

Auditor and compliance officer cleared, insurers to pay costs



By [Jean-Paul Rudd](#)

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A few years ago, several well-known short-term insurance companies took legal action against an intermediary company due to the damages they incurred as a result of the intermediary's collapse. The intermediary, presently in liquidation, was responsible for the collecting and accounting of premiums owed to the insurers.



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Surprisingly, or some might even contend strangely, the insurers elected to join the intermediary's statutorily appointed auditor and compliance officer as co-defendants to the action, suing them in delict whereas the intermediary was sued in contract.

The auditor and compliance officer subsequently filed exceptions to the insurers' particulars of claim, alleging that it lacked the necessary averments to sustain an action against them. An exception, in legal proceedings, is a formal way of bringing attention to a specific issue or objection that one party has regarding the case, indicating that there is a legal or procedural concern that needs to be addressed by the court.

The exceptions were recently argued in the High Court of South Africa, Gauteng Division, Johannesburg. To succeed with the exceptions, the auditor and compliance officer needed to convince the court that, on every possible reading of the insurers' particulars of claim, no cause of action was made out against them.

The insurers' claim against the auditor was primarily based on an alleged statutory duty it owed to the insurers. The auditor, in turn, argued that the duties it owed were to the intermediary and its shareholders, not to the intermediary's creditors and clients.



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Jean-Paul Rudd 26 Jan 2023



The claim against the compliance officer was, on the other hand, based on its alleged failure to have submitted certain compliance reports to the FAIS regulator. The compliance officer argued that the claim against it was for pure economic loss which is not *prima facie* wrongful. It argued further that the insurers failed to prove a causal link between its alleged failure to submit compliance reports and the damages suffered by the insurers. Lastly, it argued that the duties it owed was similar to that of the auditor.

The court found, amongst others, that the duties the insurers wished to place on the auditor and compliance officer would make them potentially liable to countless creditors which they did not have a relationship with. Consequently, the court upheld the exceptions and ordered the insurers to pay the legal costs of the auditor and compliance officer.

ABOUT JEAN-PAUL RUDD

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