

IN THE NORTH GAUTENG HIGH COURT, PRETORIA

[REPUBLIC OF SOUTH AFRICA]

In the matter between:

CASE NUMBER: 57977/2011

DATE: 12 FEBRUARY

**NOT REPORTABLE
NOT OF INTEREST TO OTHER JUDGES
REVISED**

JANSEN VAN RENSBURG, ANTON OBO MARNO

PLAINTIF

F

**And
ROAD ACCIDENT FUND**

DEFENDANT

JUDGMENT

Mavundla, J.

- (1) This is a third party claim, brought by the plaintiff in his personal capacity and representative capacity as the father of the minor child, Mamo Janse Van Rensburg born on 3 July 1999 (hereinafter referred to as the minor child, claiming from the defendant, damages suffered by the minor child, arising from the injuries sustained from a motor vehicle collision that occurred on 11 June 2010 at approximately 16h 15 at the R33, Modimolle Limpopo.
- [2] This is one of the matters which fell into the "cracks", resulting in an unduly delayed reserved judgment, as the result. This Court can do no more than apologise to the parties for the delay occasioned.
- [3] The liability of the defendant arises from s17 of the Road Accident Fund, which obliges the defendant "to compensate any person (third party) for any loss or damages which the third party has suffered as a result of any bodily injury or the death of someone injury to any other person, caused by for damages or loss suffered arising from anybody injury.
- [4] In the particulars of claim, plaintiff alleged that the collision occurred

between a motor vehicle bearing registration unknown to the plaintiff ("unidentified vehicle") driven by a person unknown to the plaintiff and a motor vehicle bearing registration number YVW731 GP driven by A van Rensburg in which the minor child was a passenger.

[5] The parties reached an agreement which was made an order of the Court by Ledwaba DJP, in terms of which it was ordered that:

- "1. The issues relating to future medical expenses and merits are separated from all remaining issues of past medical, general damages and loss of earning capacity as quantum in terms of Rule 33(4);
2. The defendant concedes merits 100% in favour of the plaintiff;
- 3.1 The defendant is ordered to provide an 100% undertaking to the Plaintiff in terms of Section 17(a) of the Road Accident Fund Act, Act 56 of 1966, for the costs of future accommodation of the Plaintiff in a hospital or nursing home of treatment of or rendering of a services to the Plaintiff / minor child or supplying of goods to the Plaintiff / minor child arising out of the injuries sustained by the minor in the motor vehicle collision which is the *causa* of this action, after such costs have been incurred and upon proof thereof.
4. All issues relating to or of the remainder of the quantum (issues of past medical expenses, general damages and loss of earning capacity are postponed *sine die*;
5. The defendant is ordered to pay the costs for this portion of the third party claim finalized today on a High Court scale:
 - 5.1 such costs to be up and including 25 October 2013;
 - 5.2 further including costs of senior-junior counsel Lourene Scholtz on the same basis as set out in par 5 and 5. 1;
 - 5.3 any previously reserved costs, herewith becomes unreserved;
 - 5.4 the plaintiff and minor is declared necessary witnesses;
 - 5.5 the costs of all expert reports served in terms of the court rules in support of this portion of the claim;
- 6a. The Plaintiff shall, in the event that the costs are not agreed serve the Notice of Taxation on the Defendant's attorney of record; and
- 6b The Plaintiff shall allow the Defendant 14 (Fourteen) court days to make payment of the taxed costs."

[6] In the plaintiff's particulars of claim it was alleged

that: "7. The minor child sustained the following injuries:

- 7.1 open fracture of the radius;
- 7.2 Open fracture of the first metacarpal;
- 7.3 Back contusion;

7.4 head injury

8. As a consequence of the injuries sustained by the minor:

8.1 The minor had to undergo medical treatment and will in future have to undergo medical treatment, requiring accommodation, medical goods and services as well as assistive devices;

8.2 The minor has suffered a partial destruction of his incoming earning capacity'

9 As a result of his bodily injuries, the plaintiff and the minor have suffered damages of R4 225 336. 15made up as set out below:

9.1 PLAINTIFF IN RESPECT OF PAST HOSPITAL

AND MEDICAL EXPENSES R38 000, 00

The amount represents an estimate insofar as plaintiff has

not as yet been placed in Possession of all documentary

evidence of such expenses

9.2 THE MINOR IN RESPECT OF ESTIMATED

FUTURE MEDICAL EXPENSES

UNDERTAKING

The minor will in future have to undergo extensive

medical treatment, requiring accommodation medical

goods and services, assistance and assistance devises and caregiving. The extent of the costs of such treatment is not yet known to the plaintiff and the amount represents merely an estimate;

9.3 THE MINOR IN RESEPECT OF ESTIMATED

FUTURE LOSS OF EARNING AND INTEREFERENCE

WITH

EARNING CAPACITY R2 986 942. 00

9.4 GENERAL DAMAGES R1 200 000. 00

Total R4224942. 00

Plaintiff pleads that his injury is serious in nature and the injuries sustained constitute long term impairment and loss of body function based on the narrative test as is evident from the expert opinions of Dr Kaplan, plaintiff s appointed General Practitioner. As the result, Plaintiff is entitled to non-patrimonial damages. Plaintiff has complied with section 17(1) A and regulation 3(3)(a) and 3(3)(b)(i).

10. The plaintiff has complied with the provisions of section 24 of the Act and the Road Accident Fund Regulations of 2008 prior to issue of summons.

Wherefore plaintiff prays for judgment against the defendant in the following terms:

1. Payment of the sum of R4 225 336, 15;

2. Interest in the aforesaid amounts calculated at a rate of R15, 5% per annum calculated from {14} fourteen days from date of judgment to date of

payment;

3. Costs of suit;

4. Further and or alternative relief."

[7] During the hearing of the matter, this Court was furnished with an affidavit of Mr Dune Delport, an attorney from the firm of the plaintiff's attorneys of record in terms of section 4(1) of the Contingency Fees Act, stating, *inter alia*, that:

"3.1 The above matter is subject to a Contingency Fee Agreement, which is annexed hereto marked Annexure "A";

3.2 The full terms of the settlement appear from the draft Order hereto annexed **marked Annexure "B"**;

3.3 The issue of liability was settled on the basis that Defendant is liable to the Plaintiff for 100% of the Plaintiffs proven or agreed damages;

3.4 Defendant has tendered an amount of R2 653 018.50 in settlement of the quantum of the plaintiffs claim; It is anticipated that the amount that the Plaintiff may obtain by taking the matter to trial, rather than to settle the matter on the terms and conditions as set out in the draft Order, would be very similar, as the parties are not far apart in regard to the quantum of the claim;"

[8] *In casu*, counsel the defendant did not file medico legal reports. Counsel for the defendant informed the court that he has carefully studied the medico legal reports of the plaintiff and agrees with the conclusions reached therein, as well as the amount offered by the defendant, which in his view was in the circumstances of this case. He assured the Court that he has extensively researched the authorities relating to damages claim as *in casu* and was of the view that the offer made by the defendant is fair and reasonable.

[9] At the time this Court decided not to make the draft proffered an order of Court. Save for the medico legal reports of the plaintiff, the defendant's medico legal reports, if ever such existed, were not placed before the Court. It is hard to understand that the defendant would litigate without obtaining legal reports to counter or test the correctness of the conclusions reached by the medico-legal experts of the plaintiff. I am in no way suggesting anything untoward on the part of the plaintiff's medico-legal experts. However, in matters involving huge claims running into several millions, one would expect of the defendant to give proper instructions to its attorneys, including getting their own medico legal experts so as to come to informed decisions as regards advising the defendant properly.

(10] The tendency of the defendant, in litigating without obtaining medico legal reports, and merely send its counsel to Court, is like sending a boxer into the ring with one hand tied to the back and tell him to do his best in the ring. In many instances, the defendants' attorneys and or counsel will tell the Court that they do not have instructions and leave the matter to the discretion of the Court. Sometimes the claims handler is not available to give instructions. Such conduct on the part of the defendant must be discouraged. I hope that the senior claims handlers of the defendant would look into this aspect.

(11] The question of a compensation award is a matter of the discretion of the Court. In the matter of *Pitt v Economic Insurance Co Ltd* 1957 (3) SA 284 (D) at 287E-F (cited with approval in *De Jongh v Du Pisanie* NO 2005 (5) SA 457 (SCA) at page 476C-D ((2004] 2 ALLSA 565 (SCA) at 582b-c) Holmes J held that:

"The court must take care to see that its award is fair to both sides-it must give just compensation to the plaintiff, but it must not pour out largesse from the horn of plenty at the defendant's expense.

(12] In casu, the minor child was 10 years old at the time of the accident. He was admitted at hospital where he was admitted for two days in ICU and spent about 7(seven) days in the general ward. He suffered the following injuries from the records of Muelmed Medi-Clinic: the minor had concussion without open wound and cerebral oedema. He also has on-going headaches. According to the neurosurgeon Dr HJ Edeling the injuries sustained were soft tissue injuries of the Neck and Back; various cutaneous injuries; head injuries with moderate traumatic brain injury and psychological trauma. His injuries resulted in a post-traumatic organic brain syndrome; chronic cervical headaches; chronic back pain and physical impairment; episodic vertigo and mood disorder.

(13] Dr Edeling has further stated in his report that the organic neurological **sequelae** of his brain injury have stabilised and become permanent. The post-traumatic headaches and spinal problems have become chronic and are expected to persist long term. The doctor has made his estimated future medical costs that should be provided for the minor child. These are generally covered by the s17 certificate. The doctor has also opined that whereas the neurological status is expected to remain stable, it is possible that his learning impairment and mental disability will become increasingly apparent as he ages. It is unlikely that he will develop the mental capacity for full independent living or full independent management of his

personal, financial or legal affairs. A 2% to 5% lifetime risk of late post-traumatic epilepsy is anticipated. According to the educational psychologist the minor will still be able to obtain an NSC or technical equivalent like N3 certificate. Once he is placed in a technical college environment, where he will be able to learn more vocational skills. I bear in mind that according to the Educational Psychologist Karin Trollip the minor when assessed in 2013 his parents were getting divorced. This must also have contributed negatively, in my view, to his scholastic performance and his behavioural moody tendencies. At the time of assessment he was in grade 8 month 9, a learner who had not failed any of his grades. His father obtained an N3 level of education while his mother obtained grade 10 level of education¹.

[14] The Court was presented with a draft order in terms of which an amount of R2 653 018.65 was to be paid by the defendant to the plaintiff. Where parties reach an agreement, but still bring the matter to Court, surely the Court cannot merely rubber stamp every agreement brought before it. Where it involves moneys to be paid from public coffers, then the parties must persuade the Court why it should make the agreed amount an order of Court. *In casu*, the Court is not aware as to how the amount has been reached. I do bear in mind the fact that the minor will achieve N3 certificate and progresses with vocational training.

(15) In the exercise of my discretion, and considering the extent of the injuries suffered by the child, and the fact that he would achieve N3 later in life, I am of the view that the award set herein below would adequately compensate for the injuries and sequelae thereof, "without pouring out largesse from the horn of plenty at the defendant's expense."

(16) In my view, taking into account contingencies, I would make an allowance of 15% in that regard and adjust the agreed amount with this percentage; this brings the amount to be paid by the defendant to the plaintiff in an amount of R2 255 065.85. The draft order is accordingly amended to reflect that the defendant is ordered, inter alia, to pay the plaintiff an amount of R2 255 065. 85, on or before 25 March 2016.

¹ Paginated page 71 of bundle 3 plaintiff's medico legal reports.

[13] In the premises, the draft order as amended is marked X and made an order of Court.

N.M. MAVUNDLA
JUDGE OF THE HIGH COURT

DATE OF HEARING	16/03/2015
DATE OF JUDGMENT	12/02/2016
APPLICANTS' ADV	: ADV J. N. DEVOS SC
INSTRUCTED BY	DE BROGLIO INC
SECOND RESPONDENTS' ADV	ADV B.R. MPHELA
INSTRUCTED BY	A. P. LEDWABA INC

..

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

Case No : 57977/2011

PRETORIA, ON THIS 16th DAY OF MARCH 2015
BEFORE THE HONOURABLE JUSTICE LEFABE, J.P.

the matter between:

JANSEN VAN RENSBURG, ANTONIO MARNO

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

DRAFT ORDER

HAVING heard counsel for the parties, it is ordered that:

1. Defendant shall pay Plaintiff in his personal capacity and in his representative capacity as father and natural guardian of his minor son, MARNO JANSEN VAN RENSBURG, born on 3 July 1999 ("Marno"), a capital amount of R ~~2 653 018.65~~ *(Two million six hundred and fifty three thousand, and eighteen hundred and ⁶⁵ hundred R2255 065.85 (two million two hundred & fifty five thousand and six hundred & eighty five cents) 25 March 2016.*
in delictual damages, on or before 28 April 2015.

2. 2.1 The aforesaid capital amount shall be paid into the Plaintiff's attorneys' trust account, the particulars of which are:

De Broglie t.c. Trust Account
Nedbank : Business Northrand Branch
Account Number : 1469 186 160
Branch Code : 146 905
Ref : J207

through means of a direct transfer on or before 28 April
2015.

- 2.2. Should the Defendant not pay the aforesaid amount on or before the due date for payment thereof, Defendant will be liable for interest on such amount at the rate of 9% per annum from the due date to date of payment, both days inclusive.
3. Defendant shall furnish the Plaintiff and/or the trustee referred to in paragraph 5 below, with an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act, 56 of 1996 ("the undertaking"), to reimburse the Plaintiff and/or the trustee for the cost of the future accommodation of Marne in a hospital or nursing home, or treatment of, or rendering of a service, or the supplying of goods to him, arising out of the injuries he sustained, in the motor vehicle accident that occurred on 11 June 2010, after such costs have been incurred and upon proof thereof. In addition, the undertaking shall include the costs of the creation of the trust referred to in paragraph 5 below, the costs of annually obtaining a security bond as required and the cost of the trustee in respect of the administration of the trust, limited to the costs recoverable by a curator bonis in accordance with the statutory tariffs published from time to time.
4. The Plaintiff's attorneys of record shall retain the aforesaid amount, nett of the attorney's costs and nett of the amount recovered in respect of Plaintiff's personal claim for past hospital and medical expenses, in an interest-bearing account in terms of Section 78(2)(A) of the Attorneys Act, for the benefit of Marna, pending the creation of a Trust referred to in paragraph 5 hereunder, and the issuing of letters of authority.

5. The Plaintiff's attorneys of record shall pay the amount set out in paragraph 4 above, together with any accrued interest, over to the trustee of a trust which is to be created within four months from the date of this Order, and in respect of which trust, the following shall apply:

5.1. the trust shall be created in accordance with the trust deed which shall contain the provisions set out in Annexure "A" hereto, and which is to be established in accordance with the provisions of the Trust Property Control Act, No. 57 of 1988, in favour of Marna;

5.2. the trust shall have as its trustee, Standard Trust Limited, registration number 1880/000010/06, with those powers and duties as set out in Annexure "A" hereto;

5.3. the trustee shall:

5.3.1. be entitled, in the execution of its duties and fiduciary responsibilities towards the beneficiary of the trust, to have the attorney and own client costs and disbursements of the Plaintiff's attorneys of record taxed, unless agreed;

5.3.2. be obliged to render security to the satisfaction of the Master of the High Court;

5.3.3. be entitled to administer on behalf of Marno, the undertaking referred to in paragraph 3 above and to recover the costs covered by such undertaking on behalf of Marno for the benefit of the trust;

5.3.4. at all times administer the trust to the benefit of Marna;

5.4. the trust shall not be capable of being amended without the leave of the Court.

6. ■ the event of the trust not being created within four months from the date of this Order, Plaintiff and his attorney are directed to approach this Court within two months ~~a~~er the expiry of the first period of four months, to obtain further directions with regard to the manner in which the capital amount should be further administered on behalf of Marno.

7. Defendant shall pay Plaintiff's taxed or agreed party and party costs on the High Court scale, such costs will include, but are not limited to:

7.1. the costs attendant upon the obtaining of payment of the full capital amount referred to in paragraph 1 above; and

7.2. the costs of all Plaintiff's expert medico-legal reports, as well as the reasonable taxable, qualifying and reservation fees, if any, of such experts; and

- 7.3. the costs of the actuarial reports of Mr. van Kramer; and
 - 7.4. the costs of the experts' joint minutes; and
 - 7.5. the taxed or agreed costs of senior counsel; and
 - 7.6. Plaintiff and Marna are declared necessary witnesses.
8. Plaintiff shall, in the event that costs are not agreed upon, serve the Notice of Taxation on Defendant's attorneys of record.
9. Plaintiff shall allow Defendant 14 (fourteen) Court days ~~a~~er taxation to make payment of such taxed costs.
10. This Order must be served by the Plaintiff's attorneys on the Master of the High Court within 30 days from the date of receipt of this Order from the Registrar in typed form.

BY THE COURT

R E G I S T R A R

For Plaintiff : Adv. J .N . De Vos SC

For Defendant :

Standard

Trust

DE BROGLIO INC

127 Jan Smuts Avenue
Parkwood
Johannesburg

Marna Janse van Rensburg - Id:990703 5308 086 – 04 March 2015

We confirm that Standard Trust Limited will take up the appointment as trustee of the trust to be created for the benefit of Marna Janse van Rensburg.

We place on record that as trustees, Standard Trust Limited should be entitled to levy our full tariff of fees for the administration of the trust

I hereby declare Standard Trust Limited is prepared to:

- Create a trust for the benefit of the beneficiary to receive and manage the assets from the RAF alternatively to assist as curator in the matter.
- Act as trustee to manage and invest the assets according to the guidelines of the court order, for the benefit of the beneficiary.
- Act as curator, should it be required for the wellbeing and personal affairs of the patient
- Assist the family where necessary to manage the financial affairs of the beneficiary.

Yours faithfully/

,,I!

Standard Trust

2nd Floor Rosebank Corner 191 Jan Smuts Avenue Parktown Johannesburg 2193
PO Box 1291 Parklands 2121 South Africa www.standardbank.co.za
Tel. +27 (0)11 283-1100 Fax: +27 (0)11 283-1111

Standard Trust Limited (Reg. No. 1680/000010/06) Authorized financial services provider

Director: S. Lattchand, A. Amotd, M. Nienabat
Company Secretary: S. Waeize
• Executive Director 23/11/2013

STANDARD BANK

"A"

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

Case No : 57977/2011

in the matter between:

JANSEN VAN RENSBURG, ANTON obo MARNO

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

DEED OF TRUST

-MEMORANDUM OF AGREEMENT

ENTERED INTO BY AND BETWEEN

De Broglio incorporated represented by Michael de Broglio (hereinafter referred to as the "Donor")

And

STANDARD Trust Limited, registration number 1880/000010/06, represented by Jean Vosloo (hereinafter referred to as the "Trustee")

WHEREAS the Donor is obliged in terms of an order of the High Court of South Africa, Gauteng Division, Pretoria, under case number 57977/2011 dated 16 March 2015, to create a Trust for the benefit of the Beneficiary upon the terms and conditions set out below;

AND WHEREAS the Trustee is willing to act as Trustee and to accept the donation and to administer it on behalf of the beneficiary and to utilise it in accordance with the terms and conditions in this Trust Deed.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

1.1 In this Trust Deed, unless the contrary appears from the context, the following expressions shall have the following meanings;

TRUST the Trust created in terms of this Trust Deed;

TRUSTEE the original Trustee and any person succeeding the original trustee appointed in ter 1s of this Trust Deed;

CAPITAL BENEFICIARY MARNO JANSEN VAN RENSBURG

(Identity number: 990703 5308 08 6)

INCOME BENEFICIARY the Capital Beneficiary;

BENEFICIARY the Capital- and/or Income Beneficiary;

TRUST ASSETS

the donation made in terms of clause 4 below and all assets, property or monies subsequently acquired in any manner whatsoever and irrespective of the source thereof. The expression "trust assets" includes gross income, net income and capital.

VESTING DATE

means the date on which a Trust asset is being vested in and paid out or transferred by the trustee to a Beneficiary in terms of this Trust Deed.

1.2 Unless the contrary appears from the context, words importing the singular shall include the plural and vice versa and words relating to gender shall include the other gender and bodies corporate and words relating to persons shall include bodies corporate and *vice versa*.

1.3 The heading of the clauses in this Trust Deed are for convenience and shall not be taken into account in interpreting this Trust Deed.

2. **PURPOSE OF THE TRUST**

The purpose of the Trust is the creation of a Trust fund for the maintenance and benefit of the Income and Capital Beneficiary of the Trust.

3. **NAME OF TRUST**

This Trust shall be known as the **MARNO JANSEN VAN RENSBURG TRUST.**

4. **DONATION AND VESTING OF RIGHTS IN TRUST ASSETS**

The donor hereby donates to the Trustee the sum of R 100-00 (one hundred rand) which shall vest In the Trustee with immediate effect and is to be held in trust and administered in accordance with the provisions of this Trust Deed.

5. **ADDITIONS TO THE TRUST ASSETS**

5.1 The donor shall be entitled at any time to add to the Trust Assets by making a donation, or in any other manner.

5.2 Any person shall be entitled to contribute to the Trust Assets but the Trustees shall not be obliged to accept such contributions.

- 5.3 All additions to the Trust assets shall be subject to the provisions of this Trust Deed.

6. APPOINTMENT OF TRUSTEES

- 6.1 The Trustee named at the commencement of this Trust Deed and who agreed to accept such office, shall be the first Trustee of the Trust.
- 6.2 The Trustee shall at all times be a company institution or individual, which is a member of the Association of Trust Companies of South African or an entity (with members of management, staff, directors and shareholders) independent of (and not related to) the beneficiary. It shall be the sole Trustee.
- 6.3 If the Trustee wishes to resign, it shall prior to its resignation taking effect have nominated and appointed a successor, failing which the Master may appoint a trustee, as contemplated in clause 6.2 above.

7. POWERS OF TRUSTEE

The Trustee shall, in the exercise of its powers and duties in terms of this Trust Deed, have the power to deal with the Trust assets as it may reasonably deem to be in the best interest of the Capital Beneficiary, including the power:

- 7.1 To acquire or purchase right to or interests in movable or immovable property (irrespective of where it is situated), stocks, shares, participation bonds, debentures, policies, syndications, unit trusts,

mortgage bonds over immovable property, and similar investments with life assurance or listed companies;

7.2 To realize or amend any investment forming part of the Trust Assets and reinvest the proceeds;

7.3 To recover in the name of the beneficiary or of the trustee, any costs from the Road Accident Fund for which the latter is liable in terms of Section 17(4)(a) of the Road Accident Fund Act, Act 56 of 1996 for the account of the trust and for the ultimate benefit of the beneficiary.

7.4 PAYMENTS OF DEBTS

To settle trust obligations from the capital and/or income of the Trust.

ALIENATION OF ASSETS

7.4.1 To exchange, sell or lease any Trust Assets.

7.4.2 When exercising the right to sell Trust Assets such sale may be by private treaty, by public auction, by public tender or in any other manner deemed fit provided a market related price is obtained.

7.5 5 ■IMMOVABLE PROPERTY

7.5.1 To purchase, exchange or sell immovable property in any other manner and upon such terms and conditions as may be deemed fit;

7.5.2 To erect buildings and/or other improvements on immovable property;

7.5.3 To maintain and, where necessary, repair buildings or improvements on immovable property of the Trust;

7.5.4 To sign and/or attest any document pertaining to the alienations, subdivision, exchange, or transfer and, to make applications, consent to any amendments, cancellations, exemptions, reductions, substitutions or other actions relating to any deed or documents in connection with immovable property.

7.6 LEGAL ACTIONS

To institute or defend any legal action and to sign any power of attorney and other documents required for such purpose.

7.7 BANK ACCOUNTS

To open and operate bank accounts in the name of the trust.

7.8 BUSINESS

To conduct any business in the name of the trust for profit.

7.10 LETTING AND HIRING

7.10.1 To let trust assets, movable or immovable, upon such terms and conditions as the trustee may deem fit, to collect the rentals and cancel agreements of leases;

7.10.2 To enter into agreements of lease to hire any assets for use by any of the trust beneficiary, upon such terms and conditions as may be agreed with the lessor.

7.11 INSOLVENCY

To attend any meetings of creditors of any person who may be a debtor of the trust, irrespective of whether such meeting relates to insolvency, liquidation or judicial management, to vote at such meeting and in general to exercise all such powers as may be exercised by a creditor.

7.12 PROFESSIONAL SERVICES

To employ the services of a professional advisor or artisan for purposes of the trust and, to pay the fees of such person.

7.13 OFFSHORE INVESTMENTS

If any beneficiary should emigrate from the Republic of South Africa, and if possible and allowed by law, to transfer the beneficiary's share of the trust assets to his or her country of adoption, and to appoint an agent at the trustees discretion or to establish a new trust to administer on behalf of the beneficiary such transferred assets in accordance with the terms and conditions of this trust deed.

8 DUTY NOT TO CONTRACT WITH THE TRUST

The trustee shall not contract with the trust other than for the purpose of performing its function as trustee.

9 REMUNERATION OF TRUSTEE

The trustee for the time being, if a company empowered to undertake trust business, shall be entitled, in addition to reimbursement of its proper expenses, to remuneration in accordance with the statutory tariffs applicable from time to time to the services of a *curator bonis* in terms of the Administration of Estates Act.

10 APPROPRIATION AND VESTING OF THE TRUST ASSETS

101 Subject to the provisions of this trust deed and in particular the provisions of this clause, the trustees shall, in the administration of the trust assets, follow such procedures and take such administrative steps as it deems necessary from time to time, subject to the final direction by the master of the High Court.

102 The trustee shall at least once a year decide on the application and/or appropriation of income and capital profits received by the trust.

103 The trustee shall keep an account of all assets of the trust and prepare annual statements and keep records of all transactions in the trust in terms of the general accounting practice in the Republic of South Africa and the provisions of the Trust Property Control Act or other legislation.

104 The trustee may administer this trust for the benefit of the Beneficiary in whatever manner it may determine and in that regard shall have the

widest possible powers of managing and dealing with the Trust Assets in all respects subject thereto that the trustee shall at all times act in the best interest of the beneficiaries.

11. TERMINATION OF TRUST AND DISTRIBUTION OF ASSETS

11.1 The Trust is a discretionary Trust as far as the application, allocation and appropriation of Trust Assets are concerned, subject thereto that all decisions and actions taken shall be in the best interest of the beneficiaries. No payment or transfer of Trust Assets, or part thereof, will be made to a Beneficiary before the date vesting thereof in a Beneficiary.

11.2 The Trustee may decide whether any expenses incurred in respect of the Trust will be paid from the Trust Capital, or, from the net Trust income.

11.3 Payment at any time of any portion of the Trust assets to the Beneficiary may be made in cash or in goods, or partially in cash and partially in goods, in the discretion of the Trustee. The value ascribed by the Trustee to goods awarded, shall be final and binding on all parties concerned. For the purpose of this clause, "goods" shall also include Assets of a capital nature, other than cash, forming part of the trust Assets.

11.4 The Trustee shall be entitled to capitalise any Trust income in order to increase the Trust Capital.

11.5 No beneficiary shall be entitled to transfer, cede, pledge or otherwise deal with any interest in this Trust before the date of vesting and no Beneficiary shall have any claim to any trust assets before such date.

12. TERMINATION OF TRUST AND DISTRIBUTION OF ASSETS

The trust shall terminate upon the death of MARNO JANSEN VAN RENSBURG and the remaining net assets be distributed upon termination in accordance with MARNO JANSEN VAN RENSBURG's succession regime at the time of death.

13. EXCLUSION OF BENEFITS FROM COMMUNITY ESTATE

Any benefit, including the proceeds of any such benefit, which any Beneficiary may receive under this Trust, shall be excluded from any community of property or accrual system.

14. TAXES

The Trustee may pay any taxes, which may be levied on the donor in respect of any income received by or accrued to the Trustee, from the Trust's net income and in the event of payment of such taxes by the donor, such amount shall be refunded to the donor.

15. **VARIATION OF TERMS OF THE TRUST DEED**

The terms of this trust may only be varied in terms of an order of the High Court.

Signed at JOHANNESBURG on this _____ day of — — — — — 2015 in the presence of the following witnesses:

AS WITNESS

DONOR

AS

TRUSTEE

WITNESS AS

WITNESS

EXECUTED by the said
STANDARD TRUST LIMITED

Represented by:

Director/Authorised Signatory

Director/Authorised Signatory