IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG LOCAL DIVISION, JOHANNESBURG)

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

[redacted]

SIGNATURE DATE: 27 August 2024

CASE NO: 12291/2020

In the matter between:-

ADVOCATE HERMAN KRIEL N.O. obo Minor Child Plaintiff

and

ROAD ACCIDENT FUND Defendant

SUMMARY: Quantum of Damages – Pedestrian involved in motor vehicle accident – minor doli incapax- merits conceded – future medical expenses – future loss of earnings – contingency allowances – general damages postponed sine die.

JUDGMENT

ALLEN AJ

INTRODUCTION

[1] The plaintiff is Advocate Herman Kriel N.O. an advocate of this Court and duly appointed in his representative capacity as *Curator ad Litem* on 30 May 2023 for the minor daughter KM.

[2] The defendant is the Road Accident Fund a statutory body duly incorporated in terms of the provisions of Section 2 of the Road Accident Fund Act, Act 56 of 1996 as amended and empowered to deal with this claim and obliged to compensate the minor in respect of loss or damage suffered by her as a result of bodily injuries caused by a motor vehicle and thereby within the jurisdiction of this Court.

[3] In this action plaintiff claims damages from the defendant in a representative capacity arising from injuries sustained by the minor when she was injured on 3 March 2018. The minor child was injured when she was crossing Joubert Road, Vanderbijlpark when the driver of the insured vehicle traveling at a high

speed overtook a stationary yellow Toyota Venture vehicle and collided with the minor child on the road surface, but on the insured vehicle's incorrect side of the road in close proximity to the pavement on the opposite side of the road.

[4] The minor child sustained a head injury, bruises over her forehead, a mid-shaft humerus fracture on the right and a radial nerve palsy on the right.

[5] The minor was born on 27 September 2009 and was 8 years old when the accident occurred. She is now 14 years and 11 months old. The minor child was rebuttably presumed to be *doli incapax* at the time of the accident[1].

[6] The defendant conceded liability for 100% (one hundred percent) of the plaintiff's proven damages or agreed damages. The actual merits are thereby resolved.

[7] The plaintiff sued for past medical and hospital expenses, future medical and hospital expenses, future loss of earnings/earning potential and general damages in the total amount of R8 020 000.00 as a result of the injuries sustained. Plaintiff at the trial abandoned the claim for past medical and hospital expenses.

[8] The plaintiff at the commencement of the hearing brought an application in terms of Rule 38(2) of the Uniform Rules of Court to present his evidence and that of his collateral and expert witnesses by way of affidavit as well as to admit certain evidence set out more in full in the plaintiff's application. The defendant at the commencement of the hearing gave notice to oppose this application, but did not file any opposing papers or heads of argument and elected to argue from the bar only. The defendant conceded that he should have filed papers in opposing plaintiff's application. The defendant also conceded that there were no statements from the defence that could be of assistance to the court.

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[1] N obo N v RAF (17439/2013) [2015] ZAGPJHC 77 (27 April 2015)- Weiner J concluded that there is a rebuttable presumption that the child, who was also run down by a vehicle as a pedestrian, was *doli incapax*, which had to be rebutted by the defendant. Further, if the minor child was *doli incapax* and aware of her responsibilities (in crossing a street), and could have been liable for negligence, the Defendant owed the duty to discharge that burden.

[9] The defendant also argued that no expert reports were filed and confirmed the only reports before this court are those of the plaintiff. The defendant further argued that the plaintiff's expert reports were 2020 reports and should not be allowed. The evidence before court proved the contrary such as expert affidavits filed in 2023 confirming the contents of the 2020 reports, an addendum report filed by the educational psychologist Me A Mattheus dated 16 February 2023 and an updated actuarial report of plaintiff filed dated 8 July 2024.

[10] Premised on the application before me and arguments from both parties the following order was made:

"[10.1] The applicant is granted leave to present his evidence and that of his collateral and expert witnesses by way of affidavit in terms of the provisions of Rule 38(2);

[10.2] The court admits into evidence in terms of the provisions of Section 3(1)(c) of the Law of Evidence Amendment Act, Act 45 of 1988 the following:

[10.2.1] The minor child's hospital and clinical records;

[10.2.2] The minor child's school reports;

10.2.3] The collateral evidence provided to the applicant's expert witnesses;

[10.2.4] The applicant's expert reports containing the reasons and the opinions expressed therein.

[10.3] Costs of the application".

[11] No oral evidence was adduced at the trial.

[12] No joint practice note was filed. The plaintiff filed a practice note and heads of argument whilst the defendant elected not to file heads of argument.

[13] The plaintiff filed expert reports of the following experts:

[13.1] Dr Kruger – Neurosurgeon

[13.2] Dr Roussouw – Ear, Nose and Throat Specialist

[13.3] Dr Berkowitz – Plastic and Reconstructive Surgeon

[13.4] Me Mattheus – Educational Psychologist

[13.5] Mr Jooste – Industrial Psychologist

[13.6] Dr Longano – Psychiatrist

[13.7] Me Morland – Occupational Therapist

[13.8] Dr Watts – Clinical Psychologist

[13.9] Mr Immermann – Actuary

[13.10] Dr Van Den Bout – Orthopaedic Surgeon

[14] The defendant did not file any expert reports.

[15] No joint minutes were filed.

THE ISSUES

[16] The issues which require determination are the quantum of the plaintiff's claim for future medical, hospital and related expenses, future loss of earnings, general damages and the contingency deduction applicable thereto.

THE EVIDENCE

The plaintiff's expert reports:

Dr Kruger – Neurosurgeon

[17] On 23 September 2020, two years and six months after the accident, Dr Kruger examined the minor child at the time 11 years old. The purpose of this examination was to evaluate the severity of the injuries sustained by the minor child on 3 March 2018. The report was compiled from the information obtained from the primary caregiver of the minor, on the history of the accident, accident report by SAPS, hospital records and a clinical evaluation.

[18] He opined the minor child was unconscious immediately after the accident and it is unclear for how long she remained unconscious. The minor child had no recollection of the accident and according to the primary caregiver she had a dense phase of post-traumatic amnesia of 5 days. Five days after the accident at the Chris Hani Baragwanath Hospital, the minor child recognized her surroundings and the people around her. Dr Kruger in his report, paragraph 3.1, also recorded the following: "The patient has no retro grade amnesia".

[19] He further opined the minor child was stabilized at the scene of the accident by paramedics and then taken in an ambulance to Sebokeng Hospital where the Glasgow Coma Scale (GCS) was recorded as 11/15. At some stage the minor was intubated and mechanically ventilated and also admitted to the Intensive Care Unit.

[20] On 7 March 2018 the minor was transferred to Chris Hani Baragwanath Hospital and on admission admitted to the Intensive Care Unit and extubated the

following day. The GCS was recorded as 15/15 which remained constant "throughout her ordeal". The minor was transferred back to Sebokeng Hospital on 11 March 2018 and discharged on 17 March 2018. From the clinical records available of Chris Hani Baragwanath Hospital mention was made of mildly severe brain oedema (brain swellings) (revealed through a CT-scan of the brain). The minor sustained the following injuries in the accident: head injury with loss of consciousness, mid shaft humerus fracture on right hand side, radial nerve palsy on right hand side and bruises over the forehead. The head injury sustained in the accident was treated conservatively and the bruises to the forehead were cleaned and bandaged. The right mid shaft humerus fracture was treated by way of stabilization in a plaster of paris cast in position for two weeks. The radial nerve palsy on the right-hand side was treated by way of rehabilitation namely physiotherapy and occupational therapy. The radial nerve palsy on the right-hand side has recovered well with no signs of weakness or sensory loss in the distribution of the radial nerve.

Personal history of the minor

[21] The minor child stays with her primary caregiver in an informal house in Aeroton on the East Rand of Gauteng. The caregiver is currently unemployed. The minor child has never met her farther. The minor child has two adult brothers and another 19-year-old sister and all three siblings of the minor are currently unemployed.

Educational background

[22] At the time of the accident the minor was in Grade 3 at Jabulani Thabang Primary School in Aeroton. The minor stayed off school for 3 weeks after the accident and completed Grade 3 in the same year as the accident. According to the primary caregiver of the minor she is currently struggling academically at school. The minor struggles with loss of short-term memory and regularly forgets newly learned information. At the time of the accident the minor was right-handed, but currently writes with her left-hand – this is secondary to a radial nerve injury sustained to the right-hand in the accident.

[23] At the time of the visit the minor complained of tension headaches three times a week which were aggravated by psychological stress and hot weather, pain in the right upper arm, but with no weakness or loss of sensation in the right arm/right wrist/right hand/right fingers. The minor suffers from cognitive mental problems with a loss of short-term memory, regularly forgets newly learned information, regularly forgets to do her homework and struggles academically at school. The minor had psychological/psychiatric complaints as a result of the accident. The minor had no complaints of neck pain, lumbar back ache, radial nerves, long tracked symptoms and epilepsy.

[24] In paragraph 6.2.3.4 Dr Kruger opined "from the clinical records available for my evaluation, the history, the symptoms and signs no suspicion of a focal brain injury. From the clinical records available for my evaluation, the history, the symptoms and signs no suspicion of any secondary event that took place that could have aggravated the initial head injury sustained in the accident."

[25] In paragraph 6.2.3.7 Dr Kruger opined that the minor's cognitive mental problems and psychological/psychiatric complaints are "signs of a severe diffuse axonal brain injury, as evidenced by the fact that the minor lost consciousness after the accident, had an initial Glasgow Coma Scale of 11/15 and had a dense phase of post-traumatic amnesia for 5 days".

[26] Dr Kruger deferred to the opinions of a clinical psychologist/ neuropsychologist regarding the clinical extent of the brain injury and complaints. He also deferred to the opinion of an educational psychologist regarding the educational problems at school and a clinical psychologist/psychiatrist regarding the psychological/psychiatric complaints of the minor.

[27] In paragraph 6.2.4.1 Dr Kruger opined that on a personal level the minor is currently independent with activity of daily living with normal mobility, but has stopped taking part in sport as a result of the accident.

Neurological examination

[28] Dr Kruger did a neurological examination which resulted in the following: short, medium and long-term memory – normal, concentration – normal, language ability – normal, mathematical ability – normal, general knowledge – normal, abstract thought – normal. He also recorded that the cranial nerves, cerebellum, gait and tone were all normal as was her strength, reflexes and sensory examination as well as the nerve tension tests.

[29] In paragraph 11.12 he opined that the academic performance of the minor has deteriorated since the accident.

[30] Dr Kruger was not in a position to give an opinion regarding the clinical extent of the severe diffused axonal brain injury and the current complaints of cognitive mental problems and deferred to the opinion of a clinical psychologist/ neuropsychologist. He also was not in a position to give an opinion regarding the current educational problems and deferred to the opinion of an educational psychologist. He also opined that the minor has an 8% chance of developing epilepsy in future.

[31] He was also not in a position to give an opinion regarding the humerus fracture sustained on the right-hand side and he deferred to the opinion of an orthopaedic surgeon.

[32] He was further not in a position to give an opinion regarding the previous radial nerve palsy sustained in the accident and deferred to an opinion of a neurologist.

[33] Dr Kruger also opined that the accident will not influence the minor's life expectancy but, based on the current complaints of cognitive mental problems will influence her educational future which will influence her ability to work in the open labour market and her retirement age.

[34] Dr Kruger concluded that from a neurosurgical perspective the whole person impairment (WPI) rating (combined) for the minor is 12% and the accident the minor was involved in will not result in a whole person impairment rating of above 30% in his view. By applying the narrative test, the injuries sustained in the accident qualify as serious injuries under the heading: "Severe long term mental or severe long term behavioural disturbance or disorder".

[35] Dr Kruger's report stated that the report is valid for a period of two years whereafter an updated report is to be obtained. An updated report was not obtained and he filed an affidavit dated 20 February 2023 confirming this report.

[36] He did not file a RAF 4 Serious Injury Assessment report.

Dr Roussouw – Ear, Nose and Throat Specialist

[37] On 15 September 2020, two years and six months after the accident, he assessed the minor for the purpose of compiling a medico-legal report and confirmed the contents of this report dated 17 September 2020 in an affidavit filed dated 20 February 2023.

[38] When he interviewed and examined the minor child the problems at the time were she suffers from headaches, pain in the arm, hearing loss on the right-hand side and visual disturbances. On examination her nose showed a mild deviation of the nasal septum to the left-hand side. Her ears were clinically normal although she did show signs of a hearing loss on the left-hand side. Her arm had pain on the right-hand side.

[39] The minor was sent for an audiogram which showed essentially normal hearing except that she had bi-lateral high tone hearing losses which could be predictive of barro-trauma caused by the head injury. He recommended at least three future ear, nose and throat examinations as well as audiological evaluations. He also opined that she most likely prematurely need a hearing aid in future life and at least one digital hearing aid.

Dr Berkowitz – Plastic and Reconstructive Surgeon

[40] Dr Berkowitz assessed the minor child on 19 October 2020, two years and seven months after the accident for the purpose of compiling a medico-legal report and his opinions and reasons are expressed in his report dated 21 October 2020 and confirmed in an affidavit filed dated 21 February 2023.

[41] On examination he noted a minor scare in the center of the forehead, multiple linear post-abrasion scars covering an area of 130mm x 5mm noted on the lateral aspect of the right flank and a post-abrasion scar measuring 40mm x 50mm on the lateral aspect of the proximal third of the right thigh. This scar will benefit from long term treatment with pigment cream with no future medical management and or cost for the other scars.

[42] Dr Berkowitz did complete a RAF4 Serious Injury Assessment Report and in paragraph 5.2 the narrative test of the minor child presents with permanent serious disfigurement and her whole person impairment due to skin disorders equates to 5% whilst his medico-legal report in paragraph 5.1 only recommended pigment cream for the right thigh.

Me Mattheus – Educational Psychologist

[43] Me Mattheus assessed the minor child on 14 August 2020, two years and five months after the accident, for the purpose of compiling a medico-legal report dated 22 August 2020 and an addendum medico-legal report dated 16 February 2023. This were confirmed in an affidavit filed dated 8 July 2024.

[44] Me Mattheus received the minor's school reports for Grade 3 and Grade 4. At the time of the first assessment the minor was in Grade 5. Me Mattheus could not obtain full details of the minor's birth and early-childhood development and recommended that a copy of her Road to Health Chart is obtained.

[45] She opined regarding the minor's health that her medical condition at the time of assessment was headaches for which Panado was used as treatment.

Test battery

[46] The test battery she utilized was selected with careful consideration of the minor's individual, cultural and physical background in accordance with her age and present choice of educational level. The Wechsler Intelligence Scale for Children – fifth edition (WIS-C) was administered.

[47] The minor's general cognitive and intellectual ability (full scale) measured 66 – extremely low range, verbal comprehension index 55 – extremely low range, visual spatial index 75 – border line range, fluid reasoning index 82 – low average range, working memory index 76 – border line range, processing speed index 56 – extremely low range.

Pre-accident potential

[48] The minor's pre-accident potential is deduced from various information and she recorded that "very little objective information has been presented". Accurate information regarding her mother's pregnancy, birth and development was not available and her biological father is unknown. Her mother also passed away.

[49] Me Mattheus also recorded that no pre-accident school reports were made available and she had to rely on the information received from the parent/guardian (caregiver). She further reported that: "given the very limited information available, the writer is of the opinion that the minor will most probably have been able to complete grade 12 (NQF level 4) with an endorsement to continue with a higher certificate or diploma. If given the opportunity to attend tertiary education and financial support (e.g. FEDSAS) she would have entered the open labour market with a NQF level 5/6".

Post-accident potential

[50] The educational assessment findings suggest that her cognitive functioning is falling in the extremely low range and that she is "presenting with significant

cognitive difficulties" and that her post-accident school reports are evident of a slight decline in academic progress. As she matures and progresses through the grades the full impact of the sequelae of the TBI would become more visible. She opined that the assessment results indicated that the minor is experiencing some emotional difficulties as a result of the trauma of the accident and she recommended psychotherapy and that her behavioral– and her emotional wellbeing be monitored closely.

[51] She further opined that based on the minor's cognitive profile the minor would struggle to complete her education in a mainstream school and that she should be placed in a vocational school and within this setting she would be able to leave school at the age of 18 years with a NQF level 2 and a vocational skill to make her eligible for placement in sheltered employment.

Addendum assessment report

[52] Me Mattheus also filed an addendum assessment report dated 16 February 2023 based on the assessment of 14 August 2020. This report is based on the minor's school reports received for the period 2016 to 2022. She opined that the post-accident school reports indicated that she was coping with the academic demands although cautious in the interpretation of her academic progress during the national Covid-19 pandemic.

[53] The remainder of the addendum report in essence repeated what was stated in the initial report.

Mr Jooste – Industrial Psychologist

[54] Mr Jooste assessed the minor on 30 September 2020, two years and six months after the accident, for the purpose of compiling a medico-legal report also dated 30 September 2020. A further report was filed dated 18 February 2022 based on and confirming his opinion and reasons in his previous report. The objective of this assessment was to evaluate the effects of the accident

and its sequelae on the employability and earning capacity of the minor child. The reports were confirmed in an affidavit filed dated 20 February 2023.

[55] During the assessment was present the minor, her legal guardian, Mr Louis Linde and Kevin Jooste, Industrial Psychologists and Ms Chanise Naudé, Registered Psychometrist as well as an interpreter. Her prospects were evaluated by disregarding the accident and injuries sustained and having regard to the accident and injuries sustained. The minor at the date of the assessment was 11 years old.

[56] In paragraph 4.2.2 of the initial report it was recorded that the minors' mother had a Grade 8 level education and was self-employed as a vendor selling fruits, vegetables and meat in a township close to the house and her legal guardian also has a Grade 8 level education who sells perfume from home and she receives money from family members when she needs it.

[57] The industrial psychologists were furnished with the school reports for Grade 3, Grade 4 and term 1 of Grade 5. They opined that in the interview the minor had reported, ad paragraph 56, "that she enjoys her school and that she does not find it particularly difficult" and that her favourite subjects are mathematics and english. They further opined in paragraph 59 that psychometric testing was not used to assess the minor's general level of cognitive and psychosocial functioning due to her young age and deferred to the findings of the educational psychologist (Me Mattheus).

[58] In paragraph 65 they opined that the minor appeared to be an intelligent girl who did not speak spontaneously about the accident and did not offer any complaints. When this aspect was canvassed it was revealed that she dislikes speaking about her accident.

Pre-accident potential

[59] In paragraph 68 they opined that unfortunately not much is known about the minor's developmental history due to her mother passing away and her farther not playing a role in her life. The minor was in Grade 3 and doing well at school when the accident in question intervened (Paragraph 69).

[60] In paragraph 70 they recorded that the minor was not raised in the same household as her siblings who are employed as a vendor, assistant to a plumber and her sister is not employed. In paragraph 77 they opined that by taking into consideration the aspects of the other experts that the minor would probably have obtained at least a Grade 12 level of education and matriculated with entrance to a national certificate or a national diploma and as she was too young to have made any specific career decisions consequently the application of the so called "brought brush" approach is recommended. They proposed two (2) scenarios namely scenario 1 Grade 12 with Higher Certificate (NQF level 5) and scenario 2 Grade 12 with Diploma (NQF 6).

Post-accident history and potential

[61] In paragraph 119 they opined the concerns raised by the various experts should be read with their opinion that the minor will suffer a future loss of earnings and earning capacity. In their view, ad paragraph 132, the minor is rendered practically unemployable and only found to be suitable for sheltered, sympathetic employment. This is based on her suitability by other reports filed.

<u>Dr Longano – Psychiatrist</u>

[62] Dr Longano assessed the minor child on 17 August 2020, two years and six months after the accident, for the purpose of compiling a medico-legal report also dated 17 August 2020. Dr Longano filed an affidavit dated 20 February 2023 confirming under oath this report. At the time of the interview he was furnished with the minor's hospital records, RAF 1 claim form completed by Sebokeng Hospital, accident report and an affidavit dated 10 May 2018.

[63] He opined that based upon the interview with the minor and her maternal aunt as well as a review of the documentation that the minor was reportedly struck by a vehicle whilst standing on a pavement on a road near her residence which is in contradiction with the other evidence submitted. In addition, she was not taken to Sebokeng Hospital after the accident, but to Levai Mbatha Community Health Centre (not clear how she was taken to the centre) and thereafter transferred to Sebokeng Hospital.

[64] According to the emergency services report related to her transfer her Glasgow Coma Scale was 14/15 and with a Glasgow Coma Scale later of 10/15 (the actual figure is smudged and could be different). A CT-scan of the brain was ordered and showed cerebral oedema. On 8 March 2018 the minor was transferred to Chris Hani Baragwanath Hospital and on arrival her Glasgow Coma Scale was noted as 10+. She was treated and subsequently extubated and her Glasgow Coma Scale improved to 15/15 over the next 2 days (up to 10 March 2018). On 11 March 2018 she was transferred back to Sebokeng Hospital.

[65] The minor denies any memory of the day of the accident, where it happened, what time and what she was doing prior to the accident and only remember being at Sebokeng Hospital prior to her discharge. Her primary caregiver also advised Dr Longano that the minor initially did remember walking on the pavement prior to being struck by the vehicle, but the minor has now become very tense when the accident is mentioned. The primary caregiver also advised that the minor was out of school for approximately 3 months from March to June which does not tally with the school reports which shows a total absence for 2018 of 25 days, 13 days in the second term and 9 days in the first term.

[66] He opined that her current condition was that she experiences a headache about 3 times a week which responds rapidly to paracetamol. Since the accident the minor has been unable to write with the right-hand and she learned to write left-handed and also experiences pain in the right thigh particularly during cold weather. Her sleep was good unless suffering from a headache. On

a concentration level the minor states that she has no problem following the teacher, provided she sits in the front row otherwise she cannot hear properly.

[67] The minor further stated that she can see clearly, both on the board and on written or printed material in front of her. The minor complained that her memory is not good and she tends to remember things patchily even after learning them and by the following day she has a limited recollection of what she has learned.

[68] He further opined that he is unable to specify the severity of the head injury with confidence given the fact that she was sedated, intubated and given opioid analgesics and deferred to a relevant expert for such assessment.

[69] There was also no comment on her neurological status in the discharge summary of the Paediatric Intensive Care Unit at Chris Hani Baragwanath Hospital. He further opined that the minor's injury did no appear to have affected her academic performance in the year of the accident but may have caused some declining performance in the subsequent year.

[70] He further opined that the minor's performance during the mental state assessment was in his opinion inconsistent with her report of academic performance in 2019 and he was concerned about either a deterioration in her neurological status over time or the appearance of the so called "sleeper effect" due to which her performance will progressively deteriorate over the coming years. He accordingly recommended a formal neuropsychological assessment which assessment should be preceded by a hearing screening and assessment.

Me Morland – Occupational Therapist

[71] Me Morland assessed the minor on 20 and 31 August 2020 respectively, two years and six months after the accident, for the purpose of compiling a medico-legal report dated 2 November 2020. She also filed an affidavit dated 27 February 2023 confirming under oath this report.

[72] She opined that tests were done and recorded that the minor's active and passive concentration span was lower that what it should be. Her eye movements were adequate. With the minor's postural control it was noted that she was standing with an uneven posture alignment (her right shoulder higher than her left shoulder), adequate muscle tone and was unable to hold the supine flexion posture against resistance. Her ball skills were inadequate to slightly inefficient. Her static balance was in line with her age. Her dynamic balance displayed difficulties that may be linked to neurological damage she sustained in the accident. Her drawing scored below average for her age as well as her coloring. With the EHC during the motor coordination test she scored "below average, within the accepted range for this test". Her writing was slightly below average for her age. Her maths was also below average for her grade level.

[73] The quick neurological screening test showed a Normal Response of 19. A Normal Response is indicated by a total of 25 or less and is almost always achieved by persons who are not likely to have specific learning difficulties. A Normal Response score must have no individual tasks scored in the Severely Deficient range.

[74] The minor had two individual tasks that scored within the Severe Discrepancy Range and one sub-task that scored on the Moderate Discrepancy range which support possible neurological damage. The remainder of the tests could be summarized as average for her age.

[75] Me Morland further opined that the minor's maths and writing are slightly below her grade level and should it become necessary she should be moved to a remedial school at primary school level. She will struggle to obtain a matric certification in a mainstream school.

[76] She further opined that due to the combination of the minor's cognitive deficits and psychiatric difficulties the minor is limited to work that is structured simplistic routine in nature with some level of supervision and due to her psychiatric difficulties she is also limited to work that is sympathetic in nature. For further

comment on her employment prospects she deferred to the industrial psychologist. She recommended occupational therapy and also recommended Kumon maths, a case manager be appointed and a supervisor for her after school career.

Dr Watts – Clinical Psychologist

[77] Dr Watts assessed the minor on 20 August 2020 and 3 September 2020, two years and six to seven months after the accident, for the purpose of compiling a medico-legal report. He filed an affidavit dated 28 February 2023 wherein he confirmed this report.

[78] Dr Watts did a neuropsychological assessment. The minor's inability to speak English fluently and her cultural background were factors which had to be considered when interpreting the assessment findings. The minor's performance on tasks of attention and concentration arranged from average to impaired which points to fluctuations in attention. Her immediate attention span was average as well as the mental tracking skills. Her ability to visually keep track and to concentrate on more than one piece of information at a time was impaired as was her performance on the oral version of a task of complex visual attention.

[79] A task of eye-hand co-ordination and fine motor dexterity was average with the left hand and impaired with the right hand. The minor's performance on tasks of visual perception, visuo-motor perceptual integration and judging spatial relations was intact.

[80] The minor's performance on tasks of verbal learning and memory evidenced mild impairments when non-meaningful material was involved. When dealing with material that was presented in a meaningful manner her performance was average. When she was required to learn and recall non-meaningful information the result was average for a child of her age. Her performance was also average when she was required to recall the material immediately after interference but mildly impaired after a further delay of 20 minutes. The minor's recall of complex

visual material was low average. The minor's verbal comprehension, expressive speech, reading and writing skills were adequate within the context of the evaluation whilst her arithmetic skills were impaired.

[81] The minor's estimated intellectual capacity as measured on the Coloured Ravens Progressive Matrices, a non-verbal test of intellectual capacity, fell within the above average range. The minor did not have any executive skill problems at the time of the assessment.

[82] Dr Watts opined that the neuropsychological evaluation of the minor's higher mental functioning presented constraints due to her inability to speak English fluently and her cultural background.

[83] Dr Watts also opined that the minor will need to be monitored whilst at school in order to ascertain whether or not she "grows into" any further cognitive or behavioral problems. Regarding the minor's schooling and employment he deferred to the relevant experts. He also recommended neuropsychological rehabilitation and re-assessment.

Mr Immermann – Actuary

[84] Mr Immermann, a consulting actuary practicing at GW Jacobson Consulting Actuaries (Pty) Ltd, gave an opinion and reasons expressed in a report dated 12 April 2022 and a further report dated 8 July 2024. He also filed an affidavit dated 16 July 2024 confirming the reports. In his first report he proposed as follows with a 20% contingency:

Basis I certificate level of education- a future loss of R6 637 566.00 for the accident with a 20% contingency deduction with a nett future loss of R5 310 053.00.

Basis II diploma level of education- a future loss but for the accident of R8 294 852.00 was proposed with a 20% deduction totaling a nett future loss of R6 635 882.00.

[85] Mr Immermann prepared a further report based on recommendations of the Industrial Psychologist's report and "performing calculations on this basis should in no way be construed that I certify the likely career paths but for and having regard to the accident to be realistic". On the assumptions he proposed:
Basis I certificate level of education but for the accident R7 929 414.00 with a 20% contingency nett future loss R6 343 531.00.
Basis II diploma level of education but for the accident R10 080 428.00 with a 20% contingency nett future loss R8 064 342.00.

Dr Van Den Bout – Orthopaedic Surgeon

[86] Dr Van Den Bout examined the minor on 13 August 2020, two years and six months after the accident. He filed a medico-legal report also dated 13 August 2020. He, from the outset, confirmed that the minor passed the narrative test according to points 5.1 and 5.2 of the RAF 4 Serious Injury Assessment report which he also completed. He did not file an affidavit, only a medico-legal report.

[87] He calculated the minor's impairment for the right clavicle fracture a 3% upper extremity impairment, for the right humerus fracture a 3% upper extremity impairment, in total 6% which translates to a 4% whole person impairment with no apportionment in terms of point 4.11 of the RAF 4 report.

[88] For the facial scarring, although an exception, a rating of 3% whole person impairment with a combined value of 7% whole person impairment was calculated.

[89] The whole person impairment in respect of "the head and brain injuries sustained should be obtained from a neurosurgeon / neurologist" and therefore was not included in his calculation.

[90] In his view the minor therefore did not pass the 30% rule of point number 5 of the RAF 4 report. He opined that the minor passes the narrative test for serious long-term impairment or loss of body function and for permanent serious

disfigurement. He confirmed the minor's general damages for pain and suffering, loss, amenities and disfigurement of the body. The life expectancy was not affected. The minor's future loss of income will be affected for every operation that realizes if she is earning an income by the time the operation is done and she is not paid well for being off duty due to the operation. He opined anticipated future loss of income should be obtained from a plastic surgeon for the plastic surgery procedures.

[91] In his opinion, from an orthopaedic point of view, it is a possible loss of earning capacity due to the injuries sustained which should be evaluated by an occupational therapist and industrial psychologist.

[92] The possible loss of earning capacity due to the head and brain injury sustained should be evaluated by the relevant experts.

The defendant's evidence

[93] The defendant did not present any evidence, expert reports, practice note or heads of argument. The defendant elected to argue various points subtracted from plaintiff's expert reports with an unsubstantiated opinion which did not negate the veracity of plaintiff's expert reports.

[94] The defendant also proposed a future loss of earnings amount of R6 637 566.00 less a 20% contingency and less a further 50% contingency but for the accident with a nett total of R1 991 269.80. The defendant, however, could not explain how the amount was calculated or arrived at. I accept the amount was deducted from Basis I of the actuary's first report.

EVALUATION OF THE EVIDENCE

[95] The neurosurgeon, Dr Kruger did a neurological examination and all the results were normal. He was not in a position to give an opinion regarding the clinical extent of the severe diffused axonal brain injury and the current complaints of

cognitive mental problems and deferred to the opinion of a clinical psychologist/ neuropsychologist.

[96] The opinion of a clinical psychologist, Dr Watts, was obtained. He did a neuropsychological assessment. The minor's inability to speak English fluently and her cultural background were factors which had to be considered when interpreting the assessment findings. The minor's performance on tasks of attention and concentration arranged from average to impaired which points to fluctuations in attention. Her immediate attention span was average as well as the mental tracking skills. Her ability to visually keep track and to concentrate on more than piece of information at a time was impaired as was her performance on the oral version of a task of complex visual attention.

[96.1] A task of eye-hand co-ordination and fine motor dexterity was average with the left hand and impaired with the right hand. The minor's performance on tasks of visual perception, visuo-motor perceptual integration and judging spatial relations was intact.

[96.2] The minor's performance on tasks of verbal learning and memory evidenced mild impairments when non-meaningful material was involved. When dealing with material that was presented in a meaningful manner her performance was average. When she was required to learn and recall non-meaningful information the result was average for a child of her age. Her performance was also average when she was required to recall the material immediately after interference but mildly impaired after a further delay of 20 minutes. The minor's recall of complex visual material was low average.

[96.3] The minor's verbal comprehension, expressive speech, reading and writing skills were adequate within the context of the evaluation whilst her arithmetic skills were impaired. The minor's estimated intellectual capacity as measured on the Coloured Ravens Progressive Matrices, a non-verbal test of intellectual capacity, fell within the above average

range. The minor did not have any executive skill problems at the time of the assessment.

[96.4] Dr Watts opined that the neuropsychological evaluation of the minor's higher mental functioning presented constraints due to her inability to speak English fluently and her cultural background. Regarding the minor's schooling and employment he deferred to the relevant experts.

[97] Dr Kruger also was not in a position to give an opinion regarding the current educational problems and deferred to the opinion of an educational psychologist.

[98] The Educational Psychologist, Me Mattheus, opined that the minor's pre-accident potential was deduced from various information and she recorded that "very little objective information has been presented". The educational assessment findings suggest that her cognitive functioning is falling in the extremely low range and that she is "presenting with significant cognitive difficulties" and that her post-accident school reports are evident of a slight decline in academic progress.

[99] Dr Kruger also opined that the minor has an 8% chance of developing epilepsy in future.

[100] Dr Kruger was also not in a position to give an opinion regarding the humerus fracture sustained on the right-hand side and he deferred to the opinion of an orthopaedic surgeon.

[101] The Orthopaedic Surgeon, Dr Van den Bout, calculated the minor's impairment a 4% whole person impairment with no apportionment in terms of point 4.11 of the RAF 4 report. For the facial scarring, although an exception, a rating of 3% whole person impairment with a combined value of 7% whole person impairment was calculated. The whole person impairment in respect of "the

head and brain injuries sustained should be obtained from a neurosurgeon / neurologist" and therefore was not included in his calculation.

[102] In his view the minor therefore did not pass the 30% rule of point number 5 of the RAF 4 report. He opined that the minor passes the narrative test for serious long-term impairment or loss of body function and for permanent serious disfigurement.

[103] Dr Kruger was further not in a position to give an opinion regarding the previous radial nerve palsy sustained in the accident and deferred to an opinion of a neurologist. No opinion was obtained from a neurologist by plaintiff.

[104] Dr Longano, Psychiatrist, opined that according to the emergency services report related to the minor's transfer her Glasgow Coma Scale was 14/15 and with a Glasgow Coma Scale later of 10/15 (the actual figure is smudged and could be different).

[105] I have considered the medical records filed and the Emergency Medical Service Patient Report Form had only one reading of 14/15. The Sebokeng Hospital Observation Charts for 3 and 4 March 2018 did not have any readings for the GCS and the columns were vacant.

[106] Dr Jooste, Industrial Psychologist, opined that during the interview with the minor, Dr Linde was also in attendance, she had reported, ad paragraph 56 of the report, "that she enjoys her school and that she does not find it particularly difficult" and that her favourite subjects are mathematics and english. They opined that the minor appeared to be an intelligent girl who did not speak spontaneously about the accident and did not offer any complaints.

[107] Regarding her pre-accident potential they opined that unfortunately not much is known about the minor's developmental history due to her mother passing away and her farther not playing a role in her life. The minor was not raised in the same household as her siblings who are employed as a vendor, assistant to a plumber and her sister is not employed. The application of the so called

"brought brush" approach was recommended. They proposed two (2) scenarios namely scenario 1 Grade 12 with Higher Certificate (NQF level 5) and scenario 2 Grade 12 with Diploma (NQF 6).

[108] Regarding her post-accident potential they opined that the concerns raised by the various experts should be read with their opinion that the minor will suffer a future loss of earnings and earning capacity. In their view the minor is rendered practically unemployable and only found to be suitable for sheltered, sympathetic employment. This is based on her suitability by other reports filed.

[109] I considered all the opinions with a comparative analysis of the minor's school reports pre- and post-accident.

[110] I now turn to all the minor's school reports filed:

Pre-accident

Minor's average:		Grade average of all learners disclosed:
Grade 1	68%	62.92%
Grade 2	86%	77.83%
Grade 3	81%	70.17%
Grade 3-Term 1	81.25%	68.25%

Post-accident

Grade 3-Term 2	80.25%	70.25%
Grade 3-Term 3	85%	70.75%
Grade 3-Term 4	83.5%	71.25%
Grade 4	77.5%	66.17%
Grade 5	77.33%	65.28%
Grade 6	80.25%	65.79%
Grade 7	75.67%	62.66%
Grade 8	66.67%	44.08%
Grade 9-Term 1	55%	45.22%
Grade 9-Term 2	53.11%	40.44%

[111] It is evidend that the minor's average remains 10% plus above the grade average from Grade 1 to Grade 9-Term 2 for the year 2024. The minor's average percentage pre- and post-accident in relation to the grade average is also consistent and remains consistent 10% plus above the grade average.

[112] I am of the view that no deterioration could be established in the minor's school reports as a result of the accident. The minor continues to attend a mainstream school post the accident. The "sleeper effect" could also not be established.

[113] Premised on the analysis of the school reports I disagree that the minor is rendered unemployable. I am of the view that she recovered well in the circumstances to live a normal life for which one can only be thankful.

QUANTIFICATION OF THE PLAINTIFF'S CLAIM

Past medical and hospital expenses

[114] Plaintiff did not proceed with the claim for R20 000.00 and therefore no amount is allowed.

Future medical hospital and related expenses

[115] Plaintiff in this regard seeks a full undertaking in terms of the Provisions of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996 which I am in agreement with.

Loss of earnings

[116] In the case of **S v Thomas**[2] wherein the mental condition of the accused, which was in question, was enquired into by two psychiatrists and they produced reports. In respect of the experts' reports, the court said: *'When dealing with*

[2] 2016 (4) NR 1154 (HC) ([2016] NAHCMD 320)

expert evidence the court is guided by the expert witness when deciding issues falling outside the knowledge of the court but within the expert's field of expertise; information the court otherwise does not have access to. It is however of great importance that the value of the expert opinion should be capable of being tested. This would only be possible when the grounds on which the opinion is based is stated. It ultimately remains the decision of the court and, although it would pay high regard to the views and opinion of the expert, the court must, by considering all the evidence and circumstances in the particular case, still decide whether the expert opinion is correct and reliable.'

[117] In **RAF v Guedes**[3] it was stated: "*It is trite that a person is entitled to be compensated to the extent that the person's patrimony has been diminished in consequence of another's negligence. Such damages include loss of future earning capacity (see for example* ***President Insurance Co Ltd v Mathews****)*[4]*. The calculation of the quantum of a future amount, such as loss of earning capacity, is not, as I have already indicated, a matter of exact mathematical calculation. By its nature, such an enquiry is speculative I and a court can therefore only make an estimate of the present value of the loss that is often a very rough estimate (see, for example,* ***Southern Insurance Association Ltd v Bailey***[5]*). The court necessarily exercises a wide discretion when it assesses the quantum of damages due to loss of earning capacity and has a large discretion to award what it considers right. Courts have adopted the approach that, in order to assist in such a calculation, an actuarial computation is a useful basis for establishing the quantum of damages*".

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[3] 2006 (5) SA 583 (SCA) at para 8
[4] 1992 (1) SA 1 (A) at 5C - E.
[5] 1984 (1) SA 98 (A)

[118] In the leading case of **Southern Insurance Association Ltd v Bailey**[6] the Court stated: "*Any enquiry into damages for loss of earning capacity is of its nature speculative… All that the Court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss. It has open to it two possible approaches. One is for the Judge to make a round estimate of an amount which seems to him to be fair and reasonable. That is entirely a matter of guesswork, a blind plunge into the unknown. The other is to try to make an assessment, by way of mathematical calculations, on the basis of assumptions resting on the evidence. The validity of this approach depends of course upon the soundness of the assumptions, and these may vary from the strongly probable to the speculative. It is manifest that either approach involves guesswork to a greater or lesser extent. But the Court cannot for this reason adopt a non possumus attitude and make no award.*"

[119] It is trite that the percentage of the contingency deduction depends upon a number of factors and ranges between 5% and 100%, depending upon the facts of the case.

[120] The Court has a wide discretion that must, however, be based upon a consideration of all the relevant facts and circumstances. Justice and fairness to the parties is served by contingencies to be applied on the proven facts of the case. The discretion of the Court may not be usurped by the evidence of the experts such as the actuary. The actuary's evidence only serves as a useful basis for establishing the quantum of damages.

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[6] 1984 (1) SA 98 (A) 113H-114E

[121] In order to determine the plaintiff's claim for future loss of income or earning capacity, it becomes necessary to compare what the minor would have earned 'but for" the incident with what she would likely have earned after the incident. The future loss represents the difference between the pre-morbid and post-morbid figures after the application of the appropriate contingencies.

[122] Mr Immermann, the Actuary, filed a further report based on recommendations of the Industrial Psychologist's report and "performing calculations on this basis should in no way be construed that I certify the likely career paths but for and having regard to the accident to be realistic". On the assumptions he proposed:
Basis I certificate level of education but for the accident R7 929 414.00 with a 20% contingency and a nett future loss of R6 343 531.00.
Basis II diploma level of education but for the accident R10 080 428.00 with a 20% contingency and a net future loss of R8 064 342.00.

[123] I am of the view, after having considered all the evidence, that the average of Basis I and Basis II of the actuary's further report is best suited to the minor's circumstances with a contingency of 90% to be applied. The average amount of R 9 004 921.00 after applying the contingency, is therefore R 900 492.10 for loss of income/earning capacity for the minor.

General damages

[124] The plaintiff claimed R3 000 000.00 for general damages. At the hearing it was argued that an amount of R2 000 000.00 to R2 500 000.00 would be fair and reasonable in this matter.

[125] The defendant argued that this Court did not have jurisdiction on general damages and same should be postponed *sine die*. Defendant argued further that a without prejudice offer was made during the settlement negotiations which was rejected. Counsel for the plaintiff responded that the offer was not rejected but just not accepted. This Court therefore cannot deduct that an offer was made for, amongst other, general damages.

[126] It is trite that previous awards in comparable matters are intended to only serve as a guide. Each case should be determined based on the considerations of its own facts. I considered the facts of the matter and the authorities that I have been referred to and I am of the view that the issue of general damages be postponed *sine die* and referred to the Health Professions Council of South Africa for a determination.

COSTS

[127] The general rule in matters of costs is the successful party is intitled to be awarded costs and this rule should not be departed from except where there are good grounds for doing so.

[128] There is no reason for the plaintiff not to be awarded costs of the trial and for such costs to include the costs of Senior Counsel.

ORDER

In the result I make the following order:

1. In respect of the claim, being administered by the defendant under link number **4858053**, the defendant is liable to the plaintiff, in his representative capacity, to the extent of 100% (one hundred percent) of the plaintiff's claims for future medical/hospital expenses, future loss of earnings as well as general damages consequent upon the injuries sustained by the minor, KM, in the motor vehicle collision which occurred on 3 March 2018.

2. The defendant shall make payment to the plaintiff, in his representative capacity on behalf of the minor, KM, the amount of R 900 492.10(nine hundred four hundred and ninety two rand and ten cents) made up as follows:

   2.1 Future Loss of Earnings –

   R 900 492.10(nine hundred four hundred and ninety two rand and ten cents);

   together with interest calculated in accordance with the Prescribed Rate of Interest Act, Act 55 of 1975, read with section 17(3)(a) of the Road Accident Fund Act, Act 56 of 1996 ("the Act").

3. The issue of general damages is postponed *sine die* and referred to the Health Professions Council of South Africa for a determination.

4. The payment referred to in paragraph 2 of this order shall be made into the trust account, as contemplated in Section 86(5) of the Legal Practice Act 28 of 2014, of the plaintiff's attorneys for the sole benefit of the minor, KM, pending the establishment of the TRUST contemplated in paragraph 7 hereunder. The trust banking details of plaintiff's attorneys are as follows:

NAME	:	A V W M W
BANK	:	F N B
BRANCH	:	S
TYPE OF ACCOUNT	:	T
ACCOUNT NUMBER	:	6
BRANCH CODE	:	2
E-MAIL	:	a
REFERENCE	:	Z

5. The defendant shall furnish the plaintiff with an undertaking as envisaged in Section 17(4)(a) of the Act in respect of the costs of the future accommodation of the minor, KM, in a hospital or nursing home or treatment of or rendering of a service to her or supplying of goods to her arising out of the injuries sustained by her in the motor vehicle collision which occurred on the **03rd of March 2018**, after

such costs have been incurred and upon proof thereof, such undertaking to include:

5.1 the reasonable (taxed or agreed) costs incurred by the establishment of a TRUST as contemplated in paragraph 7 below and the appointment of a trustee(s);

5.2 the reasonable costs incurred in the protection, administration and/or management of the award and the statutory undertaking furnished in terms of Section 17(4)(a) of the Act, which costs shall be limited to the prescribed tariff applicable to curators as reflected in Government Notice R1602 of 1 July 1991, specifically paragraphs 3(a) and 3(b) of the Schedule thereto; and

5.3 the reasonable costs incurred in providing security to the satisfaction of the Master of the High Court of South Africa for the administration of the award and the annual retention of such security to meet the requirements of the Master in terms of section 6(2)(a) of the Trust Property Control Act 57 of 1988 (as amended).

6. The defendant shall pay the plaintiff's costs of the suit, as taxed or agreed, on a scale as between party and party, such costs to include:

6.1 The costs occasioned by the employment of the following expert witnesses (medico-legal reports and addendums thereto, preparation, reservation and appearance fees, if any):

6.1.1 Dr Kruger – Neurosurgeon;
6.1.2 Dr Roussouw – Ear, Nose and Throat Specialist;
6.1.3 Dr Berkowitz – Plastic and Reconstructive Surgeon;
6.1.4 Me Mattheus – Educational Psychologist;
6.1.5 Mr Jooste – Industrial Psychologist;
6.1.6 Dr Longano – Psychiatrist;
6.1.7 Me Morland – Occupational Therapist;
6.1.8 Dr Watts – Clinical Psychologist;
6.1.9 Mr Immermann – Actuary;
6.1.10 Dr Van Den Bout – Orthopaedic Surgeon

6.2 Costs on Scale C (the plaintiff employed the services of Senior-Counsel).

6.3 The costs of the application for the appointment of the *Curator ad Litem*, as well as the costs and fees of the *Curator ad Litem*, Advocate Herman Kriel;

6.4 In the event of these costs not being agreed, then:

6.4.1 the plaintiff's bill of costs will be served on the defendants; and

6.4.2 once the plaintiff's bill of costs has been taxed same will be served on the defendant who will be allowed 180 (one hundred and eighty) days to make payment after such service.

7. The plaintiff's attorney is ordered and directed to cause a Trust to be established and is authorized to sign all documents necessary for the formation of the Trust for the benefit of the minor, KM, such Trust to be held by Uberrima Phoenix (Pty) Ltd, in accordance with the written consent dated 26th July 2024, annexed hereto as Annexure "**A**".

8. The Trust instrument, attached hereto as Annexure "**B**", shall *inter alia* make provision for the following:

8.1 that the minor, KM be the sole beneficiary of the trust;

8.2 that the Trustee(s) are appointed with those powers and duties as set out in Annexure "**B**";

8.3 that the Trustee(s) of the Trust to be formed shall take all the requisite steps to secure an appropriate bond of security to the satisfaction of the Master of the High Court for the due fulfilment of his/her obligations and to ensure that the bond of security is submitted to the Master of the High Court at the appropriate time as well as to all other interested parties, if so required by the Master of the High Court;

8.4 the duty of the Trustee(s) to disclose any personal interest in any transaction involving the Trust property;

8.5 the termination of the Trust shall be subject to the leave of the High Court upon application, the costs of any such application which shall be costs in the main action herein, and for which purposes notice of such application is to be given to the Defendant;

8.6 the Trustee(s) shall be entitled, if he/she deems it necessary, to utilize the income of the Trust for the maintenance of KM;

8.7 that the Trustee(s) provide security to the satisfaction of the Master of the High Court;

8.8 that ownership of the Trust property shall vest in the Trustee(s) of the Trust in their capacities as Trustee(s);

8.9 procedures to resolve any potential disputes, subject to the review of any decision made in accordance therewith by this Court;

8.10 that any amendment of the Trust instrument be subject to approval and leave of the Master of the High Court and/or this Court;

8.11 in the event of the death of KM, the Trust shall terminate, and the Trust assets shall pass to the estate of KM;

8.12 that the Trust property and the administration thereof be subject to an annual audit;

8.13 the provisions of the Trust Deed shall be in accordance with the provisions of the Trust Property Control Act, Act 57 of 1988, subject to the approval of the Master of the High Court.

9. The plaintiff's attorneys of record are authorized to deduct and/or pay from the capital payment received from the defendant, pending the formation of the Trust, the following:

9.1 the bill of costs of A.F. Van Wyk Mabitsela Williams Incorporated, including disbursements, subject to the review and/or taxation thereof by the Trustees to be appointed and/or the Taxing Master of the High Court.

10. The plaintiff and the plaintiff's attorneys concluded a contingency fee agreement.

[redacted]

ALLEN AJ

ACTING JUDGE OF THE HIGH COURT

This judgment was prepared by Acting Judge Allen. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 27 August 2024.

HEARD ON:	29 July 2024
DECIDED ON:	27 August 2024
For the Plaintiff:	Adv GJ Strydom SC Instructed by A F Van Wyk Mabitsela Williams Inc
For the Defendant:	Mr Madasela Instructed by The State Attorney Johannesburg

26 July 2024

CONSENT TO ACCEPT APPOINTMENT AS TRUSTEE

Court:	In the High Court of South Africa, Gauteng Local Division, Johannesburg
Patient:	K[redacted] M[redacted]
Identity Number:	0[redacted]
Case Number:	20/12291
Attorney:	AF Van Wyk Mabitsela Williams Inc

I, Werner Botha, with identity number 7[redacted] confirm that I am willing to accept an appointment as Trustee to Ms. K[redacted] M[redacted].

The details pertaining to my experience and academic record can be summarized as follows:

A. ACADEMIC QUALIFICATIONS

Matric

Diploma in Estate & Trust Administration

First Pioneers Program – First Level Management Development

SARS – Estate Duty Course

Harvard Leadership Program

Fiduciary Practitioner of South Africa (FPSA)

B. EXPERIENCE

I have extensive experience (in excess of 29 years) in the creation and management of Trusts and *Curator Bonis* cases.

My employment history is as follows:

1995 – 1998 : First National Trust
1998 – 2001 : ABSA Trust
2002 – 2005 : First National Trust

2005 – 2013 · Manager - First National Trust
2013 – Present: Uberrima Trust – General Manager / Director

I am frequently appointed as a *Curator Bonis and Trustee, either as an individual, or in my capacity as representative of Uberrima Phoenix Trust Management for various Special Trusts.*

C. *REFERENCES AT MASTER OF THE HIGH COURT*

I am well acquainted with the Master of the High Court in both Johannesburg and Pretoria, and deal with them on a regular basis:

Master Pretoria: Contact Person [Ms M Barnard, Tel [redacted]
Master Johannesburg: Contact Person [Ms Beatice van Wyk, Tel [redacted]
Master Bloemfontein: Contact Person [Mr Frederik Jansen, Tel [redacted]

D. CONSENT TO ACT

I confirm that, if appointed as trustee to Ms. K[redacted] M[redacted], I will:

a) Receive and manage the assets entrusted to me for the sole benefit Ms. K[redacted] M[redacted];

b) Manage and invest the assets according to the guidelline stipulated in the Court Order and as provided by the master of the High Court for sole benefit of Ms. K[redacted] M[redacted] and

c) Furnish the Master of the High Court with Security for the Funds entrusted to me for management on behalf of Ms. K[redacted] M[redacted].

Trustee to be appointed as the Professional Independent Trustee:

Uberrima Phoenix Trust Management registration number 2005/022275/07 represented by Werner Botha Id No: 760114 5007 08 2

I further confirm that I have never been removed as a Trustee or *Curator Bonis* and that I am not insolvent.

I trust that you will find the above in order.

Yours sincerely

[redacted]

Werner Botha

Cell: 0[redacted]

DEED OF TRUST

THE [redacted] M [redacted] TRUST

AGREEMENT WITH REGARDS TO A DONATION IN TRUST MADE BY AND BETWEEN:

1. **ANDRÉ FRANCOIS VAN WYK**
   IDENTITY NUMBER: 6[redacted]

   (Hereinafter referred to as "the Founder")

   and

2. **UBERRIMA PHOENIX (PTY) LTD**
   REGISTRATION NUMBER: 2005/022275/07
   (Represented by **WERNER BOTHA)**
   (ID Number: 7[redacted]

   (Hereinafter referred to as "the Trustee")

DECLARATION OF INTENTION AND PURPOSE

K[redacted] M[redacted] (ID [redacted] was involved in a motor vehicle accident as a result of which she sustained various severe injuries of a permanent nature. The injuries sustained and their *sequelae* have rendered her unable to exercise a normal domestic, recreational and occupational lifestyle in the future.

Legal action was instituted by AF Van Wyk Attorneys on behalf of K[redacted] M[redacted] against the Road Accident Fund to recover damages suffered as a result of the injuries sustained in the aforementioned accident and their *sequelae, inter alia* the loss of income.

In terms of the aforementioned court order, the Court ordered that the compensation payable by the Road Accident Fund shall be administered in a trust to be established for the sole and exclusive benefit and maintenance of K[redacted] M[redacted] in accordance with the terms and conditions circumscribed by the order; and further ordered that the attorneys of records shall cause a trust to be established in accordance with the provisions of the Trust Property Control Act 57 of 1988 for this purpose.

The Founder declares his intention to establish a Trust in favour of K[redacted] M[redacted] and subject to the terms and conditions circumscribed by the Court Order.
It is hereby confirmed that the creation of this trust is not a donation but a payment for compensation for injuries sustained in terms of the Road Accident Fund Act No. 56 of 1996.

The purpose of the Trust is that the Trustees, in that capacity, take the Trust Property in hand, be it immovable or movable, and keep it in terms of this Trust Deed, and apply themselves to maintain the Trust for the benefit of K[redacted] M[redacted].

In pursuance of the Founder's intention to found and establish a Trust, the Trustees have agreed to accept the mandate conferred upon them.

The parties to this Trust Deed desire, for the purpose of certainty and for the better administration of the Trust hereby created, to record in writing the present terms of the Trust.

The Trust to be so established shall be a "special trust" as envisaged by the definition of "special trust" as contained in Section 1 of the Income Tax Act, No. 58 of 1962 (as amended), being a trust created solely for the benefit of a person who suffers from any serious physical disability, where such disability incapacitates such person from earning sufficient income for the maintenance of such person or from managing his own affairs, which is indeed the case with K[redacted] M[redacted]

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1. DEFINITIONS.

In this Trust Deed words importing the singular shall include the plural and *vice versa*.

Words importing the masculine gender shall include females and *vice versa*.

The following expressions used in this Trust Deed shall have the meanings assigned to them hereunder, namely:

a) **"Trustees"**	Shall mean the original Trustees, inclusive of the Independent Trustee, and / or their successors or any other person appointed as Trustee in terms of this Trust Deed.
b) **"Beneficiary"**	The income and capital Beneficiary of the Trust is K[redacted] M[redacted] (ID [redacted]
c) **"Trust Property"**	Refers to the Trust property or capital vested in the Trustees, and any additions thereto, irrespective of the source that such additions are derived from, including undistributed and thus capitalized Trust Income.
d) **"Trust Capital"**	Shall mean the Trust Property excluding any portion thereof, which is Trust Income not capitalized.
e) **"Trust Income"**	Shall mean the income earned by the Trust Property and shall include but not be limited to rent, interest, dividends and capital gains, net of all expenses and outgoings which the trustees may be obliged or may choose to incur for the account of the Trust.
f) **"Trust Deed"**	Shall mean this Deed including any annexures and amendments hereto.

g) **"Maintenance"** Shall mean travels, holidays, medical and dental upkeep, welfare and benefit, education (including higher education), insurance, the acquisition or provision of residential facilities or a residence and motor vehicle, and the setting-up in business or profession or the fitting for a career.

h) **"Vesting Date"** Means the date on which the Trust Property shall vest in the Beneficiary in whose favour this Trust has been created.

i) **"The Trust"** Shall be the Trust established under this Trust Deed.

j) **"Defendant"** Road Accident Fund

k) **"Patient"** K[redacted]M[redacted]

2. NAME OF THE TRUST.

The name of the Trust is the: K[redacted] M[redacted] **TRUST.**

3. APPOINTMENT OF TRUSTEES.

3.1 At any given time, there shall be no less than 1 (one) trustee.

3.2 The first trustee of this trust and acting as a Professional Independent Trustee is Uberrima Phoenix (Pty) Ltd represented by Werner Botha, Identity Number 7[redacted]

3.3 On the death, resignation, disqualification or removal of the said Werner Botha, he shall be succeeded by a duly nominated director or official of Uberrima Phoenix (Pty) Ltd.

3.4 On the resignation, disqualification or removal of Uberrima Phoenix (PTY) Ltd as trustee, the Founder, shall be entitled to nominate a succeeding trustee or

failing such nomination by the founder, the beneficiary, assisted by their guardian, if necessary, shall be empowered to appoint a successor to act in the place of the trustee in question.

3.5 Should a Trustee cease, for whatever reason, to hold office as such then the vacancy thereby caused shall be filled by a successor Trustee nominated by the Trustees at any time during the currency of the Trust.

3.6 The Trustee in office shall have the power to assume an additional Trustee or Trustees as they may deem necessary or desirable;

3.7 The Professional Independent Trustee shall at all times be a company institution or individual which is a member of The Fiduciary Institute of South Africa and who holds the FPSA designation.

3.8 A Trustee shall be entitled to resign or terminate his services as such at any time on written notice to the Beneficiary and co-Trustees (if any). Such resignation shall take effect only upon the appointment of a succeeding Trustee and such appointment is authorized by the Master in terms of the Act. Until such time, the Trustee in office is authorized to execute all powers and duties imposed on him in this Trust Deed for the benefit of the Beneficiary and for the preservation of the trust property.

4. SECURITY.

The original or subsequent Trustee appointed or assumed under the above provisions shall be required to furnish security to the Master of the High Court of South Africa or any other official in terms of the Trust Property Control Act 57 of 1988 or any other legislation which may now be or hereafter become of force and effect.

5. POWERS, DUTIES AND AUTHORITY OF THE TRUSTEES.

The following shall refer to the duties and authority of the Trustees:

5.1 The Trust Property vests in the Trustees in their official capacity;

5.2 The powers of the Trustees in terms of this Deed vest in the Trustees in their official capacity in order to allow them to utilize the Trust Capital and/or the Trust Income to the benefit of K[redacted] M[redacted] and not for their own personal benefit. The vastness of the powers that vest in the Trustees must be interpreted to the essence that a Trust exists for the benefit of K[redacted] M[redacted];

5.3 The Trustees are entitled to take any action that they may deem necessary and/or beneficial to sustain and/or grow the Trust Capital in the interest of K[redacted] M[redacted] and may, for the purpose, take any action on behalf of the Trust that a natural person that is *sui juris* has with regard to his own matters and personal business, *excluding any power envisaged* in clause 5.17 except if such a guarantee is given to the benefit of K[redacted] M[redacted];

5.4 To open and operate accounts in banking and financial institutions of all descriptions;

5.5 Trustees have the authority to acquire Trust Property in their absolute and full discretion and to use it in any manner, and also to keep the Trust Property or any part thereof in its existing form, or to bond, or to convert it into cash, or to exchange it or reinvest the assets;

5.6 The Trustees have the authority to increase the Trust Property by way of acceptance of testamentary dispositions, *inter vivos* and/or any other manner of donation;

5.7 The Trustees have the authority to obtain movable, immovable, material or immaterial property of any sort, to sell it, to exchange it, to acquire it or to dispose of it in any manner;

5.8 The Trustees have the authority to obtain, purchase, sell, negotiate, cede rights or take up shares, stocks, debentures, securities, and other negotiable instruments of whatever kind;

5.9 The Trustees have the authority to lend out money at such an interest rate (if any) and against such security (if any) and generally under such terms and conditions as they may, within their discretion, deem fit;

5.10 The Trustees have the authority to mortgage, pawn, hypothecate or pledge as security any Trust asset;

5.11 In so far as immovable property forms part of the Trust Property, the Trustees have the authority to exchange, sell, let, to grant rights thereon, to obtain rights, to improve or maintain it, including the rights to demolish any buildings or structures on such property, or to act in any other way they deem fit;

5.12 The Trustees have the authority to collect rent, and if necessary, to cancel any lease, to take legal action to evict anyone from the property or take any other steps with regards to the contract of lease and the cancellation thereof;

5.13 The Trustees have the authority to exercise any voting rights pertaining to any shares, debentures and stocks in any manner that they deem fit and, if necessary, to have any of those shares, debentures and stocks that form part of the Trust Property registered in their own names or the names of nominees, subject thereto that measures are taken to ensure that this discretion does not affect the rights and interest of the Trust;

5.14 The Trustees have the authority to enter into farming activities, or into commerce or to be involved in any other business in the name of the Trust, or to enter into a partnership on their own or in association with others or through a Company, where a portion of, or all the shares are held by or on behalf of the Trust;

5.15 The Trustees have the authority to incorporate any Company anywhere in the world, at the cost of the Trust, with limited or unlimited liability, with the aim of *inter alia* obtaining the whole or a part of the Trust Property for such consideration which may consist of shares, debentures or any other sureties of that Company, be it paid up in full or only partially, or for such consideration as they, in their discretion, deem fit;

5.16 The Trustees have the authority to, when disposing of any of the Trust Property, give credit for the whole or part of the consideration or purchase price, with or without security for payment, or payment of rent and, in general, on such terms as they may deem fit;

5.17 The Trustees have the authority to give guarantees or any other form of surety, whether as sole sponsor, principal, or co-principal debtor with other persons, for the fulfillment of the obligations of the Trust or any other person, on such conditions as they may deem fit and, for this purpose, to mortgage, pawn, hypothecate or to cede as surety, any part, or all of the Trust Property;

5.18 The Trustees have the authority to demand, recover or receive any money, goods or business interest that is owed to the Trust and to issue a receipt, release, acquittal or any other effective remittance;

5.19 The Trustees have the authority to defend any accounts, debts, claims, disputes, legal processes and demands that may exist between the Trust and any other person or arise between them and to defend, oppose, settle, amend or to refer same to arbitration;

5.20 The Trustees have the authority to attend any meetings of the Trust's creditors or of any persons or bodies who owe the Trust any money, goods or interest, whether it be insolvency, liquidation, judicial management or any other proceedings and there, to vote in all of the matters that serve before that meeting and there to exercise the rights of the Trust;

5.21 Subject to the definitions of the terms 'Trust Capital' and 'Trust Income', the Trustees have the authority to, in their discretion, determine which revenue and bequests form part of the Trust Capital and which will be regarded as Trust Income and to allocate and deal with such revenue and bequests in a manner appropriate to their discretion so exercised;

5.22 The Trustees have the authority to, if it is essentially required, set up administrative offices for the control of administration and use of the Trust Property and to appoint the necessary personnel;

5.23 The Trustees have the authority to obtain insurance policies of any kind, to maintain, cede or alienate it for such consideration (if any) and to cancel, redeem or make it paid up or to administer it as they may see fit;

5.24 The Trustees have the authority to pay all the expenses pertaining to the administration of the Trust from either the Trust Income and/or the Trust Capital, if necessary;

5.25 The Trustees have the authority to make use of the services of professional or other advisers and/or agents for Trust business and to pay for such services from the Trust Property;

5.26 The Trustees have the authority to, from time to time delegate powers to any individual Trustee, group of Trustees or to a committee of them;

5.27 The Trustees have the authority to execute any actions, sign all documents and Deeds, or to execute them as required and to take further actions to ensure that they are in a position to execute their powers as mentioned here;

5.28 The Trustees are entitled and authorized to execute any further actions as may be required or convenient for them to fulfil the purpose of the Trust;

5.29 At any sale, public auction or public tender of Trust Property the Trustees may give credit with regard to the purchase price for the total amount or a section thereof and with or without interest;

5.30 Money that forms part of the Trust Property at an interest or without interest must be invested in such securities and in ways and conditions as the Trustees specify;

5.31 To keep any investment that forms part of the Trust Property in their discretion and to keep it in that form or to alter it or to reinvest it; and

5.32 To permit K[redacted] M[redacted] to occupy and use any immovable property free of charge or to charge a market related rental or to use any movable property which forms part of the Trust Property upon such terms and conditions as to payment of rent, rates, taxes and other expenses and insurance premiums, obligations to repair, replace and to re-decorate for such period and upon such terms and conditions as the Trustees may in their discretion deem fit; provided that no Trustee shall be liable for any loss or damage which may occur to any property (movable or immovable) by reason of such occupation and/or use.

5.33 The Trustees shall administer the Undertaking provided by the Road Accident Fund in terms of the Court Order for the benefit of the Beneficiary. For this purpose, the Trustees:

5.33.1 shall be entitled to employ natural or professional persons to attend to the future health and medical care of the beneficiary which shall *inter alia* include, but not be limited to, his future accommodation in a hospital or nursing home, or treatment or rendering of a service to him or supplying of goods to him or related expenses as detailed in the medico-legal reports arising out of injuries sustained by the Beneficiary in the motor vehicle accident referred to in the Preamble to this Trust Deed; and

5.33.2 to pay such person his fair, reasonable and necessary fees for his services rendered as well as other disbursements which he may incur in rendering such services; and

5.33.3 to recover from the Road Accident Fund 100% (One Hundred *per centum*) of such costs after the costs have been incurred and upon proof thereof, including the remuneration of and costs incurred by the Trustee in administering the Undertaking.

5.34 The Trustees shall recover from the Road Accident Fund, all the fees, costs and disbursements in terms of clause 9 of the Trust Deed and shall enforce against the Road Accident Fund all the rights of the Beneficiary and/or the rights of this Trust and without limiting the generality thereof, to enforce these rights contained in the said court order by the institution of legal proceedings or in any such manner as the Trustees deem appropriate and to recover all costs occasioned thereby from the Road Accident Fund.

5.35 In general, the Trustees are charged with the duty to meet the needs of the Beneficiary arising from his disability to the full extent allowed by the trust property.

6. TRUSTEES VACATING OFFICE.

A Trustee shall vacate his office if:

6.1 He/She resigns by giving written notice to the Master of the High Court, which he/she shall at any time be entitled to do; or

6.2 Becomes of unsound mind or incapable of managing his affairs, or for any other reason becomes incapable of acting as Trustee or unfit so to act;

6.3 Becomes insolvent or assigns his/her estate for the benefit or compounds with his/her creditors;

6.4 He/She is disqualified to act as a director of a Company in accordance with the provisions of the Companies Act; or

6.5 He/She has been found guilty of any crime involving dishonesty as an element.

7. INDEMNIFICATION OF TRUSTEES.

7.1 A Trustee is not personally liable for any loss that the Trust may incur, whatever the reason therefore, except if such loss is the result of a purposefully negligent, or fraudulent, or grossly negligent or illegal action of the Trustee.

7.2 A Trustee is not responsible for the purposefully negligent, or fraudulent, or grossly negligent or illegal action of a co-Trustee, except if he/she was privy thereto and/or if he/she had prior knowledge thereof and did not take action to prevent same.

7.3 The Trustees will be relieved of any responsibility or obligation to the Beneficiary with regard to any payments or distributions made from the income or capital from the moment that such payment or distribution is affected.

8. REMUNERATION, REIMBURSMENT OF THE TRUSTEES.

8.1 The remuneration that Trustees may claim will be such reasonable remuneration on which the Trustees may from time to time decide, but subject to a maximum that is reasonably paid to officials in the larger banks and Trust companies.

9. UNDERTAKING – SECTION 17 (4)(a) OF THE ROAD ACCIDENT FUND ACT 56 OF 1996

9. The Defendant shall furnish the Patient with an Undertaking, as contemplated in Section 17 (4)(a) of the Road Accident Fund Act 56 of 1996, to compensate the Patient, K[redacted] M[redacted], born 27 September 2009, for 100 % (One Hundred per centum) of the costs of his future accommodation in a hospital or nursing home, or for the treatment of, or rendering of a service or the supplying of goods or related expenses as inter alia set out in the medico legal reports delivered under the case number 20/12291, in respect of injuries sustained by the patient in a motor vehicle collision which occurred on 3 March 2018, after such costs have been incurred and on proof thereof, such undertaking to further include:

9.1 the reasonable costs incurred in the creation and establishment of the Trust and the appointment of trustee(s) as contemplated;

9.2 The costs of the trustee(s) in respect of the future administration of the Trust and;

9.3 The costs incurred in providing security to the satisfaction of the Master of the High Court of South Africa for the administration of the award and the annual retention of such security to meet the requirements of the Master.

10. ADMINISTRATIVE FUNCTIONS.

10.1 Subject thereto that the Trustees will throughout adhere to the purpose of the Trust, they are entitled to manage and administrate the business of the Trust and to follow such policies and entrench such procedures and take administrative steps that they from time to time deem necessary.

10.2 Any Trustee is entitled to call a meeting with at least 14 (fourteen) days prior written notice.

10.3 While only 2 (two) Trustees hold office, both of them shall constitute a quorum at meetings of the Trustees. A majority of the Trustees shall constitute a quorum while more than 2 (two) Trustees hold office.

10.4 Questions arising at any meeting shall be decided by unanimous vote if only 2 Trustees hold office or by a majority of votes if more than 2 Trustees hold office.

10.5 A Resolution in writing signed by all the Trustees shall be as valid and effectual as if it had been passed at a meeting of the Trustees duly called and constituted.

10.6 The Trustees are authorized to empower one or more of their number to sign all official documentation that is required for the administration of the Trust and to effect any transaction regarding the business of the Trust on their behalf. Signature by such a nominee of any Trust documentation will enact the decisions of the Trustees and will have the same legal standing as if the document was signed by all the Trustees.

11. DEADLOCKS AND DISPUTES.

11.1 Should a deadlock arise between the Trustees or any dispute arise among them as to the interpretation of this Trust Deed or any provisions hereof, it shall be submitted for resolution through mediation of which:

11.1.1 A mediator will be chosen within 10 (ten) calendar days of the dispute being declared, and will be selected by mutual agreement, failing which the mediator will be appointed by the then chairperson of the Arbitration Foundation of Southern Africa;

11.1.2 The mediation proceedings will be held on a date and at a venue determined by the mediator and will be confidential. No party to the dispute shall be entitled to subpoena the mediator to give evidence in any subsequent court or arbitration proceedings concerning the dispute.

11.2 In the event that the mediation does not result in agreement, or in any other circumstances where the mediation is not effective, such dispute or issue shall be referred for arbitration in accordance with the rules of the Arbitration Foundation of Southern Africa, by an arbitrator appointed by the foundation in terms of such foundation's rules, provided that nothing herein contained

shall prohibit a party from applying to any division of the High Court of South Africa with jurisdiction for interdict or other urgent relief pending the outcome of such arbitration proceedings.

11.3 The Trustees shall be entitled to appear personally and without any legal representatives before the arbitrator, and subject to his directions, the arbitration shall be conducted as informally as possible.

11.4 The decision of the arbitrator shall be final and binding on the Trustees and it is the Founder's desire that under no circumstances whatsoever shall any of the Trustees or any Beneficiary make such decision the subject of any legal proceedings.

12. ACCOUNTING.

12.1 The Trustee shall ensure that the Annual Financial Statements comprising a Balance Sheet reflecting the assets and liabilities of the Trust and an Income Statement reflecting the income, expenditure and allocation of income, if any, to the Beneficiaries be prepared in respect of each financial year of the Trust.

12.2 The Trust shall be subject to an annual audit. The Trustee shall in his absolute discretion appoint the auditor.

13. CONTRACTING WITH THE TRUST.

13.1 No Trustee shall be disqualified by his office from contracting with the Trust, nor shall any contract entered into by the Trust in which any Trustee may be interested be invalidated or voided by reason of such interest, nor shall any Trustee so contracting or being so interested or acquiring any benefit under any contract entered into with the Trust, be liable to account to the Trust for any profits or benefits realized by or under such contract by reason only of his/her holding that office, provided that he/she shall have disclosed to the remaining Trustees the nature of his/her interest before the making of the contract.

13.2 Any Trustee may exercise all the powers and discretions given to him/her in terms of this Trust Deed notwithstanding the effect that a direct or other personal interest in the matter or the consequence of the exercising of such a power or discretion may have. Any Trustee may, but is not obliged to, if he/she prefers it, withhold his involvement as Trustee in the matter where he/she has such personal interest to that of a mere formal party and he may allow his co-Trustee(s) to act alone in such matter. Each Trustee that has such an interest in any matter concerning the Trust will be obligated to give prior written notice thereof to the other Trustees.

14. APPLICATION OF THE TRUST INCOME.

Until the termination of the Trust, the Trustees shall be empowered to:-

14.1 Apply the Trust Income from time to time in payment to or on behalf of the Beneficiary.

14.2 Unless the Trustees expressly decide otherwise, from time to time, there shall be no vesting of any Trust Income in any Beneficiary.

14.3 The Trustees shall have the power in their sole discretion to distribute all or part of the Trust Income to the Beneficiary in whatsoever ratio they deem fit and/or to apply all or part of such income for the maintenance, general welfare and benefit of the Beneficiary and/or to re-invest all or part of such income and/or to add all or part of such income to the Trust Capital.

14.4 Notwithstanding the aforegoing provisions, the Trustees shall have the right after determining that any Trust Income shall vest in the Beneficiary, to credit that income to the account of the Beneficiary, or to re-invest the income on behalf of the Beneficiary, or to accumulate or capitalize or otherwise deal with the income in the name of or on behalf of the Beneficiary, without actual payment or delivery to the Beneficiary.

14.5 In respect of any Trust Income derived by the Trustees during any financial year and vested by the Trustees in the Beneficiary during that same period, the Trust shall be deemed to have acted merely as a conduit insofar as the receipt or accrual of such income is concerned.

14.6 The Trustees are specially authorized to award different classes of Trust Income to such Beneficiary as they in their entire discretion consider appropriate.

14.7 Re-invest and accumulate to the Trust Capital any of the Trust Income not so applied.

15. APPLICATION OF THE TRUST CAPITAL DURING THE SUBSISTANCE OF THE TRUST.

During the subsistence of the Trust

15.1 Unless the Trustees expressly decide otherwise, from time to time, there shall be no vesting of any Trust Capital in the Beneficiary.

15.2 The Trustees shall have the power in their sole discretion to distribute all or part of the Trust Capital to the Beneficiary in whatsoever ratio they deem fit and/or to apply all or part of such capital for the maintenance, general welfare and benefit of the Beneficiary.

15.3 Notwithstanding the aforegoing provisions, the Trustees shall have the right after determining that the Trust Capital shall vest in the Beneficiary, to credit that capital to the account of the Beneficiary, or to re-invest the capital on behalf of the Beneficiary, or to accumulate or capitalize or otherwise deal with the capital in the name of or on behalf of the Beneficiary, without actual payment or delivery to the Beneficiary.

16. RIGHT TO PAYMENT OF AMOUNTS VESTED

The right of the Beneficiary to claim or receive payment of any amount (income or capital, or both) which has been vested in them in terms of this Trust shall vest in such Beneficiary only on the date of such payment.

17. TERMINATION OF THE TRUST

17.1 Upon the death of K[redacted] M[redacted], whereupon the trustees shall pay the trust capital together with any net income, to the executor of his estate, or

17.2 When the trust property has been depleted, which ever event shall first occur.

18. BENEFITS DUE TO A MINOR.

If any Beneficiary is a minor when any benefit is due to be paid or delivered to such Beneficiary, the Trustees may in their discretion pay or deliver the benefit to the Beneficiary's guardians or either parents of the Beneficiary or any person having legal or factual custody of the Beneficiary or to anyone else on the Beneficiary's behalf or where the Beneficiary has been legally or factually emancipated, to the Beneficiary himself or herself on such terms as the Trustees may determine. The receipt of the said recipient, who shall not be required to furnish security in this regard, shall be sufficient discharge to the Trustees.

19. PLEDGE, ATTACHMENT OR INSOLVENCY.

19.1 No hopes of the Beneficiary under this Trust and no part thereof shall be attachable by any creditor of any Beneficiary or vest in his Trustee in insolvency. If any Beneficiary shall have commenced any litigation against the Trustees in their capacities as such or, prior to any payment being made to any Beneficiary, he shall have committed or suffered any act, default or process of law whereby his hopes or any part thereof would but for the provisions of this clause become vested in or payable to any other party or if any Beneficiary shall be declared insolvent or assign his estate in favour of his creditors or if an attachment is made or execution is levied of or against the hopes of any Beneficiary or any part thereof, then and in any or all of such cases the hopes of the Beneficiary concerned under this Trust shall immediately and entirely thenceforth cease and those hopes thereupon and subject to the provisions below devolve upon and vest in such other parties as would be entitled thereto if the Beneficiary concerned had died or been terminated (as the case may be) at the time of such cessation and determination, providing that:

19.1.1 No such Beneficiary shall be obliged to repay to the Trust any amounts previously paid or advanced to him/her by the Trust;

19.1.2 The Trustees shall be entitled, in their discretion, to continue to hold in Trust the share of the Trust capital to which the Beneficiary would, have been or become entitled to, without detracting from the other powers conferred on them and subject to such conditions as they, in their discretion, deem fit. Any amounts that have vested in and accrued to a Beneficiary in terms of the provisions of this Trust Deed and accretions thereto and income thereon are excluded from the operation of this clause

19.2 The Trustees shall be entitled to refuse to recognize and to treat as null and void any cession, assignment or pledge of the hopes of any Beneficiary hereunder. The Trustees may refuse to make any payment other than directly to or on behalf of or for the benefit of the Beneficiary entitled thereto under this Deed.

20. TAXATION.

Should any person become liable for any form of tax on or in respect of any of the Trust Capital or Trust income that has vested in such Beneficiary, the Trustees may refund to such person, out of the Trust Property, the amount of the tax for which he has become so liable.

21. VARIATION OF TRUST DEED.

21.1 The provisions of the Trust Deed may be varied in writing by the Trustee in any manner that it may see fit in its discretion including the amendment of any administrative clauses;

21.2 The Trust is irrevocably constituted and the Trustee may not add any further Beneficiaries or remove the named Beneficiary of the Trust;

21.3 Notwithstanding the aforementioned, should the Trustee require and/or decide or an amendment, such amendment may only be made with leave of the High Court of South Africa.

22. PROTECTION FOR MARRIED BENEFICIARIES.

Any benefit which at any time vests in any Beneficiary shall be excluded from any arrangement under the accrual system of marriage, community of property and/or of profit and loss which may at any time subsist between the Beneficiary and any spouse.

23. PROPER LAW.

This Trust Deed shall be deemed to have been constituted in the Republic of South Africa and shall be administered according to the laws of the Republic of South Africa.

THUS DONE AND SIGNED AT _____ on this _____ day of _____ 2024, in the presence of the undersigned witnesses:

AS WITNESSES:

1. .....

.....

ANDRÉ FRANCOIS VAN WYK in his capacity as Founder

2. .....

AS WITNESSES :

1. .....

.....

Uberrima Phoenix (Pty) Ltd

As represented by **WERNER BOTHA** in his capacity as Trustee

2. .....