

RISKALERT

NOVEMBER 2025 NO 5/2025

IN THIS EDITION

RISK MANAGEMENT COLUMN

- Review of the RAF Board Notices 1
- The SCOPA enquiry into the RAF 2
- Recent decisions 2
- Trust account advocates 3
- Regulatory matters 3
- Memorable quotes from judgments 4

RISK MANAGEMENT COLUMN

Review of the RAF Board Notices

Legal Practitioners Indemnity Insurance Fund: Thomas Harban, General Manager, 1256 Heuwel Avenue, Centurion 0127 • PO Box 12189, Die Hoewes 0163 • Docex 24, Centurion • Tel: 012 622 3900 Website: www.lpiif.co.za • Twitter handle: @LPIIFZA

Prescription Alert, 2nd Floor, Waalburg Building, 28 Wale Street, Cape Town 8001 • PO Box 3062, Cape Town, 8000, South Africa, Docex 149 • Tel: (021) 422 2830 • Fax: (021) 422 2990 E-mail: alert@aiif.co.za • Website: www.lpiif.co.za

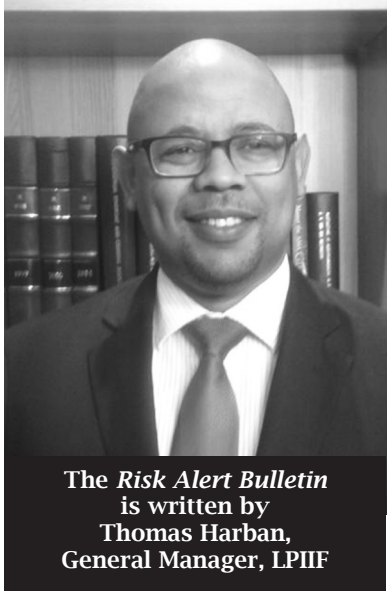
Legal Practitioners' Fidelity Fund, 5th Floor, Waalburg Building, 28 Wale Street, Cape Town 8001 • PO Box 3062, Cape Town, 8000, South Africa, Docex 154 • Tel: (021) 424 5351 • Fax: (021) 423 4819 E-mail: attorneys@fidfund.co.za • Website: www.fidfund.co.za

DISCLAIMER
Please note that the Risk Alert Bulletin is intended to provide general information to legal practitioners and its contents are not intended as legal advice.

The various tranches of litigation relating to the Road Accident Fund (RAF) Board Notices are ongoing.

The RAF's appeal against the judgment granted in the Legal Practitioners' Indemnity Insurance Fund NPC (LPIIF's) favour is expected to be heard in 2026. At the time of writing, a date for that hearing has not been allocated yet. When one is allocated, we will publish it. Interested parties can also have regard to the Supreme Court of Appeal's Bulletin published on its website.

The RAF's reconsideration application in the *Mautla*



The Risk Alert Bulletin is written by Thomas Harban, General Manager, LPIIF

matter will be heard by the Supreme Court of Appeal on 24 November 2025.



Legal Practitioners Indemnity Insurance Fund NPC

Est. 1993 by the Legal Practitioners Fidelity Fund



LEGAL PRACTITIONERS' FIDELITY FUND

SOUTH AFRICA

The SCOPA enquiry into the RAF

On 7 October 2025, parliament's Standing Committee on Public Accounts (SCOPA) commenced its investigation into the RAF. The SCOPA enquiry is expected to run until 7 November 2025. Details of the enquiry are available on parliament's website.

The SCOPA enquiry is into evidence and "allegations of mal-administration, financial impropriety, and the misuse of public funds at the Road Accident Fund and related matters". The purpose of the enquiry is, *inter alia*, to:

1. test the allegations and evidence to determine whether there was any non-compliance with laws or policies applicable to the RAF; and
2. make recommendations on what action, if any, ought to be taken to remedy such non-compliance.

The broad areas being looked at in the enquiry are:

1. governance failures at the RAF;
2. financial management and conduct;

3. procurement and supply chain management;
4. legal and litigation exposure;
5. fraud, corruption and whistleblower reports;
6. automation and claims processing; and
7. governance and human resource matters.

The proceedings are broadcast on various platforms, including parliament's YouTube channel <https://www.youtube.com/user/ParliamentofRSA>

The LPIIF has been invited to give evidence at the enquiry. The LPIIF's evidence is due to be lead on 28 October 2025.

Recent decisions

Since the last publication of the Bulletin, the following judgments have been handed down in respect of the Board Notices:

- *Banyane v RAF* (4195/2024) [2025] ZAFSHC 249 (19 August 2025)
- *Zilwa Attorneys Incorporated and Others v Road Accident Fund* (Appeal) (CA72/2024 ; 4112/2023) [2025] ZAECMHC 95 (29 August 2025)
- *Mohaleni v Road Accident Fund* (6540/2024) [2025] ZAMPMHC 44 (29 August 2025)
- *Mehlomakhulu v Road Accident Fund* (unreported, Western Cape Division, case number 15889/2023) (Slings J) (09 September 2025), and
- *Road Accident Fund v Kewana and Others* (unreported, Western Cape Division, case numbers 1588/2023, 9574/2023, 15633/2023, 15632/2023 and 19801/2022) (Pretorius AJ) This judgment relates to the five matters heard on 5 September 2025. The matter relating to case number 19801/2023 was settled between the parties before the hearing. The RAF's special pleas in respect of the four remaining matters were dismissed with costs on that day. Pretorius AJ delivered his reasons on 7 October 2025.

RISK MANAGEMENT COLUMN continued...

Trust account advocates

The judgments in *Segole v Road Accident Fund* (16923/2022) [2025] ZAGP-PHC 725 (21 July 2025) and *Sithole v Road Accident Fund* (2024/052535) [2025] ZAGPJHC 787 (8 August 2025), respectively, raised questions regarding the type of work that trust account advocates can undertake. A similar question had arisen in *Rabalao v Trustees for the time*

being of the Legal Practitioner's Fidelity Fund: South Africa and Another 2023 (5) SA 563 (GP). An appeal in the *Rabalao* matter was scheduled to be heard on 15 October 2025. When judgment is handed down in that matter, a note will be published on it.

Trust account advocates with valid Fidelity Fund certificates are, subject to the terms and

conditions of the Master Policy, covered by the LPIIF (clauses XVII, XXIII, XXV, 5 and 6). The developments in the matters referred to above are being monitored because claims for compensation arising from legal services carried out in violation of the Legal Practice Act 28 of 2014 are excluded from the policy (clause 16 (u)).

Regulatory matters

Since our last publication, there have been a host of judgments delivered involving matters. The judgments handed down in this period include the following:

- *South African Legal Practice Council v Ponoane* (4096/2024) [2025] ZAECM-KHC 63 (5 August 2025)
- *The South African Legal Practice Council v Coetzee*

and Others (6368/2023) [2025] ZAFSHC 261 (26 August 2025)

- *The South African Legal Practice Council v MJ Koenane* (4001/2024) [2025] ZAFSHC 268 (29 August 2025)
- *Maree and Bernard Attorneys and Another v South African Legal Practice Council and Another* (914/2023)

[2025] ZASCA 140 (29 September 2025)

- *South African Legal Practice Council v Mahapa* (50378/2021) [2025] ZAGP-PHC 1103 (6 October 2025), and
- *South African Legal Practice Council v Engelbrecht* (23138/2023) [2025] ZAW-CHC 468 (10 October 2025)

Memorable quotes from judgments

Mlenzana v Goodrick and Franklin Inc 2012 (2) SA 433 (FB), at 455A

“There comes a time when a diligent attorney has to leave the comfort zone of his or her air-conditioned office and venture out to do some fieldwork in order to safeguard the interests of a client.”

Kranspoort Eienaars Komitee v D J and Another (41310/2015) [2016] ZAGPPHC 887 (23 September 2016), at paragraph 1

“This is matter concerning a barking dog, to whit a Chihuahua. It is to be deprecated that a high court is burdened with such a dispute as the present one and it is equally deplorable that the parties cannot themselves resolve an issue of this nature.”

Kendirjian v Lepore [2019] NSWDC, District Court of New South Wales (6 March 2019), at paragraph 47

“...the plaintiff used the occasion of giving evidence on oath

as an occasion for advocacy, not an occasion for telling the truth.”

S v Halgryn 2002 (2) SACR 211 (SCA), at paragraph 14

“Not everyone is a Clarence Darrow or F E Smith and not every trial has to degenerate into an O J Simpson trial.”

United States v Samuels 808 F.2d. 1298, 1301 (8th Cir. 1987), cited by the Supreme Court in *Greenlaw v United States* 128 S Ct 2559 (2008)

“[Courts] do not, or should not, sally forth each day looking for wrongs to right. We wait for cases to come to us, and when they do we normally decide only questions presented by the parties. Counsel almost always knows a great deal more about their cases than we do....”

Mmotla and Others v S (A99/2018) [2024] ZAGPPHC 362 (10 April 2024), at paragraph 1

“If ever a law school needed to use a criminal case as a case

study to illustrate to students how not to prosecute a matter, this case would be ideal. The case is riddled with prosecutorial missteps, starting with a badly drafted charge sheet. Then, having charged the appellants with theft of a motor vehicle, the prosecutor led no evidence that the vehicle was in fact stolen. The appellants were also charged with murder, without the cause of death (or the chain of custody in respect of the bodies of the deceased) being proven, and on the charge of possession of firearms, no ballistic evidence was led regarding the allegedly recovered firearms, and there is also no chain of custody of the alleged firearms. To add insult to injury, the prosecutor, when faced with an application for the discharge of the appellants in terms of section 174 of the Criminal Procedure Act, 51 of 1977 (“CPA”), enthusiastically argued for their discharge, when the basis for the application was obviously flawed.”

RISK MANAGEMENT COLUMN continued...

Martin v Kiesbeampste, Newcastle Afdeling, en 'n Ander 1958 (2) SA 649 (N), at 650 E-F

“In this case the applicant’s affidavits were in English and his counsel addressed the Court in English. The first respondent’s affidavit was in Afrikaans and counsel for the respondents addressed the Court in Afrikaans. In which language then should the Court give judgment? One’s experience is that the winner is usually content to know merely that he has won. But the loser likes to know the reasons why he has lost. I proceed therefore to give judgment in the language of the losers.”

Hillhouse v Pidelta (Pty) Ltd and Another (1237/2024P) [2024] ZAKZPHC 57 (29 July 2024), at paragraph 1

“This application involves a herd of cattle, a failing kidney and an accumulated pension benefit. The herd of cattle belongs to the first respondent. The failing kidney belongs to the applicant. The accumulated pension benefit also belongs to the applicant, but is held by a pension fund, which has decided, for the time being, not to pay those benefits out to the applicant. How those facts coincide requires a consideration of the broader factual matrix applicable to this matter.”

De Wet v Barron and Others (796/2024) [2025] ZAWCHC 378 (22 August 2025)

“[67] The First Respondent litigated in luxury by appointing a silk, and then too appointing one from another Province, thereby increasing his costs even further. This matter was relatively uncomplicated: it concerned a run-of-the mill application to enforce compliance with the provisions of a deed of alienation concerning certain land. On the pleadings read as a whole, there were no issues raised which were of such high complexity that it required the forensic skills or other expertise which a senior counsel ordinarily brings to bear on a matter.

[68] It would be unreasonable if the Applicant were saddled with increased party-and-party costs which could have been reduced by the First Respondent appointing a suitably experienced junior counsel. Speaking proverbially, litigants ought to choose the right horse for the right course. This was not done here....”

Parker Attorneys v Pillay (21594/2022) [2025] ZAWCHC 386 (26 August 2025)

“[37] Ms. Pillay sought legal assistance from Parker Attorneys to challenge Old

Mutual’s unilateral decision to reduce her retirement age from 60 to 55 years, which deprived her of five years of income. Instead of resolving her grievance, she now finds herself litigating against Parker Attorneys due to their alleged professional negligence.

[38] Rather than addressing the allegations of professional negligence promptly, Parker Attorneys employed technical legal tactics that delayed the resolution of the matter. Such actions could harm the firm’s reputation, as allegations of professional misconduct should ideally be resolved swiftly.

[39] It is a well-established principle that directors or partners of law firms, such as the Defendant, are required by law to hold a valid fidelity fund certificate. This certificate provides indemnity coverage against claims of professional negligence. Instead of resorting to technical legal tactics to delay the matter, the Defendant could have reported the claim to the Legal Practitioners Indemnity Fidelity Fund. Upon receiving such a claim, the fund would have investigated its merits and either defended the action or settled the Plaintiff’s claim.”

RISK MANAGEMENT COLUMN continued...

S v Mugeru and Another 2022 (1) SACR 53 (LP)

“[8] From the commencement of the trial the first accused has been legally represented by a legal practitioner. The legal practitioner who was representing the first accused has conceded that she was very drunk in relation to the proceedings of 1st December 2020. In her own words she said she was “very drunk”. She had represented the first accused whilst she was not in her sound and sober senses. The question is whether the legal practitioner for the first accused had conducted the defence of the first accused properly whilst she was very drunk, and also a conveyancer who knew nothing about court processes.

....

[10] Counsel for the first accused has stated that she was a conveyancer and knows nothing about court processes, yet she took the instructions to represent the first accused. Since she knew nothing about court processes, I doubt whether she had properly prepared for the case. If she did not prepare for the case, she would not have been in a position to conduct the first accused defence properly. Her state of

sobriety would also have affected her ability to represent the first accused properly on 1st December 2020.

[11] According to the presiding magistrate the first accused counsel did not ask State witnesses any questions or put the version of the first accused. It would seem as if the first accused was unrepresented during trial. If it was made clear from the beginning of the trial by the first accused that he will appear in person, he would have been in a better position as it would have been the duty of the presiding magistrate to assist an unrepresented accused person.”

...

[15] The other area of concern in this matter occurred on 1st December 2020 when counsel for accused one came to court and represented accused one whilst very drunk.”

Mogari v State Attorney
(028709/2025) [2025] ZAGPPHC 980 (10 September 2025)

“He says he is an attorney. I cannot dispute that but when one reads his notice of motion, I cannot make head or tail but what I can determine is that he wants this Court to interdict some proceedings in

the Mahikeng High Court. Why would this court sitting in Pretoria interdict a High Court in the North West. I do not have jurisdiction to do that. That is number 1.

Number 2, he refers to part B, there is no part B in these papers. There is a civil case, from what I can gather because the notice of motion as well as his affidavit, I cannot make head or tail of it.

From what have gathered he has got a civil case in Mahikeng. He does not go to Mahikeng High Court to stop whatever he wants to stop; he runs to Pretoria. He does not properly serve everybody.

I say excuse him for the sloppiness of the papers because he says he is an attorney; the papers are very sloppily drawn up but that is not the case.”

South African Legal Practice Council v Ncongwane and Another (34484/2017) [2025] ZAGPPHC 626 (9 June 2025)

“[1] In South Africa, a person shall not be admitted and enrolled as a legal practitioner unless he or she is a fit and proper person to be so admitted. Section 24(1) of the Legal Practice Act (LPA) provides that a person may only practice as

RISK MANAGEMENT COLUMN continued...

a legal practitioner if he or she is admitted and enrolled as such in terms of the Act. These legal requirements simply imply that inside the circle of legal practitioners, resides only fit and proper persons. Once a person loses the characteristics of being fit and proper, he or she ought to be spewed out of the circle because he or she becomes a square peg in a round hole. Effective lawyering takes a great deal of patience, diligence, hard work, systematic drilling and strategy, and always a measured temperament. There are no shortcuts, no instant gratification and no guaranteed wealth - only diligence and sheer hard work. Almost always, there will be satisfaction for a job well done and one will earn the respect of one's clients and colleagues by reason of adherence to professional standards and integrity." (footnotes omitted)

Meyer v Meyer and Others (1819/2020) [2025] ZAWCHC 268 (23 June 2025), at paragraph 1

"The psalmist David had occasion to muse on the value of goodwill between brothers: "... *how good and how pleasant it is for brethren to dwell together in unity! It is like the precious ointment upon the head, that ran down upon the beard, ... to the*

skirts of his garment; ..." Sadly, the present case has nothing good or pleasant about it. It entails a bitter dispute between a mother and one of her sons, and there is discord amongst the sons." (footnote omitted)

N.R.M v F.N and Others (943/2023) [2025] ZAMPMBHC 53 (17 June 2025)

"[1] Like sand through the hourglass, so are the days of our lives. With those words, a popular soap opera that graced our televisions' screens since 1965, would be introduced. The truth about the phrase is that each one of us lives under the shadows of this hourglass, not knowing how much sand remains in the upper bulb thereof. The characters of this soap opera are so focused in falling in and out of love, so much that they do not even take note when the sand from the upper bulb of the hourglass is exhausted. That could be where soap opera derived its name from. When these characters are hooked in the pleasure and satisfaction that comes with falling in and out of love, they become helpless, and taking care of the sand in the hourglass is the last concern on their preoccupied minds. It seems this soap opera is not far from the real-life drama that unfolded in this case.

[2] Once sand is exhausted from the upper bulb of the hourglass, it signals the end of time. Like the characters referred to above who find themselves caught off-guard when sand is finished in the hourglass, we often find ourselves least prepared for the inevitable. Equally, nothing could have prepared Mr. L[...] M[...] (the deceased), of the untimely death he met on 06 February 2023, at the age of 43, following a motor collision that took place in the early hours, moments earlier. Without noticing the ticking clock, he had gone about falling in and out of love not knowing that his fate, or that of his assets, would one day be decided based on his decisions to fall in or out of love. Like with all of us, that fate would be determined while we rest peacefully, with no voice to speak for us."

Datacentrix (Pty) Ltd v South African National Parks and Others (041563/2024) [2025] ZAGPPHC 325 (11 April 2025), at paragraph 1

"Before this court is a titanic battle for the South African National Parks (SANParks) tender, worth just about one billion rand. Blissfully unaware of this existential threat are the lions, leopards, elephants, rhinocer-

RISK MANAGEMENT COLUMN continued...

os and cheetahs, to name but a few affected animals. I am convinced that if these animals had a say in the matter, no one would be before this court.”

Wilson v Du Toit Smuts and Partners Attorneys and Others (3985/2021) [2024] ZAMPM-BHC 57 (27 August 2024), at paragraph 1

“*Nemo iudex in causa sua* is a principle of natural justice, that forbids one to be a judge over a case in which he or she has an interest. One needs not be a judge for the principle to be applicable. It applies to every situation in which the relevant person is in a position of authority and to make a decision on issues before him/her. Even if one is determined to be impartial, perceptions cannot be overlooked. Justice should not only be done, but should also be seen being done. Facts of this case are a perfect example and reminder that failure to adhere to this principle can leave one caught in a web of conflict of interests. That call is even louder when one is in the legal profession.”

De Jager v Netcare Limited (42041/16) [2024] ZAGPPHC 503 (23 May 2024), at paragraph 1

“Do programmes such as Uyajola 99 and Cheaters, to mention but a few, fall foul of section 14

of the Constitution, in their effort to uncover the elusive and sometimes illusive truth? Or does the proportionality analysis under s 36 of the Constitution come to the rescue? In a matter for patrimonial damages involving a 66-year-old male, a preliminary point about a possible violation of his right to privacy has emerged. Just a few days before the hearing of the matter, the plaintiff raised the issue. This necessitated an adjournment of the matter to afford the defendant an opportunity to respond. The bone of contention is the surreptitious surveillance of the plaintiff and his family by Mr. Dion Pienaar, a forensic private investigator, at the instance of the defendant.”

MEC for Department of Health Limpopo Province and Another v Sithole (HCAA 03/2022) [2023] ZALMPPHC 62 (4 August 2023)

“[1] Notwithstanding whether we believe it to be true or just a recording of some mythical story, we read in the Christian Bible that on being confronted with a situation of a mob bay-ing for the blood of a woman accused of adultery, Jesus Christ defeated the intentions of the stones-possessing murderous crowd with the call that it be the one without sin who casted the first stone.

[2] The English have a say-

ing which carries through a message similar to the one attributed to Christ Jesus *supra* which calls on people who live in glass houses to refrain from throwing stones.

[3] This appeal brings to question whether an appeal by the appellants whose application for condonation and the lifting of a bar was dismissed by the court *a quo*, per AML Phatudi J, for want of full compliance with the jurisdictional factors of condonation should fail in circumstances where the respondent himself is spotting very unclean hands in that he has not prosecuted his action for more than a year since obtaining the notice of bar.

[4] It really poses a question of whether two wrongs make a right or whether Solomonic wisdom will permit a situation where one wrong party benefits out of the faults of an equally wrong opponent. The matter concerns a series of procedural missteps from both the appellants and the respondent which confront this court of appeal to determine whether the court of first instance properly employed the interests of justice crucible when dismissing an application for condonation and removal of a bar.”