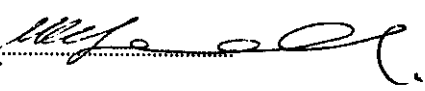




/SG

IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)

DATE:  
CASE NO: 16295/2013

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHERS JUDGES: YES/NO
(3)	REVISED
2014/11/28	
DATE	SIGNATURE

28/11/14

In the matter between:

V W VAN VUREN

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

---

JUDGMENT

LEGODI, J

[1] This is a claim against the Road Accident Fund. The plaintiff is Werner van Vuren, a young man born in Nelspruit on 11 April 1987. When this matter was laid before me, I was informed that merits have been settled 100% in favour of the plaintiff.

[2] The only issue before me concerns past and future loss of earning and earning capacity. Other heads of damages were settled before and others

during the course of trial in this matter. For example, the past hospital, medical and related costs were settled at R282 352.14, general damages at R900 000.00 and 100% undertaking in terms of section 17(4)(a). All of these are contained in a draft order submitted by agreement for the convenience of the court.

- [3] On 17 September 2009 at approximately 07:00 the plaintiff was a driver of a motorcycle with registration number DKH297MP. A collision occurred at an intersection of Suikerriet and Bulpin Streets in Nelspruit. A motor vehicle driven by one H D Vorster and coming from the opposite direction made a turn to the right in front of the plaintiff's motorcycle and as a result a collision occurred.
- [4] The plaintiff suffered injuries as a result of the collision which injuries are set out in paragraph 6 of the particulars of claim as head injury, a fracture of the terminal phalanx of the right finger, an open fracture of the right femur, an open fracture of the right tibia with associated compartment syndrome, dislocation of the left shoulder, dislocation of the right ankle, a fracture of the right knee, swelling and bruising across the face, burst foot soles and a left shoulder fracture.
- [5] The Road Accident Fund (the defendant), does not dispute the fact that the plaintiff has suffered loss of earning capacity due to the injuries sustained during the collision. What the parties cannot agree on is the contingency deduction percentage for future loss of earnings or earning capacity. On behalf of the plaintiff, it was contended that he will lose 70% of his earning capacity. On the other hand, I understood counsel for

the defendant to contend that loss of earning capacity due to the accident should be between 40% and 45%.

- [6] The defendant's counsel for his contention relied on Dr Birrell's report of the 27 May 2014. Dr Birrel is orthopaedic surgeon. In his report, he estimates the plaintiff's loss of earning capacity to be still around 40% and that he still estimates 'early retirement, assuming a retirement age of 65 years, to be at 55 years in the type of work the plaintiff is performing at present'.
- [7] It is not in dispute that as a result of the accident and the injuries sustained thereof, the plaintiff will have to retire ten years earlier, that is, at the age of 55. The 40% contingency deduction referred to by Dr Birrell meant that the plaintiff can still be able to do his work at the rate of 60%, so was the argument on behalf of the defendant.
- [8] The 40% contingency deduction, should be seen in context, so was the contention by the plaintiff's counsel. That is, Dr Birrell based his estimation only on the nature of the injuries sustained. He did not hear evidence. He did not have the opportunity to interrogate other reports, for example, reports by psychiatrist and psychologists.
- [9] A background to the nature of the work by the plaintiff is necessary. The plaintiff's highest qualification is matric which was completed in 2006. Towards the end of 2006, he was employed at a Crocodile Farm in Barberton. His main function was to take care of crocodiles like feeding them and removing their eggs to a safe place. In 2007 he worked at H1-

F1 Corporation in Nelspruit. He left for better opportunities. On 29 September 2008 he started to work for Jacks Snacks. He is still employed at Jacks Snacks.

[10] On 17 September 2009 he was involved in a collision as indicated in paragraph 3 of this judgment. Before the collision, he was earning R7 600.00 per month. His position was that of a supervisor at Nick Nacks division of Jacks Snacks. He was overseeing about 40 employees. They were manufacturing Nick Nacks products. He stood most of the time. He used to move between the machines and workers. He had to go up and down using the stairs to reach the machines. He walked Mondays to Fridays between 07:00 and 17:00 with no breaks or lunches in between. They also worked and still work on Saturdays between 07:00 and 12:00. He also stood very good prospects of promotion before the accident.

[11] All changed after the accident. He was moved to the plastic department. He could no longer carry heavy bags and move from one place to the other as he used to. He could no longer move around in between the machines and workers. He could no longer stand for a long period of time. As a result, he was moved to the plastic department. He is presently working there and this time overseeing only five general workers.

[12] The plaintiff had missed out on three promotions. Two positions came out after the accident. That is, a position for assistant production manager and production manager. Although he applied, he did not get the job. He did not, due to his injuries. There was another position which came out.

That was a sales representative position. He did not apply, as it would have meant travelling a lot.

[13] Due to the nature of the injuries sustained by the plaintiff, he had to take long sick leaves. That resulted in exceeding his leave days. He was on occasions forced to take leave without pay and thus resulting in financial difficulties. He is presently under debt review. His employer is not impressed with him and he fears that he would not last for long in his employment, particularly that he still have to go for medical treatment with further many procedures still to be performed.

[14] Two industrial psychologists, Mr W J Wessels and Ms C Du Toit, in their joint minutes dated 13 November 2014, paragraph 6.2.1 state:

‘It is evident that the plaintiff has been rendered a substantially curtailed person. It is anticipated that he will remain a substantially vulnerable person and uncompetitive in the open labour market. It is evident that all positions previously to his disposal are no longer and should he lose his current position will experience substantial difficulties to impress prospective employers. It is also expected that he will in all probability not reach his pre-accident level of competence and earning capacity. It is expected that his physical disposition will remain a burden compromising his residual work and earning capacity. It is thus expected that he will continue to sustain a loss in earnings as has already been evident and indicated.’

[15] Dealing with retirement, the two psychologists record:

‘...early retirement assuming a retirement age of 65 years, to be at 55 years on the type of work that he is performing at present’.

Referring to Dr D A Shevel, psychiatrist, Mr Wessels and Ms Du Toit conclude that the plaintiff is suffering from a significant chronic depressive illness and may well be functionally unemployable in the open labour market.

[16] In his evidence, the plaintiff indicated that he is no longer as lively as he used to be. He gets easily impatient with people. He is easily irritated and in the process he easily loses his temper. That led, amongst others, being given a written warning about his behaviour. This did not appear to be in dispute. He fears that is just only a matter of time before he is fired.

[17] Based on all of the above, it is contended that it would be wrong to rely on Dr Birrell’s estimation of 40% contingency deduction when other factors should be considered. For all of this, is contended on behalf of the plaintiff that for past and future loss of earning capacity a higher contingency deduction must be made. Counsel for the plaintiff calculates the contingency deduction as follows:

**70% Spread**

**Past loss**

Value of income uninjured: R 687, 079

Less contingency deduction:	5.00%	R	<u>34,354</u>
			652,725

Value of income injured:		R	626,834
Less contingency deduction:	5.00%	R	<u>31,342</u>
		R	595,492

---

R 57,233

Net past loss:

**Future loss**

Value of income uninjured:		R	4,308,502
Less contingency deduction:	15.00%	R	<u>646,275</u>
		R	<u>3,662,227</u>

Value of income injured:		R	2,764,085
Less contingency deduction:	85.00%	R	<u>2,349,472</u>
		R	414,612

Net future loss:

---

R 3,247,614

**Total net loss:**

---

**R 3,304,847**

[18] This calculation is said to be in line with the joint minutes of the two industrial psychologists in which they state: 'it is recommended that a substantial higher post-accident contingency deduction be applied'.

[19] Counsel for the defendant refutes the recommendation. In so doing, he argued, *inter alia*, that the plaintiff had a promotion after the accident and secondly that an Actuary recommended for smaller post- accident contingency deduction to be applied. For example, in their actuarial report dated 27 October 2014, Van De Linde Actuaries regarding two scenarios state:

'However to allow for the general uncertainty on the pre- and- post morbid income of the injured, we were instructed to illustrate the possible financial effect by using the following alternative contingency deductions for both scenarios':

Scenario A:

<b>Table of Contingency</b>		
	<b>Before Calculation Date</b>	<b>After the Calculation Date</b>
Contingency as if no incident	10%	10%
Contingency Regarding the Incident	40%	40%

Scenario B:

<b>Table of Deductions</b>		
	<b>Before Calculation</b>	<b>After the Calculation</b>



	<b>Date</b>	<b>Date</b>
Contingency as if no incident	10%	10%
Contingency Regarding the Incident	50%	50%

[20] Having set out the scenarios, they concluded by stating:

‘From the information, assumptions and basis of calculations described in this report, we have calculated the capitalized value of losses expected to be experienced by the injured as a result of the Incident, to be **R1,600,542 (Scenario A)** and **R2,619,735 (scenario B).**’

[21] It is also important to allude to other calculations of contingency deduction by Algorithm Consultants and Actuaries cc. In their report dated 13 November 2014, they too set out two scenarios as follows:

**Past loss**

**RESULTS**

**Scenario 1**

**Past loss**

Value of income uninjured:		R	687,079
Less contingency deduction:	5.00%	R	<u>34,354</u>
		R	652,725

Value of income injured:		R	626, 834
Less contingency deduction:	5.00%	<u>R</u>	<u>31, 342</u>
			595, 492
			<u>R 57, 233</u>

Net past loss:

**Future loss**

Value of income uninjured:		R	4, 308, 502
Less contingency deduction:	15.00%	<u>R</u>	<u>646, 275</u>
		R	3, 662, 227

Value of income injured:		R	2, 764, 085
Less contingency deduction:	45.00%	<u>R</u>	<u>1, 243, 838</u>
		R	1, 520, 247

Net future loss:

R 2,141, 981

**Total net loss:**

**R 2, 199, 214**

**Scenario 2**

**Past loss**

Value of income uninjured:		R	687, 079
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Less contingency deduction:	5.00%	R	<u>34,354</u>
		R	652,725

Value of income injured:		R	626,834
Less contingency deduction:	5.00%	R	<u>31,342</u>
			595,492

---

R 57,233

Net past loss:

**Future loss**

Value of income uninjured:		R	4,308,502
Less contingency deduction:	15.00%	R	<u>646,275</u>
		R	3,662,227

Value of income injured:		R	2,764,085
Less contingency deduction:	55.00%	R	<u>1,520,247</u>
		R	1,243,838

Net future loss:

---

R 2,418,390

**Total net loss:**

---

**R 2,475,623**

[22] I must immediately mention that promotion mentioned by the defendant's counsel was actually not a promotion. He was moved to another section to accommodate him in his present condition. His salary never changed. Instead, he received annual increase like any other employee.

[23] It is not an easy exercise to determine the extent of the contingency exercise. Although one is guided by the facts of each case, such facts are often if not always based on uncertainty. It is of no surprise that divergent views are expressed. For example, in the joint minutes by the two psychologists the issue relating to the extent of contingency deductions was deferred to this court. The actuarial report of Algorithm Consultants and Actuaries cc was based on the joint minutes by Mr Wessel and Ms Du Toit. Algorithm concluded in their report as follows:

‘The calculation has been based on information supplied and assumptions made which appear to be reasonable on the basis of such information. If it is considered that any information is incorrect or allegations inappropriately, then a recalculation should be made.’

[24] Algorithm based their calculations on the information provided to it. The information included an employment certificate dated 8 April 2010, an IRP5 for the tax year ending 28 February 2011, a report of industrial psychologist Mr Wessels dated 28 October 2014 and a payslip dated 31 August 2014. In addition, they were provided with a report of Industrial Psychologist Ms Du Toit dated 3 November 2014. They were

not provided apparently with joint minutes wherein a recommendation for a higher contingency deduction was suggested.

[25] Of importance is that the court heard the plaintiff's evidence and that of Mr Wessels. Parties also agreed about the use of other reports in these proceedings, the contents of which are not in dispute. According to psychiatric reports, the plaintiff has a chronic depression. Such depression will aggravate the overall level of occupational dysfunction. He will probably need to be employed in a structured sympathetic environment where very little new learning or initiative is required and where exposure to external stressors is kept to a minimum. The plaintiff is said to be suffering from an organ brain syndrome attributed directly to the injuries sustained in the collision. He is at risk to develop a variety of underlining organically based psychiatric conditions.

[26] Similarly, according to the clinical psychologist's report, psychologist functioning of the plaintiff is compromised by his poor psychological functioning and the efficacy of psychotherapy is directly linked to his physical prognosis. His psychological prognosis is thus best described as guarded. Several psychological and physical factors compromise not only his efforts to regain his power level of proficiency, but also his capacity to be employed in the open labour market. His chronic pain paired with his mood disorder of depression and symptoms of anxiety could also impact his cognitive abilities negatively possibly explaining his forgetfulness. His young life has been reduced to one of more monotony. His poor performance on some of the sub-tests, do not support successful retraining in administrative fields or positions.

[27] Now, his physical prognosis is his greatest impediment to any future work advancement. Since engaged in Jack Snack, his work pattern was physical in nature, long hours, driven by desire to meet production targets. That poses a huge challenge to the plaintiff in his present condition. It is on the basis of all this that counsel for the plaintiff argued for a higher percentage of contingency deduction.

[28] It did not appear to be in dispute that the plaintiff's future loss value of income uninjured is R4 308 502.00. Contingency deduction at 15% for such loss also did not appear to be in dispute. What is really in dispute is future loss value of income injured, in particular, the contingency deduction to be applied thereto. As indicated in paragraph 17 of this judgment, the plaintiff's counsel suggested 70% contingency deduction. That is 15% contingency deduction uninjured and 70% injured contingency deduction and thus 85% appearing on the scenario referred to in paragraph [17] above.

[29] True, in the circumstances of the case a higher contingency deduction more than what is suggested by the actuary as indicated in paragraphs [19] and [21] of this judgment is necessary. However, such contingency deduction cannot be as suggested on behalf of the plaintiff. I referred to the suggestion in paragraph [17] of this judgment. The 70% is too high. In my view, it does not reconcile with the facts of the case and the uncertainty involved in the exercise of determining contingencies. Taking everything into consideration 55% contingency deduction in favour of the plaintiff would be appropriate. The total net loss is therefore R2 890 235.00. Such a calculation was prepared for the convenience of the court. In addition, a draft order was prepared for the

court to consider. The draft also envisaged the establishment of a trust to ensure that funds payable to the plaintiff are taken care of. I have considered the terms of the trust and I am satisfied that it would be in the best interest of the plaintiff to incorporate the trust in the order.

[30] Consequently a draft order as amended and marked "X" is hereby made an order of this court.

 M F LEGODI  
JUDGE OF THE GAUTENG DIVISION, PRETORIA

16295/2013/sg

Heard on: 13 November 2014  
For the : Adv. R Ferguson

Instructed by: ADAMS & ADAMS  
Plaintiff's Attorneys  
Lynnwood Bridge Office Park  
4 Daventry Street  
LYNNWOOD MANOR  
PRETORIA,  
REF: DBS/HS/CF/LT275

For the : Adv. D. Dube

Instructed by: DYASON Incorporated  
134 Muckleneuk Street West  
NIEUW MUCKLENEUK  
PRETORIA  
REF: COETZE/MM/DD1630

Date of Judgment: 28 November 2014

**THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

X 2014/11/28  
*M. Seach*

HELD AT PRETORIA ON THIS THE 14<sup>th</sup> DAY OF NOVEMBER 2014 AT COURT 6F BEFORE THE HONOURABLE JUSTICE LEGODI (J)

CASE NO: 16295/2013

In the matter between:

**VAN VUREN, W**

Plaintiff

and

**THE ROAD ACCIDENT FUND**

Defendant

**DRAFT ORDER**

**HAVING HEARD COUNSEL** for the parties;

**THE COURT GRANTS JUDGMENT** in favour of the Plaintiff against the Defendant in the following terms:-

1. The Defendant shall pay the following amounts to the Plaintiff's attorneys, Adams & Adams, in settlement of the claim of **WERNER VAN VUREN**:

**Past hospital, medical and related costs: R 282 352.14;**

**General damages: R 900 000.00;**

**Loss of earnings/Earning capacity: R 2 890 235.00**  
*M. Seach*

The aforementioned amounts shall be payable by direct transfer into the trust account of Adams & Adams , details of which are as follows:

**Account holder : Adams & Adams Trust Account**  
**Bank : Nedbank**  
**Branch : Pretoria**

*ecf*



Branch code : 198765  
Account number : 1604 318 902  
Reference : DBS/KW/LT275

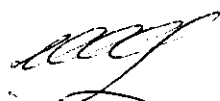
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2. The Defendant shall furnish the Plaintiff with an undertaking in terms of Section 17(4)(a) in respect of 100% of the costs of the future accommodation of the Plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him, after the costs have been incurred and on proof thereof, resulting from the accident that occurred on 17 September 2009.
3. The Defendant is liable for payment of 100% of the reasonable costs of the Trustee appointed in terms of paragraph 4 hereof, in respect of establishing a Trust and any other reasonable costs that the Trustee may incur in the administration thereof including his fees in this regard, which shall be recoverable in terms of the Undertaking issued in terms of Section 17(4)(a), and which costs shall also include and be subject to the following:-
  - 3.1 The fees and administration costs shall be determined on the basis of the directives pertaining to curator's remuneration and the furnishing of security in accordance with the provisions of the Administration of Deceased Estates Act, Act 66 of 1965, as amended from time to time, and shall include but not be limited to disbursements incurred and collection commission calculated at 6% on all amounts recovered from the Defendant in terms of the Section 17(4)(a) undertaking;
  - 3.2 The monthly premium that is payable in respect of the insurance cover which is to be taken out by the Trustee to serve as security in terms of the Trust Deed;
  - 3.3 All the abovementioned costs shall be limited to payment of the reasonable costs which the Defendant would have had to pay regarding appointment, remuneration and disbursements had the Trustee been appointed as a *curator bonis*;



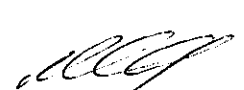
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- 3.4 The costs associated with the yearly audit of the Trust by a chartered accountant as determined in the Trust Deed;
- 3.5 The appointment and reasonable costs of a case manager.
- 4. That the nett proceeds of the payments referred to above less a sum of R250 000.00 that shall be paid by Plaintiff's attorneys directly to Plaintiff, as well as the Plaintiff's taxed or agreed party and party costs payable by the Defendant, after deduction of the Plaintiff's attorney and own client legal costs and interest on unpaid disbursements, (the "capital amount"), shall be payable to a Trust, to be established within six months of the date of this order, which Trust will:-
  - 4.1 contain the provisions as more fully set out in the draft Trust Deed attached hereto marked as annexure "A";
  - 4.2 have as its main objective to control and administer the capital amount on behalf of the Patient;
  - 4.3 Constant Wilsnach will be the first trustee with powers and abilities as set out in the draft Trust Deed attached hereto marked as annexure "A".
  - 4.4 The trustee(s) will be obliged to furnish security to the satisfaction of the Master of the High Court of South Africa for the assets of the Trust and for the due compliance of all his obligations towards the Trust.
- 5. Should the aforementioned Trust be established within the six month period, the Trustee thereof is authorised to pay the Plaintiff's attorney and own client costs out of the Trust funds in so far as any payments in that regard are still outstanding at that stage.



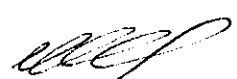
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6. Should the aforementioned Trust not be established within the six month period:-
  - 6.1 The Plaintiff's attorneys are directed to approach the court within six months thereafter in order to obtain further directives in respect of the manner in which the capital amount is to be utilized in favour of the Patient;
  - 6.2 The Plaintiff's attorneys are authorised to invest the capital amount in an interest bearing account in terms of Section 78(2A) of the Attorneys Act to the benefit of the Patient with a registered banking institution pending the finalization of the directives referred to in paragraph 6.1 above;
  - 6.3 The Plaintiff's attorneys are prohibited from dealing with the capital amount in any other manner unless specifically authorised thereto by this court, subject to the provisions contained in paragraphs 4 to 7 hereof.
  
7. Until such time as the Trustee is able to take control of the balance of the capital amount and to deal with same in terms of the trust deed, the Plaintiff's attorneys are authorised and ordered to pay from the capital amount:
  - 7.1 any reasonable payments to satisfy any of the Plaintiff's needs that may arise and that are required in order to satisfy any reasonable need for treatment, care, aids or equipment that may arise in the interim;
  - 7.2 the attorney and own client costs of the Plaintiff's attorneys together with interest on unpaid disbursement ;
  - 7.3 such other amount(s) as may reasonably be indicated and/or required for the well being of the Plaintiff and/or in his interest which a diligent *curator bonis* would have paid, had such *curator* been appointed.



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8. The Defendant must make payment of the Plaintiff's taxed or agreed party and party costs on the High Court scale which costs shall include the following:-
  - 8.1 The fees of Senior - Junior Counsel on the High Court Scale, inclusive of Counsel's full reasonable day fees for 13 and 14 November 2014 and the reasonable costs of preparation of Heads of Argument;
  - 8.2 The reasonable taxable costs of obtaining all expert, medico-legal, RAF 4 and actuarial reports from the Plaintiff's experts which were furnished to the Defendant;
  - 8.3 The reasonable taxable preparation, qualification and reservation fees, if any, of the following experts of whom notice has been given, being:-
    - 8.3.1 Dr C W Goosen (Orthopaedic Surgeon);
    - 8.3.2 Dr D A Birrell (Orthopaedic Surgeon);
    - 8.3.3 Dr P B White (Plastic & Reconstructive Surgeon);
    - 8.3.4 Dr Shevel (Psychiatrist);
    - 8.3.5 Dr J J du Plessis (Neurosurgeon);
    - 8.3.6 Mr D Rademeyer (Mobility Consultant);
    - 8.3.7 Dr M Mazabow (Clinical Neuropsychologist);
    - 8.3.8 Mr M du Plooy (Orthotic);
    - 8.3.9 Dr K Truter (Clinical Psychologist);
    - 8.3.10 Ms K Theron (Speech, Language & Cognitive Communication);
    - 8.3.11 Ms C Pretorius (Occupational Therapist);
    - 8.3.12 Mr K Carpenter-Kling (ENT Surgeon);
    - 8.3.13 Mr W Wessels (Industrial Psychologist);
    - 8.3.14 Mr G van der Linde (Actuary);
    - 8.3.15 Mr G Whittaker (Actuary).



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- 8.4 The costs of a consultation between the Plaintiff and his attorney to discuss the terms of this order;
- 8.5 The reasonable costs of a consultation between the Plaintiff's counsel, the Plaintiff, and the Plaintiff's attorney in preparation for the hearing;
- 8.6 The reasonable taxable accommodation and transportation costs (including Toll and E-Toll charges) incurred on behalf of the Plaintiff in attending medico-legal consultations with the parties' experts, consultations with the legal representatives and the court proceedings, subject to the discretion of the Taxing Master;
- 8.7 The costs of Plaintiff's counsel and attorney for attending a work-site visit on Friday, 24 October 2014.
9. The above costs will also be paid into the aforementioned trust account.
10. It is recorded that the Plaintiff's attorneys do not act in terms of a contingency fee agreement for services rendered.
11. The following provisions will apply with regards to the determination of the aforementioned taxed or agreed costs:-
  - 11.1 The Plaintiff shall serve the notice of taxation on the Defendant's attorney of record;
  - 11.2 The Plaintiff shall allow the Defendant 7 (SEVEN) court days to make payment of the taxed costs from date of settlement or taxation thereof;
  - 11.3 Should payment not be effected timeously, Plaintiff will be entitled to recover interest at the rate of 9.0% on the taxed or agreed costs from date of allocatur to date of final payment.



4.002/11/8e

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BY ORDER OF THE COURT

DBS/KW/LT275

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## DEED OF TRUST

in pursuance of a Court Order of the High Court of South Africa (GAUTENG DIVISION, PRETORIA) dated 13 November 2014 in Case No. 2013/16295 in the matter between WERNER VAN VUREN and the ROAD ACCIDENT FUND.

entered into by and between

**DAVID BENJAMIN SCHEEPERS**

attorney representing the Plaintiff in the abovementioned matter  
(hereinafter referred to as the "Donor")

and

**CONSTANT WILSNACH**

(hereinafter referred to as the "TRUSTEE")

28/11/2014

28/11/2014

In terms of which the Donor donates to the TRUSTEE, the sum of R100.00, which amount is to be held by the TRUSTEE in trust and be administrated by him in terms of the conditions and terms of this Deed of Trust as is herein set out:-

1. **DONATION**

The Donor hereby donates to the TRUSTEE the sum of R100.00, which amount will be paid to the TRUSTEE and will be received by him with the registration of this Deed.

2. **NAME OF TRUST**

The Trust will be known as the **WERNER VAN VUREN TRUST**.

3. **TRUSTEE**

3.1 The first TRUSTEE of this Trust will be the person described as TRUSTEE in the preamble to this Trust Deed. This office will be held by him for an indefinite period until his resignation or incapacity or the termination of the Trust;

3.2 The TRUSTEE is required to furnish security to the Master of the High Court of South Africa for the assets of the Trust as may be required in terms of the provisions contained in the Trust Property Control Act as amended from time to time.

*[Handwritten signature]*



28/11/14

4. **BENEFICIARY**

The beneficiary of this Trust will be **WERNER VAN VUREN**, a person suffering from a mental illness as described in section 1 of the Mental Health Care Act, 17 of 2002 or a serious bodily impairment which prevents such person from generating sufficient income for her own maintenance or managing her own affairs, with regards to the income derived from the Trust assets. Should **WERNER VAN VUREN** pass away, the Trust's assets will be transferred to the heirs of **WERNER VAN VUREN** as set out in the Will of **WERNER VAN VUREN** or should **WERNER VAN VUREN** not leave behind any will the assets will be transferred to the intestate heirs of **WERNER VAN VUREN** in accordance with the provisions of the Intestate Succession Act as amended from time to time.

5. **OBJECTIVES**

The objectives of this Deed of Trust are the following:-

- 5.1 To maintain and support the said **WERNER VAN VUREN** physically and mentally for the remaining part of her life;
- 5.2 The TRUSTEE will as far as possible endeavour to utilise the funds of the Trust to comply with the medical needs of the mentioned **WERNER VAN VUREN**. In this respect the TRUSTEE will in his discretion, and if he deems it necessary, be authorised to make use of medical advice in overseas countries and if necessary, send the mentioned **WERNER VAN VUREN** to the foreign country if the TRUSTEE in his discretion deems it to the benefit of **WERNER VAN VUREN** and if there are sufficient grounds and funds for such

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advice and medical treatment;

- 5.3 To provide accommodation to the beneficiary and one other person who will act as the beneficiary's caretaker/nurse if necessary and affordable. In this respect the TRUSTEE will also be entitled in his discretion to employ people and to remunerate them for services rendered to **WERNER VAN VUREN** where and if necessary and affordable.
- 5.4 To do anything that the TRUSTEE in his discretion deems necessary for the general wellbeing of the mentioned **WERNER VAN VUREN** and the TRUSTEE will be entitled to incur such reasonable costs as he deems necessary in this regard in his absolute discretion;
- 5.5 To invest the Trust's assets and to act therewith in such a manner so as to attempt to increase same and if possible to cause capital growth in order for the funds paid over in trust to be administered for as long as possible, to the benefit of **WERNER VAN VUREN**.

6. **ASSETS**

The assets of the Trust will include:-

- 6.1 The assets donated to the Trustee in terms of this Deed as well as any additions and accruals thereto;
- 6.2 All donations and inheritances donated or bequeathed to the Trust in supplementation of the Trust's assets;



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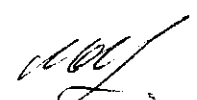
- 6.3 All assets that the Trust may purchase with its own funds or borrowed funds or that may be acquired by any other juristic act;
- 6.4 Any assets that may be allocated to the Trust in terms of an Order of Court.

7. **INCOME FROM THE TRUST**

The income of the Trust will be all income earned by means of the Trust's assets.

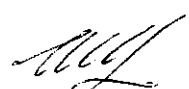
8. **POWERS OF THE TRUSTEE**

- 8.1 To enable the TRUSTEE to comply with all obligations in terms of the Deed of Trust, the TRUSTEE will be entitled:-
  - 8.1.1 To perform any act in general, whatsoever, that is according to his opinion, beneficial for the preservation and growth of the assets of the Trust, or in the interest of the Beneficiary. The powers entrusted to him according to the paragraphs hereinafter do not limit the generality of this sub-paragraph;
  - 8.1.2 To use any part of the assets or income of the Trust for payment of any costs reasonably incurred by him in relation to his duties and obligations as TRUSTEE;



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- 8.1.3 To invest the assets or income of the Trust or any part thereof, in such a manner as he may deem proper in his discretion. Without detracting from the generality of the aforementioned clause, he will be entitled to invest in shares in public companies, building societies, loans with security, investments in state and municipal shares, investments in fixed property or any such assets as he may deem beneficial to the Trust and its beneficiary which will also include moveable assets of whatsoever nature if deemed reasonably to the benefit of the beneficiary. Such moveable assets may be used or consumed by the TRUSTEE if, in his discretion, it is deemed to be reasonable in the interest of the beneficiary. He will furthermore be entitled to call up any investments, to make any investments solvent, to convert, amend, realise and to re-invest such investments in any manner reasonably deemed appropriate;
  
- 8.1.4 If the TRUSTEE practises a profession and in such capacity performs any other act or service on behalf of the Trust, in such capacity, the TRUSTEE will be remunerated for his professional services rendered without limiting or reducing his right to remuneration as stipulated hereinafter;
  
- 8.1.5 To institute legal and arbitration proceedings and to oppose same in any competent court with regard to any matter forthcoming from the Trust and to pay the costs



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incurred in relation thereto from the assets or income of the Trust;

- 8.1.6 To purchase, sell, let, hire or to hire-purchase any assets;
- 8.1.7 To reasonably acquire or renounce, in any manner whatsoever, rights on behalf of the Trust where such actions are in the best interest of the Trust;
- 8.1.8 To acquire money through a loan or expend money by way of a loan on any conditions and against proper security being furnished where money is expended by way of a loan;
- 8.1.9 To encumber any assets of the Trust by way of a bond, pledge, hypothec or session as security;
- 8.1.10 To perform all acts on behalf of the Trust which may be necessary to effect transfer of any assets of the Trust;
- 8.1.11 To grant extensions for the complying with any duty towards the Trust, to reach compromises and oppose claims against the Trust, to recognise, and settle same and to handle any claims in favour of the Trust in the same manner;
- 8.1.12 To employ people to perform any act and to remunerate them from the assets or income of the Trust. The possibility that the TRUSTEE would have been able to

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perform such act himself does not detract from the  
aforementioned entitlement;

8.1.13 To utilise the assets and income of the Trust in such a  
manner as the TRUSTEE may deem proper for the  
conservation, maintenance or replacement of any assets  
of the Trust and to demolish any buildings if deemed  
appropriate by the TRUSTEE to erect new buildings on  
the fixed property of the Trust;

8.1.14 To exercise his voting right as deemed appropriate, with  
regard to any shares which belong to the Trust and are  
held in any company or society. The exercise of his  
discretion and authority hereunder is not reduced where  
he directly or indirectly has an interest in such company  
or society neither will such TRUSTEE due to his  
confidential relationship with the Trust be obliged to give  
account of any benefit, which accrues to him due to such  
interest either directly or indirectly, nor is any act,  
agreement or deed of the TRUSTEE void or voidable on  
the ground that he received such benefit. The object of  
this clause is to avoid that the consequences of  
voidability or voidness due to the confidential office of the  
TRUSTEE will supervene and insofar as it may affect  
agreements and relationships with companies and  
societies in which the TRUSTEE has a personal interest;

8.1.15 To lend money to any person or legal entity on such  
conditions as he in his absolute discretion may stipulate  
on the condition that proper security is provided by the

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lender;

8.1.16 To enter into insurance contracts and to pay the premiums from the assets of the Trust;

8.1.17 To pay the debts of the Trust;

8.1.18 To accept or refuse donations and inheritances to the Trust;

8.1.19 To open a bank account and to borrow money from a bank on the overdraft facility or otherwise;

8.2 Notwithstanding the stipulations of paragraph 5.1 or any other paragraph in this Deed, the TRUSTEE will not be entitled to dispose of any assets or income of the Trust for his own benefit or the benefit of his estate. Without detracting from the generality of the aforementioned he will specifically not be entitled or authorised to appropriate or to dispose of any of the assets or income of the Trust as his own, as he deems fit, if he by doing so will benefit himself or his estate directly or indirectly. The TRUSTEE will furthermore not be authorised to use or consume any of the assets of the Trust directly or indirectly, for his own benefit unless so authorised by the Master of the High Court of South Africa;

8.3 If the Trust shows drastic growth and if the administration thereof requires it, the TRUSTEE will be entitled to employ a person or persons, full time or part time, to assist with the administration of

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the Trust and in this respect he will be entitled to pay a reasonable salary or remuneration, which he in his discretion deems appropriate, to such a person or persons. Control and care over the Trusts assets will however always be the responsibility of the TRUSTEE including fixed property or a bond with regards to any place in the Republic of South Africa. In this regard the only limitation is that investments may only be made within the borders of the Republic of South Africa.

9. **BOOKKEEPING**

- 9.1 The TRUSTEE must keep a complete set of accounting records with regard to the affairs of the Trust;
- 9.2 The TRUSTEE will ensure that the accounting records of the Trust are audited by a chartered accountant and that such accountant will have free access to the books, documentation and assets of the Trust.

10. **APPLICATION OF INCOME**

The TRUSTEE will use the income of the Trust to pay the administration costs for the administration of the Trust and to realise the objectives of the Trust.

11. **DUTIES OF THE TRUSTEE**

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The TRUSTEE will:-

- 11.1 As far as possible endeavour to realise the objectives of the Trust;
- 11.2 To open a current account with a registered commercial bank of his choice, which account will be used for the receipt of all cash which is paid to the Trust;
- 11.3 To invest and reinvest the funds of the Trust in such a manner as he may deem fit in shares, securities or any assets of whatsoever nature including fixed property or on bond in any place in the Republic of South Africa and in this respect the only limitation is that investments may only be made within the borders of the Republic of South Africa;
- 11.4 To amend, regroup or reinvest the investments in such a manner and on such conditions and for such objectives as the TRUSTEE in his sole discretion may deem appropriate;
- 11.5 To see to it that proper minutes of all decisions made by him, are kept in a safe place;
- 11.6 To see to it that the financial statements of the Trust for each year are kept in safe custody for the period of the existence of the Trust;
- 11.7 To see to it that all contracts are fulfilled;
- 11.8 To make all payments that may be payable on the income of the Trust;

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- 11.9 If he deems it necessary to effect any amendments to the Trust Deed, he will be entitled to make the said amendments on condition that such amendments are approved by the Donor during his lifetime. After the death of the Donor he will be entitled to make such amendments as he may deem appropriate on condition that such amendments will not amend the objective of the Trust;
- 11.10 To see to it that the set of books that he must open and keep will immediately become operational and at the same time appoint a firm of auditors for the Trust as soon as the Master of the High Court has registered this Deed;
- 11.11 To see to it that the firm of auditors that is appointed for the Trust will at all times have free access to the books and accounts and vouchers of the Trust and he further undertakes to obtain such information as the auditors may require and to make same available to the firm of auditors and if explanations are required, to provide same.

12. **APPOINTMENT OF THE TRUSTEES**

The following people will be incompetent to act as TRUSTEE of this Trust:-

- 12.1 Any person who is incompetent to act as a director of a company in terms of the stipulations of the relevant Company Laws of the Republic of South Africa;



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- 12.2 Any person who is an unrehabilitated insolvent;
- 12.3 Any person who has previously been removed as a TRUSTEE from a trust due to his/her misadministration of the said Trust;
- 12.4 Any person who has previously been found guilty, in the Republic of South Africa or elsewhere, of theft, fraud, forgery, perjury, corruption or any misconduct or offence where dishonesty was an element of and resulted in that person being found guilty;
- 12.5 Any person who has been declared mentally ill or incapable of managing his/her own affairs.

13. TERMINATION OF THE TRUST

The Trust will be terminated when the mentioned **WERNER VAN VUREN** passes away or when the Master of the High Court of South Africa orders it so, whichever event may happen first.

14. DISSOLUTION OF THE TRUST

With termination of the Trust as a result of the death of **WERNER VAN VUREN**, the Trust will be liquidated and the capital will after all the administrative costs and debts as well as claims against the Trust have been paid, be allocated according to the stipulations of the will of the mentioned **WERNER VAN VUREN** and if the mentioned **WERNER VAN VUREN** dies intestate, the nett assets of the Trust will be divided equally between her intestate heirs in accordance with the relevant Intestate

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Succession Act that is applicable in the Republic of South Africa. If the Trust is terminated by Order of the Master of the High Court of South Africa, the funds will be paid out in accordance with the stipulations of such order.

15. **EXEMPTIONS**

With regard to the aforementioned the following exemptions will be applicable:-

- 15.1 No TRUSTEE will be incapable due to his/her office as TRUSTEE of this Trust, to enter into a contract with the Trust or any company in which the Trust has an interest. Furthermore any contract entered into between the Trust and such company will not be void due to the Trustee's interest in the company. The only requirement with regard hereto, is that the TRUSTEE must before any negotiations are entered into, disclose his/her interest in the contract or entity, to the Master of the High Court of South Africa before such negotiations take place;
- 15.2 Any TRUSTEE, who is a member of or a partner in a firm of professional practitioners, may be employed by the Trust or render services for the Trust and in such instance the TRUSTEE will be entitled to a fee in his/her professional capacity;
- 15.3 No TRUSTEE will be requested to make good any damages that the Trust may have suffered, regardless of how such damage was caused, with the exception of such damage that was caused by the

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dishonesty of a TRUSTEE or as a result of his/her negligence;

15.4 No TRUSTEE will be liable for any dishonesty or wrongful act committed by any of the other TRUSTEES unless such a TRUSTEE had knowledge thereof and allowed such dishonest acts or acted as an accessory, or could have prevented such act but negligently failed to do so;

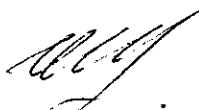
15.5 The TRUSTEE shall be indemnified out of the assets of the Trust with regards to any claims that may be instituted against him/her personally and which result from the reasonable acts of the TRUSTEE and the exercise of any of his/her competencies which he/she is entitled to exercise in terms of this Deed;

16. **REMUNERATION**

If the TRUSTEE is a professional person, he/she will be entitled to his/her reasonable professional fees for any professional work done for the Trust. Such fees will include any fees that are reasonably payable to his/her partners and he/she will further be entitled to make use of the services of other similar professional people as also auditors, medical doctors, attorneys and advocates. With regard to services rendered by the TRUSTEE for the general administration of the Trust and arrangements which he/she will make with regard to the care of the mentioned **WERNER VAN VUREN**, the TRUSTEE will be entitled to a yearly fee as stipulated in the relevant legislation of the Republic of South Africa.

17. **MARRIAGE**

All the benefits that **WERNER VAN VUREN** is entitled to in terms of this



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Deed of Trust are for all purposes excluded from any community of property or any community of profit and loss. The accrual system in terms of the Matrimonial Property Act 88 of 1984 is not applicable to any benefit hereunder. It may not be seized for the debts or liabilities of any spouse of **WERNER VAN VUREN** and may not form part of any insolvent estate of such a spouse or vest in the curator of such insolvent estate.

18. **ACCEPTANCE**

The TRUSTEE hereby accepts the donation made to him according to this Deed subject to the conditions of this Deed and further undertakes to realise the objectives of this Trust Deed.

SIGNED at PRETORIA on this the \_\_\_\_\_ day of November 2014.

**AS WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
DONOR

SIGNED at PRETORIA on this the \_\_\_\_\_ day of November 2014.

**AS WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_

TRUSTEE