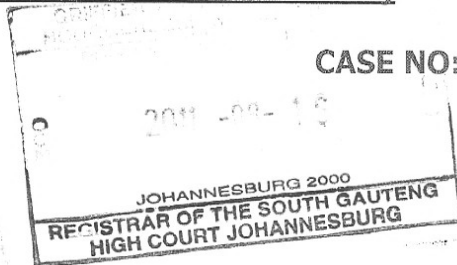


IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

(REPUBLIC OF SOUTH AFRICA)



CASE NO: 30888/2011

In the matter between:

TONY KAMIONSKY

First Applicant

DYNAM-IQUE SA CONSULTANTS AND ACTUARIES (PTY) LTD Second Applicant

and

CAMARGUE UNDERWRITING MANAGERS (PTY) LTD

First Respondent

DYNAM-IQUE SA UMBRELLA PENSION FUND

Second Respondent

DYNAM-IQUE SA UMBRELLA PROVIDENT FUND

Third Respondent

IF UMBRELLA PROVIDENT FUND

Fourth Respondent

IF UMBRELLA PENSION FUND

Fifth Respondent

NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE that the applicants intend applying to the above Honourable Court on 14th September 2011 or so soon thereafter as the matter may be heard, for an order in the following terms:-

1. Setting aside the first respondent's repudiation of the first applicant's insurance claim made against insurance policies FGPC463896745, FGPC463908365 and FGPC463908368 (the "Policies");

2. Directing the respondents to give the applicants full copies of the Policies and any other relevant policies;
3. Directing the first respondent to admit the insurance claim in respect of the first applicant and confirm the first applicant is duly covered under the Policies;
4. Directing the first respondent to admit the insurance claim in respect of the second applicant and confirm the second applicant is duly covered under the Policies;
5. Directing the respondents to pay the costs of this application; and
6. Granting the applicants such further and/or alternative relief as may be necessary.

AND THAT the affidavit of **TONY KAMIONSKY**, together with annexes will be used in support of this application.

TAKE NOTICE FURTHER THAT the applicants have appointed the address of the first applicant set out hereunder as the address to which they will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER THAT if you attend opposing this application, you are required:-

- a) To notify the applicant in writing no later than five (5) days after service of this application on you;
- b) And within fifteen (15) days after you have so given notice of your intention to oppose, to file your answering affidavit, if any;
- c) To appoint in such notification, an address in terms of Rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings.

TAKE NOTICE FURTHER THAT if no such notice of intention to oppose the relief sought be given, the application will be made on the 14th day of September 2011 at 10:00 or as soon thereafter as the matter may be heard.

DATED AT **JOHANNESBURG** ON THIS THE 16th DAY OF August 2011



TONY KAMIONSKY
First Applicant
64 Club Terrace
Cnr Cub Street and Council Street
LINKSFIELD
Tel: 073 542 8772
Fax: 086 532 4970

TO:

**THE REGISTRAR OF THE
ABOVE HONOURABLE COURT
JOHANNESBURG**

AND TO:

CAMARGUE UNDERWRITING MANAGERS (PTY) LTD

First Respondent
1st Floor Eton House
15 Eton Road
PARKTOWN
Tel: 011 356 4842

RECEIVED COPY HEREOF ON THIS THE
DAY OF 2011

FOR: FIRST RESPONDENT

AND TO:

DUNSTER & ASSOCIATES

Second, Third, Fourth and Fifth Respondents' Attorneys
4th Floor
Suite 405
42 Keerom Street
CAPE TOWN
c/o RAMSAY WEBBER
269 Oxford Road
Illovo
JOHANNESBURG
Tel: 011 778 0624

RECEIVED COPY HEREOF ON THIS THE
DAY OF 2011

**FOR: SECOND, THIRD, FOURTH
AND FIFTH RESPONDENTS'
ATTORNEYS**

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

(REPUBLIC OF SOUTH AFRICA)

CASE NO: 30888/2011

In the matter between:

TONY KAMIONSKY

First Applicant

DYNAM-IQUE SA CONSULTANTS AND ACTUARIES (PTY) LTD Second Applicant

and

CAMARGUE UNDERWRITING MANAGERS (PTY) LTD

First Respondent

DYNAM-IQUE SA UMBRELLA PENSION FUND

Second Respondent

DYNAM-IQUE SA UMBRELLA PROVIDENT FUND

Third Respondent

IF UMBRELLA PROVIDENT FUND

Fourth Respondent

IF UMBRELLA PENSION FUND

Fifth Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

TONY KAMIONSKY

do hereby make oath and state as follows:

1. The contents of this affidavit are within my personal knowledge, unless otherwise indicated, and are both true and correct.

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2. I am the sole director of the second applicant and I am duly authorised to act on behalf of the Second Applicant.
3. The first and second applicants are claimants against insurance policies FGPC463896745, FGPC463908365 and FGPC463908368 (the "Policies"), in their following capacities:
 - 3.1. The first applicant: in his capacity as an Officer of the Funds by virtue of being a past trustee of the Funds;
 - 3.2. The second applicant: in its capacity as an Officer of the Funds by virtue of being a past administrator of the Funds.
4. The first respondent is the underwriting manager who issued the Policies.
5. The second, third, fourth and fifth respondents (the "Funds") are the Insured Party under the Policies.
6. The nature of these Policies is that they are pension fund trustee liability policies providing insurance cover against negligence claims made against an Officer and they provide that the Insurer will cover the legal expenses of defending any such claim.
7. The applicants are unable to attach copies of the Policies as the respondents have refused to provide the applicants with such. The first applicant was

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given by the Principal Officer of the Funds a copy of just the generic wording of the main body of the Policies but excluding the policy schedules (see Annex "FA1").

8. On 31 January 2011 the Funds, as plaintiffs, sued out a combined summons under case number 04175/2011 through the office of the Registrar of the above Honourable Court against the first applicant, as defendant. The summons was then amended on 29 July 2011. I attach a true copy of the amended summons and particulars of claim, excluding the annexes thereto, hereto as Annex "FA2".
9. On 14 January 2011 the Funds also instituted a damages claim against the second applicant in the form of a declaration of a dispute in terms of the administration agreements between the Funds and the second applicant. The notice of dispute was delivered to the first applicant. I attach a true copy of the notice of dispute hereto as Annex "FA3".
10. On or about 8 February 2011 the insurance claims were lodged with the first respondent against the Policies on behalf of the first and second applicants.
11. In trying to get these insurance claims lodged with the first respondent all the respondents have been most uncooperative and deliberately obstructive (see as just one example Annex "FA4"). Amongst other things the respondents have:

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- 11.1. Refused to provide the applicants with full copies of the Policies;
 - 11.2. Intentionally tried to block the applicants from lodging the insurance claims;
 - 11.3. Refused to correspond with the first applicant regarding these insurance claims.
12. As a result the applicants have been unable to confirm:
- 12.1. The exact date on which the insurance claims were lodged with the first respondent;
 - 12.2. Whether the abovementioned policy numbers are correct and whether they are the only relevant policies;
 - 12.3. How much cover the Policies provide;
 - 12.4. Whether there are any other reasons why the insurance claims of the first or second applicants should be repudiated;
 - 12.5. Whether there should be additional and/or alternative respondents included in this application.

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13. The first respondent has not given any response to date as to whether the insurance claim in respect of the second applicant has been admitted or repudiated.
14. As far as the insurance claim against the first applicant goes the first respondent repudiated the claim on the basis that the policy wording states that the first applicant will only be considered as being an officer for a period of 30 days after he ceased to be an officer (see Annex "FA5").
15. The first respondent in repudiating the claim is therefore claiming that the first applicant ceased being an Officer more than 30 days prior to the claim being lodged. This is not true as the definition of Officer includes past trustees and hence the first applicant by definition has never ceased being an Officer and remains an Officer of the Funds to this very day.
16. Given the first applicant is therefore by definition still currently an Officer of the Funds the clause in the Policies stating that cover is only provided for 30 days after ceasing to be an Officer is of no relevance whatsoever. The second applicant is similarly also still an Officer of the Funds.
17. Both the first and second applicants by virtue of being Officers of the Funds are entitled to:
 - 17.1. Copies of the Policies;

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- 17.2. Full cooperation by the respondents in lodging the insurance claims against the Policies;
- 17.3. Cover under the Policies.
- 18. The first respondent has eluded to the Policies lapsing at some point but has refused to confirm when and why the Policies would have lapsed.
- 19. The uncooperative and obstructive behaviour of the respondents has necessitated the bringing of this application to the Honourable Court.
- 20. In the circumstances the applicants request an order as set out in the notice to which this affidavit is attached.

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DEPONENT

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at **JOHANNESBURG** on the 16 day of 08 2011 the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

W. N. Ngobe
COMMISSIONER OF OATHS

FULL NAMES *Nelwen Ngobe*

ADDRESS *127 ...*

OFFICE *120 ... STATION COMMANDER SA PS*

SUIDAFRIKAANSE POLISIEDIENS
120 ... STATION COMMANDER SA PS
16 AUG 2011
CLIENT SERVICE CENTRE NORWOOD
SOUTH AFRICAN POLICE SERVICE