



OFFICE OF THE JUDGE PRESIDENT

GAUTENG DIVISION OF THE HIGH COURT OF SOUTH AFRICA

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07 January 2021

In the matters of: -

Compensation Solutions (Pty) Ltd

Plaintiff

and

The Compensation Commissioner

1st Defendant

**Director-General of the Department of Labour
of the National Government of the Republic of
South Africa**

2nd Defendant

Under Case numbers:

1. 34386/2020
2. 34387/2020

JUDGE PRESIDENT'S PRACTICE DIRECTIVE IN TERMS OF SECTION 14(1)(a) OF THE SUPERIOR COURTS ACT, ACT 10 OF 2013

1. This is a Directive issued in terms of Section 14(1)(a) of the Superior Courts Act, Act 10 of 2013, read with Section 173 of The Constitution of the Republic of South Africa. The purpose of the Directive is to make provision for the constitution of a Full Court, to sit at first instance to hear, determine and resolve the legal issues that continually



feature in almost all matters initiated between the Parties, despite, in most instances, being resolved by the Judges who hear these matters.

2. Background: -

The Plaintiff is a company that factors medical accounts from medical service providers that are payable by the Defendants from the Compensation Fund established in terms of section 15 of the Compensation for Occupational Injuries and Diseases Act, 130 of 1993 as amended by the Compensation for Occupational Injuries and Diseases Amendment Act, 61 of 1997 (hereinafter referred to as “COIDA”).

The Plaintiff takes concession of all right, title and interest in and to the medical accounts in terms of written agreements concluded between the Plaintiff and the medical service providers. The Plaintiff and the relevant medical service provider in each instance notifies the 1st Defendant of such cession by way of a written credit order instruction to change the bank account into which the service provider’s accounts are paid to an account controlled by the Plaintiff.

The Plaintiff, in conducting such business, submits claims for payment of medical accounts so factored to the 1st Defendant, who is required in terms of COIDA and the duties delegated to him by the 2nd Defendant, to process and validate such medical accounts and to effect payment of the validated medical accounts to the Plaintiff from annual contributions/premiums collected by the 1st Defendant from Employers registered with it.

The dispute between the Parties arise from the alleged failure by the Defendants to fulfill their duties and obligations in terms of COIDA and more particularly the non-payment by the 1st Defendant of claims submitted by the Plaintiff relating to factored medical accounts or the failure by the 1st Defendant to effect payment of such claims within the 75 calendar day period from the date on which the 1st Defendant has accepted a claim from the Plaintiff.



The issues that feature between the Parties are the subject of a significant number of matters involving Summary Judgement proceedings that have been dealt with by the Division.

The Plaintiff argues that the Defendants unnecessarily defend Summary Judgement proceedings before the Court despite there being Orders and/or Judgements in some of the cases where Summary Judgement had been granted in favour of the Plaintiff, therefore contending that the Defendants are deliberately abusing Court process and in the process, delay the finalization of these matters.

The Defendants argue that they had been granted leave to defend in some of the matters already adjudicated upon and therefore regard the defences they raise as permissible and valid.

The impasse between the Parties is of such an unwavering nature that they cannot agree on the legal issues raised to such an extent that they were unable to comply with a directive suggested by the Judge President during a case management meeting held between the Parties' representatives, the Judge President and the then Acting Deputy Judge President on 31 August 2020. During the meeting, the Parties were directed to file a joint practice setting out the legal issues between them for purposes of constituting a Full Court to determine and resolve the issues raised. Various correspondences were subsequently exchanged between the Parties and addressed to the Offices of the Judge President and Acting Deputy Judge President where it became evident that the Parties were unable to agree on the issues for purposes of submitting a joint practice note and the Parties resorted to the filing of separate practice notes instead.

In correspondence to the Judge President dated 20 October 2020, the Plaintiff indicated that the Defendants had since the case management meeting of 31 August 2020 paid the total capital amounts claimed in all of the matters, pending then, in full and therefore it was of the view that any special defences raised by the Defendants had become academic and that it was no longer necessary for the constitution of a Full Court. The Plaintiff contended that the only remaining issue for determination by the Court before which the matters are brought is the issue relating to mora interest and costs emanating from the claims.



The Defendants, in response to this submission, argue that they had been granted leave to defend in these matters and that the defences raised had not become moot because if this was the case, the Plaintiff would not continue with the issuing of summonses on the very same causes of action as in the abovementioned matters. The Defendants are of the view that the Plaintiff's entitlement to receive and benefit from the Compensation Fund is the subject of a severely contested interpretation of COIDA ("the Act").

The issues raised in the respective practice notes and from correspondence exchanged are set out hereunder for determination by the Full Court.

3. The Legal Issues raised: -

3.1 whether the following issues, specifically raised in any of the pleas filed in the various matters be separated from the remaining issues in terms of Rule 33(4) and be determined and disposed of separately:

3.1.1 annexures "POC1" and "POC2" to the particulars of claim only applicable to the accounts listed in case number 35047/2009 and not to any other claims such as the ones under consideration.

3.1.2 Summons had been issued prematurely due to non-compliance with "W.Cl.20" procedure in respect of medical claims as set out in Government Gazette Notices 31320, 39906, 40745 or 43111.

3.1.3 that section 32(1) of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 ("COIDA") prohibits the cession of the medical claims the Plaintiff is relying upon for its claims and that cession in that regard is in any event contrary to public policy.

3.1.4 whether there is non-compliance with the State Liability Act 20 of 1957.



- 3.2 whether there is non-compliance with section 3(1)(a) of the Legal Proceedings against Organs of State Act, 40 of 2002 (“the Legal Proceedings Act”).
- 3.3 whether there is non-compliance with section 5(4) of the Legal Proceedings Act.
- 3.4 whether there is non-compliance with Rule 18(4).
- 3.5 the validity of the cession agreements between the Plaintiff and the medical service providers in terms of COIDA.
- 3.6 whether evidence may be led to deal with the abovementioned issues raised.
- 3.7 whether individual claims should fall within the jurisdiction of the Magistrate’s Court.
- 3.8 any other matter that may be raised for determination.

4. Directive: -

- 4.1 Therefore, in terms of section 14(1)(a) of the Superior Courts Act 2013, Act 10 of 2013, I hereby constitute a Full Court for purposes of hearing and disposing of the issues referred to above as well as any other issue that may be raised for determination by the Full Court.
- 4.2 This Directive is issued by service via electronic email communication on:
 - a. the Parties/their legal representatives involved in the matter.
 - b. the Ministry of Labour.
 - c. the Judges of the Gauteng Division of the High Court of South Africa.
 - d. the Registrar of the Gauteng Division of the High Court of South Africa.
Division



- 4.4 The Plaintiff shall create a CaseLines file with the prefix “FULL COURT – Various matters of Compensation Solutions (Pty) Ltd v The Compensation Commissioner and Another” and categorize the Sections of the electronic file according to the case numbers listed under the case citation in the heading of this Directive.
- 4.5 The Plaintiff is to ensure that the indexed case bundle of each listed case is uploaded to the corresponding case number of the matter by no later than close of business on 18 January 2021.
- 4.6 For purposes of service and filing of any process envisaged in this Directive such service and filing shall be by electronic email communication provided that the appropriate proof of delivery shall be provided and through uploading to the electronic file on CaseLines.
- 4.7 Access to the documents already filed in the matters referred to the Full Court will be provided to any party requiring it, but such request should be communicated to the Office of the Judge President via the email address provided in this Directive by no later than 14:00 on 22 January 2021.
- 4.8 Any interested party who wishes to be admitted as *amicus curiae* in this matter, are directed to serve and upload their applications, setting out the basis why they wish to be so admitted as well as the legal arguments/ heads of argument, they intend to advance in support of their applications by 14:00 on 01 February 2021.
- 4.9 The Plaintiff shall indicate its consent/objection to any application for admission as *amicus curiae* on or before 15 February 2021. In the event of an opposition/objection, the basis thereof must be provided as well as such legal argument as the Plaintiff wishes to advance in this regard. Consent or objection in this regard should be uploaded to the electronic file on CaseLines and the potential *amicus curiae* should be invited to the electronic file.
- 4.10 The Plaintiff is to serve and upload its heads of argument, on or before 22 February 2021. The Defendants shall serve and upload their heads of argument by no later than 23 March 2021. Other Parties, who shall have



received consent as well as granted consent to be admitted as *amici*, must serve and upload their legal argument/heads of argument by 14h00 on or before 07 April 2021.

4.11 Thereafter, the further conduct of the matter shall be case managed by a Judge to be designated by the Judge President. The case management shall include the hearing of any objections to any application for admission as *amicus curiae*.

4.12 The date on which the Full Court will hear the matter referred to it is 28 April 2021 and 29 April 2021.

4.13 The issuing of this Directive does not affect any new or pending matter(s) between the Parties which may be processed and dealt with by the Parties and the Judges hearing them as they deem fit.

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JUDGE PRESIDENT OF THE GAUTENG DIVISION OF THE
HIGH COURT OF SOUTH AFRICA

Electronically submitted therefore unsigned

