by Tony Kamionsky as trustee and/or Tammy Murewa) and Dynam-ique Consultants and Actuaries (Pty) Ltd ("*Dynam-ique*") (duly represented by Tony Kamionsky and/or Geraldine Fowler) entered into various written administration agreements, a representative sample of which is attached as annexure "A".
8. The abovementioned agreements will be referred to in these particulars as "*the prior administration agreements*".
9. The prior administration agreements were agreed upon on substantially the same terms and conditions *mutatis mutandis*, and were all expressly entered into as administration agreements in terms of s 13B of the PFA.

10. The material express, alternatively tacit terms of the prior administration agreements were *inter alia* as follows:

10.1. In terms of clause 5.1, Dynamique was appointed as a pension fund administrator in order to promote the objectives of the First, Second, Third or Fourth Plaintiffs (as the case may be), and to perform the services set out in that clause with due diligence, skill and care, and with due regard to all applicable legislation and board notices of the Registrar of Pension Funds;

10.2. In terms of clause 5.2.1, Dynamique was required to ensure that adequate internal record keeping mechanisms; accounting systems and records; and computer systems and controls, were maintained, given the size and complexity of the pension fund administration business of each of the Plaintiffs respectively;

10.3. In terms of clause 5.2.3, Dynamique was required to ensure that adequate fidelity fund guarantee insurance and professional indemnity insurance was taken out and maintained by Dynamique; and

10.4. In terms of clause 5.2.4, Dynamique was required to ensure that all investments of the Plaintiffs were made in accordance with the provisions of the PFA.

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[Signature]

11. Subsequently, on or about 30 January 2008 and at Hyde Park, Johannesburg, Dynam-ique (duly represented by Tony Kamionsky) and the Defendant (duly represented by Athené van Mazijk) entered into a written sale of business agreement for the sale of all Dynam-ique's assets, including all Dynam-ique's right, title and interest in the prior administration agreements, to the Defendant for the sum of R 5,733,277.00. A copy of the relevant agreement is attached as annexure "B" (*"the sale of business agreement"*).

12. The material express, alternatively tacit terms of the sale of business agreement were as follows:

12.1. In terms of clause 1.1.12 the effective date of the sale was to be 1 February 2008;

12.2. In terms of clause E of the Recitals, Tony Kamionsky accepted liability, jointly and severally with Dynam-ique to the Defendant for the representations, warranties, undertakings and indemnities in the sale of business agreement;

12.3. In terms of clause 4.2, the parties agreed that the Defendant would not assume any of the liabilities or obligations of Dynam-ique, except as explicitly otherwise provided for in the sale of business agreement, and for the avoidance of doubt further expressly agreed that any liabilities of Dynam-ique in relation to Errors and Omissions

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(professional liability; and "E&O") and other professional liability claims, existing or incurred prior to the Closing Date (as defined) would be the responsibility and liability of Dynam-ique, and Dynam-ique would remain responsible and liable for those claims;

12.4. It was recorded in clause 4.3 that Dynam-ique was insured pursuant to a professional indemnity insurance policy that included coverage for "E&O" with a limit of liability of R 1,000,000.00 and a deductible amount of R 250,000.00, with the relevant policy period being from 1 November 2007 to 1 November 2008;

12.5. It was further recorded in clause 4.3 that after 1 November 2008 the professional indemnity insurance would be converted and/or extended as a run-off type policy for a period of one year from the Closing Date on *mutatis mutandis* the same terms and conditions as the professional indemnity policy, and that the premium for the run-off policy would be for the account of Dynam-ique;

12.6. In terms of clause 7.2 and 7.2.1, the pension fund administration portfolio (as defined), which included the portfolios of the Plaintiffs (all administered on the terms contained in the representative sample at "A"), was to be delivered to the Defendant by delivery to it of separate deeds of assignment in the form of the draft deed of assignment attached as appendix 6 to the sale of business agreement;

12.7. In terms of clause 9.3, as read with appendix 5, Dynam-ique and Tony Kamionsky jointly and severally further warranted the following:

12.7.1. Dynam-ique was not party to a contract which involved or was likely to involve obligations or liabilities which by reason of their nature or magnitude ought reasonably to be made known to any intending purchaser of the business;

12.7.2. There was not, nor had there been, any claim regarding professional liability (Errors and Omission) or Directors' and Officers' liability, nor other forms of liability of Dynam-ique, pending or threatened, nor any known circumstances that might give rise to such a claim against Dynam-ique or the Defendant, and there was no such claim for which Dynam-ique was not fully insured.

13. As the prospective administrator and/or registered administrator of the Plaintiff funds appointed in terms of s13B of the PFA, the Defendant was obliged in terms of the PFA and the FAIS Act (the provisions of which were enacted for the protection and benefit of registered pension fund organisations such as the Plaintiffs, which in the event of breach would accord a right of action to them) *inter alia* to:

- 13.1.1. Administer the Plaintiff's funds in a responsible manner in terms of s 13B(5)(b) of the PFA;
- 13.1.2. Keep proper records, employ adequately trained staff, and have well-defined compliance procedures as required by section 13B(5)(c) to (e) of the PFA;
- 13.1.3. Maintain adequate financial resources to meet its commitments and to manage the risks to which the Plaintiff funds were exposed 13B(5)(f);
- 13.1.4. Enter into a written administration agreement with the Plaintiffs on the terms required by s3 of Board Notice 24, and/or ensure that the written prior administration agreements were properly ceded and assigned and/or remained valid and in force by ensuring compliance with clause 7.2.1 as read with Appendix 8 of the sale of business agreement;
- 13.1.5. Appoint an auditor to conduct investigations and reviews in terms of s 5 of Board Notice 24 promulgated in terms of the PFA;
- 13.1.6. Comply with the audit requirements in terms of s 19 of the FAIS Act;

13.1.7. Avoid a conflict of interest in terms of section 13B(5)(a) of the Pension Funds Act.

14. As the prospective administrator of the Plaintiff funds the Defendant further owed a common law duty of care to the Plaintiffs to ensure that all reasonable steps were taken to protect the interests of the Plaintiffs when purchasing the business of Dynam-ique, including ensuring that any claims which the Plaintiffs may have acquired against Dynam-ique, of which the Defendant should have reasonably been aware, were adequately insured and/or secured, alternatively, not deleteriously affected by the sale of business agreement.

15. The Defendant (represented by Ian Young) further on or about 7 February 2008 and at Johannesburg entered into an oral and/or tacit agreement with the Plaintiffs (represented by Tony Kamionsky) for the administration of the Plaintiff's pension fund portfolios subsequent to the effective date of the sale of business agreement (*"the oral administration agreement"*).

16. The material express, alternatively tacit terms of the oral administration agreement were as follows:

16.1. The Defendant would comply with all its obligations in terms of the PFA and the FAIS Act as set out in paragraph 27 above;

- 16.2. The Defendant would administer the Plaintiffs' pension fund portfolios on the same terms *mutatis mutandis* as those in the prior administration agreements, including clauses 5.1, 5.2.3, 5.2.4 and 5.2.3 thereof; and
- 16.3. The Defendant would, as part of its pension fund administration services, for no additional remuneration, rectify the errors in the records caused by the maladministration of Dynam-ique.
17. In breach of its duty of care as prospective administrator of the Plaintiff funds, its obligations in terms of the PFA, the FAIS Act, and/or the oral administration agreement, the Defendant negligently failed:
- 17.1. To enter into a written administration agreement with the Plaintiffs in terms of s3 of Board Notice 24;
- 17.2. To rectify the errors in the records caused by the maladministration of Dynam-ique;
- 17.3. To ensure that adequate fidelity fund guarantee insurance and professional indemnity insurance was taken out and maintained;
- 17.4. To ensure that the pension fund administration business was conducted in accordance with the provisions of the PFA and the FAIS Act, in particular by:



- 17.4.1. Failing to comply with s 5 of Board Notice 24 of the PFA in that no auditor conducted the relevant investigations and reviews set out in that section;
- 17.4.2. Failing to arrange that audits in terms of s 19 of the FAIS Act were performed;
- 17.4.3. Failing to avoid a conflict of interest caused by the sale of Dynam-ique's pension fund administration business to it, which sale was not adequately disclosed or otherwise dealt with in terms of section 13B(5)(a) of the Pension Funds Act; and
- 17.4.4. Failing to administer the Plaintiff's pension fund administration portfolios in a responsible manner as required by section 13B(5)(b) of the PFA, *inter alia* in that it:
- 17.4.4.1. Failed to conduct a due diligence on the Plaintiff's pension fund portfolios prior to concluding the sale of business agreement in order to ascertain the extent of the problems with the administration and records;
- 17.4.4.2. Failed to ensure that adequate financial resources and/or insurance were maintained to cover the claims which it knew or ought to know, or have known, had accrued to the Plaintiffs arising from the maladministration and poor record-keeping of Dynam-ique prior to the conclusion of

the sale of business agreement, in particular in that the sale of business agreement in clauses 4.2 and 4.3 only provided for professional indemnity insurance and / or "run-off" insurance cover in the maximum sum of R 1,000,000 in respect of the Plaintiff's assets under administration of over R 800 million;

17.4.4.3. Entered into the sale of business agreement on the strength of warranties from Dynam-ique which it knew or ought to have known were false and/or inadequate; and

17.5. As the prospective administrator of the Plaintiff funds, in breach of its duty of care to the Plaintiffs, wrongfully and negligently failed to ensure that claims which the Plaintiffs may have acquired against Dynam-ique were adequately secured and/or insured as set out in paragraph 17.4.4 above, in circumstances where the Defendant knew, or ought to have known, that such claims had accrued to the Plaintiffs arising from prior maladministration and poor-record keeping by Dynam-ique.

18. As a result of the above breaches of the oral administration agreements as well as the Defendant's obligations in terms of the PFA and FAIS Acts, and the Defendant's breach of the duty of care owed to the Plaintiffs:

- 18.1. The records of Plaintiff's members' investments were not rectified after the conclusion of the sale of business agreement, but instead became increasingly unreliable and incorrect; and
- 18.2. All assets of Dynam-ique, including its major asset, being its pension fund administration portfolio, were purchased by the Defendant from Dynam-ique, leaving the latter as an under-insured shell and rendering the Plaintiff's claims against Dynam-ique for maladministration irrecoverable.
19. It was within the contemplation of the Plaintiffs and the Defendant when entering into the oral administration agreements that failure by the Defendant to comply with its obligations as set out in paragraph 16 above could result in the significant costs of rectifying the Plaintiff funds' transactional histories becoming irrecoverable, particularly where the cession and assignment of Dynam-ique's pension fund portfolio to the Defendant had left the former as an under-insured shell.
20. The fair, reasonable and necessary costs of the rebuild of the Plaintiffs' records at member level, caused by the Defendant's breaches and the results thereof as set out in paragraphs 17 and 18 above, alternatively, now irrecoverable from Dynam-ique by reason of such breaches, was the sum of R18,162,480.00 including VAT, as set out in the quotation from Deloitte attached as annexure "C".

21. Notwithstanding demand the Defendant has failed and/or refused and/or neglected to meet its obligations and pay the sum of R18,162,480.00 including VAT or any amount to the Plaintiffs.

WHEREFORE the Plaintiffs pray for judgement against the Defendant, as follows:

- (a) Payment of the amount of R18,162,480.00 including VAT;
- (b) Interest on the above amounts at the rate of 15.5% *per annum a tempore morae*;
- (c) Costs of suit; and
- (d) Further and/or alternative relief.

Dated at Johannesburg this 28th day of January 2011.

SGD: E G ANDERSON

ELTON ANDERSON (With
right of appearance in terms
of the Rights of Appearance
in Courts Act No 62 of 1995)



Dated at Johannesburg this 28th day of January 2011.

SGD: E G ANDERSON

DUNSTER AND ASSOCIATES
Attorneys for the First, Second,
Third and Fourth Plaintiff
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Illovo
Johannesburg
Ref: Elton Anderson
011 778 0624

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ANNEXURE "G"

GRIFFIER VAN DIE SUID-GAUTENG
 HOOGGEREGSHOF JOHANNESBURG
 PRIVAATSAK/PRIVATE GAG 27

2011-01-31

COMBINED SUMMONS

IN THE HIGH COURT OF SOUTH AFRICA
 (SOUTH GAUTENG HIGH COURT JOHANNESBURG)

GRIFFIER VAN DIE SUID-GAUTENG
 HOOGGEREGSHOF JOHANNESBURG
 PRIVAATSAK/PRIVATE GAG 27

2011-01-31

REGISTRAR OF THE SOUTH GAUTENG
 HIGH COURT JOHANNESBURG

Case No: 04175/2011

In the matter between:-

DYNAM-IQUE SA UMBRELLA PENSION FUND First Plaintiff

DYNAM-IQUE SA UMBRELLA PROVIDENT FUND Second Plaintiff

IF UMBRELLA PROVIDENT FUND Third Plaintiff

IF UMBRELLA PENSION FUND Fourth Plaintiff

and

TONY KAMIONSKY Defendant

To the Sheriff or his deputy:-

INFORM

TONY KAMIONSKY, an adult male business person residing at 64 Club Street, Linksfield, Johannesburg, Gauteng (hereinafter called the Defendant), that

Ramsay Webber
 Elton Anderson
 011 778 0624

DYNAM-IQUE SA UMBRELLA PENSION FUND, a pension fund organisation registered in terms of the Pension Funds Act 24 of 1956 ("*the PFA*") and having its registered head office and *domicilium* address at "*The Place*", 1 Sandton Drive, Sandton, Johannesburg, and which in terms of section 5 of the PFA is capable of suing and of being sued in its own name,

(hereinafter called the First Plaintiff) and

DYNAM-IQUE SA UMBRELLA PROVIDENT FUND, a pension fund organisation registered in terms of the PFA and having its registered head office and *domicilium* address at "*The Place*", 1 Sandton Drive, Sandton, Johannesburg, and which in terms of section 5 of the PFA is capable of suing and of being sued in its own name,

(hereinafter called the Second Plaintiff) and

IF UMBRELLA PROVIDENT FUND, a pension fund organisation registered in terms of the PFA and having its registered head office and *domicilium* address at 3rd Floor, North Wing, Oakhurst Office Park, 11 St Andrews Road, Parktown, Johannesburg, which in terms of section 5 of the PFA is capable of suing and of being sued in its own name,

(hereinafter called the Third Plaintiff) and

IF UMBRELLA PENSION FUND, a pension fund organisation registered in terms of the PFA and having its registered head office and *domicilium* address at 3rd Floor, North Wing, Oakhurst Office Park, 11 St Andrews Road, Parktown, Johannesburg, which in terms of section 5 of the PFA is capable of suing and of being sued in its own name,

(hereinafter called the Fourth Plaintiff)

hereby institute action against the Defendant in which the Plaintiffs claim the relief on the grounds as set out in the particulars annexed hereto.

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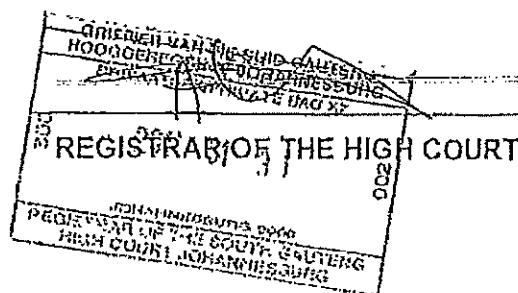
INFORM the Defendant further that if he disputes the claim and wishes to defend the action he shall:-

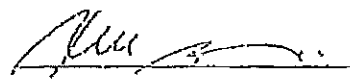
- a) within ten (10) days of the service of this Summons file with the Registrar of the Court at Corner Von Brandis and Pritchard Streets, Johannesburg a notice of intention to defend and serve a copy thereof on the Plaintiffs' attorney, which notice shall have an address (not being a post office box or *poste restante*) referred to in Rule 19(3) for the service upon the Defendant of all notices and pleadings in the action, and
- b) thereafter, and within 20 (twenty) court days after filing and serving notice of intention to defend as aforesaid, file with the Registrar and serve upon the Plaintiffs a plea, exception, notice to strike out, with or without a claim in reconvention.

INFORM the Defendant further that if he fails to file and serve notice as aforesaid judgment as claimed may be given against him without further notice to him or if, having filed and served such notice, he fails to plead, except, or to counterclaim, judgment may be given against him.

AND immediately thereafter serve on the Defendant a copy of this Summons and return same to the Registrar with whatsoever you have done thereupon.

DATED AT JOHANNESBURG THIS 31ST DAY OF JANUARY 2011




DUNSTER AND ASSOCIATES
 Attorneys for the First, Second, Third and Fourth Plaintiff
 4th Floor, Suite 405, 42 Keerom Street
 Cape Town
 Ref: Ren Dunster
 021 422 3020
 C/o RAMSAY WEBBER
 269 Oxford Road
 Illovo
 Johannesburg



Ref: Russell Bruton
011 778 0624

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ANNEXURE

PLAINTIFFS' PARTICULARS OF CLAIM

1. The First Plaintiff is the DYNAM-IQUE SA UMBRELLA PENSION FUND, a pension fund organisation registered in terms of s 5 of the Pension Funds Act 24 of 1956 (*"the PFA"*) and having its registered head office and *domicilium* address at *"The Place"*, 1 Sandton Drive, Sandton, Johannesburg, and which in terms of section 5 of the PFA is capable of suing and of being sued in its own name.
2. The Second Plaintiff is the DYNAM-IQUE SA UMBRELLA PROVIDENT FUND, a pension fund organisation registered in terms of s 5 of the PFA and having its registered head office and *domicilium* address at *"The Place"*, 1 Sandton Drive, Sandton, Johannesburg, and which in terms of section 5 of the PFA is capable of suing and of being sued in its own name.
3. The Third Plaintiff is the IF UMBRELLA PROVIDENT FUND, a pension fund organisation registered in terms of s 5 of the PFA and having its registered head office and *domicilium* address at 3rd Floor, North Wing, Oakhurst Office Park, 11 St Andrews Road, Parktown, Johannesburg, which in terms of section 5 of the PFA is capable of suing and of being sued in its own name.
4. The Fourth Plaintiff is the IF UMBRELLA PENSION FUND, a pension fund organisation registered in terms of s 5 of the PFA and having its registered head office and *domicilium* address at 3rd Floor, North Wing, Oakhurst



Office Park, 11 St Andrews Road, Parktown, Johannesburg, which in terms of section 5 of the PFA is capable of suing and of being sued in its own name.

5. The Defendant is TONY KAMIONSKY, an adult male business person residing at 64 Club Terrace, Club Street, Linksfield, Johannesburg, Gauteng.
6. At all material times the Plaintiffs owned and/or bore all risk of loss of the investments and monies under administration referred to in these particulars of claim.
7. At all material times the Defendant was a director in a private company with limited liability in the business of pension fund administration known as Dynam-ique Consultants and Actuaries (Pty) Ltd ("Dynam-ique").
8. At all material times the Defendant was a member of the Plaintiffs' boards appointed in terms of s 7A of the PFA.

Claim against Defendant as Director of Dynam-ique

9. On or about 1 March 2007, and at Johannesburg the First Plaintiff (duly represented by the Defendant as board member) and Dynam-ique (duly represented by the Defendant and/or Geraldine Fowler) entered into various written administration agreements, a representative sample of which is attached as annexure "A".

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10. On or about 6 February 2007, and at Johannesburg the Second Plaintiff (duly represented by the Defendant as board member) and Dynam-ique (duly represented by the Defendant) entered into various written administration agreements, a representative sample of which is attached as annexure "B".

11. On or about 5 February 2007, and at Johannesburg the Third Plaintiff (duly represented by Tammy Murewa as board member) and Dynam-ique (duly represented by the Defendant) entered into various written administration agreements, a representative sample of which is attached as annexure "C".

12. On or about 6 September 2006, and at Johannesburg the Fourth Plaintiff (duly represented by the Defendant as trustee) and Dynam-ique (duly represented by the Geraldine Fowler) entered into various written administration agreements, a representative sample of which is attached as annexure "D".

13. The abovementioned agreements will be referred to in these particulars as "*the administration agreements*".

14. The administration agreements were agreed upon on substantially the same terms and conditions *mutatis mutandis*, and were all expressly entered into as administration agreements in terms of s 13B of the PFA.



15. Further administration agreements pertaining to the other employers were agreed upon in writing, alternatively partly in writing and partly orally, but entered into outside of the time periods referred to in paragraphs 9 to 13 above. Such agreements were on the same terms *mutatis mutandis*. The Plaintiffs do not however have copies of such agreements in their possession.

16. The material express, alternatively tacit terms of the administration agreements were *inter-alia* as follows:

16.1. In terms of clause 5.1, Dynamique was appointed as a pension fund administrator in order to promote the objectives of the First, Second, Third or Fourth Plaintiffs (as the case may be), and to perform the services set out in the administration agreements with due diligence, skill and care, and with due regard to all applicable legislation and board notices of the Registrar of Pension Funds;

16.2. In terms of clause 5.2.1, Dynamique was required to ensure that adequate internal record keeping mechanisms; accounting systems and records; and computer systems and controls, were maintained, given the size and complexity of the pension fund administration business of each of the Plaintiffs respectively;

- 16.3. In terms of clause 5.2.3, Dynam-ique was required to ensure that adequate fidelity fund guarantee insurance and professional indemnity insurance was taken out and maintained; and
- 16.4. In terms of clause 5.2.4, Dynam-ique was required to ensure that all investments of the Plaintiffs were made in accordance with the provisions of the PFA.
17. It was within the contemplation of the Plaintiffs and Dynam-ique when entering into the administration agreements that failure by Dynam-ique to comply with its obligations in the administration agreements set out in paragraph 16 above could result in significant costs being incurred to rebuild or rectify the funds' transactional histories.
18. Subsequently, on or about 30 January 2008 and at Hyde Park, Johannesburg, Dynam-ique (duly represented by the Defendant) and AON SOUTH AFRICA (PTY) LTD ("Aon") (duly represented by Athané van Mazijk) entered into a written sale of business agreement for the sale of Dynam-ique's assets, including all Dynam-ique's right, title and interest in the administration agreements to Aon for the sum of R 5,733,277.00. A copy of the relevant agreement is attached as annexure "E" (*the sale of business agreement*).
19. The material express, alternatively tacit terms of the sale of business agreement were as follows:

- 19.1. In terms of clause E of the Recitals, the Defendant accepted liability, jointly and severally with Dynam-ique to Aon for the representations, warranties, undertakings and indemnities in the sale of business agreement;
- 19.2. In terms of clause 4.2, the parties agreed that Aon would not assume any of the liabilities or obligations of Dynam-ique, except as explicitly otherwise provided for in the sale of business agreement. For the avoidance of doubt, the parties further expressly agreed that any liabilities of Dynam-ique in relation to Errors and Omissions (professional liability; and "E&O") and other professional liability claims, existing or incurred prior to the Closing Date (as defined) would be the responsibility and liability of Dynam-ique, and Dynam-ique would remain responsible and liable for those claims;
- 19.3. It was recorded in clause 4.3 that Dynam-ique was insured pursuant to a professional indemnity insurance policy that included coverage for "E&O" with a limit of liability of R 1,000,000.00 and a deductible amount of R 250,000.00, with the relevant policy period being from 1 November 2007 to 1 November 2008;
- 19.4. It was further recorded in clause 4.3 that after 1 November 2008 the professional indemnity insurance would be converted and/or extended as a run-off type policy for a period of one year from the Closing Date on *mutatis mutandis* the same terms and conditions

as the professional indemnity policy, and that the premium for the run-off policy would be for the account of Dynam-ique;

19.5. In terms of clauses 7.2 and 7.2.1, the pension fund administration portfolio (as defined), which included all Dynam-ique's right, title and interest in the administration agreements, was to be delivered to Aon by delivery to it of separate deeds of assignment in the form of the draft deed of assignment attached as appendix 6 to the sale of business agreement;

19.6. In terms of clause 9.3, as read with appendix 5, Dynam-ique and the Defendant jointly and severally further warranted the following:

19.6.1. Dynam-ique was not a party to a contract which involved or was likely to involve obligations or liabilities which by reason of their nature or magnitude ought reasonably to be made known to any intending purchaser of the business;

19.6.2. There was not, nor had there been, any claim regarding professional liability (Errors and Omission) or Directors and Officers liability, nor other forms of liability of Dynam-ique, pending or threatened, nor any known circumstances that might give rise to such a claim against Dynam-ique or Aon, and there was no such claim for which Dynam-ique was not fully insured.

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20. Prior to the conclusion of the sale of business agreement Dynamique breached its obligations to the Plaintiffs in terms of the administration agreements:

20.1. By failing to ensure that adequate fidelity fund guarantee insurance and professional indemnity insurance was taken out and maintained;

20.2. By failing to maintain adequate internal record keeping mechanisms, accounting systems and records, and computer systems and controls, given the size and complexity of the Plaintiffs' monies under administration, in particular in that:

20.2.1. reinvestments (i.e. interest and dividends) were not credited to Plaintiffs' members' accounts;

20.2.2. redemptions were paid from monies owing to other members;

20.2.3. switches between investments were not correctly recorded in Plaintiffs' members' accounts;

20.2.4. monies destined for a particular Plaintiff were deposited into the bank account of a different Plaintiff;

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20.2.5. monies which ought to have come from a certain Plaintiff's bank account were withdrawn from another Plaintiff's bank account;

20.2.6. monies were invested in, or disinvested from, the incorrect portfolios;

20.2.7. lack of monthly and annual audits prevented identification and/or rectification of the above errors, thus compounding the problem;

20.3. By failing to ensure that the Plaintiffs' investments were made in accordance with the provisions of the PFA, and that the administration business was conducted in accordance with the Financial Advisory and Intermediary Services Act 37 of 2002 (*"the FAIS Act"*), in particular in that:

20.3.1. It failed to keep proper records, employ adequately trained staff, or have well-defined compliance procedures as required by section 13B(5)(b) to (e) of the PFA;

20.3.2. The required monthly and annual audits in terms of the PFA and/or in terms of s 19 of the FAIS Act were not performed, preventing identification and/or rectification of errors;

- 20.3.3. No auditor conducted the relevant investigations and reviews set out in s 5 of Board Notice 24;
- 20.3.4. Deposits of fund monies were made later than a business day following the date of receipt thereof, in contravention of s 8 of Board Notice 24;
- 20.3.5. Assets and liquidity were not maintained in accordance with section 7 of Board Notice 24, in particular after the sale of the administration business to the AON, in order to cover liability for past administrative errors ("*Errors and Omissions*");
- 20.3.6. The sale of Dynam-ique's fund administration business to Aon, lock, stock and barrel, was not adequately disclosed or otherwise dealt with in terms of section 13B(5)(a) of the PFA; and
- 20.3.7. Adequate financial resources and/or insurance were not maintained in contravention of section 13B(5)(f) of the PFA, in particular in that professional indemnity insurance was only taken out to the maximum insured value of R 1,000,000.00 and "*run-off*" cover after such effective date was not effected and/or was similarly inadequate

21. As a result of the above breaches by Dynam-ique of the administration agreements as well as the applicable legislation, the records of Plaintiffs' members' investments became increasingly unreliable and incorrect, and it was necessary for the Plaintiffs to engage professionals to rebuild the Plaintiffs' records at member level in order to reconstitute accurate transactional histories from the inception of Dynam-ique's tenure in terms of the administration agreements.
22. The fair, reasonable and necessary costs of the above rebuild of the Plaintiffs' records at member level was the sum of R18,162,480.00 including VAT, as set out in the quotation from Deloitte attached as annexure "F".
23. Arising from the above Dynam-ique became liable to the Plaintiffs in the sum of R18,162,480.00.
24. The Plaintiffs have initiated arbitration proceedings against Dynam-ique as indicated in the attached correspondence, annexure "G".
25. The Defendant, as a director of Dynam-ique, was a party to the carrying on of Dynam-ique's business in the manner set out in paragraph 20 above and had knowledge of such facts.

26. The Defendant was further a party (as a director and representative of Dynam-ique as well as personally) to the conclusion of the sale of business agreement by Dynam-ique in circumstances where he was aware that:

26.1. Significant and thoroughgoing errors had occurred in Dynam-ique's record-keeping and administration as a result of breaches of the administration agreements, and that such records would need to be rebuilt.

26.2. The professional indemnity ("E&O") insurance cover maintained by Dynam-ique prior to the sale of business agreement was inadequate, particularly given the state of the administration of the Plaintiff's pension fund portfolios by Dynam-ique, and the amount of monies under administration;

26.3. The provisions in clauses 4.2 and 4.3 of the sale of business agreement relating to professional indemnity insurance and "run-off" insurance cover were inadequate, particularly given that all Dynam-ique's assets were purchased by Aon, rendering Dynam-ique an under-insured shell company, and the Plaintiffs' claims against Dynam-ique irrecoverable; and

26.4. The warranties provided by the Defendant and Dynam-ique as set out in paragraph 19.6 above were to his knowledge false, and in any event insufficient to safeguard the interests of the Plaintiffs.

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27. The Defendant as a director of Dynam-ique was party to:

27.1. The maladministration set out in paragraph 20; and

27.2. The subsequent sale of Dynam-ique's business in the circumstances set out in paragraph 26 above,

which conduct was of such a nature that it constituted carrying on of the business of Dynam-ique recklessly and/or with the intent to defraud creditors within the meaning of section 424(1) of the Companies Act, 1973, alternatively a fraudulent abuse by the Defendant of the separate juristic personality of Dynam-ique, when viewed in light of Dynam-ique's obligations to comply with the PFA and associated legislation, and to safeguard the Plaintiffs' members' pension investments.

28. To the extent that the Defendant's liability in terms of 424 of the Companies Act, 1973, is held to be subject to a causation requirement, the Plaintiffs plead that as a result of the inadequate indemnity insurance and "run-off" insurance cover arranged by Dynam-ique, and the purchase of all Dynam-ique's assets by Aon in terms of the sale of business agreement, to which the Defendant was a party, the Plaintiffs' claim against Dynam-ique for R18,162,480.00 is irrecoverable.

29. Accordingly, the Plaintiffs are entitled to an order declaring that the Defendant is personally liable to them in the sum of R18,162,480.00.

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Claim against Defendant as Board Member of Consultant Funds

30. As trustee and member of the Plaintiffs' boards the Defendant had a duty to act with good faith and the standard of care, skill and diligence to be expected of a person in a fiduciary position of trust.
31. As a trustee and member of the Plaintiffs' boards, the Defendant further had the duties and obligations referred to in sections 7C and 7D of the PFA, the provisions of which were enacted for the protection and benefit of registered pension fund organisations such as the Plaintiffs, which in the event of breach would accord a right of action to them.
32. The Defendant's duties as set out in sections 7C and 7D of the PFA were *inter alia* as follows:
- 32.1. To take all reasonable steps to ensure that the interests of members in terms of the rules of the fund and the provisions of this Act were protected at all times;
- 32.2. To act with due care, diligence and good faith;
- 32.3. To ensure that proper registers, books and records of the operations of the Plaintiff funds were kept;



- 32.4. To ensure that proper control systems were employed by or on behalf of the board;
- 32.5. To obtain expert advice on matters where board members may have lacked sufficient expertise; and
- 32.6. To ensure that the rules, operation and administration of the Plaintiffs' funds complied with the PFA, the Financial Institutions (Protection of Funds) Act, 2001 (Act 28 of 2001), and all other applicable laws.

33. The Defendant, as a member of the Plaintiffs' boards, wrongfully and negligently breached his fiduciary duties to the Plaintiffs, as well as his duties to the Plaintiffs in terms of sections 7C and 7D of the PFA, by failing to prevent the maladministration referred to in paragraph 20 above, which necessitated rebuilding the Plaintiffs' records at member level, in particular in that he:

- 33.1. Failed to ensure that Dynam-ique complied with its obligations in the prior administration agreements in circumstances where he knew or ought to have known of such non-compliance;
- 33.2. Failed to implement or timeously implement proper registers, books, records of operations, and control systems, to prevent the maladministration in circumstances where he knew or ought to have

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known that such proper registers, books, records of operations, and control systems were not being implemented by Dynam-ique;

33.3. Failed to ensure that adequate professional indemnity insurance, was in place during the tenure of Dynam-ique, given the state of the administration of the Plaintiff's pension fund portfolios by Dynam-ique, and/or the amount of Plaintiff's monies under administration;

33.4. Failed to obtain or timeously obtain appropriate expert advice to prevent and/or rectify Dynam-ique's maladministration, when he knew or ought to have known that that such advice was necessary to prevent or rectify the maladministration and/or to institute proceedings to interrupt prescription of claims;

33.5. Failed generally to exercise due care, diligence and good faith, and to ensure that the interests of members in terms of the rules of the fund and the provisions of the PFA were protected, by ensuring that the administration, record-keeping and insurance cover of the Plaintiff funds was adequate at all times.

34. The Defendant further, as a member of the Plaintiffs' boards, wrongfully and negligently breached his fiduciary duties to the Plaintiffs, as well as his duties to the Plaintiffs in terms of sections 7C and 7D of the PFA, in that on or about 7 February 2008 and at Johannesburg he orally approved the sale of business agreement and cession of the administration agreements to Aon in circumstances where he knew or ought to have known:

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34.1.1. The Defendant, as a shareholder of Dynam-ique was conflicted and stood to profit from the transaction to the detriment of the Plaintiffs;

34.1.2. The warranties provided by the Defendant and Dynam-ique were false and in any event insufficient to safeguard the interests of the Plaintiffs and their members; and

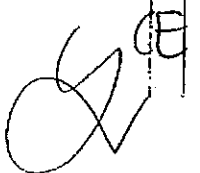
34.1.3. Inadequate insurance cover and/or run-off insurance cover was in place in circumstances where he knew or ought to have known that the sale of business agreement would leave the latter as an under-insured shell and render the Plaintiff's claims against Dynam-ique for maladministration irrecoverable.

35. The actions of the Defendant as set out in paragraphs 33 and 34 above, and in particular his failure to prevent or rectify:

35.1. Dynam-ique's maladministration and poor record keeping; and/or

35.2. The subsequent sale of Dynam-ique's business in the circumstances set out in paragraphs 34 above (as the case may be),

constituted negligent conduct in breach of his fiduciary duties and his duties in terms of s7C and 7D of the PFA, and/or grossly negligent



conduct within the meaning of s 23 of the Financial Services Board Act, 1990, in breach of his fiduciary duties and their duties in terms of s7C and 7D of the PFA.

36. As a result of the Defendant's negligent conduct as set out in paragraph 33 and 34 above, the Plaintiffs failed to prevent or rectify the maladministration and thereby the necessity of the rebuild referred to in paragraphs 21 and 22 above, alternatively the Plaintiff's claims against Dynam-ique arising from such rebuild were thereby rendered irrecoverable.

37. In the circumstances the Defendant is liable to the Plaintiffs in the sum of R18,162,480.00

38. Notwithstanding demand the Defendant has failed and/or refused and/or neglected to pay the sum of R18,162,480.00 or any amount to the Plaintiffs.

WHEREFORE the Plaintiffs pray for an order declaring that the Defendant is personally liable to them in the sum of R18,162,480.00.

AND WHEREFORE the Plaintiffs further pray for judgement against the Defendant as follows:

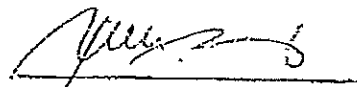
(a) Payment of the amount of R18,162,480.00;

(b) Interest on the above amount at the rate of 15.5% *per annum a tempore morae*;

(c) Costs of suit; and

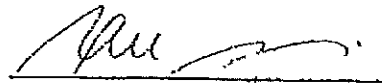
(d) Further and/or alternative relief.

Dated at Johannesburg this 31st day of January 2011.



RUSSELL BRUTON (With
right of appearance in terms
of the Rights of Appearance
in Courts Act No 62 of 1995)

Dated at Johannesburg this 31st day of January 2011.



PP
DUNSTER AND ASSOCIATES
Attorneys for the First, Second,
Third and Fourth Plaintiff
4th Floor, Suite 405, 42 Keerom
Street
Cape Town



'Shoddy' administration may cost fund members 2.3 percent of their savings

BRUCE CAMERON

GLENRAID DEBACLE SPARKS SHAKE-UP

More than 11,000 retirement fund members employed by 200 companies have lost up to 2.3 percent of their savings in the past year because yet another administrator seems to have failed to maintain accurate financial records.

Last year, Pension Services revealed that financial records of one of its clients, the insurance company Glenraid, were off by \$100 million. The administrator admitted to having falsified records to avoid the embarrassing revelation to the company's shareholders of about 200 new members (see "Glenraid Debacle Sparks Shake-Up").

This time, the auditing company is J.H. Johnson & Co., which is based in New York. Johnson & Co. was hired by the company's board of directors to audit the records of the fund. The audit revealed that the administrator had falsified records to avoid the embarrassing revelation to the company's shareholders of about 200 new members (see "Glenraid Debacle Sparks Shake-Up").

Johnson & Co. also stated that it is uncertain as to whether the fund that the administrator was auditing was properly managed and that the results of the audit are not yet known. Johnson & Co. also stated that it is uncertain as to whether the fund that the administrator was auditing was properly managed and that the results of the audit are not yet known.

The financial services giant, Fidelity, is the largest provider of retirement funds in the United States. Fidelity's records are audited by the Internal Revenue Service (IRS) and the Department of Labor (DOL). The audit revealed that the administrator had falsified records to avoid the embarrassing revelation to the company's shareholders of about 200 new members (see "Glenraid Debacle Sparks Shake-Up").

Johnson & Co. also stated that it is uncertain as to whether the fund that the administrator was auditing was properly managed and that the results of the audit are not yet known. Johnson & Co. also stated that it is uncertain as to whether the fund that the administrator was auditing was properly managed and that the results of the audit are not yet known.

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"DELL 2"

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

(REPUBLIC OF SOUTH AFRICA)

CASE NO: 34384/12

In the matter between:-

IF UMBRELLA PENSION FUND

First Applicant

IF UMBRELLA PROVIDENT FUND

Second Applicant

and

LUKHAIMANE N.O.

First Respondent

AND 31 (THIRTY-ONE) OTHERS

SIXTEENTH RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned,

YOLANDA PETRONELLA VAN WYK

(ID: 710219 0198 082)

do hereby make oath and say that:

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1. I am a Legal Director. I am duly authorised to depose to this affidavit on behalf of the sixteenth respondent ("Dell").
2. The facts herein contained are within my personal knowledge and are, to the best of my belief, both true and correct.
3. I have read the applicants' founding affidavit and annexures ~~there to and answer as more fully set out below.~~
4. In prayer 1 of the notice of motion, the applicants seek the following relief:
 - 4.1. setting aside the first respondent's determination dated 31 July 2012 in respect of a complaint lodged by the second to thirty first respondents ("*the complaint*"); and
 - 4.2. substituting therefore an order dismissing the second to thirty first respondents' complaint.

5. Dell does not oppose the granting of an order setting aside the first respondent's determination dated 31 July 2012, annexure "IF1" to the founding affidavit.
6. Dell does, however, oppose the grant of an order dismissing the complaint for the reasons more fully set out below.
7. Dell has been advised that section 30P(2) of the Pension Funds Act, 24 of 1956 ("the Act") empowers the High Court to consider the merits of the complaint in question, to take evidence and to make any order it deems fit. This constitutes an appeal in the wide sense and the court is not limited to a decision whether the first respondent's determination was right or wrong.
8. Dell has also been advised that ~~section 22 of the Supreme Court Act, 59 of 1959~~ applies. That section provides:

"22. Powers of court on hearing of appeals

The appellate division or a provincial division, or a local division having appeal jurisdiction, shall have power –

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(a) on the hearing of an appeal to receive further evidence, either orally or by deposition before a person appointed by such division, or to remit the case to the court of first instance, or the court whose judgment is the subject of appeal, for further hearing, with such instructions as regards the taking of further evidence or otherwise as to the division concerned seems necessary; and

(b) to confirm, amend or set aside the judgment or order which is the subject of the appeal and to give any judgment or make any order which the circumstances may require."

9. The applicants have failed to annex a copy of the complaint to the founding affidavit. I annex hereto marked "AA1" a copy of the complaint and pray that same be read as if specifically incorporated herein.

10. Although the complaint has not been drafted as elegantly as one would have desired (or expected), it will be argued at the hearing hereof that it does make out a case against the relevant board

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[Handwritten signature]

members for breach of their statutory and fiduciary duties owed to the applicants. Dell and its employees who are members of the applicants wish to pursue the complaint against those board members and it is conceivable that, if the order which Dell seeks is granted, other respondents (save for the first respondent) and other interested parties may wish to similarly pursue the complaint.

11. The applicants were not cited as respondents in the complaint ~~and no relief was sought against them by the complainants.~~

When the court grants an order setting aside the first respondent's determination against the applicants, the applicants have no further role to play in the complaint as it is currently formulated. In the circumstances, the applicants do not have the *locus standi* to seek the dismissal of the complaint.

12. Given the court's wide powers in this appeal, Dell contends that, taking account of the *prima facie* case made against the relevant board members in the complaint and in the interests of justice and fairness, the court should make the following order:

12.1. setting aside the first respondent's determination under reference number PFA/WE/6292/2011/SM dated 31 July



2012 made in terms of section 30M of the Pension Funds Act, 24 of 1956 in respect of a complaint lodged by the second to thirty first respondents;

12.2. remitting the complaint to the first respondent to enable the complainants in the complaint to pursue relief against the relevant board members for breach of their statutory and fiduciary duties owed to the applicants;

12.3. permitting the respondents or any other interested parties to supplement the complaint with any further submissions they wish to make to the first respondent;

12.4. that the complainants serve a copy of the complaint, duly supplemented, on all previous-board members of the applicants against whom they seek relief;

12.5. affording such previous board members of the applicants a reasonable opportunity to file a written reply to the supplemented complaint;

12.6. that the first respondent reconsider the supplemented complaint and make a determination in terms of section 30M of the Act.

YOLANDA PETRONELLA VAN WYK

The Deponent has acknowledged that he/she knows and understands the contents of this affidavit, which was signed and sworn to before me at _____ on this the _____ day of _____ 2012, the regulations contained in Government Notice No.R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

COMMISSIONER OF OATHS

Initial Each Page Here: _____ *YV* *ce*

"DELL3"

IN THE TRIBUNAL OF THE PENSION FUND'S ADJUDICATOR**(PFA Reference: PFA/WE/6292/2011/SM)**

In the matter between:-

AFFIRM MARKETING (PTY) LTD & OTHERS**Employer/
Complainants**

and

LE GRELLIER, BOTHA, LEPAR & STUART**First Respondent****ANY FORMER TRUSTEE OF THE BOARDS
OF THE IF FUNDS OVER THE RELEVANT
PERIOD, WHOSE IDENTITIES ARE
UNKNOWN****Second Respondent**

**DELL COMPUTER (PTY) LTD'S REPLY TO GAIL LE
GRELLIER'S RESPONSE**

1. Dell Computer (Pty) Ltd ("*Dell*") was one of the original employer complainants in this complaint dated 28 April 2011. It is a participating employer in the IF Umbrella Pension Fund and the IF Umbrella Provident Fund ("*the IF Funds*"). The IF Funds launched an application in the South Gauteng High Court under case number 34384/2012 in which they sought an order setting aside the Pension Fund Adjudicator's ("*the*

Adjudicator") determination under the present reference number dated 31 July 2012.

2. In an email dated 10 May 2013, the Adjudicator allowed Dell until 15 May 2013 to reply to the response to the complaint filed by Gail Le Grellier ("*Le Grellier*"). Le Grellier was a former trustee of the IF Funds and is one of the 1st Respondents.
3. The Adjudicator is referred to the response to the complaint filed by Le Grellier dated 1 May 2013.
4. In paragraph 4c of her response, Le Grellier asserts that until the rebuild is concluded it cannot be clear whether a members' fund credits are over- or understated or whether a member has been prejudiced as the result of a trustee decision to incur an expense to rebuild the IF Funds data. It is not refuted that the trustees authorized the spending of R20 million to rebuild the IF Funds data. Whether the total value of the IF Funds is found to be understated or overstated, the total value of the understated or overstated amount will constitute an amount minus R20 million as a result of the expense incurred, having a prejudicial effect on each of the members.
5. In response to the averments made in paragraphs 6 – 8, Dell questions the veracity of the alleged oversight the trustees exercised. The trustees' failure in oversight is clearly evidenced by the decision to spend R20 million on the rebuild. If proper oversight was exercised it would have

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negated the need for a rebuild. The inaccurate and incomplete financial record keeping of the IF Funds data which resulted in the costly and protracted rebuild of the IF Funds data itself, is prima facie evidence of the trustees' breach of their fiduciary duty to act in the best interest of the members of the IF Funds, and further a breach of the trustees' statutory duty to keep accurate and complete financial records for the IF Funds.

6. In paragraph 8c, Le Grellier admits the trustees' decision to authorize the rebuild. Le Grellier appears to go even further to state that AON undertook to bear the cost of/fix the records post 1 February 2008. Is it implied that AON would cover the costs of the rebuild if any portion was still outstanding post 1 February 2008 or rather as Dell understands the position to be that a 'clean' handover would have had to be made to AON on 1 February 2008 and the IF Funds had to have opening balances for each member signed off by the trustees as at 1 February 2008. Thus the rebuild cost would be for the account of the IF Funds and not AON. Le Grellier is requested to furnish information or documentation evidencing the alleged undertaking.
7. By Le Grelliers' own admission only Adendorffs and Deloitte were consulted on the rebuild. It is submitted that various alternatives should have been considered to mitigate the cost of the rebuild. In paragraph 9b, mention is made of the fact that there was no significant difference in cost

between the 2 accounting firms for the proposed rebuild, yet no information in substantiation thereof is furnished. The reports alluded to in paragraph 16 of Tony Kamionsky's ("*Kamionsky*") response dated 29 April 2013, will shed light on the state of the financial record keeping of the IF Funds at the time the decision was taken to rebuild the IF Funds data at member level. Dell submits that the Adjudicator must consider and have regard to these reports and the resultant decision and necessity to rebuild the IF Funds data.

8. In contrast to what was alleged in Kamionsky's reply in paragraph 28, 30, 31 and 33, Gail Le Grellier in paragraph 11 of her reply has alleged that AON and not the trustees neglected to pay the PI cover insurance premiums. Yet again no information is furnished to substantiate same. The veracity of this allegation needs to be investigated by the Adjudicator. Dell deems it prudent that the Adjudicator firstly, questions and investigates whether the trustees or AON neglected to pay the premiums for the PI Cover, and secondly, whether the total amount of the cover was deemed to be adequate having regard to the size and total value of the IF Funds?
9. Dell has in its possession Minutes of a Meeting held at its Bryanston offices on the 1st of October 2012. The gravity of the meeting is evidenced by the positions held by the attendees. Dell was represented by Seth Angel (Sales Operations Manager), Juan Mostert (Chief Financial

Officer), Brad Pulford (Country Manager), Roshana Reddy (Head of Human Resources) and Yolanda van Wyk (Head of Legal). Jaco Kok represented AON and Eric Joell represented Saint Andrews Brokers. In the Minutes of the Meeting Jaco Kok admits and alludes to an oversight by AON that the premiums were not paid in September 2010. A copy of the Minutes of the Meeting is annexed hereto marked "X". The Adjudicator is best placed to request copies of the policies from Camargue together with any correspondence evidencing the premiums not being paid and by whom, correspondence surrounding exclusion clauses in the policies specifically relating to the rebuild of the funds and any possible claims associated therewith.


10. Le Grellier's contention in her response under reply stating the legality of the allocation of the cost of the rebuild to member fund credits as an ad hoc expense is submitted to be incorrect. The cost of the rebuild cannot be couched in a matter that is consistent with the definition of an ad hoc expense as contained in the rules of the IF Funds.
11. It submitted that the trustees knew or ought to have known about the inaccurate record keeping and outstanding financials pertaining to their administration of the IF Funds at the time that the decision surrounding the proposed amendments to the rules of the IF Funds were taken, in particular the amendment registered on the 8th of September 2009, giving rise to the definition of ad hoc expenses. Shortly after taking office in

2006 Le Grellier and the fellow trustees' at the time, ought to have been, and must have been aware of the inaccurate and incomplete record keeping of the financials of the IF Funds. Similarly AON ought to have been aware of the inaccurate and incomplete record keeping of the financials of the IF Funds prior to the purchase of the administration business of the IF Funds as at 1 February 2008. The decision to rebuild the IF Funds data at member level only took place approximately 2 years after the purchase of the administration business by AON. The Adjudicator must furthermore ascertain whether there is any portion of the rebuild of the IF Funds data that is due in whole or in part as a result of an act or omission by AON after purchasing the administration business of the IF Funds. The amendment to the rules of the IF Funds giving rise to the definition of ad hoc expenses appears rather to be an attempt by the trustees to amend the rules of the IF Funds due the trustees' foreseeing the possibility of liability on their part and in order to attempt to justify the inclusion of the costs of the rebuild within the definition of ad hoc expenses.

12. Not only did the former trustees' breach their fiduciary and statutory duties which they owed to the IF Funds, but also having regard to the averments made by Le Grellier, AON also appears to have failed to comply with and discharge their fiduciary and statutory duties which they owed to the IF Funds. Dell implores to the Adjudicator to call for and

have regard to all the ancillary documentation and information alluded to in the response from Kamionsky and Le Grellier in order for a just and equitable determination to be made against the correct parties, that firstly caused or contributed to the cost of the rebuild, and secondly, the non-payment of the premiums in respect of the PI cover.

DATED at Cape Town on this the 13th day of MAY 2013.



BROOKS & LUYT INC
Suite 301C, Building 20
The Waverley Business Park
Wycroft Road
Mowbray
Cape Town
7925
Docex 226 Cape Town
Ref:
DELL/pensionfund/LeGrellier-
reply



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"X"

Ryan De Klerk

From: [REDACTED]
Sent: 03 October 2012 10:17 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Minutes of the Meeting
Attachments: MINUTES OF THE MEETING HELD AT DELL COMPUTER BRYANSTON ON THE 1ST OCTOBER 2012.docx

Dear All

Please find attached the "Minutes of the Meeting" that was held at Dell on the 1st October with AON – Jaco Kok.

Kind regards

Esme Swift
General Manager

Saint Andrews Brokers (Pty) Ltd
Tel no : (011) 463 1103
Fax no : 0866 829 561
Office Support Fax : (011) 463 1104
Saint Andrews Brokers is an authorized Financial Services Provider



MINUTES OF THE MEETING HELD AT DELL COMPUTER BRYANSTON ON THE 1ST OCTOBER 2012

PRESENT

Seth Angel SA; Juan Mostert JM; Brad Pulford BP; Roshana Reddy RR; Yolanda van Wyk YW representing Dell Computer.

Jaco Kok JK representing Aon .

Eric Joell EJ representing Saint Andrews.

BP opened the meeting and asked each person to introduce themselves. He then explained that we have an unfortunate situation with the Dell Provident Fund DPF and asked JK to explain the history in full and also to explain where we are in the process of repairing the administration.

JK Aon worldwide provides admin services to retirement funds and in 2008 Aon SA wanted to expand their admin business so they bought Dynami-ques' book of business. They also bought Glenrands' book of business as well. The staff in charge at Aon at that time did not understand what it took to run the admin business and there were no skills in Aon SA at the time. The financial statements and fund data were not acceptable to the auditors and the only way to fix the problem was that the Trustees decided to rebuild the funds. Aon went out to tender and Deloitte and Touche. D&T won the tender to rebuild the funds at a cost of R18 million. The financial statements for 2006 to 2012 were outstanding and JK was frankly uncomfortable with the admin done in 08/09 under the management of Aon staff. When JK joined Aon he saw that the projected targets could not be met and he then changed the time lines for the project to realistic time lines and communicated this to brokers and funds, this was unpopular but realistic.

JK then went to meet with the Registrar of Pension funds Mr Boyd. MB to explain the problems openly and present Aons' plans to fix the problems. Mr Boyd approved the plan and JK and MB have met monthly since then. Benefit statements were sent out at the beginning of the year to do a high level check and it was found that there were still mistakes. Now the main thing that is holding up the process is that D&T have to write an upload file to transfer the spread sheet data to the Everest admin system that Aon use for the retirement fund admin. This is proving more difficult than initially thought.

JK thinks that complete benefit statements will be issued (to the end of 2012) by December this year or January next year as the 2012 financial statements still need to be done.

BP asked is Aon can give a guarantee on these time lines and are they firm and credible.

JK said that Aon are reliant on D&T to produce the upload file and the auditors to do the financial statement. So some of the process was outside his control. Also the Trustees run the show and Aon is reliant on the Trustees to approve decisions and this takes time. The current Trustees are suing Aon to recover the R20 million that the old Trustees said Aon could take for the rebuild of the funds. The date is therefore not ironclad as there are too many external parties involved in the exercise.

JK also stated that the Pension Fund Adjudicators PFA determination interferes with the rebuild as the Trustees have to tell Aon either to allow for the deduction of the R20 million in the rebuild figures or not. The PFA got the determination wrong and it is impossible to comply with.

YW said to be blunt the Trustees decisions impact on the rebuild that Aon and D&T are doing please explain.

JK said that not all the documentation was complete therefore the Trustees have to approve certain assumptions, this is a decision that the Trustees will have to make, they will have to apply their minds and this could take time.

YW what is Aon doing to drive the process harder

JK Aon has brought in a person with this expertise from the UK and he comes over every two weeks

YW why was the 2.5% taken from the members funds as the members were not responsible for the admin

JK It was Dynamiques' fault and the Trustees decided to instruct Aon to take the 2.5% for the rebuild.

YW you stated Aon were partially responsible as well.

JK the rebuild for 2008/09 was paid for by the R18 million but Aon has spent R45 million total rebuilding the rest of the data and the total revenue to Aon from the pension fund admin business is only R5.5 million per annum.

YW if Aon is the biggest player globally why has this taken so long to do

JK Aon cannot afford this to go on longer and it needs to be completed as soon as possible

YW who made the decision to buy the Dynamique and Glenrand business

JK No one internally is owning up and most of the staff that were there at the time have moved on. These were disastrous acquisitions for Aon but as a major player internationally Aon will not walk away from their responsibilities as Glenrand did.

YW we certainly admire you for that and that you have been open with the PFA. How was the decision made to deduct the 2.5% from all members?

JK The trustees at the time should have noticed when the financials were not done, that there was a problem. The Trustees' view was that we needed to do a rebuild and that all the members should pay.

YW Why should clients who joined after March 2008 pay and why did the Trustees change the rules after the event to allow them to take the R20 million out of the members' funds.

JK the Trustees decided the admin needed to be rebuilt and they have gone after the previous trustees and the previous administrator and Aon in the civil courts to recover the money. They

changed the fund rules to allow them to take the R20 million or the rebuild could not have been done.

YW but if I was a trustee, it is not right to change the rules after the event to fix the problem. What about the PFA ruling against the funds to return the money taken.

JK the trustees are suing the former trustees John Rollison but he has no money. Dynamique has been liquidated so it is deep pocket syndrome and the trustees are suing Aon but we are not a charitable institution so we are opposing the suit. Members will be better off with Aon in the long term as we are committed to the admin industry.

EJ what about the Professional Indemnity PI cover that should have been in place. It is my understanding that someone at Aon forgot to pay the premiums and because of that the cover lapsed and when it was reinstated the PI cover excluded any claims arising out of the negligence of the previous trustees.

JK there was an oversight by Aon and the premiums were not paid in September 2010. The trustees neglected to inform Camargue the PI insurer who holds 90% of the PI cover for trustees in SA. The PI cover had been issued with a qualification based on the fact that the 2006 financials were qualified and Camargue issued the cover with an exclusion due to anything to do with the qualification of the 2006 financial statements. The PI cover was reinstated in March 2011 but with an exclusion of anything to do with the rebuild exercise. The current Trustees are holding Aon, Dynamique and the previous trustees liable and are suing them in the civil court for the return of the R20 million.

YW was the 2.5% deduction for a fixed fee to D&T and are Aon paying for any fees over and above this for the rebuild

JK Aon has three businesses Actuarial, Health Care and Retirement Fund Administration and consulting and the latter business has lost R30 Million and R33 million in the last two years and it is projected to break even next year. Aon's biggest competitor worldwide is set to make a large purchase of a local administrator in SA next year and Aon want to be in admin and they will not be closing the admin. In fact Aon are bringing new products to the admin market next year.

SA how will the benefit statements be delivered? , will all the funds be up to date at one time or will the statements be delivered fund by fund

JK They will be delivered umbrella fund by umbrella fund as each rebuild exercise is completed but in what order they will be completed I do not know at this point.

SA it is extremely important that we put communication to our employees on this with a full and factual report on what has happened to date and dead lines

YW agreed with this and asked JK to prepare such a document

JK said he will draft a document and get it to the Dell management committee

EJ said he will follow up this with JK and get the document to the management committee

YCE

JM said this is imperative as the Dell Provident fund is now being discussed in the corridors and this is not good for the staff morale

YW said the document should explain what's happening and the time line etc

JM asked if the fund is returning capital and no interest and this effects the closing of estates as they cannot be closed as there is still money outstanding

SA asked if Aon being the 13B sponsor now creates a conflict of interest

JK explained that the PFA's ruling against Aon was based on a technical breach as Aon SA did not have a 13B licence. Aon consulting did but with the amalgamation of the companies this technical breach occurred. Aon has made a settlement to the FSB. The FSB issued the lowest sanction against Aon and did not allow them to take on any new pension business until the FSB were happy with Aon. Aon had an independent audit done by KPMG and got a clean bill of health. KPMG's external audit was presented to the FSB in June 2012 and in July 2012 the restrictions on accepting new business were lifted by the FSB. Aon need to put on new business as admin is a volume business and Aon are losing money at the current business levels. So if Aon stopped the rebuild exercise the FSB would stop Aon accepting new business and this would not be what Aon want.

YW who is the new 13B sponsor

JK The concept of a sponsor does not exist in pension law in SA. Aon Hewitt would be the sponsor.

AH is in the process of setting up new funds and will be bringing new funds and concepts to the market next year.

YW but Aon appoint the Trustees so they are not independent. Aon appoint the trustees who then appoint Aon as the administrator of the funds

JK Yes the rules are messy and we as Aon don't look too deeply at this

YW should she look at this as a lawyer

JK no

SA and JM the ruling by the PFA where does the money to pay back the members come from

JK the PFA did not apply her mind and the ruling is impossible to implement which is why the trustees are appealing the ruling the trustees are also suing Aon, Dynamique and the previous trustees in the civil courts to recover the R20million

JM what if the money is returned how will this be distributed among the members

JK Interest will be calculated and the members' share calculated but exactly how this will be done is a trustees' decision so I cannot give you an exact answer at this time.

SA if this money is returned how will this be shown to the members

JK it will be on the web site and on the member benefit statement in red and bold so members' are aware of it. The current way that the deduction of the R20 million was distributed is fairer to the lower paid staff.

JM surely it is the trustees duty to act in the best interest of the members

JK Umbrella funds as they are not always in the best interests of the members and Aon are building a new design of fund that will mean fairer asset management charges and fees to members. The industry is due a shake up and the current administrators are not prepared to do it.

YW said it is important to get peoples trust back after this and similar events in the UK

JK said it is important not to place your money with a small player

BP summing up JK will draft a communication letter to our staff at Dell summing up the current situation and the time lines in place. This should assure them that the process is nearly complete.

JK if you want me to address the staff I am more than willing to do so.

YW this might be a good idea

BP lets decide as a management committee exactly how we communicate to the Dell staff and when we have sent out JK's letter to the staff we will decide if any other communication is necessary.

The meeting was closed at 11.30 am.

GC

"DELL 4"

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12 November 2010

The Directors
Aon South Africa (Pty) Ltd
P O Box 1874
Parklands
2121

Dear Sir/Madam

PROPOSAL TO ASSIST THE ADMINISTRATOR TO RE-CREATE CREDIBLE MEMBER RECORDS WHICH WILL FACILITATE FUTURE ASSET / LIABILITY RECONCILIATIONS AT AN INDIVIDUAL MEMBER LEVEL FOR THE IF AND DYNAM-IQUE FUNDS

The trustees of the IF and Dynam-ique Funds appointed Deloitte to re-create credible member records which will facilitate future asset / liability reconciliations at an individual member level for the IF and Dynam-ique funds for the period from inception of the funds to 31 January 2008. Aon South Africa (Pty) Ltd, the current administrators of these funds have requested that the scope period of the work being performed be extended.

We have set out below our understanding of your requirements, and the agreed approach with respect to the abovementioned assignment. We have also set out our fee basis and have attached our standard terms and conditions for your information, which apply to this engagement and are incorporated herein by reference.

We refer you to our engagement letter in respect of the ALM Project, dated 1 July 2010. In terms of the letter, the scope period of the engagement was envisaged from inception to 31 January 2008. The need has now identified for an extension of the project's scope period.

Scope

As agreed the scope and approach of the extended engagement will follow the scope and approach as set out in the engagement letter in respect of the ALM Project, dated 1 July 2010 as issued and signed by the trustees of the funds together with the detailed methodology and assumptions as tabled and approved by the steering committee of the current project.

National Executives: GG Gehrik Chief Executive AE Swiegers Chief Operating Officer GM Pincock Audit
DL Kennedy Tax D Legal and Risk Advisory L Geerling Consulting L Bam Corporate Finance CR Beerman Finance
TJ Brown Clients & Markets NT Mlaba Chairman of the Board MJ Comber Deputy Chairman of the Board
Regional Leaders: BGC Farrah

A full list of partners and directors is available on request

B-BBEE rating: Level 3 contributor/AA (certified by Empowerdex)

Member of Deloitte Touche Tohmatsu Limited

CE
SI

Aon South Africa (Pty) Ltd
12 November 2010

Timing

Given our initial deliverables to the Trustees of the funds, we recommend the following timing for the commencement of the work:

- Phase 1 will run concurrently with the original project.
- Phase 2 will start after the completion of the original project and phase 1.

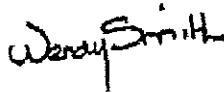
As communicated to yourselves and the Trustees during phase 1 of the project (per the initial proposal timeline on page 5), our initial timeline for completing the project was 9 – 12 months. With the additional work to be completed for phase 1 we still expect that the original timeline for completing the project will be between 9 - 12 months. Extra resources will be made available to meet this target. Our estimated timeline for completing phase 2 is 6 months.

All other terms and conditions as set out in the engagement letter dated 1 July 2010 apply to the extension of the contract. We wish to draw your attention to our standard terms and conditions on the final pages of this letter.

We are pleased to be of assistance to you in this matter and assure you of our best attention at all times. Should you have any questions or wish to make any comments in respect of the above, please do not hesitate to contact us at your earliest convenience. The engagement director, Wendy Smith can be reached at (021) 427 5456 or 082 557 2902.

We would be grateful if you could sign and return to us a duplicate of this letter indicating your understanding, agreement and approval of the scope and terms of engagement.

Yours sincerely



Wendy Smith
Director

I understand and accept the terms of appointment set out in the above letter and in the attached standard terms and conditions of engagement and *I have been duly authorised to act on behalf of the company in this matter.*

For Aon South Africa (Pty) Ltd

Date:



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8 October 2012

Dear Dell Employee

Update on the rebuild of the IF Umbrella Provident Fund

Following discussions with the management of Dell South Africa, I thought it a good idea to write to you personally to update you on the progress that has been made in relation to the rebuild of this fund.

I am aware that there is a lot of discomfort amongst members of this fund, and I have a great deal of sympathy in this regard. I would like to take this opportunity to give you my assurance that the matter is in hand.

Since taking up my new role in April 2011, most of my time has been devoted to resolving the issues on these funds (the IF Umbrella Provident Fund, the IF Umbrella Pension Fund, the Dynam-i-que Umbrella Provident Fund and the Dynam-i-que Umbrella Pension Fund).

Too many matters have been allowed to drift for too long, and incorrect expectations had been set about when the work would be completed.

To put it into context – this project involves the rebuild of every administration record, for every member, since the inception of the funds in 2004 and 2005. This is a very big and complex project.

The good news is we have made significant progress. Whilst there have been hiccups along the way, as you would expect in a project of this magnitude, we are now in the process of integrating the rebuilt values – as at 2010 – into our administration system. The 2007, 2008, 2009 and 2010 financial statements for these funds have also now been signed off by the Trustees.

We will then have to update the administration since that date, using these corrected "starting values". For example, we will have to go and revisit every claim payment made after this date, and every switch between investment managers since 2010 to ensure that the record-keeping is up to date and correct. This is a significant piece of work, but I have dedicated resources on standby in order to get this done in the shortest possible time.

The long and the short of it is that there is still some work to be done, but I am confident that we will start issuing up to date benefit statements by the end of this year, and into early next year, once this catch-up work has been completed. I am currently not in a position to say for which of the 4 umbrella funds we will be able to issue benefit statements this year.



Registration Number 1978/004501/07 | VAT Number 4320101498 | Authorised Financial Services provider Licence 20555
 Directors: CA Roux (Chief Executive Officer & Chairman), GM Fagan, JA Kok, Dr NT Magau¹, V Mahlangu¹, MM Maponya¹,
 A Rakgalakane, GR Scott, B Singh¹,
¹ Non-Executive
 Company Secretary – JA Howell
 w: www.aon.com

I would like to express my sincere apology for this situation, and also assure you I am leaving no stone unturned in order to get the project completed as soon as possible.

Aon Hewitt is the biggest administrator of pension benefits in the world, and I am leveraging this capability to get the legacy issues resolved, but also to ensure that going forward we offer the South African market the best possible administration service.

Dell is an important global client of Aon Hewitt, and this gives us an even greater incentive to put matters right and to provide you with the high levels of service you as a company have come to expect of us globally.

Kind regards



Jaco Kok
CEO – Aon Hewitt South Africa

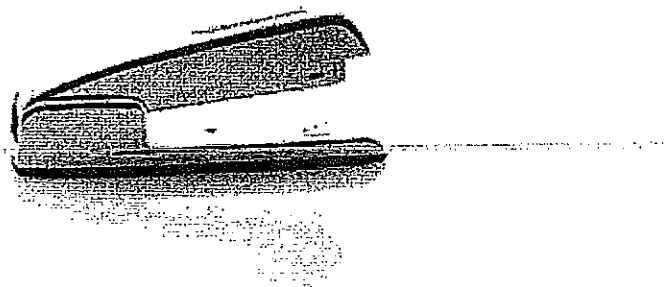


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Deloitte.

Report to the Trustees of the
Dynam-ique and IF Funds on the
ALM Project – Phase One



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7 March 2012

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The Trustees
Dynamique and IF Umbrella Funds
C/o AON South Africa (Pty) Ltd
Parklands
2121

Dear Sirs

The ALM Project - Phase One

We enclose our report of prepared on request of the Trustees of the Dynam-ique and IF Pension and Provident Funds (the umbrella funds) in respect of the ALM Project that they commissioned.

The purpose of the report is to provide the Trustees with an executive summary of the project scope, objective, methodology and outcomes. The report is not intended to provide a complete assessment of the project outcomes. The trustees are advised to read the report in conjunction with the Annexures (provided electronically) and the detailed fund deliverables that were provided to the funds' administrators, Aon Hewitt Ltd, in accordance with the requirements of the Trustees.

Our work has been limited to the brief and scope of work as provided by the Trustees, and as set out in the Report, the information made available to us and the methodology assumptions as set out in the Report and supporting Annexures.

Our work did not constitute an audit or a review in terms of International Standards of Auditing, (ISA) and consequently we do not express any opinion on the work performed or on any of the information contained in the report or in any of the project deliverables.

The Report is confidential and provided for the explicit use of the Trustees only. Any distribution thereof to third parties may only be done with the express consent of Deloitte. No party is entitled to rely on the Draft Report for any purpose whatsoever and we accept no responsibility or liability to any party in respect of the contents of this Report.

Yours faithfully



Wendy Smith
Director – Special Services Group

National Executive: GG Celink Chief Executive AE Swagers Chief Operating Officer GM Kinneck Audit
DL Kennedy Risk Advisory & Legal Services HB Kader Tax L Greening Consulting L Barn Corporate Finance
JK Mazzocco Human Resources CR Beisman Finance TJ Brown Chairman of the Board
MJ Comber Deputy Chairman of the Board
Regional Leader: BGC Fannin

A full list of partners and directors is available on request

B-BBEE rating: Level 2 contributor in terms of the Chartered Accountancy Profession Sector Code

Member of Deloitte Touche Tohmatsu Limited

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- Annexure D - Methodology presentation
- Annexure E - Consolidated Issues Log by Umbrella Fund
- Annexure F - Detailed Issue Logs by participating employer
- Annexure G - Umbrella Funds' net asset/liability position, by Participating Employer

(The Annexures have been provided electronically to the Trustees on a disc issued with this report)

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YK

Background and Scope

In July 2010 the Trustees of the Dynam-ique and IF Pension and Provident Funds (the umbrella funds) commissioned the ALM Project and appointed Deloitte to undertake the project.

The funds are umbrella funds each with a collective of participating employer funds. The administration of the umbrella funds was taken over by Aon Hewitt Ltd (Aon) in February 2008 and due to numerous factors the administration of the umbrella funds prior to this had not been adequately maintained.

The purpose and objective of the ALM Project was to re-create the member records from the inception of the umbrella funds to 31 January 2008, which would interalia, facilitate future member asset/liability reconciliations at an individual participating employer level, and to some degree restore the integrity of the umbrella funds' member data.

Key Scope criteria

The scope of work to be performed as part of the project covered:

- The full analysis (re-build) of the umbrella fund accounts at member level for the umbrella funds from inception to 31 January 2008:
 - Note that Aon engaged Deloitte to extend the period of the re-build for each of the 4 umbrella funds from 31 January 2008 to the 2008 financial year end of each of the umbrella funds, being 29 February 2008 for the Dynam-ique Funds and 31 May 2008 for the IF Funds. This report covers the full period including the extension period. (A copy of the signed proposal submitted and the extension letter are all attached as Annexure A). Trustee approval for this extension and the related terms was provided to Deloitte by Gail le Grellier, Trustee, on behalf of the Board of Trustees.
 - Note that in terms of the agreement reached between Aon and the Trustees the delivery of the trial balances and supporting records as at 31 January 2008 and as agreed to in the original engagement, was moved to coincide with the extended periods, to the financial year ends for each of the umbrella funds.
- The scope covered the Dynamique Pension Fund, Dynamique Provident Fund, IF Pension Fund and the IF Provident Fund and included all the participating employers (approximately 280 in total) and their member accounts (comprising approximately 11 500 members). (A listing of the participating employer funds included in the scope of the project is attached as Annexure B).
- Review and analysis of the relevant information relating to the umbrella funds contained in the documentation and electronic data provided by Aon.
- Cash book reconciliations for each of the 4 umbrella funds to bank statements provided.

Delivery at the conclusion of the project:

- A schedule of members with closing values as at the year-end date
- Details of contributions, investments, deductions, voluntary contributions, and any Section 14 transfers
- A schedule of investments which are found to be not in accordance with funds' / members' mandates and the proposed corrective action
- Cashbook reconciliations for each of the 4 umbrella funds

- The following was excluded from the scope by the Trustees:
 - Members / groups which have transferred out of the umbrella funds
 - Members who have resigned, passed away or left the umbrella fund
 - Timing impact of:
 - Late receipt of contributions
 - Late investment of contributions in the market
 - Non timely execution of members' investment choice
 - Impact of investments in incorrect portfolios
 - Recording separately the tax deductions and reconciliation thereof to monthly payment submissions to SARS
 - Reconciliation of payments of risk and related premiums

Scope modifications

The initial cut-off period was changed from 31 January 2008 to the umbrella funds' respective year ends, being 29 February 2008 for Dynam-ique Funds and 31 May 2008 for IF Funds.

Terminated Funds were taken into account when preparing the consolidated Trial Balance, at the umbrella fund level.

The trustees and Aon expanded the information requirements of the data upload to incorporate additional member data, including static data extracted from Everest.

The Issues Logs prepared included any investments which we found not to be in accordance with funds' / members' mandates and how this was treated in the build. ~~No separate schedule of these instances was prepared.~~

Project Governance

The project was monitored and controlled through a Steering Committee. Our recommendation was that the steering committee be represented as follows:

- At least 2 members of the Board of Trustees
- At least 2 senior Aon representatives
- The chairperson be selected from the Trustee representatives
- The auditor be represented
- As a minimum, 2 senior representatives of the Deloitte team

The purpose of the Steering Committee was to meet at least monthly and be responsible for, inter alia:

- Confirmation of the scope of the project
- Approving the project plan and periodic updates thereto
- Assessing progress of the project
- Considering issues brought before them and taking policy decisions expeditely
- Evaluation of check point assessments presented
- Approval of progress payments to Deloitte
- Final sign-off of project deliverables

Deloitte was responsible for the preparation of the Steering Committee agenda and presentation pack. Aon was responsible for taking, recording and distributing the minutes and actions of the Steering Committee meetings. (Copies of the Steering Committee agendas, presentation packs and Steering Committee meeting minutes (where available) are all attached as Annexure C, in date order).

The Deloitte project team would report into the Steering Committee, and as a minimum would have present, the Deloitte project director and Deloitte project manager.

During the project, the Steering Committee, Trustee and AON member representatives changed.

The table below outlines the Trustee members who represented the Board of Trustees on the Project during the course of the Project.

Date appointed / co-opted	Last attendance date	Trustee representative
Inception	27 January 2011	Gall le Grellier
Inception	End of project	Clive Stuart
Inception	End of project	Stefane Bredenkamp
February 2011	End of project	Ray Welham
February 2011	End of project	John Rollason
February 2011	End of project	Craig Falconer (occasional invitee for specific issues)

The table below outlines the AON member changes during the course of the Project.

Date appointed / co-opted	Last attendance date	Name
Inception	7 October 2011	Helen Barton
Inception	2 September 2011	Carel Smith
Inception	End of project	Bernice Davies
Inception	27 January 2011	James Adams
Inception	27 January 2011	Nkanyiso Mpofo
2 September 2011	End of project	Stefane Bredenkamp
7 October 2011	End of Project	Bonita Oosthuizen
26 July 2011	End of Project	Mark Jones