**National Assembly**

**Question No: 2308**

**2308. Mr C H HHunsinger (DA) to ask the Minister of Transport:**

(1) What (a) are the reasons that the Road Accident Fund (RAF) ignored the court order by Judge Wendy Hughes on 1 June 2020 to retain the lawyers for six more months and (b) plans are in place to assist with clients’ claims during the specified time period;

(2) (a) how does the RAF intend to source more state attorneys, (b) what are the timelines and (c) why has the RAF chosen to take the specified route and move away from the previous approach;

(3) whether the specified change that the RAF has embarked on will be more cost-effective for the specified entity; if not, what is the position in this regard; if so, what are the (a) details of the costing and (b) further relevant details;

(4) what has been the total cost to the RAF to have the panel of 103 attorneys disbanded? NW2881E

 **REPLY**

1. (a) The reasons that the Road Accident Fund (RAF) ignored the court order by Judge Wendy Hughes on 1 June 2020 to retain the lawyers for six more months was that the RAF launched an appeal against the order, which appeal has the legal effect of suspending the operation of the order. However, the Applicants then brought an application in terms of section 18(3) of the Superior Courts Act, 2013 for the order to be implemented pending the outcome of the petition to the Supreme Court of Appeal, which application was granted by the Judge, but was subsequently set aside by a full bench of the Court,following an appeal by the RAF in terms of section 18(4) of the Act; and (b) the RAF has put plans in place, as required by section 4(1)(b)of the RAF Act, to assist with clients’ claims by investigating and settling the matters returned by its former panel of attorneys and inviting plaintiff attorneys to block settlement meetings, where the RAF purposefully pursues the settlement of matters that are capable of settlement, and by referring disputes for voluntary mediation through a pilot project. Majority of these matters were litigated unnecessary as they are capable of settlement. This approach is beneficial to the claimants as they no longer need to wait for future trial dates in order to have their claims settled but rather settled earlier;
2. (a) the RAF intends to source more state attorneysthrough its usual recruitment processes and this will be informed by the volume of work (number of litigated matters where there are triable disputes) versus the reasonable number of attorneys required to attend to such matter efficiently; (b) with a timeline for the initial targeted number set for the end of the current financial year and (c) the RAF has chosen the specified route to move away from the previous approach because the Road Accident Fund Act, 1996 (the Act) provides that the RAF must pay compensation to road accident victims in accordance with the Act, which allows the RAF a period of 120 days from the date on which the claim is lodged to investigate its liability and to settle the claim. It is only in exceptional cases that litigation is contemplated, and it is not anticipated that the RAF would outsource its investigation of claims to an external panel of attorneys, as has been done. It is important to mention that a study conducted by Professor Hennie Klopper on the RAF matters set down on the court roll in the Gauteng Division of the High Court, Pretoria revealed that 99.56 % of the matters are settled at the doorstep of court and less than 1% (0.45%) proceed to trial. This study was done in the Pretoria High Court which has the highest number of litigated matters countrywide. Although the research focused on Pretoria, the RAFs observation is that this is reflective of the general trend in all the courts in South Africa. RAF matters get settled by both parties and the settlement agreements are then made orders of court. Moreover, the panel of attorneys and the RAF are regularly criticized for the manner in which they manage these outsourced claims. In a recent Judgment in Mpumalanga High Court in the matter of Mncube v RAF, Legodi JP said the following

*“More than 90% of matters on our trial roll are the Road Accident Fund which is funded through public purse. One would have thought the parties and or legal practitioners in dealing with these matters, will be more expedient and professional. However, the contrary appears to be the case. This is despite continuous financial woes the Fund finds itself in.”*

In the unreported judgment of Daniels and Others v Road Accident Fund and Others, Binns-Ward J, after reviewing 17 cases where the RAF was rebuked by various judges for their handling of claims and litigation, said the following:

*“A depressing feature of all of the aforementioned judgments is that they instance examples of cases in which the Fund must have incurred substantial legal expenses in taking to trial, or on appeal, claims which it had no basis to responsibly contest. In the context of the evidence before us that legal expenses constitute a very significant component of the Fund's overall expenditure, this is an aspect of the Fund's conduct which is demanding of conscientious attention by the responsible authorities…”.*

Currently, the RAF owes claimants many billions of Rand in settled claims. It is however unable to pay these claimants and yet spends R10.6 billion on legal costs annually. By getting rid of the current operating model, with unaffordable panel of attorneys, and by adopting the new operating model the RAF could save substantial amounts in legal fees. The RAF 2020-2025 Strategic Plan targets a 75% saving on legal costs over the five-year period, which will assist the RAF to pay claimants promptly from the anticipated saving. In addition, this new operating model will lead to very few RAF matters coming before courts, which will lessen the workload of the overworked judges;

(3) it is foreseen that the change will be substantially more cost-effective for the RAF (a) by reverting to an operating model which gives effect to section 4(1)(b) of the RAF Act, where the RAF capacitates its Operations (claims) Department for Claim Handlers to investigate and settle claims, as opposed to outsourcing claims to a costlypanel of attorneys, and by pursuing voluntary mediation, as opposed to expensive and protracted litigation, through which significant savings in legal cost can be achieved and (b) where litigation cannot be avoided, referral of the matter to a salaried state attorney, as opposed to a private attorney, will achieve further savings. In terms of the previous model, any attendance by an attorney on a particular litigated matter resulted in a charge of approximately R 292,50 per quarter of an hour and with RAF litigation being handled by the office of the State Attorneys, such attendances will no longer attract any fees;

(4) the service level agreements concluded between the RAF and its former panel of attorneys expired due to effluxion of time on 31 May 2020 following amendments which were made to the Service Level Agreement which was due to expire in November 2019. Of significance with the amendment is that a provision which allowed for making copies on handover of files was amended. The provision of copying costs was going to result in legal costs of R 1, 3 Billion at any time when the RAF changes the panel of attorneys. The total cost to the RAF to have the panel of attorneys disbanded is unknown, as it is a function of the difference between the R 3.6 billion approximately spent by the RAF annually on its former panel of attorneys, and the cost of the implementation of the new operating model, which is expected to achieve substantial savings on legal cost, as alluded to in the earlier response to the prior question.