



LAW SOCIETY
OF SOUTH AFRICA

PRESS RELEASE

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**LAW SOCIETY TO ADDRESS CONSTITUTIONAL COURT FOR DIRECT ACCESS TO
CHALLENGE CONSTITUTIONALITY OF ROAD ACCIDENT FUND
AMENDMENT ACT ON 12 AUGUST 2010**

The Law Society of South Africa (LSSA) will petition the Constitutional Court on 12 August 2010 to hear its application for direct access so that it may present argument to the court on various constitutional challenges to the Road Accident Fund Amendment Act and Regulations. If the application for direct access is granted on 12 August, the appeal against the judgment of the North Gauteng High Court issued on 31 March 2010, will be heard there and then.

The LSSA is joined by ten other applicants – the Quadpara Association of South Africa, the National Council for Persons with Physical Disabilities in South Africa, the South African Association of Personal Injury Lawyers and seven road accident victims – and is supported by the Automobile Association, which has a membership of some 1.2 million.

The LSSA application contends that the RAF Amendment Act not only radically reduces the benefits which the RAF pays to victims of road accidents, but it adds insult to injury by depriving innocent road accident victims of their fundamental common-law right to claim compensation from the negligent and/or reckless drivers who cause their injuries.

'The result is that victims of road accidents are placed in a uniquely deprived position. Victims of other recklessness or negligence – such as hospital negligence, assaults, wrongful arrest, wrongful shootings, train accidents, airplane crashes, failure to maintain or the provision of faulty equipment or premises, failure to maintain roads and pavements – can all claim compensation for personal injuries suffered by them from the person at fault. Victims of road accidents can no longer do so, even if the reckless wrongdoer is the wealthy driver of a luxury car or a profitable bus company. They are even placed in a markedly worse position than victims of workplace accidents who, at least qualify for private hospital and medical treatment for their injuries, regardless of who was to blame,' explains Jacqui Sohn, the Chairperson of the LSSA's Road Accident Fund Committee.

The LSSA also states in its papers before the Court that the most vulnerable victims – children, young persons and other vulnerable people – are the worst affected by the Amendment Act.

Before the amendment became law, motorists, bus operators and other public carriers were liable to compensate their passengers in terms of the common law in full for the damages suffered by them as a result of the negligence of that motorist, bus driver or operator. Many motorists and public carriers carried insurance which was readily obtainable and affordable to cover them for this risk. Now, in terms of the Amendment Act, they have been completely absolved from any

financial liability to the innocent victim whatsoever, leaving the critically injured, innocent passenger exposed to potentially ruinous hospital and medical costs or to treatment at the already overburdened provincial hospitals, which on the Minister of Transport's own admission, cannot provide long-term rehabilitation to seriously injured victims.

The State argues that those victims (namely the innocent road accident victim rather than the reckless or negligent bus operator and/or motorist) should now take out insurance (at their expense) to protect themselves from financial ruin caused by a negligent motorist. However, many vulnerable victims (and, in particular children) cannot obtain insurance to protect them in full against the wrongs of others. Statistics show that children and young persons make up half of the seriously injured road accident victims and that their future earning capacities are usually completely destroyed by serious accidents. This is not insurable. The best interests of child victims could be protected by adding just over 1 cent per litre on the current fuel levy or, on average, an additional R19,68 per year per motorist.

At the same time as taking away the right to sue the wrongdoer, the RAF Amendment Act also reduces the compensation that victims can claim from the RAF itself. For example, past and future loss of income or support is capped at R160 000 per year, and hospital, medical and health care is limited to provincial hospital tariffs, no longer private medical care tariffs.

Some 20 000 road accident victims are injured every month. Their claims are currently governed by the provisions of the Amendment Act which applies to all car accidents after 1 August 2008. Currently none of those injured can look to the person who caused their loss for compensation not covered by the Amendment Act. Many of them will receive no benefit at all in terms of the Amendment Act as their life-threatening injuries will not meet the extremely high threshold to qualify for compensation for pain and suffering, disfigurement and loss of amenities of life. For example, in terms of the regulations defining 'serious' injury in the American Medical Association Guides 6th edition, a victim whose leg is amputated below the knee would not qualify for compensation and is also denied the right to sue the actual wrongdoer for compensation.

'The LSSA contends that it is, therefore, of great public importance that an authoritative and conclusive judgment on the constitutional issues be provided by the Constitutional Court, as soon as possible,' says Ms Sohn.

Attached:

- Background to the Law Society's Constitutional Court application
- Heads of Argument for the First and Third to Eleventh Applicants
- Heads of Argument for the Second Applicant
- Heads of Argument for the Eleventh Applicant
 - Progress on this matter can be accessed on the 'Forthcoming Hearings' section on the Constitutional Court website: <http://www.constitutionalcourt.org.za>

**ISSUED ON BEHALF OF THE CHAIRPERSON OF THE LAW SOCIETY OF SOUTH AFRICA'S
ROAD ACCIDENT FUND COMMITTEE, JACQUI SOHN**

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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 20 000 attorneys and 5 000 candidate attorneys.