

# UNDERSTANDING ROAD ACCIDENT FUND CLAIMS

## ROAD ACCIDENT FUND CLAIMS EXPLAINED

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The Road Accident Fund (RAF) provides compulsory social insurance cover to all users of South African roads in respect of liability incurred or damage caused as a result of an accident involving motor vehicles within the country's borders.

Claims against the RAF are based on bodily injury or death resulting from the negligent driving of a motor vehicle. Liability incurred in relation to damage of property is specifically excluded from this social insurance cover.

### >>> CLAIMS PROCESS

Pursuant to a change in legislation in recent years, only claims with a certain guaranteed probability of success are handled by attorneys. Furthermore, in terms of the RAF Amendment Act, which came into operation on 1 August 2008, a serious injury assessment report, to be completed by a medical practitioner (RAF 4 FORM), is necessary to prove claims over a certain amount.

The claim form, which initiates contact with the RAF and which sets out all required details is known as the RAF 1 form.

### >>> LIABILITY AND QUANTUM

Clients in matters of this nature are often referred to as claimants. Any claim against the RAF will, in the normal course, be divided into two distinct portions, being liability and quantum.

Liability refers to proof of negligence which resulted in the accident causing bodily injury or death. Only once liability is proven, can a matter proceed to have the injuries and expenditure quantified.

Quantum therefore refers to the mathematical component of the claim and relies heavily on the input of expert witnesses, for example medical doctors, as well as various ancillary therapists. Actuarial calculations based on the affected body part and subjective factors pertaining to the claimant are used as a guideline to quantify such claims.

### >>> CLAIMS PROCESS

Matters are not always settled through negotiations and often require litigation to come to finalisation. Two possible scenarios might present in these circumstances:

1. A settlement offer made by the RAF, which will be filed in the form of a court notice, may be accepted by the client during litigation. This settlement may be recorded in a court order, subsequent to such acceptance; or
2. A judgement is made and such judgement notice reflects the amount awarded to the successful litigant and pursuant to a court hearing of the matter.

Upon finalisation of a claim, the RAF is obliged to pay over to the attorney or claimant, the compensation as agreed or awarded. When this is paid to the attorney, he/she is entitled to pay all relevant disbursements, debit their fees and furnish the client with the balance after accounting.

In instances where matters end up in court, the RAF either makes a legal cost contribution or agrees to pay the party and party costs of the claimant's legal team.

Quantification of party and party costs is achieved by a process called taxation. At the end of the taxation process, a stamped allocator, which is an official allocation of such amount will be available on file.

### >>> COMPLIANCE BY ATTORNEYS AND RISK TO THE RAF

Attorneys have in recent times received some bad press when it comes to handling claims against the RAF.

In many instances, the defrauding of the RAF resulted in not only exploitation of this public fund, but also compromised public trust in the conduct of attorneys who perform this type of work. As a result, the RAF has opened its doors to the public to lodge claims directly. Numerous local branches of the RAF are operating to serve the public and this is no longer a field of law which is exclusively in the domain of attorneys' work. The RAF also offers a service whereby members of the public can track and monitor their claims and the status thereof to promote transparency of the process.

### >>> AUDIT OF A RAF CLAIM

When auditing a RAF claim file, it is imperative to ensure that the claimant is clearly identified on the claim forms (FORM 1 and 4), accompanied by his/hers identity document as submitted to the RAF. Claims on behalf of children under the age of 18 years of age (minors) are commonplace and sufficient identification of not only the claimant, but also the parent or guardian is required by the RAF. Birth certificates, death certificates, identity documents and/or affidavits setting out the relationship of the representative to the claimant should be cross referenced as a matter of course.

Any correspondence from the RAF is clearly discernible and reflects not only the logo, but also the name of the matter, claim reference and details of the claimant. An offer in respect of settlement will also be received on such official correspondence and can be reconciled with any payment reflected in the trust account.

When accounting to clients, at the conclusion of a matter of this nature, it is imperative that the client should be credited with its cost contribution and or allocated taxed costs.

Many attorneys take on RAF cases on a contingency fee basis and therefore the auditor must also ensure that the requirements of the Contingency Fee Act have been adhered to. An explanation of legal fees, including the taxation process as well as the requirements of the Contingency Fee Act will be covered in future articles.