


As you know, your matter is in our High Court department and is being dealt with there. We get a lot of queries about High Court matters, which are usually our bigger matters, and we thought that we would address some of those issues in this little flyer, bearing in mind that we do also have a detailed booklet which sets out how we handle High Court matters and it gives you a lot of practical information, including maps of how to find the various Courts. Should you need a further copy of this booklet, and one would already have been sent to you, please simply contact Corné on (011) 446-4211 or via e-mail to corne@onlinelaw.co.za and she will either post you one or e-mail you one.



Q: Why do I need to see so many experts?


A: The claim against the Road Accident Fund is proved, and quantified, by medical experts. An orthopaedic surgeon, for example, will detail physical bodily injuries and a neuro-surgeon would detail head injuries and the consequences thereof. Obviously, these need to be medically proved, and we work with the very best plaintiff experts to ensure that your case is prepared and run to the highest standards. Without experts, the case is essentially worth close to nothing, and if it is a case that happened after 1 August 2008, it will almost certainly be worth nothing. Experts detail the pain and suffering that you endured and most importantly, how the injuries have impacted upon your work and working capacity.



Q: What if I cannot make the appointment or I need to reschedule it?

A: In the event that you miss your appointment or attempt to reschedule it, it may well lead to your case being postponed and in the High Court that invariably means a delay of at least 13 to 15 months, and sometimes longer depending on the Court. In other words, miss an appointment, and you can quite easily wait in excess of another year for your case to be finalised! It is for this reason that we always stress to our clients that while we cannot control how well the other side, being the attorneys for the Road Accident Fund and the Road Accident Fund itself, prepare for cases, we can and must ensure that we and you are ready and that you have attended all of your medico legal appointments without missing any. Sometimes, and perhaps it is because clients are not paying for their case upfront, having elected a contingency fee arrangement, it seems that a minority of clients really do not give these doctors proper respect and feel that they can reschedule at the last second. At the end of the day, we are not talking about ordinary doctors and the clinic next door, which in any event deserve respect. We are talking about the very leading specialists in their field, in the country, and

you simply cannot miss appointments. Firstly, getting appointments with these specialists is incredibly difficult, because they are in huge demand and in some cases we have to block book appointments one and a half or two years in advance. If you miss the appointment, or attempt to reschedule it, there is a very good chance that we will not even be able to get you in with that expert again, which will mean that you will not have the best on your case. In addition to that, in all probability the expert will then charge you for missing the appointment and that would be a fee ranging somewhere from R1 000,00 to R3 000,00. Our contingency fee arrangement does not cover charges that you incur by missing appointments and you would be liable for them.



Q: What must I tell the Doctor/s?


A: You need to detail to the doctor the pain and suffering that you went through at the time of the accident and afterwards and how it has affected your life at home, and more importantly at work. In most of our cases, and certainly in cases involving accidents that happened after 1 August 2008, the most important aspect of the claim is the claim for loss of income and so it is essential that you tell the doctor, in most careful detail, as to how your working career is affected – if indeed it is. We always ask our clients to keep notes about this and payslips as well, if possible. It is very important that, while we know a lot of people want to preserve their jobs and want to act tough at work, that you do allow those around you to understand if indeed you are suffering, and to understand the circumstances that have led to this. Again, what you can expect to receive is entirely dependent on what your circumstances are, and how the injuries have affected your life and work. Injuries that some people think are not that significant, can ruin other people's lives, and it is up to you to keep us, and especially the doctors we send you to fully informed as to the unique circumstances of your life. When you see the doctor, don't just tell him how you feel that day. Tell him or her about how you felt since the accident – about the good days and the bad days – and make sure they fully understand the extent of your suffering and its impact at home and at work.

By way of example, a client of ours working on a computer who suffered a whiplash, struggled to work as effectively on the computer as before the accident, needed more time off work and as a result had to give up overtime. They also felt that they were not promoted as quickly as they had been before and all of this led to a substantial loss of income. In short, there are a number of ways that an accident can affect your working career, even looking forward into the future, and this is all taken into account based on the doctors that you see for us.

You need to tell the medical expert whether you have any difficulty sitting for any reasonable lengths of time at work, whether you have to drive as part of your job and how your driving is affected – if indeed it is. You need to tell the doctor whether or not you are able to effectively and productively utilise a computer just as you did before the accident or if the use of a computer is now more difficult than before. You must also specify to the doctor and all the experts we send you to, as to how your productivity at work has been affected, if indeed it has been. In other words, are you able to do 5% less, 10% less, 20% less or 50% less work than you did before?

 **Q: I work for a company. What sort of documents are you looking for?**

A: We need to be supplied with a copy of your employment contract as soon as possible together with recent salary slips as well as, and where possible, your notes or documents indicating any loss that you have suffered. If for example, you used to work overtime, and now you don't, then let us have copies of salary slips reflecting the overtime that you used to work and what you were earning and the recent salary slips which would indicate that you are not working the same extent of overtime, if any at all. It is also important that you provide us with details of people at your company that we can speak to about how your work has been affected and your commission/promotion prospects, etc.


 **Q: I own my own business. Can I claim a loss of income?**

A: Yes, you can, but if you operate your own business, the matter is immediately complicated by the fact that the paper trail that you leave in running the business is often the only independent evidence of the extent of your loss. Courts are understandably more careful to accept evidence of earnings before and after the accident. If there is no documentary evidence available, such as bank statements, source documents (such as invoices rendered and received), proof of labour disbursements and the like. In addition, Judges are only human and are also subject to the desire to 'kick for touch', if evidence or earnings are not presented in an easily accessible and understandable fashion. Accordingly, the better you prepare your documentation regarding your earnings and loss thereof, the more likely you are to recover your full loss. We urge you to timeously start preparing the evidence which should serve to prove that you have in fact suffered a loss.


Make sure that you make use of professionals to prepare your financial statements and request

such professionals to compile statements that can demonstrate your loss. Such professionals must also be made aware of the fact that their evidence in Court will probably eventually be required, with the result that they must be prepared to defend their statements and evidence. Due consideration should be given to the effect of the manner in which taxation has been dealt with in the past. In other words, it will serve no purpose for your bookkeeper or your accountant to write a load of exaggerated nonsense as to what you were earning, if it cannot be backed up.

It should also be borne in mind that most businesses are usually operated through vehicles such as companies and close corporations and if this is indeed the case in your matter, the loss of income is usually suffered by that entity and not by yourself personally. If the loss of such entity directly impacts on your own personal income position, such fact and the extent thereof should clearly be demonstrated in professionally prepared financial statements. Bear in mind that we are required to discover all the source documents and that the same must be made available to the other side and eventually be proven, to substantiate the financial statements reflecting the loss. In other words, you cannot simply claim a loss without proof – you have to supply those papers before the other side as well.

 **Q: I understand that approximately 45% of matters are postponed at court the first time. Will my case be one of them?**

A: There is no way of us knowing whether or not your case will be postponed. What we can tell you is that the biggest causes of postponements are generally the fact that the attorneys for the Road Accident Fund are not prepared and ready to run to trial. When our clients are to blame, and that is not most of the time, the most common factors are that our clients either suddenly reveal, at the last second, witnesses that they have never told us about before, or detail injuries or loss of income that they have never told either us or any of our doctors about before and most commonly, matters are postponed when our clients either miss our medico legal appointments or the other side's medico legal appointments.

 **Q: Will I be asked to go and see experts for the other side?**

A: You may well be asked to go and see medical experts for the attorneys representing the Road Accident Fund. These experts are not generally as friendly as our experts, and while they are obviously meant to be objective, we certainly have seen some very strange

reports from experts hired by the Road Accident Fund in the past and without exception, they almost always seem to take a more negative approach to our clients, than our experts do.

One can never tell whether or not you will be required to see experts, and it is probably safer to say that generally it is in the bigger cases that you are required to see experts and the problem that we face is that they are allowed, in law, to give as little as 5 days notice of the date of an appointment and if you miss the appointment, you will then be liable for legal costs and your matter will in all probability be

postponed. This does sound somewhat shocking, but that is unfortunately the process, and there is nothing that can be done about what are, after all, rules of Court.

The bottom line is, if you get asked at the last second, which is invariably when the attorneys for the Road Accident Fund do make these requests, to go and see experts for them, you are going to simply have to accommodate them and get to those appointments one way or another – or risk seeing your case postponed for one and a half years.

Problems associated with medico legal reports and doctors

Unfortunately, in a day and age when the Road Accident Fund no longer settle even the smallest cases without us forcing them to Court, the Courts have become flooded with these cases. One struggles to get experts who want to do medico legal work, because there is always a very good chance that they will have to give up their work for the day and go to Court. So, one is left with a limited pool of specialists who are prepared to do the work in the first place and the problem is then compounded by the fact that obviously we would not be doing our clients any favours if we send them to a totally unsympathetic doctor, who could not care about the injuries or detailing the impact of them on their life, in particular their working career.

So, essentially we are looking for sympathetic doctors who spend the time to fully investigate a person's problems and who are prepared to do this work. It is a very limited group of doctors, and in most matters you need at least an orthopaedic surgeon, occupational therapist and industrial psychologist – in other words, a minimum of three experts – and in many cases you need more. The bigger problem we have now however is to get the reports back from the doctor in time for the other side to respond to it. We increasingly face a predicament where we simply cannot get the reports back from the experts in time and some of those matters, as a result, have to be postponed. The Road Accident Fund then becomes entitled, and unfortunately sometimes does so quite unreasonably, to demand a postponement.

There is very little that we can actually do about this, because sympathetic doctors, who have a good reputation in Court, and who are available and willing to do this work, are few and far between, so there is no doubt that essentially they call the shots. In other words, we cannot simply just move our work to another expert, because we are talking about a limited number of people who do this work and we prefer to work with the best. The best are extremely popular, they are fully booked and the bottom line is, even if they supply their reports too late and yet another case gets postponed, we, and any other firm who knows what they are doing, will continue to work with that expert. The bottom line is that it's either an expert with a timeous report completely dismissive of a client's difficulties, or we get an expert who is prepared to listen and support your assertions of difficulties, whose report is sometimes out of time. Some clients, understandably, expect us to phone the expert and express the client's fury at the postponement. This is problematic when some time in the future we may have to call that expert to come and testify on your behalf in Court. It makes no sense to enrage them. They invariably explain to us that they are being requested to do so much work that they unfortunately cannot be responsible for some delays that occur now and then.

That is the first challenge that we face, it is one that leads to postponements in about 35% of our cases, and it is one that you do need to be aware of, because it can happen in a matter and more frequently in a matter that is considered to be worth in excess of R100 000,00.



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