

Our Ref: Mr Berger/Im/960426
Your Ref:

Email: vcarelse@parliament.gov.za

Fax: 086 514 2552

The Portfolio Committee on Transport
3rd Floor, W/S 3/79
90 Plein Street
CAPE TOWN
8001

84 – 6th Avenue corner Louis Botha Avenue
Highlands North JOHANNESBURG
2192

P O Box 250
Highlands North
2037

Telephone : (011) 786-3096
Telefax : (011) 786-3111

Deeds Office Lodgement No: 9 Johannesburg

e-mail : info@normanberger.co.za
website : www.normanberger.co.za

Registration Number : 2000/011637/21
VAT Number : 4160195295

19 July 2012

ROAD ACCIDENT FUND (TRANSITIONAL PROVISIONS) BILL [B 22-2012]

**WRITTEN SUBMISSIONS FOR YOUR URGENT ATTENTION
IN RE SECTION 19(b)(ii)**

**(DELETED IN NEW ACT, BUT STILL EXISTING IN OLD ACT – LIABILITY
EXCLUDED FOR PASSENGER (CHILD) MEMBER OF THE HOUSEHOLD OF THE
DRIVER (FATHER OF INJURED CHILD) OF THE ONLY VEHICLE INVOLVED**

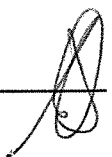
Dear Sirs

**OUR CLIENT: LUISA MARIA SARDINHA PERREGIL obo CIELO v RAF
DATE OF ACCIDENT: 19 JULY 2008**

**MINOR'S PERSONAL INJURY CLAIM IN TERMS OF ROAD ACCIDENT FUND ACT
NO. 56 OF 1996 (ACCIDENT OCCURRED BEFORE 1 AUGUST 2008)**

***Introduction – your advertisement on the Bill and invitation to submit written
comments***

1. We have noted your advertisement on the Bill and obtained a copy of the Bill.
2. At the start we must point out that these submissions relate to a specific motor vehicle accident (MVA) in which the only vehicle involved was driven recklessly / negligently by the father of the injured child (ie the injured child is a member of the household of the father driver).
3. The liability of RAF in such case is
 - excluded under Section 19(b)(ii) of the old Act which applies to this MVA, but



- had the accident occurred on or after 1 August 2008, the liability would not have been excluded because under the new Act, Section 19(b)(ii), has been deleted (also Section 19(b)(i), which does not apply to our case as it deals with conveyance on a motorcycle for reward.
- **However, your Bill does not provide for a case such as this matter and**
- **we especially point out in detail that not only does it not deal with Section 19(b) (especially Section 19(b)(ii) which concerns our matter), but**
- **most importantly, the Bill provides in the head note for “...*third parties whose claims were limited...*”(my underlining) and therefore**
- **does not deal with those claims which are excluded and only deals with those claims that are limited and**
- **it would seem that, because the *Mvumvu* Judgment referred to in your memorandum on the objects of the Bill (attached to the Bill), para 1.4 dealt with Section 18 only, the Bill has dealt with limited claims, the issue in the *Mvumvu* case which did not deal with Section 19 (headed “*Liability excluded in certain cases*”, so**
- **we are left with the situation where Section 19(b)(ii) of the old Act, which is applicable to our case although no longer existing in the new Act, has been overlooked completely in the Bill and**
- **clearly there has to be a provision for cases such as ours so that the Bill should apply to our case and therefore the head note should be amplified to reflect not only “*limited claims*”, but also “*excluded*” claims.**

Background to our submissions – injured child aged 3 at time of accident on 19 July 2008 is member of the household of the driver (his father) and child's claim is excluded by the existing RAF Act (the old Act)

4. We detail below the background to our submissions and the submissions themselves.
5. We will not burden you with our correspondence with RAF relating to our submitting the claim, received by RAF, Johannesburg office, on 18 May 2012, beyond enclosing a copy of the first page of our letter dated 17 May 2012 enclosing the claim documents where you will see we contend that Section 19 is unconstitutional.
6. This comment of unconstitutionality was made after studying the old Act, the new Act and the *Mvumvu v Minister of Transport* Judgment and seeing that Section 19(b)(ii), “*member of the household*” was not an issue in the *Mvumvu* Judgment, because the *Mvumvu* Judgment only dealt with the unconstitutionality of the R25 000,00 limitation in Section 18.
7. We are concerned by the use of the word “*limited*” because our claim for the child is **excluded** entirely in Section 19 of the old Act as already mentioned and **it is imperative that there be a provision inserted that will allow this claim to proceed so that there will be no need to challenge the unconstitutionality of Section 19(b)(ii) excluding “a *member of the household*” of the driver.**

8. Prior to the Bill being published, we spent some considerable time perusing all the submissions in respect of the *Mvumvu* case both in the Western Cape High Court and the Constitutional Court – it was clear to us that we would have to challenge the old Section 19(b)(ii) as being unconstitutional unless by 17 August 2012 amendments were made that would also cover Section 19(b)(ii), but now that the Bill has been published, it is imperative that we avoid Constitutional Court issues on Section 19(b)(ii) and that the Bill include provisions to cover our situation.
9. You will note from the Memorandum on the objects of the Road Accident Fund (Transitional Provisions) Bill, 2012, paragraph 1.6 detailing the background to the object of the Bill, that “.. *the legislation concerned should propose some middle ground, which increases the compensation available to the victims but does not amount to full compensation...*”.
10. Also, paragraph 2.1 under “*Objects of Bill*”, make it clear that the Bill “...*seeks to provide for transitional measures in respect of certain categories of third parties whose claims were limited under the old Act, and to give effect to the Constitutional Court judgment of Mvumvu v Minister of Transport*”.
11. Also, paragraph 2.3 shows how the objects of the Bill have completely overlooked a case falling under Section 19, such as the injured child in this case because paragraph 2.3, dealing with clause 2(1) reflects “*while the default position is that they will become subject to a version of the new Act, they can elect if they prefer to remain subject to the old Act*”.

Prescription- although this is not of relevance in our submissions in regard to our injured child's case, on reading the Bill we have noted that there needs to be some elimination of confusion on “prescribed” in the definition in clause 1 and the use of the word “prescribed” in the definition of “third party”

12. Although our claim has not prescribed as the child is presently 7 years old, we have noted that there will be confusion between “prescribed” in the definitions which says “*means prescribed by the Minister by regulation in the Gazette*” and the word “*prescribed*” referred to in the definition of “*third party*” where it appears and “..... *whose claim has, upon this Act taking effect, not prescribed or been finally determined by settlement or judgment*”, which obviously refers to the prescription, ie expiration of the time period.

Summary – ie your need to amend the Bill to provide for passengers being members of the household of the driver responsible for the accident so that such injured persons do have a claim and to amend definitions to eliminate confusion in “prescribed”

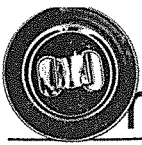
13. Please acknowledge receipt and advise us if you have any queries or comments on our submissions.

14. We await to hear from you.

Yours faithfully
Norman Berger & Partners Inc

Per: Mr Berger





Our Ref: Mr Berger/lm/960426
Your Ref: YOUR CLAIM NO TO BE ALLOCATED

84 – 6th Avenue corner Louis Botha Avenue
Highlands North JOHANNESBURG
2192

Delivery By Hand
Road Accident Fund
31st Floor
Marble Towers
208 - 212 Jeppe Street
JOHANNESBURG
2001

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| DATE: | |
| TIME: | |

P O Box 250
Highlands North
2037

Telephone : +27 (11) 786 3096
Telefax : +27 (11) 786 3111

Deeds Office Lodgement No: 9 Johannesburg

e-mail : info@normanberger.co.za
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17 May 2012

NEW CLAIM SUBMITTED HEREWITH

URGENTLY ADVISE YOUR CLAIM NUMBER

MINOR'S PERSONAL INJURY CLAIM IN TERMS OF ROAD ACCIDENT FUND ACT NO. 56 OF 1996

FORM 1 CLAIM FORM HEREWITH

(ACCIDENT OCCURRED BEFORE 1 AUGUST 2008)

PLEASE NOTE THAT SECTION 19 OF RAF ACT (BEFORE 1 AUGUST 2008) IS UNCONSTITUTIONAL AND SHOULD YOU REPUDIATE, THE CASE WILL PROCEED AS FAR AS THE CONSTITUTIONAL COURT

IF YOU INTEND TO REPUDIATE, PLEASE DO SO NOW SO THAT THERE IS NO NEED TO WAIT 120 DAYS AND WE CAN ISSUE SUMMONS IMMEDIATELY

Dear Sirs

OUR CLIENT: LUISA MARIA SARDINHA PERREGIL obo CIELO PERREGIL
IDENTITY NO : 761201 0099 08 8
DATE OF ACCIDENT : 19 JULY 2008

INVOLVING IDENTIFIED MOTOR VEHICLE REGISTRATION NO/S: TMV733GP

We advise -

