



LAW SOCIETY
OF SOUTH AFRICA
PRESS RELEASE

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**LAW SOCIETY CONCERNED THAT RAF IS SHORT CHANGING ROAD ACCIDENT
VICTIMS THROUGH HASTY DIRECT SETTLEMENTS**

‘Accident victims who are seriously injured and who make hasty settlements with the Road Accident Fund (RAF) for what might appear to them to be a significant sum without independent legal advice or before their claims are properly quantified, will have their whole lives to regret this,’ warn Law Society of South Africa (LSSA) Co-Chairpersons Mvuzo Notyesi and Jan van Rensburg.

The LSSA has noted, with considerable concern the recent unwarranted attacks by the RAF on the role played by the legal profession in ensuring that claimants receive fair compensation and in particular the recent characterisation of attorneys as mere ‘intermediaries’ in the claims process. Attorneys are never ‘intermediaries’. They do not mediate between the victim and the RAF. They represent the victim, who is their client, to ensure the most just and fair outcome for their clients.

‘Attorneys and other professionals play a vital role in investigating, processing and, if necessary, litigating claims arising from car accidents, as well as in quantifying and advising victims on the actual value of their claims, particularly those who sustain serious injuries that will have a lifelong impact on their quality of life and their ability to earn an income.’ say Mr Notyesi and Mr Van Rensburg.

They add: ‘Not only is the claims process highly technical, complicated and difficult for a lay person to follow, it also requires that the claimant produce medical and police records and expert reports that many claimants are not able to access or cannot afford.’

The LSSA has also noted that the RAF continues to advertise and lobby aggressively for accident victims to claim direct from the RAF in press releases, print and online advertisements, on its website, at road shows and outreach programmes. In a recent media statement journalists were told that, in many

cases, claimants are better off approaching the RAF direct because their claims are settled quickly – in around four months – and they get their full pay out without having to surrender a big chunk to an attorney.

While that might hold good for minor injuries, it certainly cannot be good for seriously injured victims where it can take as long as two years for injuries to stabilise. It is only at that stage that a proper assessment can take place of the quantum, both with regard to general damages for pain and suffering and for special damages for loss of income, past and future as well as medical and other costs. It may only then become apparent that the claimant's earning capacity has been compromised or destroyed. If the claim was settled within four months it is very unlikely that any amount will be included for future loss of income or that the essential medical and other expert opinion was obtained necessary to quantify the claim properly. Once the claim is settled, then depending on the circumstances, it might not be possible to rectify the under settlement,' explain Mr Notyesi and Mr Van Rensburg.

Importantly, the LSSA is of the view that the RAF has a conflict of interest when it seeks to act as both a 'functionary' as per the Road Accident Fund Act and to prosecute, advise and process claims on behalf of direct claimants.

This has resulted in cases where claimants have had to challenge the RAF in court for under settlement.

The RAF continues to lay the blame for significant delivery costs solely at the door of the legal profession. The reality is that many claims in which the victims are represented by attorneys, should be settled long before the cases reach the court, by which time significant costs have been incurred which could have been avoided. In these matters, the RAF is, in fact, solely to blame as it does not instruct its attorneys in time so they can use the rules of court to limit costs. The RAF also, in many instances, does not respond to settlement approaches made to them early on in the prosecution of the claim.

'The RAF has repeatedly said that it supports fair and equitable compensation for claimants. It should, therefore, welcome the contribution that the legal profession can and does make to achieve this. The RAF should focus on its core function, being the administration of claims in terms of the Road Accident Fund Act, and work with the profession in order to curtail costs and expedite finalisation of claims, rather than seeking to compete for direct claimants. In this process, the RAF risks the possibility to face claims and to incur unnecessary costs for under-settlement or for prescribed claims' say Mr Notyesi and Mr Van Rensburg.

ISSUED ON BEHALF OF THE CO-CHAIRPERSONS OF THE LAW SOCIETY OF SOUTH AFRICA, MVUZO NOTYESI AND JAN VAN RENSBURG

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Editor's note:

The Law Society of South Africa brings together its six constituent members – the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces, the Black Lawyers Association and the National Association of Democratic Lawyers – in representing South Africa's 24 330 attorneys and 5 000 candidate attorneys.