

CV 1

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**INSPECTION HELD ON 30 AUGUST 2012**
**MATTER OF AVRIL MPHO MASHILOANE//ROAD ACCIDENT FUND.**
**IRREGULARITIES FOUND WHEN TAXED PARTY AND PARTY BILL OF COST WAS  
COMPARED WITH THE SERVED ATTORNEY CLINET BILL OF COST**


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RAF ref: 500/1501350/02/0 – Link: 2733589

**CONSULTATIONS:**

The following consultation reflects in the party and party bill of cost and **not** in the attorney client bill of cost. Inspection of the file indicated that no file notes exist iro the following consultation. It is clear from the inspection that Norman Berger attorneys picked client up for consultations, medico legal appointments, consultations with counsel and court attendances.

No travelling disbursements exist for the following consultations:

DATE	CONSULTATION	TIME SPENT
28/06/2010	Consultation with client to discuss the accident report and SAP statements (item 33) <sup>i</sup>	1 hour
21/01/2011	Consultation with client to traverse the RAF1, hospital records and attend to instructions to experts etc (item 72) <sup>ii</sup>	1 hour
4/8/2011	Consultation with client to advise him of rights and obligations iro defendant's experts and discussed medico legal reports by Dr Barlin, R Marks and J van Zyl after the the appointment with Dr Fourie (item 121) <sup>iii</sup>	3 hour
5/08/2011	Consultation with client to traverse actuarial report (item 137) <sup>iv</sup>	15 min
24/8/2011	After consultation with counsel, <u>discuss</u> defendant's expert reports (item 158) <sup>v</sup>	2.5hr

Monetary value these consultations: R6,205.40

A.M.M.

Handwritten signature and initials, including 'M.A.M.' and a large stylized mark.

"FICTITIOUS" COPIES IN THE PARTY AND PARTY BILL OF COST

ITEMS	COPIES TO	TOTAL FICTITIOUS COPIES IN PARTY AND PARTY BILL OF COST
8,10,14,18,20,22,26,28,30,37, 44,46,49,56,62,67,71,80,82,84, 86,88,94,108,110,113,117,124, 128,141,146,151,156,	Counsel <sup>vi</sup>	247 p
57	Lodgement documentation to defendant <sup>vii</sup>	119p
100	Report by Dr Barlin to R Marks and J van Zyl <sup>viii</sup>	22p
106	Report by R Marks to J van Zyl <sup>ix</sup>	19p
118	Report by J van Zyl to R Marks <sup>x</sup>	15p
142	Report by Dr Schwartz to experts <sup>xi</sup>	21p
147	Report by Dr Fourie to R Marks and J van Zyl <sup>xii</sup>	24p
152	Report by Rose Leshika to experts (R Marks and J van Zyl) <sup>xiii</sup>	20
156	Expert minutes by Dr Barlin and Schwartz to R Marks and J van Zyl <sup>xiv</sup>	4p
161	Expert minutes by J van Zyl and Dr Fourie to R Marks and Dr Barlin <sup>xv</sup>	2p
156	Expert minutes by Dr Barlin and Schwartz to R Marks and J van Zyl <sup>xvi</sup>	4p

Monetary value of copies made: 497 copies R 974.20

A.M.M.

M.M.M.  
A.A.

**CORRESPONDENCES**

The following discrepancies were found on inspection of the file and when compared with the attorney own client bill of cost:

CORRESPONDENCE	AS PER PARTY AND PARTY BILL OF COST	AS ATTORNEY CLIENT BILL OF COST	PER LETTER COUNT	OVERREACHED WITH
Letters written (up to 17/7/2010)	35p	23p	35	
Letters received (up to 17/7/2010)	19p	9p	2	17 letters on party and party scale
Letters written (from 18/7/2010)	68p	73p	68	
Letters received (up to 17/7/2010)	76p	80p	24	52 letters on the party and party scale

Monetary value of *fictitious* letters charged: R 2839.50

**DISCREPANCIES IN TELEPHONE CALLS MADE AND RECEIVED FOUND WHEN PARTY AND PARTY BILL OF COST COMPARED WITH ATTORNEY CLIENT BILL OF COST**

<u>TIME FRAME</u>	<u>PARTY AND PARTY BILL</u>	<u>ATTORNEY CLINET BILL</u>	<u>DIFFERENCE</u>
Up to 17/7/2010	4 calls	3 Calls (15min)	1 call
After 18/7/8/2010	15 calls	15 min	12 calls unaccounted for

Value of fictitious calls: R551.50

**WORK DONE BY FILING CLERKS (NEITHER ATTORNEY NOR CANDIDATE ATTORNEY)**

A.M.M.

M.M.M.  
A

<u>ITEM</u>	<u>WORK DONE</u>	<u>TIME SPENT</u>
52	Enter matter on continuous roll - clerk	0.25 hour @ R65.00
134	Index and paginate court file - clerk	1 hour @ R260.00
131	Copy, collate and bind bundles - clerk	2 hours @ R520.00

Value of work charged for unprofessional staff (R845.00)

TOTAL VALUE OF FICTITIOUS ITEMS IN THE PARTY AND PARTY BILL OF COST:

R11,415.6

It must be noted that attorney Anthony Millar signed a certificate in respect of the party and party bill of cost, declaring that he has perused the party and party bill of cost and confirmed the bill was found to be correct and that every description in the bill of cost with reference to work, time and numbers is consistent with what was necessarily done by him

<sup>i</sup> No consultation reflects in the attorney client bill of cost

<sup>ii</sup> No consultation reflects in the attorney client bill of cost

<sup>iii</sup> Attorney client bill of cost indicates a consultation of 30 minutes (item 151). The consultation in the attorney client bill of cost is also disputed in the absence of a file note. The travel disbursement 100707 indicates that the driver picked the client up at Zonke, took him to Brakpan and back to Zonke (80km) No indication on the disbursement voucher that client was transported to the office to consult.

<sup>iv</sup> No consultation note on file. NOTE: actuarial report is factual incorrect and does not reflect the correct income (as per Counsel's email to NBA dated 23/8/2011. The question is that if client attended a consultation, why was the incorrect values of the report only discovered when counsel pointed it out to the attorney? The travel disbursement 100442 indicated that the driver picked client up at his house (Zonke) transported him to Dr Schwartz and took him back to Zonke (75km) No indication on the disbursement voucher that client was transported to the office to consult.

<sup>v</sup> No file note to indicate the discussion. Attorney client bill of cost (item 202) makes a provision for a consultation with client to discuss defendant's expert report for 1 hour.

<sup>vi</sup> Compare and refer to counsel's account – brief consisted at 185p (charged for in item 132 of the party and party bill). On inspection it was established that counsel's brief consisted of bundle (185p) joint minutes (7p) and pleading bundle (21p).

<sup>vii</sup> Lodgement documentation was never copied for defendant. On 18/8/2010 lodgement documentation was scanned and emailed to dineos@msm-inc.co.za

<sup>viii</sup> Report by DrBarlin was scanned and emailed to J van Zyl and R Marks. No actual copies made

<sup>ix</sup> Report by R Mark scanned and emailed to J van Zyl.

<sup>x</sup> Report by J van Zyl scanned and emailed to R Marks.


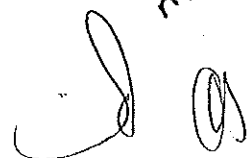
<sup>xi</sup> Report by Dr Schwartz scanned and emailed to own experts

A.M.M.

*[Handwritten signature]*  
*[Handwritten initials]*  
*[Handwritten initials]*

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- <sup>xii</sup> Report by Dr Fourie scanned and emailed to R Marks and J van Zyl
  - <sup>xiii</sup> Report by Dr Schwartz scanned and emailed to own experts
  - <sup>xiv</sup> Minutes scanned and emailed to R Marks and J van Zyl
  - <sup>xv</sup> Minutes scanned and emailed
  - <sup>xvi</sup> Minutes scanned and emailed to R Marks and J van Zyl

A. M. M.

  
M. S. M.  


**Cora Van der Merwe**

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**Subject:** FW: MASHILOANE TAXATION - INSPECTION AT OFFICES OF NORMAN BERGER ATTORNEY - PRELIMINARY REPORT

**From:** Cora Van der Merwe  
**Sent:** 30 August 2012 03:59 PM  
**To:** 'tony@berlowitz.co.za'

**Subject:** MASHILOANE TAXATION - INSPECTION AT OFFICES OF NORMAN BERGER ATTORNEY - PRELIMINARY REPORT

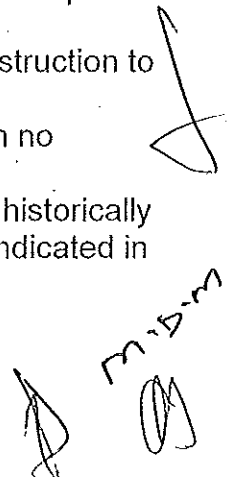
Dear Mr Berlowitz

I confirm that I attended to the inspection yesterday, and I am in the process of drafting a report for you.

I found only a few time related notes on file, many work specified in the bill ( on an hourly rate was) **could not be proved with a file note**. For example every time when they received a medico legal report, they peruse the hospital records and all related clinical data (This happened 9 times).

The hospital records was straight forward, client had a mid-shaft fracture of the femur with an internal fixation and no complications - and half of the records related to injuries that had **no nexus** to the accident. What is however interesting, if the attorney indeed considered the hospital records, compared all the medico legal reports as stipulated in the bill of cost, why did they not pick up that:

1. R Mark erred in her report when she noted in her report that plaintiff was unconscious after the accident. The hospital records in the contrary indicated that plaintiff was well orientated
2. R Marks erred further indicating that plaintiff was treated in Natalspruit AND Baragwannath hospital for the injuries sustained in the accident. The operation done at Bara had no nexus with the accident.
3. R Marks completed the RAF 4. Occupational therapists are not classified as medical practitioner
4. R Mark erred when she completed the RAF 4 as she used the UPPER extremity impairment evaluation to classify an injury (femur #) and indicated a WPI of 6%
5. R Marks in her report dated **17/07/2011** indicated in her medico legal report a performance level of 87.5% and rate of working as 90% . She is of the opinion that plaintiff will be rehabilitated after 6 hour occupational therapy sessions. She is of the opinion that plaintiff will be in a position to return to work after the prescribed rehabilitation.
  - a. Despite this finding NBA appointed and actuary and indicated in their instruction to Clemans Roland Murfin on **3/8/2011** that:
    - i. It is anticipated that client will return to work to the age of 50 (with no evidence provided that client will retire at an earlier age)
    - ii. Plaintiff earned R2,471.00 at the time of the accident, which was historically incorrect as their own expert (J van Zyl) and defendant's expert indicated in their reports an income of R1,400.00.

Handwritten signature and initials, including a large stylized 'A' and 'M.M.M.' written vertically.

Attorney charged one hour on the 15<sup>th</sup> of July 2012 to compare the report by R Marks with the report by Dr Barlin and the hospital records. If the attorneys applied their minds they would have noticed the discrepancies iro:

- o Injuries sustained – no mention to unconsciousness in hospital records and report by Dr Barlin
- o Hospital treatment ( Dr Barlin indicated that plaintiff was treated on two occasions in Natalspruit – R marks indicated that Plaintiff was treated in 2 hospitals

No file note to proof the time spent

#### RAF 4

Claim lodged 1/3/2010 – RAF4 not submitted

Summons issued 5/7/2010

Plea: 10/8/2010 – defendant objected to WPI whilst not in possession of RAF4

RAF4 lodged 16/10/2010

Pre-trial admission sought by NBA – that defendant received the RAF4 and did not object within 60 days

#### RAF4 FORM COMPLETED BY DR BRAUDE (NATALSPRUIT) AND R MARKS

##### (OCCUPATIONAL THERAPIST:

- o Dr Braude never saw client, and client never submitted himself for a serious injury assessment.
- o Dr Braude indicated on the RAF4 “No physical examination done – refer to Natalspruit hospital records annexed to the report” He made a finding on loss of mobility and scarring based on the clinical notes and the report by R Mark, who indicated a WPI of 6%.
- o Dr Braude bases his serious injury assessment on the report by R Marks:
  - o R Mark erred when she completed the RAF 4 as she used the UPPER extremity impairment evaluation to classify an injury (femur #)
  - o and indicated a WPI of 6%
  - o She assigned a grade 2 to the injury
  - o She indicated a final impairment of 14%
- o Dr Braude indicated on the RAF4 under paragraph that the **narrative test** is applicable under heading 5.2 (being serious disfigurement) ONLY
- o No conclusions was reached by Dr Braude iro para 4.5 and 4.6
- o Dr Braude stated that client reached the maximum MMI
- o No declaration was signed by R Marks

On 24/8/2011 NBA received the report by Dr Fourie who defers the expert agreement i.e Dr Schwartz and Ms Leshika that there is NO objective evidence that client experience loss of work capacity

**Dr Swartz for the defendant indicated:** that plaintiff sustained a mid-shaft fracture of the right femur and healed fully with no functional impairment.

1. Dr Swartz indicated that there was NO NEXUS between the back shoulder and knee injury (pre-existing condition) and the accident
2. The joint minutes by Dr Barlin and Dr Swartz dated 20/6/2011 indicated that the two surgeons were in agreement that plaintiff suffered only the femur fracture as a result of the accident.

**Rose Leshika for the defendant** indicated that client needs no occupational therapy, needed no assistive devices and had no loss of employment capacity. R Marks for the plaintiff **indicated rehabilitative occupational therapy of 6 hours after which client will be able to return to work.**

M. V. M.  
A

On 31.08.2011 NBA consulted with J van Zyl (30min) – file note consisted only of 22 words “Pensions: find out if men has been changed to 65. Who qualifies, what to do” and charged client R1150 for this

On 31.08.2011 NBA consulted with R Marks for 30 min – file note “ back injury as per de IV (*unreadable*) enough. Not only did they rely on wrong info, they also charged client R1150 for this.

**COUNSEL:**

Brief consisted only of 210 pages (trial bundle, pleading bundle and joint minutes. NBA charged client for 543 copies.

Counsel wrote a letter to NBA requesting them to seek confirmation that the **general damages to be adjudicated** by HPCSA.

**TIME RELATED ITEMS IN THE BILL OF COST**

Of the 50 hours iro time spent on time related basis, I could only find file notes to proof 8 hours spent on the file.

Jora van der Merwe  
[Legally.accurate@gmail.com](mailto:Legally.accurate@gmail.com)

*Handwritten signatures and initials:*  
A large checkmark-like signature.  
A signature that appears to be "M. van der Merwe".  
Two circular initials, possibly "R" and "A".



**CERTIFICATE BY INTERPRETER**

I, Moswamotse David Mamosela confirm that:

1.

I attended the consultation between Ms Cora van der Merwe, Legal Cost Consultant and Mr Avril Mpho Mashiloane, when the bills of costs drawn by Norman Berger and Partners were discussed. I did the interpretation in Sotho.

2.

After the consultation, an affidavit, attached hereto, was drafted, which contents were interpreted to Mr Mashiloane.

3.

I confirm that as far as the affidavit refers to the "mandate", that a copy of same was given to the client. I asked him to read a paragraph from the mandate and to explain to me what he understood. Mr Mashiloane was not in a position to communicate any details of the mandate to me in English or Sotho and confirmed that it was too difficult for him to understand.

4.

As far as the affidavit refers to conflicting items in the bills of costs, copies of the bills were shown to him, the contents of the items explained to him in Sotho.

Signed on this 11 day of September 2012

[Signature]  
INTERPRETER

[Signature]

[Signature]  
m-s.m.  
[Signature]

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## AFFIDAVIT

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I, Avril Mpho Mashiloane, state under oath:

1.

Jabu, found me during September 2009 in the township on crutches. I did not know him, and it was the first time that I had contact with him. Jabu had other people with him and told me that he would come back to see me. Jabu asked me how I got injured and I told him that I was knocked down by a vehicle. He told me that he could help me. He told me that he can take me to lawyers who can help me to lodge a claim at the Road Accident Fund. On 20 September 2009 Jabu came and picked me up. He took me to Norman Berger & Partners who took my details and who told me that they would help me to lodge a claim. The first time that I had contact with these attorneys, was when Jabu took me there.

2.

AD CONSULTATION: 20/9/2009

My mother and I consulted with a black lady with the name of Thembi Vilakazi on the 20 September 2009 when Jabu took us there. Thembi took my details and asked me to sign documentation. The contents of the documentation was never discussed or explained to me. Thembi just asked me to sign the documentation. No other people was present at the consultation. I was under the impression that Thembi was the attorney who will help me to lodge a claim at the Road Accident Fund. No other person consulted with me that day. I was under the impression that Jabu worked there, but was informed at a later stage, when I tried to phone Jabu, that he did not work there.

3.

*A.M.M.*

*Am*

*A.M.M.*

*In*

*M.D.M.*

*(Signature)*

AD MANDATE

Thembi asked me to sign a mandate. I did not understand what I signed. Although she conducted the conversation in my language, no contents of the documents were explained to me. I trusted her and did not ask any further questions. Now that I have a copy of the mandate, I confirm that I was never aware that the attorney would charge me R2,000 per hour for work done or R6,00 per kilometer for everytime that they pick me up. The mandate, attached hereto as annexure A, is written in difficult language, and even if I read it slowly, I can not understand what I am reading.

4.

AD CONSULTATION 2010/06/28

Norman Berger & Partners (The attorney) indicated in the party and party taxed bill of cost (Item 33 - Annexure A) that they consulted with me on this date to discuss the accident report and SAP statements. I deny that they have ever consulted with me on this date or that they have ever discussed the accident report and police statements with me at a later stage. I note that this consultation does not reflect in the attorney client bill of cost.

5.

AD CONSULTATION 2011/01/21

Norman Berger & Partners (The attorney) indicated in the party and party taxed bill of cost (item 72 - Annexure A) that they consulted with me on this date to discuss the RAF1, hospital records and instructions to experts. I deny that they have ever consulted with me on this date or that I have ever discussed the hospital records with them at any stage. I note that this consultation does not reflect in the attorney client bill of cost.

6.

AD CONSULTATION 2011/08/04:

The attorneys never consulted with me on this date. The driver picked me up at my house and took me to the office in Louis Botha Avenue. I waited there for the driver to take me to

A.M.M.

A.M.M. I.O.

M.S.M.  
A

AD TRIAL 2011/09/05

I never attended court for the second time. The driver picked me up at my house and took me to the attorney's office. There I consulted with Thembi Vilakazi who asked my to sign the 'court order'. She signed as witness. She told me that the court awarded R37,000.00 for past loss of income and that there will be another R182,000.00 for my injuries. I am still waiting for that money.

Thembi never told me that the attorney for the Road Accident Fund objected to my injuries as not being serious. I was left with the impression on 5 September that my matter was finalized and the I will receive the R182,000.00 soon. They never informed me of any further court actions.

*Ashe.*

DEPONENT

I certify that this affidavit was signed and sworn to before me at ~~Zonkazan~~ on this the 11 day of ~~September~~ 2012 by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and who uttered the following words "I swear that the contents of this affidavit are true, so help me God".

*AMM*

*Im* *M.D.M*

*Am.*

*[Signature]*

*2012/09/11-3 C87*  
*2012/09/11*  
*ZIL MATHIVH*

SOUTH AFRICAN POLICE SERVICE  
CLIENT SERVICE CENTRE  
2012 -09- 11  
ZONKIZIZWE - EAST RAND  
SOUTH AFRICAN POLICE SERVICE

COMMISSIONER OF OATH

*A.M.M.*

*[Signature]*  
*M. Dim.*