



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

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

SIGNATURE

DATE: 21 November 2025

Case No. 11323/2022

In the matter between:

**THE BIOLOGICALS AND VACCINES INSTITUTE OF
SOUTHERN AFRICA (PTY) LTD**

Plaintiff

and

GUARDRISK INSURANCE COMPANY LIMITED

Defendant

JUDGMENT

WILSON J:

- 1 The plaintiff, "Biovac", produces vaccines at a complex of buildings fitted-out for that purpose near Cape Town. On 18 July 2021, one of these buildings, referred to throughout the trial as "building B", caught fire and sustained extensive damage. Before the fire, in early 2021, Biovac had taken out an all-risks insurance policy with the defendant, Guardrisk. The value of the policy

was half the insurable loss caused to the building. Another insurer, known as Allianz, covered the other half of the loss.

2 In due course Biovac claimed from both insurers for its losses resulting from the fire. Allianz settled the claim lodged with it, but Guardrisk repudiated Biovac's claim. Biovac sued on the Guardrisk policy. The trial was allocated to me under the commercial court rules. On 27 June 2023, I granted Biovac condonation for the filing of an unsigned set of particulars of claim (see *Biologicals and Vaccines Institute of Southern Africa (Pty) Ltd v Guardrisk Insurance Company Limited* [2023] ZAGPJHC 729 (27 June 2023)), and an exchange of pleadings ensued.

3 On the pleadings as they originally stood, Guardrisk sought to avoid liability under the policy on at least four bases. It also took issue with the quantum of the loss Biovac claims. The trial was set down to proceed before me between 11 and 29 August 2025 on all the pleaded issues. Shortly before the trial was due to start, however, Guardrisk amended its plea to introduce two additional defences, to which Biovac then replicated. This threw the commencement of the trial into doubt, because the evidence necessary to ventilate the additional issues would likely exceed the time allotted to the trial. In addition, Guardrisk wished to file a rejoinder, which Biovac may then have sought to rebut. If the three weeks allocated during August 2025 could not be used, the whole trial would have to have been postponed until the third term of 2026.

4 Faced with such a delay, the parties asked that I afford them the first of the three weeks allocated to hear the trial to negotiate a separation of issues which would allow me to hear and determine some portion of the pleaded issues

during the second two of the three allocated weeks. By the beginning of the second week of the trial, each party had proposed a different way of carving up the pleaded issues. Ultimately, only Biovac persisted with its proposed separation.

5 That proposal would see me determine three controversies. The first was whether Biovac had made misrepresentations material to Guardrisk's decision to extend cover (the issue raised at paragraphs 5.2.1 and 11.2.1 to 11.2.8 of Guardrisk's plea); the second was whether Biovac had culpably failed to take reasonable steps to comply with applicable legislative or regulatory requirements with which Guardrisk was entitled to expect Biovac to comply (the issues at 5.2.2 and 11.3 to 11.3.1.1 of the plea); and the third was whether Biovac's claim was time-barred (the issue at paragraphs 5.2.4 to 5.2.4.2 and 11.3.3 of the plea). Pleadings in relation to these issues had closed. They were, in other words, not the subject of the amendments to the plea and the replication made shortly before the trial.

6 Despite not being opposed in principle to a separation of issues, Guardrisk objected to the separation Biovac proposed. I heard argument on Biovac's separation application on Tuesday 19 August 2025. I granted the separation Biovac asked for, and the trial on the separated issues started on the same day. Evidence on those issues was concluded on Wednesday 27 August 2025. The matter was then postponed for the exchange of written submissions before the presentation of oral argument on 28 October 2025.

7 When I granted the separation of issues, I indicated that I would give my reasons for doing so in this judgment. In what follows, therefore, I first give my

reasons for granting the separation Biovac asked for. I then turn to the separated issues themselves. I reject Guardrisk's misrepresentation claim, on the basis that the misrepresentation it ultimately relied upon was probably never made. I find that the all-risk cover Guardrisk extended in this case insured Biovac against its negligent failure to comply with the legal requirement that it possess electrical certificates of compliance in respect of its premises. Guardrisk could only avoid the policy if it had been shown that Biovac was not only negligent, but recklessly disregarded the absence of the relevant certificates of compliance. That was not demonstrated. I finally conclude that the claim advanced in this case was not time-barred.

- 8 Accordingly, and for the reasons that follow, I determine each separated issue in Biovac's favour. I direct that the remaining issues between the parties will stand over to be dealt with in further proceedings I shall case-manage under the commercial court rules.

The separation of issues

- 9 Convenience is the overriding consideration in any application to separate the issues arising in a trial action. To be capable of convenient separation, the issues to be separated must be conceptually distinct. They must also generally be capable of determination without hearing evidence that will later have to be repeated in relation to other triable issues. It is also desirable that a repetition of witnesses is avoided, especially if credibility findings will have to be made in relation to particular witnesses who may have to testify more than once in respect of different issues.

- 10 Once a court is satisfied that the issues sought to be isolated for separate determination are conceptually distinct from those arising in the rest of the action, and that there will be little or no overlapping evidence required to hear them, the question is whether there is some advantage to be had in ordering a separation which is not outweighed by any obvious or foreseeable disadvantage. If the advantages outweigh the disadvantages, the court will generally order the separation (see *S v Malinde* 1990 (1) SA 57 (A) at 68C–E).
- 11 Trial courts are fairly regularly criticised for ordering separations which turn out not to commend themselves to courts of appeal. These criticisms are usually made when the court of appeal is forced to deal with “piecemeal” appeals against a trial court’s rulings on the separated issues. These appeals almost invariably waste the time a separation of issues is often meant to save (see, for example, *Firm-O-Seal CC v Wynand Prinsloo & Van Eeden Inc* 2024 (6) SA 52 (SCA), paragraphs 2 and 10 and *Theron and Another NNO v Loubser NO* 2014 (3) SA 323 (SCA), paragraph 18).
- 12 While understandable, much of this criticism strikes me as too demanding. As Mr. van der Nest, who appeared with Mr. Ainslie for Biovac, pointed out, any issue worth separating is likely to result in a decision which is definitive enough to be appealable in principle. Inherent in ordering a separation is the risk that the trial court will come to a conclusion on a separated issue with which a court of appeal might reasonably differ. A trial court might anticipate that the separated issue is a straightforward factual matter unlikely to be capable of realistic challenge on appeal, but it cannot be sure of that in advance. The

best that can be done is to weigh the prospect of a piecemeal appeal against the advantages to be had from the separation.

13 In this case, everyone agreed that the three issues Biovac sought to separate are conceptually distinct from the other issues defined in the pleadings. The evidence to be led in relation to them was also discrete: it was chiefly evidence of what happened during a survey of Biovac's property which took place in January 2021; evidence of what caused the fire at building "B"; evidence of the technical meaning and status of electrical certificates of compliance; and evidence of how the decision to advance cover to Biovac was taken. None of this evidence will need repeating. A witness or two may have to come back to give evidence later in the trial, but they will have to testify on different issues. In theory, there was a risk that I would have to make credibility findings that would come back to haunt me when those witnesses returned. But that risk was small, and it did not ultimately materialise.

14 Accordingly, the issues Biovac identified as separately triable were ripe for separation. There was, in addition, a substantial advantage to ordering the separation, in that it meant that I could use two weeks of court time that I, and the parties, would otherwise have lost. The pressure on this court's trial roll is well-known. There are simply too few courts, and too few Judges to hear the number of trials presently enrolled before us. While every effort is being made to reduce the tremendous press of business brought to this court – for instance by encouraging the parties to define the issues they wish to resolve more closely and to resolve those issues by mediation where possible – there can

seldom be any good excuse for postponing a three-week trial where there is the possibility of a fair and sensible separation of issues.

15 The only alternative to a separation of issues or a wholesale postponement of the trial would have been to hear three weeks' worth of evidence before postponing the trial part-heard for the better part of a year. Given the obvious frailties of memory, that would not have been fair to anyone, even with a running transcript.

16 The only foreseeable disadvantage to the separation Biovac proposed was the possibility of a piecemeal appeal. But the simple and largely factual nature of the separated issues mean that a piecemeal appeal, while obviously incapable of being excluded, is not as likely an outcome as it otherwise would be.

17 It was for all these reasons that I separated the issues in the manner recorded in my order of 19 August 2025.

18 I now turn to the separated issues themselves.

The misrepresentations alleged

19 Guardrisk originally sought to avoid the policy issued in this case on the basis that it would not have issued the policy but for three misrepresentations made to it by or on behalf of Biovac. These misrepresentations were (a) that there were electrical certificates of compliance in place for all distribution boards in building "B" which were not more than two years old; (b) that there were earth leakage certificates issued for building "B" and (c) that there were no

flammable liquids used or stored on any part of the complex of buildings of which building “B” forms a part.

20 During the exchange of pleadings, Guardrisk abandoned reliance on the alleged misrepresentation that building “B” had earth leakage certificates. At the commencement of the evidence before me, Guardrisk sought only to rely on the alleged misrepresentations that there were were electrical certificates of compliance in place for all distribution boards in building “B” which were not more than two years old, and that there were no flammable liquids used or stored on Biovac’s premises.

21 In its written submissions delivered at the end of the evidence on the separated issues, Guardrisk abandoned its reliance on the alleged misrepresentation concerning flammable liquids. However, for reasons to which I shall shortly turn, I think that the evidence relating to that alleged misrepresentation is relevant to my assessment of whether Biovac actually made the remaining misrepresentation – relating to Biovac’s possession of electrical certificates of compliance for all distribution boards in building “B”.

22 Guardrisk says that the misrepresentation that Biovac had electrical certificates of compliance in place for all distribution boards in building “B” was made in the course of a survey of Biovac’s property conducted on 14 January 2021. Michael Hasenbroek, who gave evidence before me, carried out the survey. Nadeem Galant, an employee of Biovac who also gave evidence, accompanied Mr. Hasenbroek on his visit.

23 Mr. Hasenbroek said that Mr. Galant had told him that Biovac had electrical certificates of compliance in place for all distribution boards in building “B”. Mr.

Galant does not remember the details of the visit, but he was adamant that he would never have said such a thing, because he himself did not know whether there were such certificates. It was not his job to keep them, and he would have referred Mr. Hasenbroek to those whose responsibility it was to ensure that the certificates were in place.

24 It is common cause that Biovac was never able to produce electrical certificates of compliance for its distribution boards in building “B”. There was some suggestion at trial that this did not mean that Biovac never had them, but I need not consider that issue. It seems to me that the material issue is whether Mr. Galant told Mr. Hasenbroek, during the 14 January 2021 survey, that Biovac did have such certificates.

25 On that issue, I must choose between Mr. Hasenbroek’s evidence on the one hand, and Mr. Galant’s evidence on the other. There was no serious suggestion that either man was lying, in the sense that they sought deliberately to mislead me. Nor was there any doubt in my mind that each man was confident that what they were saying must be true. The circumstances surrounding the events to which each man testified were generally consistent with either man’s version.

26 Given all this, generally speaking, Mr. Hasenbroek’s apparently direct recollection that Mr. Galant told him that Biovac had electrical certificates of compliance in place for all distribution boards in building “B” would be more reliable than Mr. Galant’s evidence: viz that he, Mr. Galant, could not remember what he said, but that he would never have made a representation concerning electrical compliance certificates he knew nothing about.

- 27 Mr. Hasenbroek's direct recall of Mr. Galant's representation is asserted in his witness statement, which was accepted as his evidence-in-chief under the commercial court rules. At paragraph 25.7 of his witness statement, Mr. Hasenbroek says that Mr. Galant "expressly advised [him] in response to [his] direct questioning that [Biovac] had [electrical compliance certificates] not older than two years for all the distribution boards" in building "B". It was this, Mr. Hasenbroek said, that led him to select the option (akin to ticking a box) indicating the existence of such certificates in the electronic document on which the survey was completed.
- 28 However, under cross-examination, Mr. Hasenbroek struggled to formulate in clear terms what he asked Mr. Galant and what he says Mr. Galant actually told him. He did not say that he asked the specific question set out in his witness statement. He said that he "would have asked" (not "did ask") "for the electrical [certificates of compliance] pertaining to the whole site, not only pertaining to DB boards" (see the transcript of evidence for 27 August 2025, pp 143 to 144). Mr. Hasenbroek was driven to accept that there was no such question on his survey (see p 145, line 23), and he ultimately conceded that his discussion with Mr. Galant was about whether there were electrical compliance certificates for Biovac's premises in general rather than particularly about distribution boards in building "B". Mr. Hasenbroek's version was ultimately that Mr. Galant said that there were such certificates for all installations everywhere on the premises (see p 147, lines 18 to 21).
- 29 Of course, it may have been that Mr. Galant told Mr. Hasenbroek that there were certificates of compliance for all Biovac's buildings and installations,

which would naturally have encompassed the pleaded representation upon which Guardrisk relies. But if that is the truth of the matter, it begs the question of why Mr. Hasenbroek did not say so from the outset. At best for Mr. Hasenbroek, he does not in fact have a direct and independent recollection of exactly what Mr. Galant told him. If he had, he would have been able consistently to recall exactly what Mr. Galant said. This he was unable to do.

30 That being so, I do not think that I can prefer Mr. Hasenbroek's version over Mr. Galant's merely on the basis that he claimed a direct recollection of what was said during the survey. The reality of the situation is that neither man can directly recall what was said on the day of the survey in connection with building "B"'s electrical compliance certificates.

31 Perhaps accepting this, Mr. Ferreira, who appeared together with Mr. Killian for Guardrisk, argued that Mr. Hasenbroek's version of what was said during the survey had to be preferred because it was contemporaneously documented in the survey form itself.

32 Initially, I found this argument attractive. Contemporaneously produced documents are often a better guide to events than the oral evidence of those who witnessed them. The classic example of a reliable contemporaneous document is a contract reduced to writing and signed by the parties. The existence of an authentic document of that nature will generally be accepted at the expense of one or other party's denial, based upon mere recollection, that an agreement was reached.

33 But a court's general preference for contemporaneous documents has its limits. A contemporaneous document must itself be reliable, and not all

contemporaneous documents are equally so. A note made of an event by one observer at the time of the event records no more than what they think they saw. Where the event has a simple and objective quality, such as whether something took place during the day or at night, the note might still be strong evidence of the fact it records. However, the greater the degree of subjectivity involved in the event itself, the less inherently reliable the contemporaneous note.

34 For example, a contemporaneous note of the nature of a transaction – such as whether money that passed between two people was a gift or a loan – will seldom record more than what the originator of the note thought was happening. If the circumstances surrounding the transaction suggest that the originator's impression was unrealistic or far-fetched, or if the originator of the note is himself a proven liar, or has some other ulterior motive for making a misleading note, then the note itself will hardly make a difference.

35 In addition, there are degrees of contemporaneity. A record made at exactly the time an event took place is generally more reliable than a record produced hours or days afterwards.

36 Accordingly, the fact that an observation is recorded in a document is not an evidentiary panacea. Much depends on the nature of the document, how it was produced, the circumstances under which it was produced, who produced it, and when they produced it.

37 In this case, the document relied upon is a an electronic survey reporting form. Mr. Ferreira asked me to accept that the document is reliable because it was completed during the survey itself: it was, in other words, an up-to-the-minute

recording of the questions Mr. Hasenbroek asked, the answers Mr. Galant gave, and what Mr. Hasenbroek himself observed. However, the evidence does not bear that out. Mr. Hasenbroek did not himself say that he completed the survey as he toured Biovac's premises. His witness statement in fact suggests otherwise: that the survey report was finalised and uploaded sometime between the survey visit and the next day, 15 January 2021 (see paragraph 27 of Mr. Hasenbroek's witness statement).

38 Still, the fact of the matter is that Mr. Hasenbroek did record on the survey report that there were electrical certificates of compliance for the distribution boards in building "B". In the absence of any indication that the survey report recorded anything other than what Mr. Hasenbroek had been told or himself saw on his visit to Biovac's premises, I would have been inclined to accept the survey report as evidence that Mr. Hasenbroek was probably recording what Mr. Galant had told him.

39 However, I do not think that I can accept that the survey report is a faithful record of what Mr. Hasenbroek saw and was told. This is because the survey report also recorded that there were no "flammable liquids" stored on Biovac's premises. That was plainly false: so plainly false that Guardrisk ultimately abandoned the contention that Mr. Hasenbroek had been told that there were no flammable liquids on the premises.

40 Mr. Ferreira argued that the contention was abandoned because Mr. Galant and Mr. Hasenbroek were at cross purposes about what counted as a "flammable liquid", but I reject that argument. Objectively speaking, there were flammable liquids stored on Biovac's premises. Indeed, the evidence was that

Mr. Hasenbroek must have walked past a brick building very clearly marked as a flammables store at least once during the course of the survey. Mr. Hasenbroek in fact accepted that he was shown the flammables store (even though the version put to Mr. Galant in cross-examination was that Mr. Hasenbroek would deny this (see the transcript of proceedings for 20 August 2025, p 18, lines 1 to 3)). Mr. Hasenbroek said that Mr. Galant told him that there were no flammable liquids in the store at the time of the survey, which is why he recorded that there were no flammable liquids on the premises.

41 I cannot accept that version. The purpose of the survey was to assess the general risk the insurer had to cover, at least partly on the basis of the uses to which the premises were usually put. A brick-built flammables store was a good indication that flammable liquids were usually stored on Biovac's premises. No reasonable person in Mr. Hasenbroek's position would have recorded that there were no flammable liquids stored on Biovac's premises having been shown a building marked as being in use for that purpose – even if they were told, as Mr. Hasenbroek says he was, that there were no flammable liquids in the store at the time he was shown it.

42 It follows that Mr. Hasenbroek's survey report contains at least one obvious falsehood: the proposition that there were no flammable liquids stored on Biovac's property. That in itself diminishes the survey report's value as a contemporaneous document.

43 Moreover, it is consistent with Mr. Galant's version: that, even though he could not remember what happened during the survey, he would never have conveyed such obviously false information to Mr. Hasenbroek. He knew for a

fact that there were flammable liquids used and stored at several places throughout the premises, and he would not have walked Mr. Hasenbroek past a building marked as a flammables store while confidently informing Mr. Hasenbroek that there were no flammable liquids stored on the premises. Likewise, Mr. Galant said, he would never have told Mr. Hasenbroek that there were electrical certificates of compliance for the distribution boards in building “B”, or anywhere else on Biovac’s premises, unless he knew for a fact that there were. Since he had no idea whether such certificates existed, he could not have told Mr. Hasenbroek that they did.

44 Ultimately, it is for Guardrisk to prove that the misrepresentation it relies on was actually made, not for Biovac to prove that it was not. In this respect, an insurer attracts the same onus as when it alleges that the term of a policy has been breached or that an exclusion in a policy applies (on which see *Walker v Santam Ltd* 2009 (6) SA 224 (SCA) paragraph 16 and *Resisto Dairy (Pty) Ltd v Auto Protection Insurance Co Ltd* 1963 (1) SA 632 (A) at 645A-D). The onus could only be discharged if I preferred Mr. Hasenbroek’s evidence over Mr. Galant’s. For the reasons I have given, I can find nothing in the evidence on which to prefer Mr. Hasenbroek’s version over Mr. Galant’s.

45 It might be suggested that there is no explanation in the evidence, other than pure sloppiness, for why Mr. Hasenbroek would complete his survey in such a misleading way. In truth, though, I do not think that Mr. Hasenbroek can fairly be accused of sloppiness. As Mr. van der Nest put to him in cross-examination, his survey in fact revealed a “meticulously clean”, “well-maintained” operation. Biovac’s whole premises, including its electrical

installations, made a “very good impression” on Mr. Hasenbroek (see the transcript of evidence for 27 August 2025, at p 140). Overall, Mr. Hasenbroek accepted that Biovac was a “good clean risk”. Its premises were “well-maintained and well-managed” (p 154).

46 It is in my view probable that Mr. Hasenbroek ticked the boxes consistent with this overall impression, including those dealing with the existence of certificates of electrical compliance in building “B”. He did so because he was generally happy with what he saw, rather than because Mr. Galant had assured him that the electrical certificates of compliance were actually in Biovac’s possession. In other words, when completing his survey shortly after his visit to Biovac’s premises, Mr. Hasenbroek took the view that such a well-run facility must have had certificates of compliance in place, and that, whether or not there were flammable liquids stored on the premises at the time of his visit, Biovac could be relied upon to deal appropriately with whatever flammable liquids it generally handled. He then submitted the survey and promptly forgot the finer detail. When asked, years later, to justify what he put in the survey, he genuinely but erroneously believed that the survey was a faithful record of what he saw and was told, down to the finest detail. This seems to me to be the probable explanation of why Mr. Hasenbroek recorded, falsely, that there were no flammable liquids stored on the premises and that electrical certificates of compliance were in place that Biovac did not in fact have.

47 For all these reasons, I find that the evidence does not establish that Biovac misrepresented that it had electrical certificates of compliance in place for all

distribution boards in building “B” which were not more than two years old. On a balance of probabilities, I am satisfied that the representation was not in fact made. This conclusion renders it unnecessary for me to consider whether the misrepresentation Guardrisk alleged would have been material to its decision to advance cover.

48 Accordingly, I decide the first separated issue in Biovac’s favour.

Biovac’s failure to comply with applicable legislative or regulatory requirements

49 Clause 6 of the policy applicable in this case requires Biovac, acting through its directors and officers, to take reasonable precautions “to prevent accidents or losses and prevent or cease any activity which may give rise to a liability or to any injury”. Biovac is also required to “take all reasonable steps to observe and comply with all statutory or local authority laws obligations and requirements.”

50 The second separated issue is whether Biovac breached this clause because it “was not in possession of an electrical certificate of compliance for any of the distribution boards for Building B as required by the Electrical Installation Regulations (2009) issued under section 43 of the Occupational Health and Safety Act, 1993” (paragraph 11.3.1.1 of Guardrisk’s plea).

51 There was no serious dispute before me that (a) the onus of proving the breach of this clause rests on Guardrisk; (b) the breach of such a clause is the breach of a warranty, with the consequence that Guardrisk need not show that the lack of electrical certificates of compliance the distribution boards for building “B” actually caused a loss; and (c) the all-risks policy at issue in this

case insures Biovac against its own negligence in failing to have the relevant certificates in hand.

52 The fact that the policy insured Biovac against its own negligence is significant. It means that Biovac is not in breach of the reasonable precautions clause merely because it failed to obtain and remain in possession of the relevant certificates. What the cases make clear is that Biovac must, in addition, have actually recognised the danger to which it was exposed, and have done nothing or too little about it (see *Santam Ltd v CC Designing CC* 1999 (4) SA 199 (C) at 211 A-C and *Paterson v Aegis Insurance Co Ltd* 1989 (3) SA 478 (C) at 481F-G). The essence of recklessness is that a known and serious risk is accepted as the likely consequence of a given course of action. A reckless person knows that damage is likely to follow from particular conduct but carries on nonetheless. A negligent person merely proceeds without taking reasonable measures to mitigate foreseeable risk.

53 I will accept for present purposes that Biovac's failure to produce the relevant certificate placed it in breach of the Electrical Installation Regulations, 2009. However, I heard no direct evidence that Biovac knew that it did not have the relevant electrical compliance certificates, much less that it was reckless to the possibility that it did not have them, or that damage might ensue because it did not have them.

54 The run of the evidence was in fact directly opposed to that conclusion. Everyone who actually saw Biovac's premises or considered the layout of or protocols applicable to their management accepted that Biovac ran a well-maintained and high-quality facility. I have already referred to Mr.

Hasenbroek's level of satisfaction with Biovac's premises. Daniel Joubert, who gave expert evidence for Guardrisk on the likely cause of the fire, formed what he accepted was a "favourable opinion" of the state of the distribution boards in building "B"'s plant room (see the transcript of evidence for 26 August 2025, p 80, line 13). Jaco Ellis, who had done work on and tested the installations in Building "B" in 2009, and had issued an electrical certificate of compliance in respect of that work, described the test numbers he saw during that work as "beautiful" (see the transcript of evidence for 21 August 2025, p 28, lines 12 to 18).

55 Moreover, Werner Sieburg, who gave expert evidence for Guardrisk, accepted that "a valid initial [electrical certificate of compliance] had probably been issued" in respect of Biovac's premises (see Mr. Sieburg's witness statement paragraph 9.2), whether or not Biovac could locate it.

56 None of this is consistent the inference that Biovac knew that it did not have the required certificates, or was reckless to the possibility that it did not have them. Accordingly, I find that Biovac's failure to maintain possession of electrical compliance certificates in respect of building "B" did not place it in breach of clause 6 of its policy with Guardrisk. I decide the second separated issue in Biovac's favour.

The time bar clause

57 I turn finally to Guardrisk's contention that Biovac's claim was time-barred. Clause 20 of the policy provides that "[n]o claim shall be payable unless [Biovac] claims payment by serving legal process on [Guardrisk] within six months of the rejection of the claim in writing and pursues such proceedings

to finality". Guardrisk rejected Biovac's claim on 15 February 2022. Biovac served its combined summons on 10 August 2022. On 27 July 2023, Guardrisk delivered its plea. The plea denied that the documents annexed to Biovac's particulars of claim were a correct reflection of the insurance policy on which Biovac sued. Guardrisk annexed a series of documents to its plea which it said accurately reflected the policy. On 10 July 2024, Biovac amended its particulars of claim to allege that the policy consisted of the documents Guardrisk alleged in its plea. In other words, Biovac accepted that Guardrisk was correct to take issue with the particulars of claim as they originally stood, and agreed with Guardrisk that the policy was as Guardrisk had pleaded it. This incited a further amendment to Guardrisk's plea. The amendment was that because Biovac had changed the policy wording on which it relied, it had introduced a new claim outside the time-bar contained in the policy.

- 58 The point is, in my view, a specious one. Biovac claimed payment on its policy with Guardrisk by "serving legal process" within six months, as the time-bar clause requires. The mere fact that the "legal process" it initially served relied on a document that turned out not to fully record the terms of the policy is of no moment. The "legal process" required by the time-bar clause was served. Nor did the subsequent amendment of Biovac's particulars of claim fundamentally alter the nature of that process or the claim Biovac sought to advance. Guardrisk would not have been entitled to complain that the claim was time-barred if Biovac had met Guardrisk's plea by simply admitting the documents relied upon in it by way of a replication. I fail to see how Biovac's decision to deal with the plea by amending its particulars of claim made any difference.

- 59 The fundamental question is whether the claim advanced on the amended particulars was the same claim that was advanced on the particulars in their original form (see, by analogy, the discussion of what constitutes a “debt” for the purposes of interrupting prescription in *CGU Insurance Ltd v Rumdel Construction (Pty) Ltd* 2004 (2) SA 622 (SCA) at 628A and the cases cited there). It clearly was. Biovac’s conduct was accordingly consistent with both the letter and the purpose of the time-bar clause.
- 60 For these reasons, I conclude that Biovac’s claim was not time-barred, and I determine the third separated issue in Biovac’s favour.

Costs

- 61 Mr. van der Nest submitted that costs should follow the outcome of the hearing on the separated issues. Had Guardrisk prevailed on any of the separated issues, I would have agreed, since that would have brought the proceedings to an end. However, the fact that Guardrisk has not been successful on the separated issues does not necessarily mean that it will not ultimately be successful in resisting Biovac’s claim.
- 62 I see no reason why, if Guardrisk is ultimately successful, it would not be entitled to the costs of the trial proceedings as a whole. In any event, if I am to carve up the costs of the trial in the manner Mr. van der Nest suggested, I think I must do so at the end of the whole trial. For these reasons, the costs of the hearing on the separated issues are reserved for later determination.

Order

63 In the result, the trial is postponed *sine die* for the hearing of the remaining pleaded issues. The question of costs is reserved. I shall case manage the further conduct of the trial in terms of the commercial court rules.



S D J WILSON
Judge of the High Court

This judgment was prepared by Judge Wilson. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it 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 21 November 2025.

HEARD ON: 11 to 29 August; 28 October 2025

DECIDED ON: 21 November 2025

For the Plaintiff: M van der Nest SC
D Ainslie
Instructed by David Bayliss Attorneys

For the Defendant: E Ferreira SC
J Killian
Instructed by Engelbrecht Attorneys Inc