

Kamionsky states that the Applicants "were *further grossly negligent as they hadn't paid the insurance premiums on these policies and hence the insurer just washed their hands of the claim on the basis that the policies had lapsed due to non-payment of premiums*".

7. In paragraph 30.7 of its answering affidavit the 16<sup>th</sup> Respondent states "It was also incumbent on the trustees, in the circumstances, to take particular care to ensure that the PI cover for the trustees and the Funds was in place, and that the premiums were paid in respect of those policies, in order that any remedial work which needed to be carried out by a third party could be funded through those insurance policies. The trustees could never responsibly, or in accordance with their fiduciary duties, have allowed the Funds' members to bear the costs of rectifying the trustees' fiduciary and statutory breaches."

#### **Background to the Funds' indemnity insurance**

8. In order to understand the insurance background, I briefly set out the salient points below:

8.1 The insurance cover held by the Funds and its "officers" as defined in the relevant policies has consistently been held in terms of policy wording which is attached as annexure "FK1".

7 P  
SAC

- 8.2 Aside from cover for theft, fraud, dishonesty and computer crime (which is not relevant), cover for claims in negligence by third parties is on a so-called "*claims made*" basis, and the relevant policy which responds is the policy in force when the written notice of the claim is given by the insured.
9. The Funds first reported possible circumstances which could give rise to claims during January and February 2011, during the policy period which ran from 1 August 2010 to 31 July 2011. A copy of the relevant policy schedule is attached as annexure "FK2". The applicable policy wording, as already mentioned, would have been that set out in annexure "FK1".
10. On 18 March 2011, Camargue Underwriting Managers (Pty) Ltd ("*Camargue*"), the underwriters on behalf of Lloyds Syndicate 2987 and Mutual and Federal Insurance Company Limited ("*the insurers*"), advised that the policies had lapsed due to non-payment of premiums. A copy of the relevant correspondence is attached as annexure "FK3".
11. It transpires that due to an administrative error within Aon the premium was not paid to Camargue.
12. In this regard I attach as annexure "FK4" correspondence from the Funds' attorneys to Aon recording the chain of events and reserving the Funds' rights against Aon.

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ATK

13. However badly the above may reflect on the trustees and administrators in office at the time, none of these issues resulted in a lack of cover for the rebuild cost or the issues necessitating the rebuild. This is because previously (and during the tenure of the Applicants as trustees on the boards of the Funds) exclusions were introduced into the policies based, *inter alia*, on problems related to the Dynam-ique period of administration. At page 3 of "FK2" the following specific exclusion appears: *"Any claim/loss arising in any way from the issues raised by the Auditors following their audit for the year ended 28 February 2006"*.
14. The financial reports for the Funds for the period 2006 are attached, "FK5" and "FK6". At page 18 of the IF Provident Fund report the auditors identified and outlined administration and management weaknesses (circumstances that pertained to the Dynam-ique as well as the IF Funds).
15. The Funds were advised that claims based on the circumstances which gave rise to the rebuild would be excluded and that the Funds should set about re-negotiating insurance cover. The Funds were, however, not able to renegotiate any cover which did not contain similar exclusions to those which had already been put in place in previous policies relating to the errors and anomalies identified by the auditors. An extract of the relevant renegotiated policy is attached as annexure "FK7".

M.P.  
AKC

### The insurer's position

16. It further became clear that the Funds' insurers would have repudiated any claims made by the Funds and/or "officers" of the Funds. Mr Tony Kamionsky attempted to claim an indemnity from the Funds' insurers under case number 30888/2011 in the South Gauteng High Court (a claim which was later withdrawn). I will not burden these papers with details of the affidavits filed in this matter, but they will be made available to the parties should they wish to refer to them at the hearing of the matter.
17. However, the insurer's response to Mr Kamionsky's aforesaid claim for an indemnity provides an important indicator that the insurers would and will repudiate any claim based on the Dynam-ique maladministration *inter alia* for the reasons set out in this affidavit.
18. In particular, the underwriters Camargue rejected Mr Kamionsky's claim for indemnity in a letter dated 9 September 2011 (attached as annexure "FK8") *inter alia* because:

18.1 the exclusions based on the issues raised by the auditors referred to in this affidavit meant that the claim was not covered;

T.P.  
D.P.

18.2 the policies would have been void, or voidable, as material disclosures within Mr Kamionsky's knowledge were not made at the commencement of the August 2009 period, and


18.3 Mr Kamionsky was aware of circumstances that may have given rise to claims by February 2008, at the latest, but failed to notify insurers.

19. The above information relating to the insurance position arising from the maladministration has been published to members of the Funds in a communiqué dated 24 August 2012, attached as annexure "FK9".

**Summary**

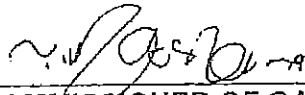
20. Any claim relating directly or indirectly to the maladministration and poor record-keeping which gave rise to the rebuild exercise would in all probability not have been covered by the policies taken out by the Funds from 1 August 2008 to date.

21. In the above circumstances the statements by the 16<sup>th</sup> Respondent and Kamionsky to the effect that the insurers repudiated the Funds insurance claim solely by reason of non-payment of premium, is incorrect.



FRANCISCO JABULANE KHOZA

The deponent has acknowledged to me that he knows and understands the contents of this affidavit which was signed and sworn before me at Johannesburg on the \_\_\_\_ day of October 2013, the regulations contained in Government Notice R1258 of 21 July (as amended) having been complied with.



COMMISSIONER OF OATHS

TSHEPANG PORTIA MATSHANA  
EX OFFICIO  
COMMISSIONER OF OATHS  
PRACTISING ATTORNEY  
REPUBLIC OF SOUTH AFRICA  
165 WEST STREET  
SANDTON

FKI



## PENSION FUND TRUSTEES LIABILITY INSURANCE POLICY

Subject to the terms, exclusions and conditions (precedent or otherwise) and in consideration of, and conditional upon the prior payment of the premium by or on behalf of the Insured and receipt thereof by or on behalf of the Insurers, the Insurers agree to indemnify the Insured in respect of the defined events occurring during the period of insurance and as otherwise provided under the policy up to the limit of indemnity specified.

### CONDITIONS

#### 1. Conditions Precedent to Liability

Insofar as they relate to anything to be done or complied with by the Insured, the due observance and fulfilment of the following conditions and stipulations and of any further conditions and stipulations that may be endorsed hereon or added hereto is a condition precedent to any liability of the Insurers under this policy and no waiver of any of the terms, conditions or stipulations of this policy shall be valid unless made in writing upon this policy and signed on behalf of the Insurers. The head notes to any paragraph are for reference purposes and shall not effect the interpretation of the policy.

#### 2. Claims Notification

Notification of any claim or circumstance which may give rise to a claim shall be given in writing as soon as is reasonably possible, with the fullest information thereof. The Insured shall also furnish all such information and assistance as the Insurers may require.

If the Insured, or any representative of the Insured to whom is entrusted the duty of superintendence or audit, suspect or become aware of the negligence or dishonesty of an officer, they shall report such negligence or dishonesty as soon as possible.

#### 3. Prosecution

The Insured shall, if and when required by the Insurers, and at the expense of the Insurers, use all diligence in prosecuting the officer to conviction for any criminal act which he/she shall have committed and in consequence of which a claim shall have been made under this policy and shall, at the Insurers' expense, give all information and assistance to enable the Insurers to sue for and obtain reimbursement from the officer or his/her estate of any monies which the Insurers shall have become liable to pay hereunder.

#### 4. Litigation costs

The Insurers agree to pay litigation expenses in prosecuting or defending any claim where such litigation expenses are incurred with the written consent of the Insurers. Such payment to be part of and not in addition to the limit of indemnity.

#### 5. Admission of Liability

The Insured shall not, without the written authority of the Insurers, voluntarily incur any liability (including litigation expenses) or voluntarily give any undertaking to make any payment, or settlement of or admission of liability for, any event for which the Insurers would be liable under this policy.

#### 6. Access to the Fund's Records

The Insurers or its duly authorised representative shall have reasonable access to the Insured's records and books after receiving notice of a loss and may call for sworn declarations by the Insured or their representative in support of any claim submitted.

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[Signature]

7. Subrogation

When a loss has been made good by the Insurers, a discharge thereof shall be made by the Insured and the Insured shall, when required by and at the expense of the Insurers, assign to the Insurers claims and rights of action competent to the Insured against the persons concerned in respect of the loss sustained. However, this shall not apply to any natural person(s) acting as an officer where they are indemnified under defined event 1.

8. Assets of Officer Held by Insured

Any sum of money, estate or effects which shall come into the possession or power of the Insured for or on account of any person whose act or acts give rise to a claim under defined events 2 or 3 shall, insofar as it is competent for the Insured to do so, be realised by the Insured to the best advantage and the proceeds shall be accounted for by the Insured to the Insurers and treated as a deduction from the loss.

9. Control of Proceedings

The Insurers shall be entitled to undertake the conduct and control of all or any proceedings in respect of any claim for which the Insurers may be liable under defined event 1 which may be commenced by or against the Insured, and to use the name of the Insured to enforce, for the benefit of the Insurers, any order made for costs or otherwise and to make or defend any claim for indemnity or damages against any person or insurers or for any other purpose connected with this policy.

9.1 The Insured shall not be required to contest any legal proceedings unless counsel (to be mutually agreed upon by the Insured and the Insurers) shall advise that such proceedings should be contested.

9.2 The Insurers shall not settle any claim without the consent of the Insured. If however the Insured shall refuse to consent to any settlement recommended by the Insurers, and shall elect to contest or continue any legal proceedings in connection with such claim then the Insurers' liability for the claim shall not exceed the amount by which the claim could have been so settled plus the costs, charges and expenses incurred with their consent up to the date of such refusal, and then only up to the limit of indemnity.

10. Recoveries Where a Loss Exceeds the Limit of Indemnity

In the case of recovery on account of any loss covered under this policy the amount recovered, after deducting the actual cost of obtaining or making such recovery but excluding the Insured's own labour and/or establishment costs, shall be applied in the following order:

10.1 To reimburse the Insured in full for that part, if any, of such loss that exceeds the amount of coverage provided by this policy (disregarding the amount of any first amount payable);

10.2 The balance, if any, or the entire net recovery if no part of such loss which exceeds the amount of coverage by this policy, to reduction of that part of such loss covered by this policy, or if payment thereof shall have been made, to the reimbursement of the Insurers;

10.3 Finally, to that part of such loss sustained by the Insured by reason of any first amount payable.

11. Signing of Proposal

It is understood and agreed that knowledge in respect of any act or acts which may have been committed by the person signing any proposal form or giving renewal or other instructions shall not prejudice any claim under this policy.

12. First Amount Payable

The Insurers shall not be liable for the first amount payable stated in the schedule, which shall apply separately in respect of each and every claim.

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[Signature]

13. **Fraudulent Claims**

If any claim under this policy is in any respect fraudulent, or if any fraudulent means or devices are used by the Insured or anyone acting on their behalf or with their knowledge or consent to obtain any benefit under this policy, or if any event is occasioned by the willful act or with the connivance of the Insured, the benefit afforded under this policy in respect of such claim shall be forfeited.

14. **South African Jurisdiction**

This policy shall be governed by the laws of the Republic of South Africa whose courts shall have jurisdiction in any dispute arising hereunder.

15. **Cancellation**

This policy may be cancelled at any time by the Insurers giving 30 days' notice in writing to the Insured, or by the Insured giving immediate notice. The Insured shall be entitled to a refund of premium for the unexpired period of insurance.

**DEFINED EVENTS**

1. **Negligence**

Any claim first made against any officer during the period of insurance resulting from any wrongful act committed by an officer anywhere in the world but not in respect of any judgement, award or settlement made within countries which operate under the laws of the United States of America or to any order made anywhere in the world to enforce such judgement, award or settlement in whole or in part.

If, during the period of insurance, written notice of a claim against the Insured has been given to the Insurers, then any claim which is subsequently made against the Insured and reported to the Insurers alleging, arising out of, based upon or attributable to the facts alleged in the claim of which such notice has been given or alleging any wrongful act which is the same, related, continuous or repeated wrongful act alleged or contained in such claim, shall be considered made against the Insured and reported to the Insurers at the time such notice of such claim was given.

If, during the period of insurance, or during the discovery period (if applicable) the Insured shall become aware of any circumstances which may reasonably be expected to give rise to a claim being made against the Insured and shall give written notice to the Insurers of the circumstances and the reasons for anticipating such claim, without full particulars as to dates and persons involved, then any claim which is subsequently made against the Insured and reported to the Insurers alleging, arising out of, based upon or attributable to such circumstances or alleging any wrongful act which is the same, related, continuous or repeated wrongful act alleged or contained in such circumstances, shall be considered made against the Insured and reported to the Insurers at the time such notice of such circumstances was given.

2. **Theft, Fraud and Dishonesty**

2.1 Loss of money and/or other property belonging to the Insured or for which they are responsible, which is stolen or removed without the Insured's authority by an officer;

2.2 Direct financial loss sustained by the Insured as a result of fraud or dishonesty of an officer and which results in dishonest personal financial gain for the officer concerned;

all of which occurs during the period of insurance or after the retroactive date and which is discovered during the period of insurance or within 12 months of the termination of this policy.

The term "money" shall include securities, derivative instruments, cheques, bills of exchange, investments, certificates of deposit, shares, letters of credit or orders upon public treasuries, promissory notes, currency notes, coins and bonds.

3. **Computer Crime**

Loss resulting directly from fraudulent or dishonest

3.1 entry of data into, or

3.2 change of data or programmes within

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the officer's computer system, provided such entry or change causes

- (i) property to be transferred, paid or delivered;
- (ii) an account of the Fund, or of its member(s) to be added, deleted, debited or credited;
- (iii) an unauthorised account or fictitious account to be debited or credited

all of which occurs during the period of insurance or after the retroactive date and which is discovered during the period of insurance or within 12 months of the termination of this policy.

Provided that

- (a) Renewal of this insurance from period to period or any extension of any period of insurance shall not have the effect of accumulating or increasing the liability of the Insurers beyond the limit of indemnity stated in the schedule.
- (b) The Insurers' total aggregate liability under all defined events together shall not exceed the limit of indemnity shown in the schedule.
- (c) The Insured shall be responsible for the first amount payable shown in the schedule. Such first amount payable is to apply without aggregation to each and every claim hereunder.
- (d) The liability of the Insurers is limited to losses incurred by the Insured relative to pension / provident / disability / trust monies in respect of past, present or future employee benefits.

#### DEFINITIONS

The following definitions shall have the same meaning throughout the policy where ever they appear.

1. Officer

Any of the following who provides services to or for the Insured:

a present or past committee member, individual, manager, trustee, administrator, third party service provider, controller, principal officer, treasurer, clerk, employee or agent of the employer company.

2. Wrongful Act

Any actual or alleged breach of duty, statutory duty or trust, neglect, error, misstatement, misleading statement, omission, defamation, *injuria*, unintentional breach of confidentiality or other act wrongfully committed, omitted or attempted by an officer and which arises by reason of their being an officer of the Insured other than as Insured under defined event 2 or 3.

3. Insured

The fund described in the schedule.

4. Fund

Any fund declared to the Insurers which was, on or prior to the inception of the policy, established and maintained for the benefit of the past, present and future employees of the employer company or their respective beneficiaries.


5. Loss

5.1 Damages, Judgements or settlements;

5.2 Costs and expenses awarded against any Insured through any claimant or claimants;

5.3 All other costs and expenses incurred with the written consent of the Insurers including but not limited to

- (f) Insurers' costs and expenses

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(ii) costs, charges and expenses of legal representation.

Wherever the terms "loss" or "claim" are used in this policy it is understood to mean any losses or series of losses arising out of the same event.

A loss, losses or series of losses caused by wrongful acts of, or involving any one person whether acting alone or in collusion, whether with one of the officers of the Insured or not, or wrongful acts in which any one person whether acting alone or in collusion is concerned or implicated, shall be deemed as being the same event.

6. Dishonesty

6.1 Theft as provided for in defined event 2.1;

6.2 Fraud as provided for in defined event 2.2.

"Dishonesty" shall not include gain by an officer in the form of salary, salary increases, fees, commissions, bonuses, promotions or other emoluments.

EXTENSIONS AND CLAUSES

1. Discovery Clause

In the event that the Insurers refuse to renew this insurance then subject to all the terms, exceptions and conditions of this policy the Insurers agree to extend the period during which the Insured may report a claim for a period of 12 months (hereinafter referred to as the discovery period) provided that:

- (a) the Insurers shall not be liable for wrongful acts which occurred after the period of insurance;
- (b) any such reported claim shall be treated as if it had been reported on the last day of the period of insurance;
- (c) the total amount payable by the Insurers for a claim reported during the discovery period shall not have the effect of increasing the limit of indemnity under the policy;
- (d) the Insured has not obtained insurance providing substantially the same cover as granted under this policy.

2. Claims Preparation Costs

The insurance under the policy is extended to include costs reasonably incurred by the Insured in producing and certifying any particulars or details required by the Insurers in terms of Condition 2 or to substantiate the amount of any claim provided that the liability of the Insurers for such costs in respect of any one claim shall not exceed 2% of the limit of liability or the amount stated in the schedule whichever is the greater amount.

3. Costs of recovery

If the Insured shall sustain any loss to which the policy applies which exceeds the limit of indemnity, the Insurers will in addition pay to the Insured costs and expenses not exceeding 3% of the limit of indemnity, or the amount stated in the schedule whichever is the greater, necessarily incurred with the consent of the Insurers (which consent shall not unreasonably be withheld) for the recovery or attempted recovery from the officer in regard to whom the claim is made, of that part of the loss which exceeds the limit of indemnity hereunder. All amounts recovered by the Insured in excess of the said part of the loss shall be for the benefit of the Insurers.

4. Costs of Reinstating Office Records

The policy is extended to include costs, charges and expenses incurred by the Insured in replacing and/or restoring any computer files and data media documents, manuscripts, business books, plans, design specifications or programmes destroyed, damaged or lost as a result of loss insured by this policy, provided that the liability of the Insurers shall not exceed 2% of the limit of indemnity or the amount stated in the schedule, whichever is the greater amount.

5. Reinstatement of Sum Insured

The payment by the Insurers of any loss involving one officer or any number of officers shall not reduce the Insurers' liability in respect of the remaining insured officers provided that the maximum amount payable by the Insurers for all losses (including defence costs) shall not exceed, during any one period of insurance, double the limit of indemnity shown in the schedule.

6. **Extended Cover for Former Officers**

Any person who ceases to be an officer shall for the purposes of the policy be considered as being an officer for a period of 30 (thirty) days after he ceased to be an officer.

7. **Accountants Clause**

Any particulars or details contained in the Insured's books of account or other business books or documents which may be required by the Insurers for the purpose of investigating or verifying any claim hereunder may be produced and certified by the Insured's auditors or professional accountants and their certificate shall be prima facie evidence of the particulars and details to which it relates.

8. **Unidentifiable Officer Clause**

If a loss is alleged to have been caused by the fraud or dishonesty of any of the officers and the Insured shall be unable to designate the specific officer or officers causing the loss, the Insured's claim in respect of such loss shall not be invalidated by their inability to do so provided the Insured is able to furnish evidence to the reasonable satisfaction of the Insurers that the loss was in fact due to the fraud or dishonesty of one or more of the officers.

9. **VAT Exclusive**

The sum insured is expressed on a VAT-exclusive basis and the Insurers agree to indemnify the Insured over and above the limit of indemnity for any VAT obligation the Insured may incur arising out of any claim settlement made hereunder.

10. **Retroactive Date**

The Insurers shall not be liable to provide indemnity hereunder for any event(s) which occurred prior to the retroactive date stated in the schedule, provided that nothing contained within this condition shall be interpreted as releasing the Insured from their obligation to reveal as a material fact all details of claims made or outstanding or events likely to give rise to a claim.

11. **Increase in Limit of Indemnity**

If the limit of indemnity is increased, such increased limit of indemnity shall only apply to the defined event(s) occurring after the date of such increase.

12. **Fraudulent Signatory Extension**

The misrepresentation or non disclosure of any matter by the Insured and/or any covered individual or entity or their agent will render the policy void. However any loss caused by the dishonest or fraudulent act(s) of any signatory to the proposal form committed whilst acting in the capacity of an officer prior to the signing of such proposal form shall not be excluded solely by the fact that such loss has not been notified to the Insurers in the proposal form.

**EXCLUSIONS**

The Insurers shall not be liable for any claim(s)

1. for any actual or alleged bodily injury, sickness, disease or death of any person or any actual or alleged loss or destruction of or damage to any tangible property including loss of use thereof;
2. based upon, arising out of, directly or indirectly resulting from, or in consequence of, or in any way involving actual or alleged seepage, pollution or contamination of any kind;
3. any third party claim arising from or contributed to by depreciation (or failure to appreciate) in value of any investment, including loans, securities, commodities, currencies, options and futures transactions, or as a result of any actual or alleged representation, guarantee or warranty provided by or on behalf of the insured as to the performance of any such investments where such matters are outside the influence or control of the officer;

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It is agreed however, that this exclusion shall not apply to any loss due solely to negligence on the part of an officer in failing to effect a specific investment transaction in accordance with specific prior instructions.

- 4. resulting from the intentional suspension of contributions to the fund by the employer company;
- 5. resulting from the fraud or dishonesty of any officer from the time the Insured shall become aware that such officer has committed any fraud or dishonesty indemnifiable in terms of the policy. Any wrongful act pertaining to any Insured shall not be imputed to any other Insured;
- 6. in respect of which the Insured is entitled to indemnity under any other policy except in respect of any excess beyond the amount which would have been payable under such policy had this policy not been effected;
- 7. for loss or damage caused directly or indirectly by or through or in consequence of any occurrence for which a fund has been established in terms of the War Damage Insurance and Compensation Act 1976 (No. 85 of 1976) or any similar Act operative in any territory to which this policy applies;
- 8. for loss of or damage to property directly or indirectly caused by or in any way related to:
  - (a) civil commotion, labour disturbances, riot, strike, lockout or public disorder or any act or activity which is calculated or directed to bring about any of the foregoing;
  - (b) war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not) or civil war;
  - (c)
    - (i) mutiny, military rising, military or usurped power, martial law or state of siege or any other event or cause which determines the proclamation or maintenance of martial law or state of siege;
    - (ii) Insurrection, rebellion or revolution;
  - (d) any act (whether on behalf of any organisation, body or person or group of persons) calculated to
    - (i) overthrow or influence any State or Government or any provincial, local or tribal authority with force or by means of fear, terrorism or violence;
    - (ii) bring about loss or damage in order to further any political, religious, social, ideological or similar purpose, aim, objective or cause or to bring about any social, ideological or economic change or in protest against any State, Government or any provincial, local or tribal authority or for the purpose of inspiring fear in the public or any section thereof;
  - (e) any attempt to perform any act referred to in clause (d) above;
  - (f) the act of any lawfully established authority in controlling, preventing, suppressing or in any way dealing with any occurrences referred to in clauses (a), (b), (c), (d) or (e) of this exception.

If the Insurers allege that by reason of clauses (a), (b), (c), (d), (e) or (f) of this exception loss or damage is not covered by this policy the burden of proving the contrary shall rest on the Insured.

- 9. This policy does not cover
  - (a) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting therefrom or any consequential loss
  - (b) any legal liability of whatsoever nature

directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purpose of this exclusion only combustion shall include any self-sustaining process of nuclear fission. The indemnity provided by this policy shall not apply to nor include any loss, destruction, damage or legal liability directly or indirectly caused by or contributed to by or arising from nuclear weapons material.

10. Special War and Terrorism Exclusion

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Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with

- (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, insurrection, rebellion, revolution, military or usurped power, or confiscation or nationalisation or requisition or destruction of or damage to property by or under the control of any Government or Public or Local Authority; or
- (b) directly or indirectly caused by, resulting from happening through or in connection with any act of terrorism regardless of any other cause contributing concurrently or in any other sequence to the loss.

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

In any action, suit or proceedings where the Insurers allege that by reason of this exclusion a loss is not covered by this insurance the burden of proving that such loss is covered shall be upon the Insured.

11. Special Computer Loss General Exclusion

Notwithstanding any provision of this policy including any special exclusion or extension or other provision not included herein which would otherwise override a general exclusion, this policy does not cover any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or consisting of or arising from the incapacity or failure of any computer, correctly or at all

- (a) to treat any data as the correct date or true calendar date, or correctly or appropriately to recognise, manipulate, interpret, process, store, receive or to respond to any data or information, or to carry out any command or instruction, in regard to or in connection with any such data or
- (b) to capture, save, retain or process any information or code as a result of the operation of any command which has been programmed into any computer, being a command which causes the loss of data or the inability to capture, save, retain or correctly to process such data in regard to or in connection with any such data or
- (c) to capture, save, retain or to process any data as a result of the action of any computer virus, or other corrupting, harmful or otherwise unauthorised code or instruction including any trojan horse, time or logic bomb or worm or any other destructive code, media or programme or interference.

A computer includes any computer, data processing equipment, microchip, integrated circuit or similar device in computer or non-computer equipment or any computer software, tools, operating system or any computer hardware or peripherals and the information or data electronically or otherwise stored in or on any of the above, whether the property of the Insured or other person.

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7. P  
*[Handwritten signature]*

FK2



SCHEDULE

POLICY NO: FGPC463908368 INTERMEDIARY: Aon Risk Services

THE INSURERS:

Lloyds Lloyds Syndicate 2987 (Brit) as evidenced by Contract No. SOL043/10 for 50% Mutual & Federal Insurance Company Ltd for 50%

Important: The Insurers named hereon bind themselves each for their own part and not one for another. Each Insurer's liability under this certificate shall not exceed the percentage or amount of the risk shown against that Insurer's name.

THE INSURED:

IF Umbrella Pension Fund

VAT No: ADDRESS:

1 PO Box 1874 PARKLANDS JOHANNESBURG 2121

PERIOD OF INSURANCE:

From: 01 August 2010 To: 31 July 2011 both dates inclusive and any subsequent period for which the insurer accepts a premium.

RENEWAL/ANNIVERSARY DATE:

01 August 2011

ANNUAL PREMIUM:

R 12,500.00

PREMIUM DUE:

Table with 2 columns: Description, Amount. Rows: Premium: R 10,964.91; VAT @ 14%: R 1,635.09; Total now payable: R 12,500.00

Commission payable to intermediary R 2,500.00 including VAT



Date: 17 September 2010

Signed for Camargue Underwriting Managers (Pty) Ltd

Reason for Issue: Policy - Renewal Prop

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INSURED : IF Umbrella Pension Fund  
 POLICY NUMBER : FGPC463908368  
 POLICY TYPE: Pension Fund Trustees

Limit of Indemnity R 10,000,000  
 First Amount Payable Nil  
 Retroactive Date: 21 November 2006

**Extensions and Endorsements Applicable:**

Reinstatement Option  
 Claims Preparation Costs: 2% of Limit of Indemnity  
 Costs of Recovery: 3% of Limit of Indemnity  
 Costs of Reinstating Office Records: 2% of Limit of Indemnity

Specific Exclusion: Any claim/loss arising in any way from the issues raised by the Auditors following their audit for the year ended 28 February 2006.

The Insurers shall not be liable for loss arising from:  
 Any claim based on, arising out of, relating to or involving, directly or indirectly any form of investment into:

Corporate Money Managers (Pty) Ltd and any subsidiary or associated company and/or any affiliated entity and/or any related entities subsequently involved as a result of the ongoing FSB investigation and/or any investigation conducted by any other equivalent authority under any other jurisdiction;

Fredrick Benjamin Andalarit and/or any of his associates and/or National Financial Partners (Pty) Ltd and/or Finshare Financial Services (Pty) Ltd and/or Progressive Investment Trust, and any subsidiary or associated company and/or any affiliated entity and/or any related entities subsequently involved as a result of the ongoing FSB investigation and/or any investigation conducted by any other equivalent authority under any other jurisdiction;

J Arthur Brown and/or any of his associates and/or Fidenfia Asset Management (Pty) Ltd and/or Common Cents Investment Portfolio Strategists (Pty) Ltd and any subsidiary or associated company and/or any affiliated entity and/or any related entities subsequently involved as a result of the ongoing FSB investigation and/or any investigation conducted by any other equivalent authority under any other jurisdiction.

Subject otherwise to the Terms, Conditions and Exclusions of the Policy.

**ADDITIONAL BENEFITS**

The Insured is entitled to the following additional benefit(s):

- 1. Access to a professional arbitration service to resolve disputes between the Fund and its member(s).

*Handwritten initials and signature:*  
 N.P.  
 [Signature]

ADDITIONAL EXTENSIONS/EXCLUSIONS

SEVERAL LIABILITY CLAUSE

PLEASE NOTE - This notice contains important information. PLEASE READ CAREFULLY.

The liability of an insurer under this contract is several and not joint with any other insurers party to this contract. An insurer is liable only for the proportion of liability it has underwritten. An insurer is not jointly liable for the proportion of liability underwritten by any other insurer. Nor is an insurer otherwise responsible for any liability of any other insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by an insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in this contract.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's at the above address.

Although reference is made at various points in this clause to "this contract" in the singular, where circumstances so require this should be read as a reference to contracts in the plural.

Handwritten initials and signature, possibly "Y.P." and "OK".

FK3



Camargue Underwriting Managers (Pty) Ltd Reg. No 2000/028098/07  
1<sup>st</sup> Floor 15 Elop Road Parktown 2193  
Postal Suite 250 Private Bag X 4 Bedfordview 2008  
Tel: +27 11 356 4846/4801 Fax: +27 11 356 4847  
E-mail: camargue@camarguem.co.za  
VAT No. 4050204447

Gina Stols  
ADN South Africa (Pty) Ltd

Dear Gina,

Trustees Fidelity and Errors and Omissions Insurance

<u>Policy Name</u>	<u>Policy Number</u>
Dynam-Ique SA Umbrella Provident Fund	FGPC463908359
Dynam-Ique Umbrella Pension Fund	FGPC463908362
IF Umbrella Pension Fund	FGPC463908368
IF Umbrella Provident Fund	FGPC463908365

We regret to advise you that we have lapsed the abovementioned Policies with effect from the following dates:

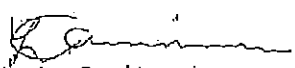
- Dynam-Ique SA Umbrella Provident Fund (FGPC463908359) - 1 August 2010
- Dynam-Ique Umbrella Pension Fund (FGPC463908362) - 1 August 2010
- IF Umbrella Pension Fund (FGPC463908368) - 1 August 2009
- IF Umbrella Provident Fund (FGPC463908365) - 1 August 2009

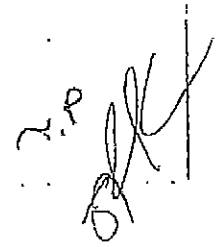
This is consequent on non-payment of the Renewal Premium on the dates indicated.

We are not permitted by the terms of our mandate from Insurers to accept Premium so late or to reinstate cover this far back.

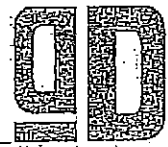
We regret any inconvenience that this may cause and trust that you will understand our position in this regard.

Kind regards,

  
Lucian Carclumarú  
Underwriter  
Camargue Underwriting Managers



FK4



DUNSTER & associates attorneys conveyancers

T +27 (0)21 422 3020 F +27 (0)86 601 2142 E ren@dunster.co.za

Your ref: M Ravenscroft and C Clark  
Our ref: RD/RV/DYN1-0001  
Date: 7 April 2011

AON SOUTH AFRICA (PTY) LTD T/A  
AON FINANCIAL MARKETS BROKERS  
Attention: Michele Ravenscroft and Claudia Clark  
Email: [Michele.ravenscroft@aon.co.za](mailto:Michele.ravenscroft@aon.co.za)  
[Claudia.clark@aon.co.za](mailto:Claudia.clark@aon.co.za)

Dear Sirs / Mesdames,

TRUSTEES FIDELITY ERRORS AND OMISSIONS INSURANCE: POLICIES FGPC463908359;  
FGPC463908362; FGPC463908368 AND FGPC463908365

1. We act for the Dynam-ique Umbrella Pension Fund, the Dynam-ique Umbrella Provident Fund, the IF Umbrella Pension Fund and the IF Umbrella Provident Fund ("the Funds").
2. We refer to the undated letter received from the underwriters of the above policies on or about 18 March 2011, a copy of which is attached as annexure "A". We further attach a copy of the Funds' response to this letter, as annexure "B".
3. Whilst the Funds remain of the view that cover in terms of the policies is valid and in force, to the extent that the points raised by the insurers relating to late payment of premium may be correct, it was clearly your responsibility as brokers inter alia to have advised the Funds that the premium was not paid timeously, and to have warned the Funds that they were not on cover. This clearly did not occur.
4. In the circumstances, and given the statutory obligations of the Funds to operate with appropriate insurance cover in the interests of members, unless we receive confirmation within 14 calendar days that Aon will stand surety for the obligations of the insurers, we are instructed to Institute proceedings for a declaratory order to the effect that Aon is liable to indemnify the Funds to the extent that the insurers have lawfully "lapsed" the policies.

Partner: Ren Dunster [B.Com LLB LLM Tax & Shipping] | Associates: Bridget Ellender [BA, LLB] Matthew De Wet [B.Com LLB]  
4th Floor, Suite 405, 42 Keerom Street, Cape Town, 8001 | PO Box 15519, Vloeberg, 8018  
[info@dunster.co.za](mailto:info@dunster.co.za) | [www.dunster.co.za](http://www.dunster.co.za)

Handwritten initials: JMK



5. We accordingly await your response as a matter of urgency.

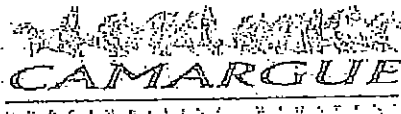
Yours faithfully  
DUNSTER & ASSOCIATES

Not signed, sent electronically

REN DUNSTER

2.12  
*[Handwritten signature]*

A



Camargue Underwriting Managers (Pty) Ltd Reg No 2000/028098/07  
1<sup>st</sup> Floor 16 Elton Road Parktown 2193  
Postnet Suite 250 Private Bag X 4 Bedfordview 2008  
Tel: +27 11 350 4845/4801 Fax: +27 11 356 4847  
E-mail: [camargue@camargueum.co.za](mailto:camargue@camargueum.co.za)  
VAT No. 4050204447

Gina Stols  
AON South Africa (Pty) Ltd

Dear Gina,

Trustees Fidelity and Errors and Omissions Insurance

<u>Policy Name</u>	<u>Policy Number</u>
Dynam-Ique SA Umbrella Provident Fund	FGPC463908359
Dynam-Ique Umbrella Pension Fund	FGPC463908362
IF Umbrella Pension Fund	FGPC463908368
IF Umbrella Provident Fund	FGPC463908365

We regret to advise you that we have lapsed the abovementioned Policies with effect from the following dates:

- Dynam-Ique SA Umbrella Provident Fund (FGPC463908359) – 1 August 2010
- Dynam-Ique Umbrella Pension Fund (FGPC463908362) – 1 August 2010
- IF Umbrella Pension Fund (FGPC463908368) – 1 August 2009
- IF Umbrella Provident Fund (FGPC463908365) – 1 August 2009

This is consequent on non-payment of the Renewal Premium on the dates indicated.

We are not permitted by the terms of our mandate from Insurers to accept Premium so late or to reinstatae cover this far back.

We regret any inconvenience that this may cause and trust that you will understand our position in this regard.

Kind regards,

Lucian Carclumaru  
Underwriter  
Camargue Underwriting Managers

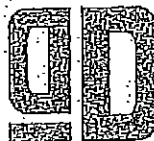
Handwritten initials/signature in the bottom right corner.

"B"

T +27 (0)21 422 3020

F +27 (0)96 601 2142

E ren@dunster.co.za



**DUNSTER**  
 & associates  
 attorneys conveyancers

Your ref: *Lucian Corciumuru*Our ref: *RD/CR/DYN1-0001*Date: *7 APRIL 2011***CAMARGUE UNDERWRITING MANAGERS (PTY) LTD**Attention: Lucian CorciumuruEmail: Lucian@camargueum.co.zaCamargue@camargueum.co.zaAnd to: **Lloyd's South Africa (Pty) Ltd**

Fax: 011 884 0384

And to: **Mutual and Federal Insurance Co Ltd**

Fax: 011 374 2652

Dear Sirs,

**TRUSTEES FIDELITY ERRORS AND OMISSIONS INSURANCE: POLICIES FGPC463908359;  
 FGPC463908362; FGPC463908368 AND FGPC463908365**

1. We act for the Dynam-ique Umbrella Pension Fund, the Dynam-ique Umbrella Provident Fund, the IF Umbrella Pension Fund and the IF Umbrella Provident Fund ("the Funds").
2. We refer to your undated letter received on or about 18 March 2011.
3. We have taken instructions and advise that the Funds deny that the renewal premium was not paid timeously. Further, neither you, nor the insurers, have any rights in terms of the policy or otherwise to "lapse" the policies.

21.10



4. We point out that the premiums were fully paid-up by latest 9 March 2011 and that premium payments were effected within the policy renewal period, prior to any claim for indemnification or demand for payment by the Insurers. Further, no demand for premium was ever made.
5. In any event the policy provides that the Insurers agreed to "indemnify" the Funds "in consideration of, and conditional upon the prior payment of the premium". However, prior payment of the premium is not made a condition precedent of the policy itself.
6. Self-evidently, the premium has already been paid but no claim for indemnification has occurred. (Our client has only notified your client of circumstances which may in future give rise to a claim, which appears to be the reason you have repudiated liability on the policies).
7. In the circumstances the policy is valid and in force, and our client is of the view that you and/or the insurers are in breach of the policies and/or have unlawfully repudiated the policies by the undated letter received on 18 March 2011.
8. In the circumstances, and given the statutory obligations of the Funds to operate with appropriate insurance cover in the interests of members, unless we receive confirmation within 14 calendar days that the cover afforded by the policies is in place, we are instructed to institute proceedings for a declaratory order to that effect, as well as ancillary relief.
9. We accordingly await your response as a matter of urgency.

Yours faithfully  
DUNSTER & ASSOCIATES

Not signed, sent electronically

REN DUNSTER

r.p.  
RDC

664

FK5

The Board of Trustees  
IF Provident Fund

1 August 2008

Dear Renier,

Report to the administrators and trustees of IF Provident Fund for the year ended  
31 May 2006

We have recently completed our audit of the books of the fund for the period ended 31 May 2006. Attached to this letter is a Report to Management in which we set out those material items that came to our attention together with our suggestions for improvement.

A draft of this report was discussed with yourselves and your comments are noted below the respective suggestions.

We wish to emphasise that our report includes only those material weaknesses which have come to our attention during the course of our normal audit work and not necessarily all the weaknesses that may exist.

This report has been prepared solely for the private use of management and we assume no responsibility to any other person. It must not be disclosed to any third party without our prior written consent.

We wish to express our appreciation of the courtesy and co-operation extended to us by yourselves and all staff during the course of our work.

Should there be any matter which you wish to discuss further do not hesitate to contact us.

Yours faithfully,

Costas Valds  
YVR and Company

Y.P.  
FK

# IF PROVIDENT FUND

Report to management of the weaknesses and other matters that came to our attention during the course of our audit for the year ended 31 May 2006

*This report has been prepared solely for the private use of management and we assume no responsibility to any other person. It must not be disclosed to any third party without our prior written consent.*

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  - 1.1. Investment certificates – Brantam EB ..... 1
  - 1.2. Cash in Transit ..... 2
  - 1.3. Investment – Prime Chardonnay Fund of Funds ..... 2
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Y.P  
off

IF PROVIDENT FUND

1. Matters reported in the annual financial statements

1.1. Investment certificates -- Brantam EB

*Observation*

The investment certificate for Brantam EB -- Champagne differs in amount to the general ledger by R352.47.

The investment certificate for Brantam EB -- Cabernet differs in amount to the general ledger by R1575.5.

The investment certificate for Brantam EB -- Chardonnay differs in amount to the general ledger by R4758.66

The investment certificate for Brantam EB -- Shiraz differs in amount to the general ledger by R(441.98).

The net difference is an overstatement of the investment balances and overstatement of investment income by R6244.65

*Recommendation*

These amounts are not material and can be corrected in the subsequent period. Full reconciliations should be performed by the administrators to identify the differences in the two balances to ensure the accurate recording of transactions. Differences in these balances may also lead to areas of fraud.

*Trustee Comment*

*Administrator Comment*

Y.P.  
*[Signature]*

IF PROVIDENT FUND

1.2. Cash in Transit

*Observation*

Included in sundry debtors are investments in transit which do not reflect on the audit statements at year-end. These amounts reflect on the subsequent statements after year-end. The administrator is unable to obtain explanations as to why the amounts do not appear on the current investment certificates.

*Recommendation*

A full reconciliation of investments should be performed in the subsequent year to ensure that all investments have been recorded correctly. The administrator should investigate the reason for amounts not being included on the investment statements and should ensure that this does not repeat itself in subsequent years.

*Trustee Comment*

*Administrator Comment*

1.3. Investment—Prime Chardonnay Fund of Funds

*Observation*

Included in investments is an amount of R143,299. No evidence has been obtained to verify the accuracy and existence of this investment.

*Recommendation*

Supporting evidence should be obtained to verify the accuracy and existence of this investment.

*Trustee Comment*

*Administrator Comment*

IF PROVIDENT FUND

1.4. Investment – Coronation Cash Plus

*Observation*

Included in investments is an amount of R19,270. The administrator is unable to identify the reason for this amount reflected in the general ledger as amounts deposited in the account were after year end. We were also unable to obtain an investment certificate for this investment to verify the accuracy and existence of this investment.

*Recommendation*

Explanations and supporting evidence should be obtained to ensure that this amount is correctly reflected in the annual financial statements.

*Trustee Comment*

*Administrator Comment*

1.5. South African Reserve Bank reports

*Observation*

The investment statements required to perform the South African Reserve Bank D.427 review are still outstanding at time of drafting. The administrator has stated that these reports can be obtained from the old system, but will take some time to locate them.

We also draw your attention to the fact that the report as at 31 March 2006 was only submitted in April 2007, which is not in line with the requirement for the report to be submitted within 3 months after quarter end.

*Recommendation*

The supporting investment statements should be obtained to allow the auditors to report their findings in terms of the D.427 report.

*Trustee Comment*

*Administrator Comment*

Y.P.  
*[Handwritten signature]*

IF PROVIDENT FUND

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1.6. Retirement Fund Tax

*Observation*

The taxation charge for the period has not been raised.

*Recommendation*

A taxation calculation should be performed and a journal passed to ensure the expense is correctly reflected in the accounts.

*Trustee Comment*

*Administrator Comment*

7.9  
*[Handwritten signature]*

IF PROVIDENT FUND

1.7. Missing Service Level Agreements

*Observation*

The following service level agreements could not be located:

- Affordable Adventures
- Afichlor
- Beefmaster
- Coastal
- Designs Ahead
- Garrun Group
- Hemocus
- Hestico
- I Capital
- Marcus Brewster
- Mega Mica Fourways
- Mica Home
- Panoramic
- PL Fenwick
- Rentech
- Roundabout
- Solidfeel
- Tuchenhagen
- World Groupage

*Recommendation*

Service level agreements should be drafted with the various participating employers in line with s13B of the Act.

*Trustee Comment*

*Administrator Comment*

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## IF PROVIDENT FUND

## 1.8. Service level agreements in the name of previous administrators

*Observation*

The following service level agreements were still in the name of Integrated Futures (Pty) Ltd for the audited period ending 31 May 2006

- Absolute Hardware cc
- Affrim Marketing
- Amcotec (Pty) Ltd
- Bay Breeze Trading 94 cc
- Bolt Corporation (Pty) Ltd
- Bovell Freeman Holley (Pty) Ltd
- ConVista Consulting (Pty) Ltd
- Dr Loella Ritz Incorporated
- Enterprise IG
- Exim International (Pty) Ltd
- Fruitar Export
- H Birkenmayer (Pty) Ltd
- Iocore (Pty) Ltd
- Josee Richards cc
- Kismet Communications cc
- Kone Elevators (South Africa) (Pty) Ltd
- Le-Nash Signs
- Magnet Engineering cc
- Mediterranean Delicacies cc
- Misys International Financial Systems (Pty) Ltd
- Mixtec cc
- New Balance SA (Pty) Ltd
- Orfeo Project (Pty) Ltd
- Peter Bates Group (Pty) Ltd
- Petromark (Pty) Ltd t/a Petroleum Marketing Organisation
- PharmAfrica (Pty) Ltd
- P and F Metal Works
- Portfolio Analytics (Pty) Ltd
- Ranch Estates Feedlot (Pty) Ltd
- Ryder Homes
- Specialist Group Risk Benefit Consultants (Pty) Ltd
- Ultra Litho (Pty) Ltd
- Universal Life Brokers and Consultants cc
- Vrystaat Rugby Union
- Westfalia Separator S.A. (Pty) Ltd
- Xeicon Medical Solutions (Pty) Ltd

*Recommendation*

All service level agreements should have been reissued in the name of Dynam-ique SA Consultants and Actuaries so as to ensure the validity of the terms of the agreements. All service level agreements should be reissued in the name of Aon.

*Trustee Comment**Administrator Comment*

2.8  


IF PROVIDENT FUND

1.9. Service level agreements not signed

*Observation*

The following service level agreements have not been signed to validate the terms and conditions of the contract.

- Josee Richards cc
- Petromark (Pty) Ltd v/a Petroleum Marketing Organisation
- The Green Cartridge Company (Pty) Ltd

*Recommendation*

Administrators and trustees should ensure that all service level agreements are signed to confirm the terms and conditions of the contract.

*Trustee Comment*

*Administrator Comment*

J.P.  
T.A.

## IF PROVIDENT FUND

## 1.10. Variances in calculation of administration charges

*Observation*

The following administration charges do not agree to the charges specified in the service level agreements:

- Affirm Marketing Services (Pty) Ltd
- Kone Elevators
- Le-Nash signs
- Magnet Engineering
- Misys International Financial Systems (Pty) Ltd
- Mixer cc
- Portfolio Analytics (Pty) Ltd
- Ranch Estates Feedlot (Pty) Ltd
- Royal Rice (Pty) Ltd
- Enterprise IG
- The Green Cartridge
- Vrystaat Rugby Union

*Recommendation*

The fund accountant should perform full reconciliations of these expenses to ensure their accuracy.

*Trustee Comment**Administrator Comment*2 P  
[Handwritten signature]

IF PROVIDENT FUND

1.11. Outstanding special rules

*Observation*

The following special rules could not be located:

- Affordable Adventures
- Africhlor
- J Capital
- Orfeo
- PL Fenwick
- Rentech

*Recommendation*

The special rules should be obtained from the Financial Services Board or the various consultants to the Fund.

*Trustee Comment*

*Administrator Comment*

7.8  
*[Handwritten signature]*

IF PROVIDENT FUND

1.12. Missing exit benefit files

*Observation*

From a sample of 36 exit benefits selected for testing, the following member files could not be obtained:

- H. Roux
- M. Morobi
- B. Strickland
- P. Cullen
- M. Cocking
- P. Cullen
- C. Gatherer
- M. Hogg
- J. Mashlela
- H. Mangera
- M. Muller
- K. Singama
- J. Shushu

The administrator has stated that due to an oversight in the past, the files may never be located.

*Recommendation*

Missing files represent a significant weakness in the controls and administration of the Fund and could also lead to areas of fraud risk. A thorough investigation should be made as to the accuracy and validity of the exited members.

Controls should be implemented with the new administrator to ensure that these areas of weaknesses identified are covered.

*Trustee Comment*

*Administrator Comment*

## IF PROVIDENT FUND

---

**1.13. Tax directives***Observation*

From the sample of benefits where files were located, the following tax directives could not be found:

- G Pefile
- CHengst
- MLouis
- HThomas
- JPhiri

*Recommendation*

Missing documents represent a significant weakness in the controls and administration of the Fund and could also lead to areas of fraud risk. A formalized set of policies and procedures in dealing with claims should be documented and a supervisor appointed to ensure that administrative staff adhere to these procedures.

*Trustee Comment**Administrator Comment*

IF PROVIDENT FUND

1.14. Withdrawal notifications

*Observation*

From the sample of benefits where files were located, the following withdrawal notifications could not be found:

- C Hengst
- R Chasenski

*Recommendation*

Missing documents represent a significant weakness in the controls and administration of the Fund and could also lead to areas of fraud risk. A formalized set of policies and procedures in dealing with claims should be documented and a supervisor appointed to ensure that administrative staff adhere to these procedures.

*Trustee Comment*

*Administrator Comment*

1.15. Exit benefit - K Nash

*Observation*

We were unable to verify the accuracy of the exit benefit paid to K Nash. The final benefit paid to the member differed to the amount per the system. No calculation could be obtained to substantiate the difference in amount. Furthermore, the tax directive applied for the member differs to the members benefit per the share of fund on the administrators system and to the amount ultimately paid to the member.

*Recommendation*

A detailed calculation of the members benefit should be performed and stored in the members file to ensure the accuracy of the benefit paid. Furthermore, this calculation should be reviewed by a senior person.

*Trustee Comment*

*Administrator Comment*

IF PROVIDENT FUND

1.16. Exit benefit - W Van Staaden

*Observation*

We were unable to verify the accuracy of the exit benefit paid to W Van Staaden. The final benefit paid to the member differed to the amount per the system. No calculation could be obtained to substantiate the difference in amount. Furthermore, the tax directive applied for differs to both amounts.

*Recommendation*

A detailed calculation of the members benefit should be performed and stored in the members file to ensure the accuracy of the benefit paid. Furthermore, this calculation should be reviewed by a senior person.

*Trustee Comment*

*Administrator Comment*

1.17. Reinsurance recoveries

*Observation*

Although reinsurance recoveries are paid directly to the dependants of the members, the auditors are of the opinion, due to the lack of documentation available, that there may potentially be dependants who have not received their benefit.

*Recommendation*

A thorough investigation should be made by the administrators to ensure that all death recoveries have been paid in full to the dependants of the deceased member.

*Trustee Comment*

*Administrator Comment*

2.0  
JAC

IF PROVIDENT FUND

1.18. Reporting period

*Observation*

Certain transactions have been recorded in the accounts which occurred before the financial period under review. We were unable to obtain relevant explanations as to the reason for this.

*Recommendation*

Trustees should obtain explanations from the administrators as to the reason for this and should ensure that FSB approval has been obtained.

*Trustee Comment*

*Administrator Comment*

1.19. Risk rate confirmations

*Observation*

We were unable to obtain the risk rate confirmations for the period under review. The confirmations given to the auditors did not agree to the rates per the administrators schedules, with the exception of Bolt Corporation.

*Recommendation*

All risk rate confirmations should be obtained by the administrators. The administrators should also check that the confirmations obtained agree to the administrator's schedules. Investigations should be made for any variances.

*Trustee Comment*

*Administrator Comment*

*M.P.  
RKC*

## IF PROVIDENT FUND

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**1.20. Outstanding rules***Observation*

The special rules for the individual participants were not filed appropriately and resulted in numerous hours spent on locating them. Furthermore, the following rules could not be located:

- Africhlor
- Orfeo
- PL Fenwick

*Recommendation*

All legal documents should be filed and stored in a correct manner. The special rules which cannot be found should be requested from the Financial Services Board.

*Trustee Comment**Administrator Comment*

2.10  
BFL

IF PROVIDENT FUND

1.21. Rules which do not appear to have been registered

*Observation*

We were unable to obtain signed rules or proof that the rules have been registered for the following participating employers:

- Absolute Hardware CC
- Affordable Adventures
- Beefmaster
- Garrun Group Employee Benefits (Pty) Ltd
- I Capital Risk Services (Pty) Limited
- Iocore (Pty) Ltd
- Le-Nash signs
- Magnet Engineering
- Rentech
- Royal Rice (Pty) Ltd

*Recommendation*

Administrators and trustees should ensure that the special rules have been registered. Copies may be obtained from the Financial Services Board, if registered, and should be stored at the offices of the administrator.

*Trustee Comment*

*Administrator Comment*

Handwritten initials and signature in the bottom right corner.

IF PROVIDENT FUND

1.22. Audit preparation and fund accountant

*Observation*

No audit preparation file was prepared by the administrators during the course of the audit. A standard industry checklist was sent to the fund accountant prior to commencement of the audit, yet no file was prepared. This resulted in additional time spent locating various documents.

*Recommendation*

The administrator should ensure an audit file is prepared containing the relevant documents the auditor will require to conduct his audit without any restrictions.

*Trustee Comment*

*Administrator Comment*

2. P  
PK

IF PROVIDENT FUND

2. Accounting and administrative issue

2.1. Fraud risk

Observation

The following key areas have been identified as high risk fraud areas during the course of the audit

ECONOMIC AND REGULATORY ENVIRONMENT

- Management does not monitor significant controls adequately.
- Management fails to correct known material weaknesses in internal control on a timely basis.
- Management continues to employ ineffective accounting, information technology or internal auditing staff.
- Poor corporate governance practices

LACK OF CONTROLS AND DOCUMENTARY EVIDENCE

- Poor record keeping
- Poor management supervision and monitoring
- Poor recruiting procedures for sensitive positions
- Poor documentation
- Audit scope limitation
- Unusual documentary evidence
- Incomplete or inadequate records
- Poor response to confirmation requests or significant differences
- Poor audit preparation

Recommendation

The primary responsibility for the prevention and detection of fraud and error rests with both those charged with the governance and the management of the fund. The respective responsibilities of those charged with governance and management may vary from fund to fund. Management, with the oversight of those charged with governance, needs to set the proper tone, create and maintain a culture of honesty and ethics, and establish appropriate controls to prevent and detect fraud and error within the entity.

It is the responsibility of those charged with governance of a fund to ensure, through oversight of management, the integrity of an entity's accounting and financial reporting systems and the appropriate controls are in place, including those for monitoring risk, financial control and compliance with the law.

PF 130 clearly sets out the roles and responsibilities of the board of trustees towards good governance of retirement funds, and should be adhered to.

It is the responsibility of the management of the fund to establish a control environment and maintain policies and procedures to assist in achieving the objective of ensuring, as far as possible, the orderly and efficient conduct of the fund's business.

VVR and Company have attached a proposition to the management letter, detailing a way forward in an attempt to reduce the risk of fraud and error within the records of the fund.

Handwritten initials/signature: J.P. [Signature]

FK6

The Trustees  
IF Umbrella Pension Fund  
P O Box 1874  
Parklands  
2121

17 August 2009

Attention: Principal Officer

Dear Sirs,

Report to the administrators and trustees of IF Umbrella Pension Fund for the year ended 31 May 2006

We have recently completed our audit of the books of the fund for the year ended 31 May 2006. Attached to this letter is a Report to Management in which we set out those material items that came to our attention together with our suggestions for improvement.

We wish to emphasise that our report includes only those material weaknesses which have come to our attention during the course of our normal audit work and not necessarily all the weaknesses that may exist.

This report has been prepared solely for the private use of management and we assume no responsibility to any other person. It must not be disclosed to any third party without our prior written consent.

We wish to express our appreciation of the courtesy and co-operation extended to us by yourselves and your staff during the course of our work.

Should there be any matter which you wish to discuss further do not hesitate to contact us.

Yours faithfully,

Costas Vakis  
VVR and Company

2.P  
BVL

### IF Umbrella Pension Fund

Report to management of the weaknesses and other matters that came to our attention during the course of our audit for the period ended 31 May 2006

*This report has been prepared solely for the private use of management and we assume no responsibility to any other person. It must not be disclosed to any third party without our prior written consent.*

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Y.P.  
*[Handwritten Signature]*

IF Umbrella Pension Fund  
31 May 2006

1. Transfers received

*Observation*

There was no supporting documentation for the following transfers received by the fund:

Participating employer	Type of transfer	Amount received	Nature of outstanding documentation
Surtees Engineering	Section 14	R399 396.13	FSB approval
Lechabile Storage Solutions	Section 14	R654 908.36	FSB approval; List per member of the total amount received
Unknown	Unknown	R180 759.99	FSB approval / Recognition of transfer form; List per member of the total amount received
Permatool	Individual	R 18 837.27	Recognition of transfer form

As a result of the outstanding information, we could not confirm that the above transfers received were accurate, valid and complete or whether the values had been allocated to the members accordingly.

*Recommendation*

Section 14 approvals and Recognition of transfer forms, together with any supporting lists per member, should be kept for all transfers received, in order to confirm that the values have been allocated to the members correctly.

*Trustee Comment*

*Administrator Comment*

J.P.  
J.K.

2. Exit benefit testing

*Observation*

Member files pertaining to exits during the year could not be provided for testing. As result, our audit report has been qualified.

*Recommendation*

The administrator should ensure that member files are available for testing, as this is a significant part of the audit.

*Trustee Comment*

*Administrator Comment*

3. PAYE on benefits

*Observation*

An amount of R34 197.31 was paid to SARS on 6 February 2006 in respect of PAYE on exits. There was no schedule to support which members made up the payment, and the amount was not deducted from the members' benefits due, but was rather expensed as an additional benefit. We have reallocated the total amount against Benefits due, but it was not possible to see which members to allocate the payment to, and as a result there will be some differences between individual and total benefits due.

*Recommendation*

The administrator should determine from subsequent years which members' benefits that have still not been paid could pertain to the PAYE portion of the benefit, and clear their benefits due accordingly.

*Trustee Comment*

*Administrator Comment*

Y.P.  
JPK

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#### 4. Investment certificates

*Observation*

We could not be provided with investment certificates or investment statements for the Brantam investments. The total value of these investments according to the ledger amounted to R4 048 985.75 at year end. We were unable to verify the existence, accuracy and completeness of these investments due to the lack of 3<sup>rd</sup> party confirmation from investment managers. We were also not provided with Regulation 28 certificates for the Investec funds or the Brantam investments at 31 May 2006. As a result, our audit report has been qualified.

*Recommendation*

The administrator should attempt prior to subsequent audits to obtain all necessary investment certificates and Regulation 28 certificates, so as to avoid qualifications. Going forward, investment certificates should be requested soon after year end and saved electronically so that they will be available for audits.

*Trustee Comment**Administrator Comment*

#### 5. SARB reports

*Observation*

SARB reports were not completed or submitted for the fund during the period under review. As a result, we were not able to perform the Factual Findings report in terms of Exchange Control Circular D.427 as required.

*Recommendation*

The administrator should ensure that SARB reports have been submitted for all periods covered in subsequent audits.

*Trustee Comment**Administrator Comment*

## 6. Employer payrolls

*Observation*

We were not provided with payrolls from the employer in order for us to verify the completeness and accuracy of contributions. We were only provided with administrator payrolls, but this is not sufficient evidence that the salaries were provided and confirmed monthly by the employers. As a result, our audit report has been qualified.

Our contribution and risk premium recalculations were performed solely from the administrator payrolls available. The following administrator payrolls that we selected to recalculate the contributions and risk premiums were not available:

Participating employer	Months not available
African Railway & Traction Services	December 2004
Capital Risk Services t/a AIB	March 2005, June 2005
Country Club Jhb	October 2005
Glencairn Insurance Brokers	September 2005
Keeley Granite	March 2006, May 2006
Kone Elevators	June 2005
Permatool	December 2004
Surtees Investments	December 2004, June 2005, May 2006
Surtees Railway Supplies	December 2004, June 2005, May 2006

*Recommendation*

The administrator should ensure that they receive payrolls from the employer with their payment every month, and these payrolls should be saved on the network. It is vital that these payrolls be available during the audit, as the testing of contributions from employer payrolls are a significant part of the audit.

*Trustee Comment**Administrator Comment*

28  
JFK

7. Contribution discrepancies

*Observation*

The following discrepancies were noted based on our recalculation and audit of contributions:

Participating employer	Nature of discrepancy
Capital Risk Services t/a AIB	According to the payrolls tested, there are no employer contributions for executives, but according to the Special rules their employer contribution should be 10%.
International Liner Agencies	According to the Special rules, executives (category 1) should contribute 6% member and 9% employer contributions, but according to the payrolls tested they are contributing 7.5% member and 14% employer contributions. According to the Special rules, staff (category 3) should contribute 7.5% member and 14% employer contributions, but according to the payrolls tested they are contributing 6% member and 9% employer contributions. Therefore it appears that contributions have been switched for the two categories.

*Recommendation*

The administrator should ensure that the discrepancies are corrected by the employer or that the Special rules are amended, depending on which circumstance is correct.

*Trustee Comment*

*Administrator Comment*

T.P.  
JFK

8. Arrear contributions

*Observation*

The following arrear contributions were not received after year end within the prescribed period:

Participating employer	Amount	Reason
Capital Risk Services t/a AIB	R 33 358.80	Underpayments for August and September 2005
Keeley Granite	R121 306.65	Total arrear contributions at year end amounted to R248 973.99; only an amount of R127 667.34 was received in June 2006 (R33 648.08 on 5 June 2006 and R94 019.26 on 9 June 2006).
Kone Elevators	R317 367.64	Relates mainly to payments not received for September and October 2005

*Recommendation*

The administrator needs to determine whether these payments have been received subsequently, and followed up with the employers if necessary.

*Trustee Comment*

*Administrator Comment*

9. Section 13A contraventions

*Observation*

The following contributions were received from participating employers after the 7<sup>th</sup> of the month, resulting in Section 13A contraventions:

Participating employer	Contribution due	Month	Date received
African Railway & Traction Services	R 31 261.73	June 2004	30 July 2004
	R 32 616.75	July 2004	13 August 2004
	R 32 575.02	September 2004	12 October 2004
	R 53 712.41	April 2005	8 June 2005
	R 59 059.68	May 2005	10 June 2005
	R 66 639.51	December 2005	9 January 2006
Bryanston Parallel Medium	R 9 158.70	March 2005	30 May 2005
	R 9 158.70	April 2005	30 May 2005

T.P.  
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IF Umbrella Pension Fund  
31 May 2006

Cape Bag Depot	R 56 646,93	October 2004	24 November 2004
	R 55 465,09	December 2004	24 January 2005
Country Club Jhb	R 85 463,39	October 2005	9 November 2005
Glencairn Insurance Brokers	R 38 500,00	November 2005	21 December 2005
	R 38 500,00	December 2005	9 January 2006
	R 38 500,00	April 2006	8 May 2006
Gregpack CC	R 6 314,08	August 2005	15 September 2005
	R 6 314,08	November 2005	8 December 2005
	R 6 314,08	December 2005	13 January 2006
	R 6 314,08	January 2006	10 February 2006
	R 4 396,00	April 2006	8 May 2006
	R 4 396,00	May 2006	8 June 2006
Kone Elevators	R130 658,02	January 2005	30 September 2005
	R132 898,31	February 2005	30 September 2005
	R134 184,48	March 2005	30 September 2005
	R136 601,29	April 2005	30 September 2005
	R144 428,14	May 2005	30 September 2005
	R146 438,93	June 2005	30 September 2005
	R149 529,45	July 2005	30 September 2005
	R151 168,22	August 2005	30 September 2005
	R161 330,04	October 2005	8 December 2005
	R159 883,69	November 2005	8 December 2005
R176 496,13	February 2006	9 March 2006	
Midland Medical Holdings	R146 396,43	April 2006	10 May 2006
Lechabile Storage Solutions	R160 770,37	November 2005	14 December 2005
	R160 770,37	December 2005	9 January 2006
	R140 952,47	March 2006	11 April 2006
	R136 676,96	May 2006	8 June 2006
Netsys International	R 15 228,39	March 2004	24 May 2004
	R 15 228,39	April 2004	24 May 2004
	R 15 228,39	May 2004	17 June 2004
	R 15 228,39	June 2004	27 July 2004
	R 15 228,39	July 2004	12 August 2004
	R 15 228,39	August 2004	27 September 2004
	R 15 693,90	March 2005	13 April 2005
	R 13 635,93	January 2006	8 February 2006
	R 13 043,82	March 2006	8 April 2006
R 11 676,24	May 2006	8 June 2006	
Permatool	R 13 334,37	August 2004	30 November 2004
	R 13 334,37	September 2004	30 November 2004

T.P.  
STP

IF Umbrella Pension Fund  
31 May 2006

	R 13 334.37	October 2004	30 November 2004
Saxum Consulting	R 2 000.00	March 2004	2 July 2004
	R 2 000.00	April 2004	2 July 2004
	R 2 000.00	May 2004	2 July 2004
Surtees Engineering	R 7 497.42	June 2004	30 July 2004
	R 7 497.42	July 2004	13 August 2004
	R 8 162.40	April 2005	8 June 2005
	R 8 162.40	May 2005	9 June 2005
	R 8 162.40	August 2005	14 September 2005
Surtees Investments	R 17 624.13	June 2004	13 August 2004
	R 17 624.13	July 2004	13 August 2004
	R 24 316.23	April 2005	8 June 2005
	R 24 316.23	May 2005	9 June 2005
Surtees Railway Supplies	R 12 162.59	June 2004	30 July 2004
	R 12 162.59	July 2004	13 August 2004
	R 13 288.16	April 2005	8 June 2005
	R 13 013.49	May 2005	9 June 2005
Surtees Tube Technologies	R 5 352.37	June 2004	13 August 2004
	R 5 352.37	July 2004	13 August 2004
	R 5 689.11	April 2005	8 June 2005
	R 5 689.11	May 2005	9 June 2005
	R 5 740.94	December 2005	9 January 2006

Late payment interest in terms of regulation 33 was not raised on the above.

*Recommendation*

The administrator should encourage the participating employers to pay their contributions before the 7<sup>th</sup> of the month. Late payment interest should be raised on all contributions received after the 7<sup>th</sup> of the month.

*Trustee Comment*

*Administrator Comment*

Y.P.  
J.P.H.

10. Administration fees

*Observation*

Service level agreements could not be provided to confirm the administration fee rates of the following participating employers:

- Bryanston Parallel Medium
- Capital Risk Services t/a AIB
- Lechabille Storage Solutions

Furthermore, there were no payrolls available for the following employers in order to confirm the number of members on which administration fees were based:

Participating employer	Months
African Railway & Traction Services	December 2004
Capital Risk Services t/a AIB	March 2005, June 2005
Country Club Jhb	December 2004
Glencairn Insurance Brokers	September 2005
Kone Elevators	June 2005
Permatool	December 2004
Surtees Investments	December 2004, June 2005, May 2006
Surtees Railway Supplies	December 2004, June 2005, May 2006

*Recommendation*

Signed service level agreements should be maintained for all participating employers of the fund.

Payrolls for each participating employer should be available for each month in order to confirm that administration fees have been charged on the correct amount of members.

*Trustee Comment*

*Administrator Comment*

7.0  
JFK

11. Consulting fees

*Observation*

Consulting agreements could not be provided to confirm the consulting fee rates of the following participating employers:

- Bryanston Parallel Medium
- Capital Risk Services t/a AIB
- Lechabile Storage Solutions

Furthermore, the following differences were noted based on our recalculation of consulting fees using the rates per agreements of various participating employers (i.e. total contributions x rate per agreement):

Participating employer	Total fees per recalculation	Total fees per audit schedule	Difference Under/(Over)
African Railway & Traction Services	R 79 782.53	R 54 559.15	R 25 223.38
Cape Bag Depot	R 55 765.02	R 49 568.54	R 6 196.48
Kone Elevators	R 92 154.27	R 117 395.53	(R 25 241.26)
Netsys International	R 38 141.94	R 34 700.35	R 3 441.59
Surtees Engineering	R 12 404.73	R 8 644.46	R 3 760.27
Surtees Investments	R 35 948.25	R 25 818.65	R 10 129.60
Surtees Railway Supplies	R 20 574.76	R 14 563.09	R 6 011.67
Surtees Tube Technologies	R 8 913.63	R 5 967.00	R 2 946.63

*Recommendation*

Signed consulting agreements should be maintained for all participating employers of the fund.

The administrator should ensure that consulting fees are being calculated at correct rates and using the correct monthly contributions.

*Trustee Comment*

*Administrator Comment*

T.P.  
J.P.

**12. Reinsurance premium confirmations***Observation*

Third party confirmation from reinsurers could not be provided to confirm the risk premium percentages of the following participating employers:

Participating employer	Reinsurer
African Railway & Traction Services	Discovery Life
Cape Bag Depot	Medscheme
Capital Risk Services t/a AIB	Sanlam
Country Club Jhb	Sanlam
Glencairn Insurance Brokers	Sanlam
International Liner Agencies	Discovery Life
Kesley Granite	Sanlam
Kone Elevators	Momentum
Saxum Consulting	Sage
Surtees Engineering	Discovery Life
Surtees Investments	Discovery Life
Surtees Railway Supplies	Discovery Life
Surtees Tube Technologies	Discovery Life

We were also not able to recalculate employer contributions for the Surtees Group, including African Railway & Traction Services, as a result of the risk portion of the contribution percentage which could not be verified, as the rates used on the risk schedule differed to the total rates on the contribution schedule.

*Recommendation*

Confirmations should be obtained annually from the reinsurers to confirm the percentages being paid for reinsurance premiums, and these confirmations should be kept in a permanent file or on the network.

*Trustee Comment**Administrator Comment*

2.18  
D.P.

## 13. Reinsurance premium discrepancies

*Observation*

The following discrepancies were noted based on our recalculation and audit of reinsurance premiums:

Participating employer	Nature of discrepancy
Cape Bag Depot	Salaries used for premiums differ to salaries per contributions, with no supporting payrolls provided for the difference. Total difference of R33 292,17 (underprovided) noted on recalculation based on salaries per contributions.
Lechabile Storage Solutions	Risk premium percentage per Sanlam's confirmation is lower than percentages used on audit schedule. Total difference of R21 001,43 (overprovided) noted on recalculation based on percentage per Sanlam's confirmation.
NMK Premium Global Brands	No GLA provided for May 2006 (the month that employer joined the fund). Total difference of R11 196,39 (underprovided) noted on recalculation based on salaries per contributions.
Surtees Group (including African Railway & Traction Services)	PHI premiums from June 2004 to August 2005 were allocated to "Policy Name Missing" instead of Discovery Life in the general ledger. We had to reallocate and split these premiums during the audit. Furthermore, payments for reinsurance premiums were not shown on the audit schedule provided by the administrator. We had to work through the ledger and allocate the payments during the audit. Both of the above resulted in a lot of additional time spent during the audit.
Capital Risk Services t/a ALB	Reinsurance premiums were only expensed from August 2005 to December 2005, although the employer was contributing to the fund from March 2005 to May 2006. No explanation was provided as to why the premiums were not expensed for the full period.
Kone Elevators	No payrolls were provided to confirm the GLA salaries for June 2005 and the PHI salaries for January 2005, June 2005 and May 2006.
Surtees Railway Supplies	No payrolls were provided to confirm the total salaries used for PHI premiums.

*Recommendation*

The administrator should ensure that the same discrepancies do not occur in subsequent audits.

*Trustee Comment**Administrator Comment*

7.P  
BPK

14. Cash in transit

*Observation*

A number of payments made by the fund to investment managers during the period could not be traced to current or subsequent investment statements from the investment managers. The payments were as follows:

Date paid	Investment manager	Amount
16 March 2006	Investec Absolute Fund	R 9 973.94
16 March 2006	Investec Opportunity Fund	R 9 973.94
20 April 2006	Allan Gray Stable Fund	R 3 422.15
5 May 2006	Allan Gray Stable Fund	R 10 135.07
31 May 2006	Allan Gray Stable Fund	R 13 270.01
31 May 2006	Allan Gray Stable Fund	R 14 623.14
31 May 2006	Investec Absolute Fund	R 9 952.65
31 May 2006	Investec Absolute Fund	R 10 967.51
	Total	R 82 318.41

These amounts have been included in cash in transit under sundry debtors in the current year.

*Recommendation*

The administrator should liaise with the investment managers to ensure that they allocate these amounts to the fund's investments.

*Trustee Comment*

*Administrator Comment*

Y.P.  
*[Handwritten signature]*

15. IF Umbrella Provident Fund debtor

*Observation*

Included in accounts receivable is an amount due from the IF Umbrella Provident Fund, relating to payments made to or on behalf of the Provident Fund, less amounts refunded, made up as follows:

Date	Details	Amount
25 October 2005	Allan Gray transfer from IF Pension Fund to IF Provident Fund	R 84 241.66
22 February 2006	Payment made to IF Umbrella Provident Fund	R 550 000.00
8 March 2006	Refund by IF Provident Fund directly to SIS investment of IF Pension Fund	(R 95 853.62)
16 March 2006	Refund by IF Provident Fund directly to Allan Gray investment of IF Pension Fund	(R 51 293.28)
3 April 2006	Payment to S Skelton on behalf of IF Provident Fund	R 2 502.15
13 April 2006	Refund by IF Provident Fund directly to Brantam investments of IF Pension Fund	(R 389 631.92)
	<b>Total outstanding at year end</b>	<b>R 99 964.99</b>

*Recommendation*

The administrator needs to ensure that this amount is refunded by the IF Umbrella Provident Fund, if this has not yet been done after year end.

*Trustee Comment*

*Administrator Comment*

T.P.  
*[Handwritten signature]*

16. Accounts payable

*Observation*

Included in accounts payable is an amount of R168 279.70 which relates to payments received from March 2005 to August 2005 from Petromark, which is not a participating employer of the fund. The total amount had still not been refunded at year end.

*Recommendation*

The administrator should determine whether the amount has been refunded after year end, and if not, it should be refunded to the correct fund as soon as possible.

*Trustee Comment*

*Administrator Comment*

17. Bank reconciliation

*Observation*

A bank reconciliation at year end was not provided during the audit, and there was an initial difference of R213 848.14 between the bank statement balance and the general ledger balance. After unsuccessful attempts to have the difference reconciled for us, we had to work through the ledger and bank statements for the entire period in order to clear the difference. This resulted in a lot of additional time spent during the audit.

*Recommendation*

The administrator needs to ensure that a bank reconciliation, which agrees to the ledger and bank statement at year end, is provided for all future audits.

*Trustee Comment*

*Administrator Comment*

7.0  


18. Fidelity cover

*Observation*

We were not provided with a certificate or other form of confirmation that fidelity cover was in place for the trustees during the period under review.

*Recommendation*

The administrator should try to obtain a fidelity cover certificate for the period under review. Should this not be possible, we will report accordingly in our Section 15 report.

*Trustee Comment*

*Administrator Comment*

19. Minutes

*Observation*

The minutes that were provided during the audit have not been signed. We were also not provided with minutes before 13 March 2006.

*Recommendation*

All minutes should be signed and kept in a minute book, and the minute book should be readily available during the audit.

*Trustee Comment*

*Administrator Comment*

Y.P  
JAC

20. Member reconciliation

*Observation*

The following differences were noted:

Participating employer	Category	Per member reconciliation	Per audit schedule / Share of fund
African Railway & Traction Services	Transfers	-1	0
	Withdrawal-Dismisal	-3	-1
	Closing membership	59	58
Kceley Granite	Withdrawal-Resignation	-11	-8
	Closing membership	203	199
Kone Elevators	Withdrawal-Resignation	-13	-14
	Closing membership	77	76
Midland Medical Hldgs	Closing membership	235	228
NMK Premium Global Brands	Closing membership	83	82
Surtees Engineering	Transfers	-1	0
Surtees Investments	Transfers	-1	0
	Closing membership	22	10
Surtees Tube Technologies	Transfers	-1	0
Country Club Jhb	Withdrawal-Resignation	-2	-1

As a result of these differences, we could not verify the accuracy, completeness or existence of benefits during the year or of membership at year end, and our audit report has been qualified as a result.

*Recommendation*

The administrator needs to ensure that all movements on the member reconciliation agree to the supporting audit schedules and the closing share of fund for all audits going forward.

*Trustee Comment*

*Administrator Comment*

Z.P.  


**21. Retirement Fund Taxation***Observation*

Our recalculation of Retirement Fund Tax from RFT certificates for the period 1 January 2004 to 31 May 2006, showed an amount of R18 251.99 payable by the fund. No provision or payments for RFT were made by the fund during the period.

*Recommendation*

Once we have determined from the 2007 audit whether any payments were made to SARS in respect of RFT, the administrator and/or trustees should enquire from SARS as to the obligation and procedure to pay any outstanding taxes prior to the scrapping of RFT from 1 March 2007.

*Trustee Comment**Administrator Comment*7.0  
JK

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FKT



SCHEDULE

POLICY NO: FGPC463951137 INTERMEDIARY: Aon Risk Services

THE INSURERS: Lloyd's Syndicate 2987 (Brit) as evidenced by Contract No. SOL043/10 for 50% Mutual & Federal Insurance Company Ltd for 50%

Important: The insurers named hereon bind themselves each for their own part and not one for another. Each insurer's liability under this certificate shall not exceed the percentage or amount of the risk shown against that insurer's name.

THE INSURED: Dynam-ique and IF Funds

VAT No: N/A ADDRESS: 1 Sandton Drive The Placa SANDTON 2146

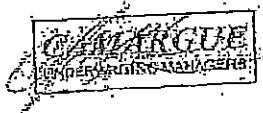
PERIOD OF INSURANCE: From: 01 June 2011 To: 31 May 2012 both dates inclusive and any subsequent period for which the Insurer accepts a premium.

RENEWAL/ANNIVERSARY DATE: 01 June 2012

ANNUAL PREMIUM: R 75,000.00

Table with 2 columns: Description, Amount. Rows: Premium: R 65,789.47; VAT @ 14%: R 9,210.53; Total now payable: R 75,000.00

Commission payable to Intermedlary R 15,000.00 Including VAT



Date: 01 July 2011

Signed for Camargue Underwriting Managers (Pty) Ltd

Reason for Issue: Authorisation Completed

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**COVER DETAILS**

INSURED : Dynam-Ique and IF Funds  
POLICY NUMBER : FGPCA03951137  
POLICY TYPE : Pension Fund Trustees

Limit of Indemnity	R 50,000,000
First Amount Payable	Nil
Retroactive Date:	
<b>Extensions and Endorsements Applicable:</b>	
Reinstatement Option	
Claims Preparation Costs:	2% of Limit of Indemnity
Costs of Recovery:	3% of Limit of Indemnity
Costs of Reinstating Office Records:	2% of Limit of Indemnity

Memo: The Funds to be covered under this Policy are Dynam-Ique SA Umbrella Provident Fund, Dynam-Ique Umbrella Pension Fund, IF Umbrella Pension Fund, and IF Umbrella Provident Fund.

It is hereby Agreed that the Retroactive Date shall read as follows:  
Dynam-Ique SA Umbrella Provident Fund: 01/08/2004 - LOI: R 10,000,000  
Dynam-Ique Umbrella Pension Fund: 01/08/2004 - LOI: R 10,000,000  
IF Umbrella Pension Fund: 21/11/2006 - LOI: R 10,000,000  
IF Umbrella Provident Fund: 21/11/2005 - LOI: R 10,000,000

**Special Exclusion:**  
It is understood and agreed that notwithstanding anything else stated in the Policy the Insurers shall not be liable for any claim arising from or in respect of  
(i) Any matter which is the subject of legal proceedings between the Fund and/or Dynam-Ique Consulting and Actuaries (Pty) Ltd and/or Mr Tony Kamlonaky and/or Aon South Africa (Pty) Ltd.  
(ii) The rebuilding of the Fund records following the resignation of Dynam-Ique SA Consulting and Actuaries (Pty) Ltd, including any costs and expenses incurred;  
(iii) Those matters raised under the heading "Qualifications" by the Fund auditors in their report for the period ended 31 May 2008 for the IF Umbrella Pension Fund and the IF Umbrella Provident Fund;  
(iv) Those matters raised by the Fund auditors in their "Report to management of the weaknesses and other matters that came to our attention during the course of our audit for the period ended 20 February 2006 for the Dynam-Ique Umbrella Pension Fund and the Dynam-Ique SA Umbrella Provident Fund  
(v) Any claim made against the Fund by any member or former member in respect of any matter excluded in terms of (i), (ii), (iii) and (iv) above.

The Insurers shall not be liable for loss arising from:  
Any claim based on, arising out of, relating to or involving, directly or indirectly any form of investment into:

Corporate Money Managers (Pty) Ltd and any subsidiary or associated company and/or any affiliated entity and/or any related entities subsequently involved as a result of the ongoing FSB investigation and/or any investigation conducted by any other equivalent authority under any other jurisdiction;

Frederick Benjamin Ardakoff and/or any of his associates and/or National Financial Partners (Pty) Ltd and/or Finshare Financial Services (Pty) Ltd and/or Progressive Investment Trust; and any subsidiary or associated company and/or any affiliated entity and/or any related entities subsequently involved as a result of the ongoing FSB investigation and/or any investigation conducted by any other equivalent authority under any other jurisdiction;

J Arthur Brown and/or any of his associates and/or Fidenita Asset Management (Pty) Ltd and/or Common Cents Investment Portfolio Strategists (Pty) Ltd and any subsidiary or associated company and/or any affiliated entity and/or any related entities subsequently involved as a result of the ongoing FSB investigation and/or any investigation conducted by any other equivalent authority under any other jurisdiction.

Subject otherwise to the Terms, Conditions and Exclusions of the Policy.

**ADDITIONAL BENEFITS**

The Insured is entitled to the following additional benefit(s):

1. Access to a professional arbitration service to resolve disputes between the Fund and its member(s).

*T.P.*  
*[Signature]*

ADDITIONAL EXTENSIONS/EXCLUSIONS

SEVERAL LIABILITY CLAUSE

PLEASE NOTE - This notice contains important information. PLEASE READ CAREFULLY.

The liability of an insurer under this contract is several and not joint with any other insurers party to this contract. An insurer is liable only for the proportion of liability it has underwritten. An insurer is not jointly liable for the proportion of liability underwritten by any other insurer. Nor is an insurer otherwise responsible for any liability of any other insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by an insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in this contract.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's at the above address.

Although reference is made at various points in this clause to "this contract" in the singular, where circumstances so require this should be read as a reference to contracts in the plural.

Handwritten initials and signature in the bottom right corner.



## CAMARGUE UNDERWRITING MANAGERS

This Insurance is effected with certain Underwriters at Lloyd's, London and other Insurers.

This Certificate is issued in accordance with the authorisation granted to the Coverholder by certain Underwriters at Lloyd's, whose syndicate numbers and the proportions underwritten by them can be ascertained from the offices of said Coverholder, and Mutual & Federal Insurance Company Ltd (hereinafter jointly referred to as Insurers) and in consideration of the premium specified herein; Insurers do hereby bind themselves, severally and not jointly, each for his own part and not one for another, their Executors and Administrators.

The Coverholder referred to herein is

Camargue Underwriting Managers (Pty) Ltd  
1st Floor Eton House, 15 Eton Road, Parktown, Johannesburg  
Reg No: 2000/028098/07  
Authorised Financial Services Provider License No. 6344.

The Insured is requested to read this Certificate, and if not correct, return it immediately to the Coverholder for appropriate alteration.

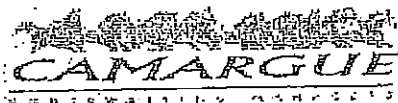
In the event of a claim under this Certificate, please notify the Coverholder who is acting as the agent of Insurers.

### CERTIFICATE PROVISIONS

- 1 **Service of Suit:** In the event of any litigation arising out of Insurance assumed hereunder, Lloyd's South Africa (Pty) Ltd, 7th Floor The Forum, 2 Maude Street, Sandton, South Africa is required, in terms of the Short Term Insurance Act No. 53 of 1998, to accept service of suit against Underwriters.
- 2 **Assignment:** this Certificate shall not be assigned either in whole or in part without the written consent of the Coverholder endorsed hereon.
- 3 **Complaints:** If you have any complaints concerning your insurance, please contact the Coverholder.
- 4 **Attached Conditions incorporated:** this Certificate is issued and accepted subject to all the provisions, conditions and warranties set forth herein, attached or endorsed, all of which are to be considered incorporated herein.

This Insurance shall be governed by the laws of the Republic of South Africa, whose courts shall have jurisdiction in any dispute arising hereunder.

*Z.P.*  
*[Signature]*



## IMPORTANT INFORMATION FOR ALL OUR CLIENTS

(This notice does not form part of the Insurance Contract or any other document)

Policy Reference Number: FGPC483951137

### About ourselves, your Underwriting Manager

Company Name: Camargue Underwriting Managers (Pty) Ltd  
(Reg No. 2000/028098/07)

Physical Address: 1st Floor Eton House, 15 Eton Road, Parktown, Johannesburg

Postal Address: Postnet Suite 250, Private Bag X4, Bedfordview 2008

Telephone No: 011-356-4845 Fax No: 011-356-4847

Website & e-mail: [www.camargueum.co.za](http://www.camargueum.co.za) / [camargue@camargueum.co.za](mailto:camargue@camargueum.co.za)

Our Compliance Officer: Craig Ormrod – telephone no. 0861 226 6759

Our license to operate as a Financial Service Provider: License No: 6344.  
Category I Short Term Insurance Commercial Lines & Personal Lines

We have the following Insurance coverage in place: Professional Indemnity Insurer: Zurich Risk Financing SA Limited.  
Fidelity Guarantee Insurer: Zurich Risk Financing SA Limited.  
IGF Guarantee

How we are paid for our services: We are paid a fee by insurers for managing your policy on their behalf. In addition we have a vested interest in this transaction by virtue of a profit share agreement between ourselves and insurers.

Over 30% of our income is derived from both Lloyd's and from Mutual & Federal

### About your Insurer

Name: Mutual & Federal Insurance Company Ltd. Reg. No. 70/06619/05

Address: 75 President Street, Johannesburg 2001  
PO Box 1120, Johannesburg 2000

Phone & Fax: Phone 011-374-9111; Fax 011-374-2652

Compliance Officer: Ms J Hurter - phone 011 374 2315

Name: Lloyd's Syndicate 2987 (Managing Agent: Brit Syndicates Ltd)

Address: Lloyd's South Africa (Pty) Ltd, The Forum, 7th Floor, Sandton,  
Johannesburg. PO Box 787163 Sandton 2146.

Phone & Fax: Phone 011 884 0486; Fax 011 884 0384.

How your insurer is paid: The premium shown on your quote, policy or renewal schedule, less the risk management fee described below, will be paid to your insurer. Any additional fee charged will be shown separately.

Ownership: We own no shares in Brit or in Mutual & Federal Insurance Company  
Neither Brit nor Mutual & Federal Insurance Company own any shares in us.

Type of policy: This is a Pension Fund Trustees Liability Policy

*J.P.*  
*[Signature]*

**Our mandate:** We have written mandates from Brit and Mutual & Federal Insurance Company authorising us to transact this class of business on their behalf.

**Premium obligation:** This policy is subject to payment of an annual premium, the amount of which is shown in the policy schedule. The premium includes a risk management fee of 15% which is used by Camargue to pay for the additional benefits described in your policy documentation. The premium is payable on or before the inception date or renewal date shown in the policy schedule. Failure to pay the premium by this date may result in your policy being cancelled and any claim rejected.

**How to institute a claim:** Inform your intermediary as soon as you become aware of a situation or event that may give rise to a claim under the policy; they will advise us, and tell you what procedure to follow.

**Complaint process:** 1. If you have a complaint about our service, staff or products please contact the following person with full details of the problem:

Mr P Downham  
Telephone no. 011 356 4833  
E-mail: peter@camargueum.co.za

2. If you wish to lodge a complaint direct with Insurers please contact:

Lloyd's South Africa (Pty) Ltd  
Tel: 011 884 0486 Fax: 011 884 0384  
and/or  
Mutual & Federal Insurance Company Ltd.  
Phone 011-374-9111; Fax 011-374-2652

3. If your problem is not resolved to your satisfaction you may refer your complaint to the Ombud for Financial Service Providers at

PO Box 74571, Lynwood Rldge, 0040  
Telephone 0860 324766, Fax 012 348 3447  
Website: www.falsombud.co.za  
e-mail: info@faisombud

**Service of suit:** In the event of any litigation arising out of this insurance, Lloyd's South Africa (Pty) Ltd, 7th Floor, The Forum, 2 Maude Street, Sandton, South Africa is required in terms of the Short Term Insurance Act No. 63 of 1998 to accept service of suit against Underwriters at Lloyd's.

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everingham<sup>ltd</sup>

DATE : 9 September 2011

OUR REF. : N Everingham/CAMA1-10180

TO : Mr T Kamionsky  
64 Club Street  
cnr Club Street and Council Street  
LINKSFIELD

AND TO : Dynam-Ique SA Consultants and Actuaries (Pty) Limited  
c/o Mr T Kamionsky  
64 Club Street  
cnr Club Street and Council Street  
LINKSFIELD

Dear Sir

CLAIMS BY : T KAMIONSKY and DYNAM-IQUE SA CONSULTANTS AND ACTUARIES (PTY) LIMITED

1. We note that you represent yourself in your personal capacity and also purport to represent Dynam-Ique SA Consultants and Actuaries (Pty) Limited ("*Dynam-Ique Consultants*").

THE RELEVANT POLICIES

2. We have been informed that Dunster & Associates on behalf of Dynam-Ique SA Umbrella Pension Fund, Dynam-Ique SA Provident Fund,

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Telephone: (021) 461-8550 - Facsimile: (021) 461-8580 - Website: [www.everingham.co.za](http://www.everingham.co.za)  
 Unit 69, Roeland Square, Roeland Street, Cape Town - P O Box 2030, Cape Town, 8000 - Docex 269, Cape Town  
 Directors: Nigel A. Everingham and Adrian J. Kennedy

Handwritten initials and signature, possibly 'N.A.E.' and 'A.J.K.'

IF Umbrella Provident Fund and IF Umbrella Pension Fund ("the Funds") are in communication with you regarding your request to be provided with copies of the insurance policies. As is already apparent to you, the policies incorporate the standard wording attached as annexure "FA1" to your founding affidavit in the application under case number 4175/2011 referred to hereafter.


- 3. We confirm that we act for the Insurers named in those policies. In particular, we act on behalf of the insurers named in the four relevant policies which are dated 17 September 2010, who are Lloyds Syndicate 2987 and Mutual & Federal Insurance Company Limited.

**THE INSURED**

- 4. In terms of each of the policies, the Insured is identified in each case as the particular fund referred to therein. In the result, it is the Funds who are the insured persons under the policies and they are the entities with the insurable interest which was insured in terms of the policies.

**THE APPLICATION**

- 5. We also act for Camargue Underwriting Managers (Pty) Limited ("Camargue"), who are the First Respondent in the application brought by you and Dynamique Consultants under case number 30888/2011 ("the application"). As you are aware, we have on behalf of Camargue entered an Appearance to Defend your application.
- 6. In terms of prayer 2 of your Notice of Motion filed in the application you seek an order directing the Respondents to furnish you with full copies of the policies. In the event that the Funds, represented by Dunster &

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Associates, accede to your request to be provided with the policies, the need for that relief will fall away.

- 7. In prayers 3 and 4 of your Notice of Motion you seek orders that Camargue is directed to admit your Insurance claims and to confirm that you and Dynam-Ique Consultants are covered under the policies. An opposing affidavit to your application setting out Camargue's defence will be filed shortly by ourselves on behalf of Camargue.

THE PURPOSE OF THIS LETTER

- 8. We further confirm that our client has previously advised you that the claims intimated by you and Dynam-Ique Consultants in terms of the policies are not covered by the policies. The purpose of this letter is to reaffirm our client's standpoint and to elaborate on the reasons for the rejection of your claims in terms of the policies.

YOU ARE NOT THE INSURED

- 9. As already made clear, our clients have no contractual relationship with you, neither you nor Dynam-Ique Consultants are named as the insured in terms of the policies and our clients dispute that you, separate from the Funds, have an actionable claim against the insurers. In any event, the claims which you assert against our clients, do not fall within the ambit of what has been insured in terms of the policies.
- 10. Our clients accordingly deny that you, or Dynam-Ique Consultants, have any contractual rights under the policy which entitle you, or Dynam-Ique Consultants, to receive an indemnity for a loss sustained by the Funds arising out of a wrongful act. Similarly, neither you nor Dynam-Ique

Z.P  
*[Handwritten signature]*

Consultants have any direct rights of enforcement under the policies against our clients.

#### THE POLICIES NEVER CAME INTO EFFECT

11. Over and above the foregoing, the policies never came into effect. The policies were subject to the due payment of the agreed premium as reflected on the respective policy schedules. In this regard we draw your attention to the Insuring Clause of the policy which states :

*"Subject to the terms, exclusions and conditions (precedent or otherwise) and in consideration of, and conditional upon the prior payment of the premium by or on behalf of the Insured and receipt thereof by or on behalf of the Insurers, the Insurers agree to indemnify the Insured in respect of the Defined Events ..."*

12. The Insuring Clause is to be read in conjunction with Condition 1 of the policy which makes it clear that the due observance of the conditions and stipulations of the policy are conditions precedent to the insurers' liability, and that no waiver of any of the terms or conditions or stipulations shall be valid unless made in writing upon the policy and signed on behalf of the insurers.
13. The premiums payable in terms of the policies for the relevant period namely from 1 August 2010 to 31 July 2011, were not paid. Accordingly, the policies never came into effect and in any event, our client informed the Funds' intermediary that the policies had lapsed.
14. Accordingly, the policies issued to the Funds in respect of the period during which the claims against you and Dynam-Ique Consultants were

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made, never came into effect and/or have lapsed and are of no force or effect.

**MISREPRESENTATION AND NON-DISCLOSURE**

- 15. It is the obligation of the Insured or its agent or representative, when proposing for the insurance, to disclose all facts material to the assessment of the risk and the premium.
- 16. Further, in completing and submitting the proposal form to the insurers for the relevant insurance, it is declared that the statements and particulars in the proposal are true and that no mis-statements have been made and no material facts have been suppressed.
- 17. In the proposal forms submitted on behalf of the Funds in respect of the policies of insurance with effect from 1 August 2009, it was represented that:
  - 17.1. the Funds had not suffered any loss caused by dishonesty or negligence during the preceding five years;
  - 17.2. after specific investigation, the Funds were not aware of any circumstances that could reasonably be expected to give rise to a claim in terms of the insurance being applied for.
- 18. At all material times prior to the inception of the policy commencing 1 August 2009 you bore knowledge of material facts relating to errors or omissions, or alleged errors or omissions, with regard to the administration of the Funds by Dynam-ique Consultants.

*T.P.*  
*[Signature]*

- 19. Such information was material to the assessment of the risk and should have been disclosed to insurers prior to the inception of the policies commencing with effect from 1 August 2009.
- 20. Accordingly, and even if the policies had not lapsed due to non-payment of premium, and even if it could be said that you and Dynam-ique Consultants were entitled to claim in terms of the policies (all of which is denied), the policies would have been void, alternatively voidable at the insurers' instance, with effect from the inception date being 1 August 2009, and no rights or obligations would arise thereunder.

THE SPECIFIC EXCLUSION

- 21. The proposal forms submitted on behalf of the Funds for the renewal of the policy effective from 1 August 2010, which were dated 10 August 2010, contained a disclosure of circumstances which could be expected to give rise to a claim, described as *"the rebuild of the Fund at a cost"*.
- 22. The documents submitted in support of the proposal for insurance included the Annual Financial Statements for the Dynam-ique Funds prepared by BDO Spencer Steward for the period 1 August 2005 to 28 February 2006, and the Annual Financial Statement for the IF Funds prepared by VVR & Company in respect of the period from 1 January 2004 to 31 May 2006. In addition, the documents included a letter and report to the Administrators and Trustees setting out material weaknesses which had come to the auditors' attention during the course of the audit.
- 23. Our client was only prepared to renew the policy on the basis that claims or losses arising in any way from the issues raised by the auditors following their audit for the year ended 28 February 2006 would be specifically excluded. The Specific Exclusion was endorsed on the Cover

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[Signature]

Details attached to the policy schedules which were issued on 17 September 2010.

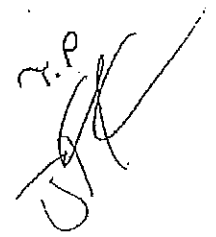
- 24. The issues raised by the auditors related to the facts which gave rise to the Funds' claims against you and Dynamique Consultants and/or the claim which has been made against you and Dynamique Consultants arises, either wholly or partly, from the issues raised by the auditors. Consequently your and Dynamique Consultants' claims, even if they could be asserted against the Insurers, would have fallen within the scope of the Specific Exclusion.

THE CURRENT POLICY

- 25. At the request of the Funds and the Intermediaries Aon South Africa (Pty) Limited ("Aon") a new policy of insurance was issued to the Funds in respect of the period of insurance from 1 June 2011 to 31 May 2012.
- 26. The current policy makes it quite clear that the claims asserted by you and Dynamique Consultants are excluded.

POLICY CRITERIA NOT SATISFIED

- 27. Due to the fact that the current policy is inapplicable to the claim for indemnity, and the prior policies are of no force or effect for the reasons stated above, it is not necessary to address issues of policy coverage any further.
- 28. Nevertheless, for the sake of completeness, we deal with a number of issues below which indicate that, even if the prior policies had been in force at the relevant time, they would not respond to the claims lodged by you and Dynamique Consultants.

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THE SCOPE OF THE INDEMNITY

29. We are of the view that the legal actions which have been instituted against you in your personal capacity, and against Dynam-ique Consultants, at the instance of the Funds, falls outside the scope of the policy coverage.

30. The claim which is envisaged in Defined Event 1 of the policy is a claim by a third party, which would include a member who claims to have suffered a loss of pension and/or provident monies due to a wrongful act committed by the officer. The Indemnity does not cover claims or losses associated with litigation between the Insured itself and its own Trustee.

31. Attention is also drawn to proviso (d) to the Defined Events which reads as follows :

*"The liability of the Insurers is limited to losses incurred by the Insured relative to pension/provident/disability/trust monies in respect of past, present or future employee benefits."*

32. The costs which have been incurred by the Funds to Messrs Deloitte in respect of the rebuild of the data constitutes an expense which has been deliberately incurred by the Funds for purposes of the administration of the Funds' business. Such an expense is not recoverable in terms of the policies.

33. It is also evident from the particulars of claim in respect of the action by the Funds against you in your personal capacity that the two separate causes of action set out therein are not covered in terms of the policies.

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*[Handwritten signature]*

CONDITION 2 – CLAIMS NOTIFICATION

34. Condition 2 provides, *inter alia*, as follows :

*"Notification of any claim or circumstance which may give rise to a claim shall be given in writing as soon as is reasonably possible, with the fullest information thereof."*

35. The knowledge which you had of the administration of the Funds' affairs by Dynam-Ique Consultants had been acquired during the period in which the administration services were rendered, namely, the period from 1 August 2005 to 1 February 2008. Accordingly, in the event that an indemnifiable claim which could be made by you and Dynam-Ique Consultants existed under the policy (which is denied), then it is evident that you were aware of a claim's circumstance as at 1 February 2008, at the latest, but failed to notify this to insurers in accordance with Condition 2 and further failed to provide full information in respect of such circumstance. The breach of Condition 2 would therefore disentitle you from the indemnity which is sought.

PRE-EXISTING EVENT

36. Over and above the foregoing, the claims asserted by you appear to have their origin in a period which is not covered by the Insurance.

RESERVATION OF RIGHTS

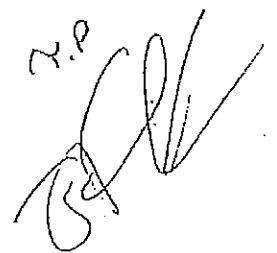
37. All rights of our clients are fully and expressly reserved, including the right to amend or amplify the existing grounds of rejection and raise additional policy defences, should this be deemed necessary, at a later stage.

Yours faithfully



N A Everingham

EVERINGHAMS ATTORNEYS

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IF Umbrella Pension and  
Provident Fund



Dynam-ique SA Umbrella  
Pension and Provident Fund

24 August 2012

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

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

Introduction

1. This communication is solely in response to the recent communication distributed by Mr Tony Kamionsky ("Kamionsky") on behalf of Dynam-ique SA Consultants and Actuaries (Pty) Ltd ("Dynam-ique"), dated 15 July 2012. Mr Kamionsky is the current sole director of Dynam-ique.
2. Both Kamionsky and Dynam-ique are opposing claims instituted by the Funds.
3. The root cause for the litigation stems from the poor administration of the Funds' records and data by Dynam-ique, which were unreliable. The rebuild was undertaken to protect members and the Funds. The Funds seek a contribution towards the rebuild costs from Kamionsky and Dynam-ique.
4. Neither Kamionsky nor Dynam-ique have any further contractual relationship with the Funds, the trustees or its members. The recent communication therefore appears to have been created and distributed by Dynam-ique in its capacity as a former administrator (which has now been sued by the Funds).
5. The general purport of the communication is that the rebuild was not necessary, that the claim should have been covered by the insurers and that neither Mr Kamionsky nor Dynam-ique should be sued. These parties, the defendants in the actions, will, naturally, have an opportunity to prove their arguments in court. The processes of the court are available to both Mr Kamionsky and Dynam-ique to allow them to fairly deal with, and prove, their allegations.

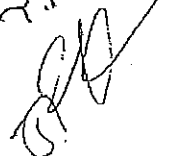
Registration number: IF Pension (12/8/37464) IF Provident (12/8/37452)  
Dynam-ique Pension (12/8/37635) Dynam-ique Provident (12/8/37634)  
Registered Address: 70 Grayston Drive, Sandton, Johannesburg  
Trustees: J Rollason (Independent Chairman), R Welham (Independent Trustee), F Khoza  
(Independent Trustee), G Griffin (Independent Trustee), C Falkoner (Trustee),  
L Wingrove-Gibson (Independent Principal Officer)

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- 6. Although the Funds cannot comment on all issues which are still being dealt with under the legal process, the Funds can give the assurances and information below.

The rebuild and payment of premiums

- 7. The records and data of the Funds were unreliable and necessitated a rebuild. The previous Trustees appointed Deloitte to undertake this intricate and extensive project after obtaining quotes and interviewing potential service providers.
- 8. The suit (due to be heard in November 2012) was initiated by Kamionsky and Dynam-Ique who argue that because of the alleged negligence of the Funds they have not received insurance cover for the claims against them and the Funds should be liable for any such claims.
- 9. In the recent communication Kamionsky and Dynam-Ique rely heavily on the non-payment of premiums for the period commencing August 2010 as a basis for this claim. In addition a "cover up" is alleged.
- 10. Kamionsky and Dynam-Ique's claim for cover was rejected for various pre-existing reasons as set out by the insurers in correspondence to Mr Kamionsky, dated 9 September 2011. A copy of the correspondence is attached and discussed below.
- 11. The Funds admitted that premiums were not properly paid to insurers for the insurance period commencing 1 August 2010. The Funds made full disclosure of this issue to the Pension Funds Adjudicator, in the annual financial reports and confirmed the lapsing of cover in the reports to members. Aon, although so authorised, did not pay the premiums to the underwriter. Fortunately, no claims arose during this period and cover was reinstated retroactively. The Funds' rights to sue Aon were reserved. No claims arose against the Funds during the break in cover. As the cover was "reinstated retroactively", this means that, if it later transpires that there was an event during this period, or prior thereto, which is properly reported for the first time, it will not be excluded from cover.
- 12. It is important to note that exclusions already existed at the commencement of the August 2010 period. Material administrative weaknesses within Dynam-Ique during 2006 had been identified by the Funds' auditors in August 2008. A copy of a page from the report (Report to the administrators and trustees of the IF Provident Fund for the year ended 31 May 2006) is attached hereto. Claims related to the weaknesses expressed in this document were specifically excluded prior to the commencement of the August 2010 period. If the premiums had been paid, the claim would have been rejected anyway.

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13. When cover was reinstated retroactively in June 2011, additional exclusions, which identified certain rebuild-related claims, were loaded onto the policy. These additional exclusions were, however, also related to the extract from the report on the weaknesses of the Dynam-ique administration and would probably have been excluded at the commencement of the period in any event.

14. A study of the correspondence dated 9 September 2011 reveals that the claim for cover by Kamionksy and Dynam-ique was rejected for reasons more directly linked to the conduct and status of Kamionsky and Dynam-ique, and not the Funds. This letter was written in response to a claim by Kamionsky and Dynam-ique against the insurers for cover. Kamionsky subsequently withdrew the claim.

15. The reasons for the rejection of the claims for Indemnity by Kamionksy and Dynam-ique include:

15.1 Neither Kamionsky nor Dynam-ique ever had a right to a claim,

15.2 Even if Kamionksy and Dynam-ique had a right and the premium had been paid, it would have been excluded,

15.3 In terms of the notification provisions in the policy, Kamionsky should have reported the problems as early as 1 February 2008 (when he was the managing director of Dynam-ique).

16. It appears that Kamionsky and Dynam-ique have little chance of success but the Funds are the defendants in this claim and have no option but to defend it.

17. The fundamental issue between the Funds and Dynam-ique remains the poor state of the records and data up to February 2008.

General comments

18. The trustees are aware that any expenses in recovering a contribution to the rebuild costs must be incurred with the members' best interests in mind.

19. The trustees have not instituted action where the chances of recovery appear poor and where it appears the Funds' money may be wasted. At this stage recovery is only sought against Kamionsky, Dynam-ique and the current administrators, Aon.

20. Kamionsky implies that the trustees have been given financial information indicating the chances of recoverability to be improbable, but to date no financial information has been provided by Kamionsky. Kamionsky has only suggested, without substantiation, that there will be no benefit to the Funds.

21. The trustees have attended two meetings, requested by Kamlonsky, regarding possible settlement of the matter. The trustees remain open to such discussions.
22. Regarding the arbitration against Dynam-ique, Kamlonsky continues to delay the resolution of this matter and appears intent on avoiding the ventilation of the issues in the appropriate forum.
23. Regarding the litigation against Kamlonsky, the various allegations against the Funds are incorrect. The rules of court and procedure are available to Kamlonsky and Dynam-ique should they have grievances with procedural issues. The Funds have experienced their own frustrations and delays with the progression of their claims, but look forward to the resolution thereof in the appropriate forum.
24. The trustees are satisfied that their legal services are being provided at reasonable market rates, these are regularly monitored whilst maintaining the members' best interests in mind.
25. The Dynam-ique communication contains numerous other allegations which are not canvassed herein, but which are denied. The Funds regularly receive new arguments from the defendants. The fundamental, and most misleading, allegations have been dealt with herein. Any matters of substance or consequence will be presented to members. Members may be assured that where issues are not responded to herein they are either denied or do not require attention. Much of the Dynam-ique communication is emotive argument.
26. The Funds seek a financial contribution from the Defendants based on the cost of reconstructing records and data. It should be clear to members that the Defendants are not willing participants in the litigation and would prefer such to be dropped, this appears to be one of the goals of the communication.
27. Unless the parties are able to settle the issues (which the Funds have attempted) the Funds are progressing the litigation in the appropriate forums. Any matters of substance will be presented to members, the Funds will not take part in debating unsubstantiated allegations by way of communiqué's and will not be responding to further arguments presented by Kamlonsky and Dynam-ique in this forum.
28. The Funds' options are regularly reviewed whilst weighing the benefits to, and interests of, members.

JOHN ROLLASON  
CHAIRMAN

LINDY WINGROVE-GIBSON  
PRINCIPAL OFFICER



IF PROVIDENT FUND

2. Accounting and administrative issue

2.1. Fraud risk

Observation

The following key areas have been identified as high risk fraud areas during the course of the audit:

ECONOMIC AND REGULATORY ENVIRONMENT

- Management does not monitor significant controls adequately.
- Management fails to correct known material weaknesses in internal control on a timely basis.
- Management continues to employ ineffective accounting, information technology or internal auditing staff.
- Poor corporate governance practices

LACK OF CONTROLS AND DOCUMENTARY EVIDENCE

- Poor record keeping
- Poor management supervision and monitoring
- Poor recruiting procedures for sensitive positions
- Poor documentation
- Audit scope limitation
- Unusual documentary evidence
- Incomplete or inadequate records
- Poor response to confirmation requests or significant differences
- Poor audit preparation

Recommendation

The primary responsibility for the prevention and detection of fraud and error rests with both those charged with the governance and the management of the fund. The respective responsibilities of those charged with governance and management may vary from fund to fund. Management, with the oversight of those charged with governance, needs to set the proper tone, create and maintain a culture of honesty and ethics, and establish appropriate controls to prevent and detect fraud and error within the entity.

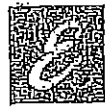
It is the responsibility of those charged with governance of a fund to ensure, through oversight of management, the integrity of an entity's accounting and financial reporting systems and the appropriate controls are in place, including those for monitoring risk, financial control and compliance with the law.

PF 130 clearly sets out the roles and responsibilities of the board of trustees towards good governance of retirement funds, and should be adhered to.

It is the responsibility of the management of the fund to establish a control environment and maintain policies and procedures to assist in achieving the objective of ensuring, as far as possible, the orderly and efficient conduct of the fund's business.

VVR and Company have attached a proposition to the management letter, detailing a way forward in an attempt to reduce the risk of fraud and error within the records of the fund.

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everingham<sup>INC.</sup>

DATE : 9 September 2011

OUR REF. : N Everingham/CAMA1-10180

TO : Mr T Kamionsky  
64 Club Street  
cnr Club Street and Council Street  
LINKSFIELD

AND TO : Dynam-ique SA Consultants and Actuaries (Pty) Limited  
c/o Mr T Kamionsky  
64 Club Street  
cnr Club Street and Council Street  
LINKSFIELD

Dear Sir

CLAIMS BY : T KAMIONSKY and DYNAM-IQUE SA CONSULTANTS AND ACTUARIES (PTY) LIMITED

1. We note that you represent yourself in your personal capacity and also purport to represent Dynam-ique SA Consultants and Actuaries (Pty) Limited ("Dynam-ique Consultants").

THE RELEVANT POLICIES

2. We have been informed that Dunster & Associates on behalf of Dynam-ique SA Umbrella Pension Fund, Dynam-ique SA Provident Fund,

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Telephone: (021) 461-8550 - Facsimile: (021) 461-8580 - Website: [www.everingham.co.za](http://www.everingham.co.za)  
 Unit 69, Roeland Square, Roeland Street, Cape Town - P O Box 2030, Cape Town, 8000 - Docex 269, Cape Town  
 Directors: Nigel A. Everingham and Adrian J. Kennedy

IF Umbrella Provident Fund and IF Umbrella Pension Fund (*"the Funds"*) are in communication with you regarding your request to be provided with copies of the insurance policies. As is already apparent to you, the policies incorporate the standard wording attached as annexure "FA1" to your founding affidavit in the application under case number 4176/2011 referred to hereafter.

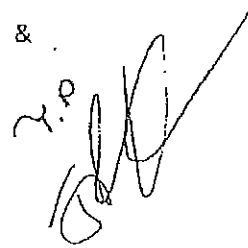
3. We confirm that we act for the Insurers named in those policies. In particular, we act on behalf of the insurers named in the four relevant policies which are dated 17 September 2010, who are Lloyds Syndicate 2987 and Mutual & Federal Insurance Company Limited.

#### THE INSURED

4. In terms of each of the policies, the insured is identified in each case as the particular fund referred to therein. In the result, it is the Funds who are the insured persons under the policies and they are the entities with the insurable interest which was insured in terms of the policies.

#### THE APPLICATION

5. We also act for Camargue Underwriting Managers (Pty) Limited (*"Camargue"*), who are the First Respondent in the application brought by you and Dynam-ique Consultants under case number 30888/2011 (*"the application"*). As you are aware, we have on behalf of Camargue entered an Appearance to Defend your application.
6. In terms of prayer 2 of your Notice of Motion filed in the application you seek an order directing the Respondents to furnish you with full copies of the policies. In the event that the Funds, represented by Dunster &

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Consultants have any direct rights of enforcement under the policies against our clients.

THE POLICIES NEVER CAME INTO EFFECT

11. Over and above the foregoing, the policies never came into effect. The policies were subject to the due payment of the agreed premium as reflected on the respective policy schedules. In this regard we draw your attention to the Insuring Clause of the policy which states :

*"Subject to the terms, exclusions and conditions (precedent or otherwise) and in consideration of, and conditional upon the prior payment of the premium by or on behalf of the Insured and receipt thereof by or on behalf of the Insurers, the Insurers agree to indemnify the Insured in respect of the Defined Events ..."*

12. The Insuring Clause is to be read in conjunction with Condition 1 of the policy which makes it clear that the due observance of the conditions and stipulations of the policy are conditions precedent to the insurers' liability, and that no waiver of any of the terms or conditions or stipulations shall be valid unless made in writing upon the policy and signed on behalf of the Insurers.

13. The premiums payable in terms of the policies for the relevant period namely from 1 August 2010 to 31 July 2011, were not paid. Accordingly, the policies never came into effect and in any event, our client informed the Funds' intermediary that the policies had lapsed.

14. Accordingly, the policies issued to the Funds in respect of the period during which the claims against you and Dynam-ique Consultants were

made, never came into effect and/or have lapsed and are of no force or effect.

#### MISREPRESENTATION AND NON-DISCLOSURE

15. It is the obligation of the Insured or its agent or representative, when proposing for the Insurance, to disclose all facts material to the assessment of the risk and the premium.
16. Further, in completing and submitting the proposal form to the insurers for the relevant insurance, it is declared that the statements and particulars in the proposal are true and that no mis-statements have been made and no material facts have been suppressed.
17. In the proposal forms submitted on behalf of the Funds in respect of the policies of insurance with effect from 1 August 2009, it was represented that:
  - 17.1. the Funds had not suffered any loss caused by dishonesty or negligence during the preceding five years;
  - 17.2. after specific investigation, the Funds were not aware of any circumstances that could reasonably be expected to give rise to a claim in terms of the insurance being applied for.
18. At all material times prior to the inception of the policy commencing 1 August 2009 you bore knowledge of material facts relating to errors or omissions, or alleged errors or omissions, with regard to the administration of the Funds by Dynam-ique Consultants.

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*[Handwritten signature]*

- 19. Such information was material to the assessment of the risk and should have been disclosed to insurers prior to the inception of the policies commencing with effect from 1 August 2009.
- 20. Accordingly, and even if the policies had not lapsed due to non-payment of premium, and even if it could be said that you and Dynam-ique Consultants were entitled to claim in terms of the policies (all of which is denied), the policies would have been void, alternatively voidable at the insurers' instance, with effect from the inception date being 1 August 2009, and no rights or obligations would arise thereunder.

THE SPECIFIC EXCLUSION

- 21. The proposal forms submitted on behalf of the Funds for the renewal of the policy effective from 1 August 2010, which were dated 10 August 2010, contained a disclosure of circumstances which could be expected to give rise to a claim, described as *"the rebuild of the Fund at a cost"*.
- 22. The documents submitted in support of the proposal for insurance included the Annual Financial Statements for the Dynam-ique Funds prepared by BDO Spencer Steward for the period 1 August 2005 to 28 February 2006, and the Annual Financial Statement for the IF Funds prepared by VVR & Company in respect of the period from 1 January 2004 to 31 May 2006. In addition, the documents included a letter and report to the Administrators and Trustees setting out material weaknesses which had come to the auditors' attention during the course of the audit.
- 23. Our client was only prepared to renew the policy on the basis that claims or losses arising in any way from the issues raised by the auditors following their audit for the year ended 28 February 2006 would be specifically excluded. The Specific Exclusion was endorsed on the Cover

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Details attached to the policy schedules which were issued on 17 September 2010.

- 24. The issues raised by the auditors related to the facts which gave rise to the Funds' claims against you and Dynam-ique Consultants and/or the claim which has been made against you and Dynam-ique Consultants arises, either wholly or partly, from the issues raised by the auditors. Consequently your and Dynam-ique Consultants' claims, even if they could be asserted against the Insurers, would have fallen within the scope of the Specific Exclusion.

THE CURRENT POLICY

- 25. At the request of the Funds and the intermediaries Aon South Africa (Pty) Limited ("Aon") a new policy of insurance was issued to the Funds in respect of the period of insurance from 1 June 2011 to 31 May 2012.
- 26. The current policy makes it quite clear that the claims asserted by you and Dynam-ique Consultants are excluded.

POLICY CRITERIA NOT SATISFIED

- 27. Due to the fact that the current policy is inapplicable to the claim for indemnity, and the prior policies are of no force or effect for the reasons stated above, it is not necessary to address issues of policy coverage any further.
- 28. Nevertheless, for the sake of completeness, we deal with a number of issues below which indicate that, even if the prior policies had been in force at the relevant time, they would not respond to the claims lodged by you and Dynam-ique Consultants.

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*[Handwritten signature]*

THE SCOPE OF THE INDEMNITY

- 29. We are of the view that the legal actions which have been instituted against you in your personal capacity, and against Dynamique Consultants, at the instance of the Funds, falls outside the scope of the policy coverage.
- 30. The claim which is envisaged in Defined Event 1 of the policy is a claim by a third party, which would include a member who claims to have suffered a loss of pension and/or provident monies due to a wrongful act committed by the officer. The indemnity does not cover claims or losses associated with litigation between the insured itself and its own Trustee.
- 31. Attention is also drawn to proviso (d) to the Defined Events which reads as follows :

*"The liability of the Insurers is limited to losses incurred by the insured relative to pension/provident/disability/trust monies in respect of past, present or future employee benefits."*

- 32. The costs which have been incurred by the Funds to Messrs Deloitte in respect of the rebuild of the data constitutes an expense which has been deliberately incurred by the Funds for purposes of the administration of the Funds' business. Such an expense is not recoverable in terms of the policies.
- 33. It is also evident from the particulars of claim in respect of the action by the Funds against you in your personal capacity that the two separate causes of action set out therein are not covered in terms of the policies.

*T.P.*  


**CONDITION 2 – CLAIMS NOTIFICATION**

34. Condition 2 provides, *Inter alia*, as follows :

*"Notification of any claim or circumstance which may give rise to a claim shall be given in writing as soon as is reasonably possible, with the fullest information thereof."*

35. The knowledge which you had of the administration of the Funds' affairs by Dynam-Ique Consultants had been acquired during the period in which the administration services were rendered, namely, the period from 1 August 2005 to 1 February 2008. Accordingly, in the event that an indemnifiable claim which could be made by you and Dynam-Ique Consultants existed under the policy (which is denied), then it is evident that you were aware of a claim's circumstance as at 1 February 2008, at the latest, but failed to notify this to insurers in accordance with Condition 2 and further failed to provide full information in respect of such circumstance. The breach of Condition 2 would therefore disentitle you from the indemnity which is sought.

**PRE-EXISTING EVENT**

36. Over and above the foregoing, the claims asserted by you appear to have their origin in a period which is not covered by the insurance.

**RESERVATION OF RIGHTS**

37. All rights of our clients are fully and expressly reserved, including the right to amend or amplify the existing grounds of rejection and raise additional policy defences, should this be deemed necessary, at a later stage.

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Yours faithfully



N.A. Everingham

EVERINGHAMS ATTORNEYS

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