

Dispute Resolution

30 June 2026

South Africa

- Your expert report is worthless – unless you do these things first



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Your expert report is worthless – unless you do these things first

In *Griebenouw v Minister of Labour and Others* (7114/2019) [2026] ZAWCHC 316 (17 June 2026), the High Court delivered a sharp reminder to litigants: attaching an expert report to an affidavit is not the same as placing evidence before a court.

Griebenouw sought confirmation of a *rule nisi* – a provisional court order – in a dispute about the percentage of his disability pension and the compensation payable to him under the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA).

To prove the amounts he said were owed, Griebenouw attached an actuarial report, prepared by Wim Loots of WL Actuarial Consulting, to his supplementary founding affidavit and asked the court to treat its contents as evidence in support of the relief he sought.

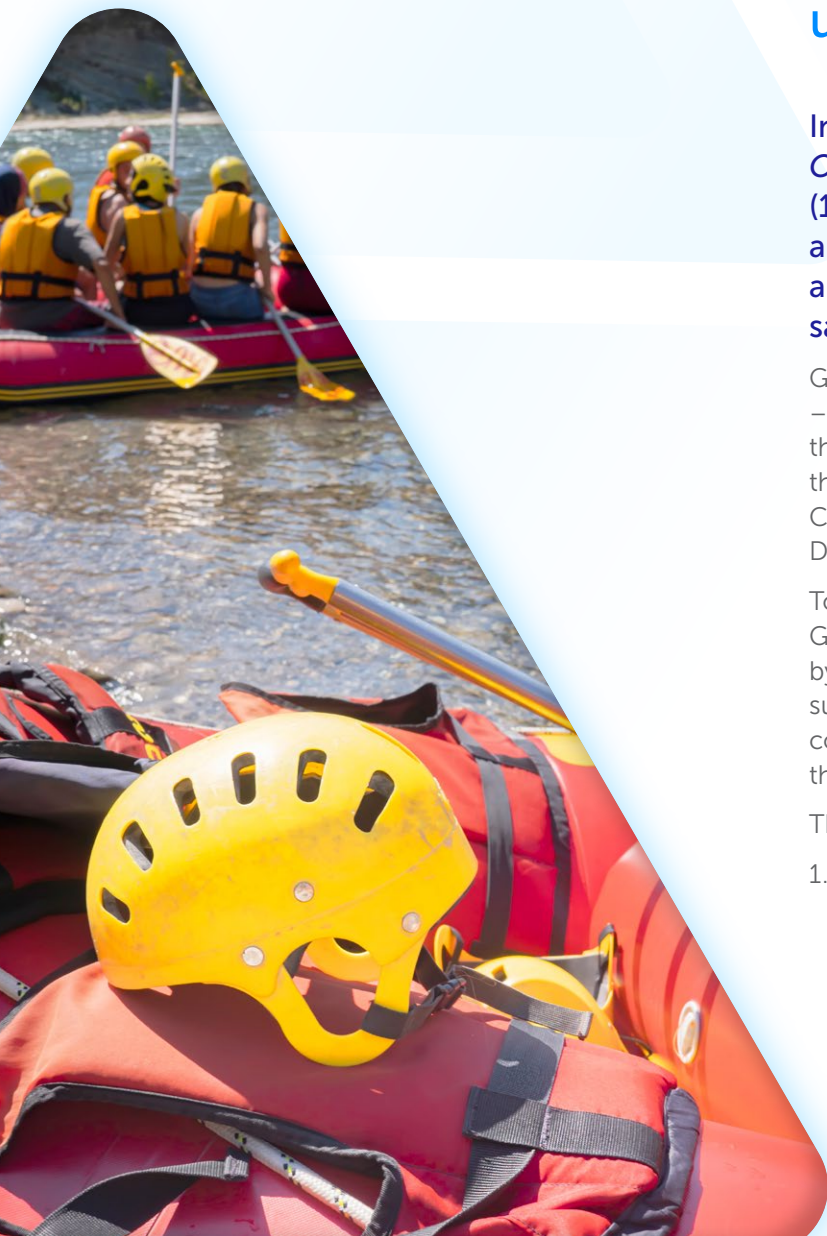
The respondents objected on three grounds:

1. The report was annexed to the affidavit without a confirmatory affidavit from its author. Its contents were therefore not placed before the court under oath, as required by Rule 6(1) of the Uniform Rules of Court.

2. The applicant gave no notice of his intention to rely on expert evidence, as required by Rule 36(9)(a) of the Uniform Rules. He also did not seek the leave of the court or the consent of the other parties.
3. The calculations in the report were at odds with COIDA. The report used a 2023 salary scale, whereas section 63 of COIDA requires compensation to be calculated at the rate of remuneration at the time of the accident – in this case, 1998. The report also claimed a lump sum for future compensation, to which the applicant was not entitled, and sought increased compensation without following the process required by section 56 of COIDA.

The court sided with the respondents.

On Rule 6(1), the court was unequivocal: in motion proceedings, affidavits serve as both pleadings and evidence. A party cannot discharge its evidential burden by annexing a report from someone else. The expert must depose to their own affidavit – confirming their qualifications, the facts they considered, the reasoning they followed and the



conclusions they reached. Compounding this, the applicant himself did not state in his affidavit that he believed the contents of the report to be true, nor did he provide any grounds for such belief.

On Rule 36(9)(a), the court noted that the expert opinion was disputed and not capable of easy verification. By failing to give notice and properly disclose the expert's opinion, the applicant denied the respondents any meaningful opportunity to consider, interrogate and challenge it; fundamentally undermining the fairness of the proceedings.

The court also found that neither the applicant nor Loots claimed, under oath, that Loots possessed the knowledge or expertise to express an opinion on the matters in issue. A bare reference to his Fellowship of the Actuarial Society of South Africa was not enough. Without sworn evidence of expertise, the court could not assess, let alone accept, the cogency of his conclusions.

The result was inevitable. Without a confirmatory affidavit, the report contained no sworn evidence of the underlying data, methodology or reasoning. The court found it to be inadmissible hearsay, argumentative matter with no evidential content, and of no probative value. Once excluded, the applicant was left without the evidence needed to prove his claim, and the *rule nisi* was discharged.

The takeaway for practitioners is clear. If you intend to rely on expert evidence in motion proceedings, a report that is merely attached to an affidavit, however detailed or technically sophisticated, is not evidence. Courts will not do the work of establishing admissibility for you.

**Eugene Bester, Gavriel Bender
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