news you're not supposed to know

nosewek

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78 APRIL 2006

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Steel bosses scheme to grab pension billions

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noseweek

APRIL 2006 ISSUE 78

Illustration: DR JACK

17 Rolls-Royce paid dicey BEE lawyer secret 1.9m

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Gone but not lost

Your subscription reminder letter addressed to Mr M Collins of Fresnaye refers. It is with regret that I advise that Michael has died as a result of motor neurone disease.

I can assure you that Michael was particularly orderly in planning his affairs, so it is no wonder that his subscription ended on his death.

As you say, he's been a subscriber from day one, through good times and bad, so I'm sure he still *nose* where to find it.

As you also mention in your letter that the only blot on the horizon is that he might no longer be with us, I can assure you that, if at all possible, Michael will have found a copy and will read it from cover to cover.

Stuart Collins
Executor of Estate Late M Collins,
Cape Town

Maybe we should leave one in his postbox – just in case. – Ed.

Give Nedbank a break

While I yield to nobody in my lack of sympathy for our banks, your cover story in *nose*77 is hardly a case of David vs Goliath. Here is a businessman who, in a grotesque attempt to outdo his rich Winelands neighbours, spends R60-million on property near Stellenbosch, sees his *gat*, then finds he cannot repay Nedbank R12m he borrowed. Boo fucking hoo!

Your story is told entirely from the mouth of the borrower. Anyone with some experience would guess that there may be other aspects to this tale.

For example: The French who were magically prepared to pay R49m and solve his financial predicament, but were "spooked" by the sale in execution, and then failed to even turn up at the auction; sounds like the classic bullshit which desperate borrowers throw at their creditors to buy time and stave off legal action.

You write that the French "would have bid if there had been an opportunity." There *was* an opportunity: they knew well in advance that the property was going to be auctioned, but didn't show. Another buyer (Mr Haskell) instructs his agents to bid on the property at auction, but does not tell them how much he is prepared to pay, so in the middle of the auction they have to run off to a nearby hilltop to get in cellphone contact with him.... Really! If I were the auctioneer, faced by such amateurish nonsense, I too would have gone on with the sale. It's hardly surprising that the bank, too, eventually became *gatvol* and wanted their money back.

Maybe the judgment will confirm your one-sided view of this dispute, but bottom line is: who cares?

Jonathan Shuriya
Cape Town

You presume a lot. "Who cares?" you ask. All those people who have an overdraft at Nedbank, for a start. And then there's the fiduciary duty, many of us had assumed, banks owe to their clients. – Ed.

A businessman spends R60m on a property then finds he can't repay Nedbank. So, who cares?

Gus

He's lonely because he ate his friends

Ex trouble and strife

I read with horror of the plight of Frank Chilchik at the hands of his ex-wife, Janine Rose Ressel (*nose*77). I have one thing to say to Frank – kill the woman before she kills you!

Ingrid Milne
Rabie Property Projects
Cape Town

A popular but not necessarily sensible view. – Ed.

Scabrous Scalabrino

I too have been on the receiving end of Magistrate Scalabrino's belittling sarcasm. She asked me while perusing my expenses: "Why are you paying R680 a month into a retirement annuity, so you can retire in luxury?" and "Why do you need a TV?" (relating to the R21 a month licence fee I pay).

Yet not once did she ask my wife for proof of her understated salary or grossly exaggerated expenses.

My wife had some months earlier cleaned out the contents of our home while I was at work and moved in with her lover – she took the washing machine, but Scalabrino ordered me to contribute towards the maid who cleans my wife's home and washes the clothes of her lover. I must wash mine in a bucket. I was ordered to pay towards their phone bill but my daughter can't phone me because they never have airtime for her.

I too must pay for all school extra-mural activities, school wear, books etc. My wife is certainly not paying pro rata expenses.

The Family Advocate's Court in Cape Town has displayed an even more disgusting bias in favour of the mother, to the extent of manipulating the words of my daughter to describe me as a poor father. I have the proof of this in an independent social worker's report. The family advocate's report is so full of invidious, unsubstantiated remarks about me that it must be libellous, yet it has the official stamp of the court. This document has entrenched incredible acrimony.

Who suffers the worst? My poor daughter.

Thank you Ms Scalabrino.

Name withheld
Cape Town

PS: Please withhold my identity as I will likely have to appear before her again.

Cape Town's icons

The article "South Africa's cultural locales" (*nose*77) alongside the article about the Sydney Opera House, made excellent and entertaining reading. After listing a number of edifices in South Africa, none of which actually qualifies for icon status or dignifies the city in which it is situated, Levin asks: "Is there any South African building that resonates such evocative and instantly identifiable purity of form? Yeah, one. Only it happens to be a flat topped mountain."
I would suggest there is another that warrants mention: Cape Town's majestic flyover roads that end in midair. They should rate as an icon of our time – and a city that just can't get it together.

V Rupping
Parow

Eskom's shocking business

I would like to know why the CEO of Eskom cannot be forced to resign? Perhaps all the millions paid to him in salary, performance bonuses and restraint of trade agreements can then be paid to all the consumers in the Western Cape as a gesture to compensate them for the losses they have suffered.

On Monday 6 March, the *Cape Times* published a schedule of the load-shedding for the day and, right next to it, an article about the monopoly utility's chairman's remuneration.

The electricity failed to go off as "scheduled" – it never does.

Surely the CEO should be held responsible for the lack of planning, when he knew six years before the event that there was going to be an electricity crisis about now? He should not have

put the technical people on early retirement and should have kept the other coal power stations on the go.

At the moment everyone's getting the blame – except the real culprits.

Myrtle du Toit
Montague Gardens

The Wayde Baker case

As very well documented in your publication, my son, Wayde Baker, was beaten up very badly at a St John's house party in April 2005.

We are presently involved in civil litigation in an attempt to get some financial compensation for the medical expenses we have had to incur in order to get Wayde's face rebuilt. In the course of this litigation attorneys representing the defendants raised an exception to our particulars of claim.

We were forced to argue this exception in court and had to concede. In addition to the exorbitant medical bills I have had to pay, the loss of my home and the tremendous hardships our family has been forced to endure as a result of the actions of the boys who attacked my son, I have now had to pay the wealthy parents of these boys their court costs: an additional sum of R56,000. I have just paid the boys for beating up my son!

To the boys and their parents, I would like to say the following: All I have ever wanted was an admission of guilt and compensation for our medical expenses. I receive no satisfaction as a result of the conviction of one boy whose silence was bought by the others.

These boys will not be able to move forward in their lives unless they repent and take responsibility for this dastardly deed. I have no doubt that in time the wheels of a higher form of justice will prevail.

Lynne Baker
Johannesburg

Less is moreish (more or less)

Readers may be interested in a series of courses run by the celebrated academic, Dr Morton Tsepo Le Grange.

His popular seminars demonstrate the economic merits of poor service, wastage, idleness, sabotage, theft, prevarication and other forms of counter-productivity.

Inefficiency, he maintains, is a virtue that increases the need for more work and more jobs, which is exactly what the country needs.

Le Grange is an associate professor of Bureaucratic Studies at the Neo-Luddite University of Alberta.

His 2005 series of conferences on this subject caused a 3% drop in the Canadian GNP.

Details of his courses in South Africa should be on his website when it is finally up and running.

Gus

Cautionary Tale for Adults

It really fucks me up to say
what happened just the other
day:
Innocent Jake, enticed by sin,
forgot to use a latex skin
amnesiac re HIVs,
or over-trusting ARVs,
he was, shall we say, indiscreet,
and, caught up in the moment's
heat,
forgot the other's point of view
as thoughtless people sometimes
do.
The moral? No, there isn't one
Men are entitled to their fun.

Name withheld out of fear
Cape Town

Why's Yengeni still out?

I would like to know how Tony Yengeni, whose appeal has been turned down, is still free:

- Driving a new supercharged black Range Rover Sports and a black Mercedes Benz 200 Kompressor.
- Keeping a mistress in an apartment in Bantry Bay.
- Playing golf at clubs round and about Cape Town.

Is this perhaps the new way that revered Heroes of the Struggle serve their prison sentences for corruption?

A Raucher
Sea Point

Yengeni's appeal was turned down by the Pretoria High Court in November. In December he lodged an application for leave to appeal to the Supreme Court of Appeal – and has managed to get the hearing of the application postponed to May. That's how. – Ed.

Knock and drop

I was amazed by the strong action taken against Justus van der Hoven by the SA Heritage Resources Agency (*nose*77), as this is completely at odds with my sad experience with them.

On 4 March 2005 a notice appeared in the *Springs Advertiser* that an application had been received by the Provincial Heritage Resource Authority to demolish the buildings on erf 408 Springs and that any interested party could submit objections and comments within 30 days.

However on driving past the property on the same day, I found the buildings were already being demolished!

I immediately took photos of the destruction and then faxed a letter of objection together with the photos to the authority on 15 March 2005.

Needless to say I had no response and then sent a further fax on 2 June 2005, which suffered the same fate.

A motor dealer now trades from the site.

Hopefully you can find out why this illegal activity has been permitted by the authority.

Alan Taurog
Springs

In praise of tabloids

Rian Malan, when he pulls his pen out, proves again his status as a master of his craft. For me his article on press baron Deon du Plessis (*nose*76) conjured up memories of my late father, Jim Bailey.

Deon shares Jim's independent up-yours approach, breaking the rules of the private school with its bullies and teacher's pets that the broadsheet mainstream media has become.

Jim pioneered giving the people what they want with his *Golden City Post*, Africa's first tabloid, which had a readership in excess of half a million – a black readership, that is, in the time of the Bantu education system. He was hated from the highest to the lowest echelons of the newspaper world.

Hats off to the brave, the free and the independent thinkers.

Beezy Bailey
Cape Town

Castle's sell-by date

Why do you think that Castle Lager has its sell-by date at the bottom of each can in code, while Windhoek's is in plain English? I thought it was the public's right to know when a product had reached its expiry date. But, of course, I may be wrong.

Paul Scheepers
Plettenberg Bay

Robbing the poor

In April 2003 we revealed the scandalous intrigue behind the ostensible legal dispute between various members of textile magnate Philip Frame's family and the trustees of his Will Trust: how the settlement agreement that was ultimately made an order of court in the case was part of an elaborate plan devised by eminent members of the legal profession – including Sydney Kentridge and Mervyn King – to get the court to endorse a scheme of bribery and fraud.

Frame's already wealthy children, who he had explicitly disinherited, succeeded in walking off with his R500-million estate – after they had silenced the trustees of the estate with a payoff of millions.

Frame's real heirs were supposed to be the 30,000 poor textile workers for whose benefit he had established the Trust. Not only were they not represented in court; they probably remain unaware of the case and its dire implications for them.

By the time we got to telling the Frame story, it was history.

In this issue we tell a story involving a very similar scheme. But this time it's happening right now and this time it involves as much as R10-billion that rightfully belongs to a million former employees in the metal and engineering industries – who are not represented in court.

On the face of it, in the present court case Seifsa and Numsa are only seeking the court's ruling on which law should determine how they distribute a massive "surplus" in the Steel and Engineering Industries pension funds. (See page 9.)

Once again, the lawyers have contrived to exclude the parties with the largest interest – pre-eminently the million-odd former employees who were ruthlessly exploited by the pension fund trustees (most of them appointed by Seifsa and Numsa) and, secondly, the thousands of small-scale employers who were similarly forced to contribute billions to the funds – ostensibly for the benefit of their employees – but, in fact, to the secret advantage of their bigger competitors, and to fill union coffers.

Ultimately, of course, they are hoping to get the Supreme Court of Appeal to, in effect, endorse a deal that is morally outrageous and must be repugnant to public policy.

Kebble's legacy lives on

Lunga Ncwana – a prominent ANC Youth League (ANCYL) member in the Western Cape – was first mentioned in *noseweek* in April 2004 (*nose*55) in an article about Brett Kebble's dodgy dealings in politics and business.

We reported that Ncwana had been the conduit for a controversial donation of R500,000 by Kebble to the ANC in the Western Cape.

Then already we suspected that the donation – piously explained by Kebble as a gesture of "patriotism and support for democracy" – was a mere hint of what he was secretly funnelling to the ANC.

Now we have learned of a further, massive, secret donation from Kebble to the ANC, also channelled through Ncwana's bank account.

On 10 April 2004, a handsome R5-million arrived in Ncwana's account with the Tokai branch of Nedbank. The notation on the electronic transfer read: RB Kebble.

On April 26, Ncwana then drew a cheque for R2.5m in favour of the ANC – clearly what Kebble intended. But what became of the difference?

Well, before Brett's money launderer did anything else, he rushed off to Investment Cars, where he spent a quick R375,071. Obviously when you're delivering a cheque for R2.5 million to the ANC, you must be driving the appropriate vehicle.

He did also hand a cheque for R250,000 to Andile Nkuhlu, a member of the ANC Youth League National Executive Committee. The balance went to other friends that we shall name on another occasion.

Ncwana's bank accounts were always awash with a regular flow of cash from Kebble, enabling Ncwana to keep himself and his friends in style.

The week before Christmas in 2003, Kebble kindly made another R200,000 deposit in Ncwana's account. So, next day, natty Mr Ncwana took himself off to Jeff Dee Clothing, where he splashed out on a R39,960 new outfit.

Donations to the party were invariably signalled by a notably bigger transfer from Kebble. An example: on 6 August 2004 R500,000 arrived in Ncwana's account from Kebble. Five days later, two cheques went out: R100,000 to the ANCYL, and R100,000 to Songezo Mjongile, another member of the National Executive Committee of the ANCYL.

A small curiosity: on 30 March 2004, after receiving R80,000 from Kebble, Ncwana paid R20,000 to a certain KN Gigaba. KMN are the initials of Malusi Gigaba, ANCYL executive member who two months later became deputy minister of home affairs. Maybe the deputy minister ought to tell us – if not Parliament – a bit more about that.

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Mr Nose puts it about

Another exhausting social round for Judge Hlope

MR NOSE has learned that Cape Judge President John Hlope and (this time only some of) his brothers and sisters on the Cape Bench have been off to yet another commercially sponsored party: a grand drinks bash sponsored by Sanlam last month at the Cape Grace's ever-so-smart Bascula Lounge.

Officially the party was to celebrate the recent elevation of old TRC hand, advocate Dumisa Ntsebeza, to senior counsel status. You might suppose that, in fairness, Judge Hlope simply could not refuse an invitation from Sanlam, having so recently accepted an equally fabulous free lunch from the life assurer's main competitor, Old Mutual (*nose*76). But Mr Nose suspects it might not be as fair as all that.

Some readers will know that Sanlam has a special business relationship with the Oasis Group of companies – they have jointly developed and market the Sanlam Oasis Crescent Fund to investors who wish only to invest in funds that are managed in accordance with Muslim sharia law. Judge Hlope also has links with the Oasis Group: he heads the UmbiloTrust which owns a significant stake in Oasis Asset Management. That much you probably knew. But what you surely did not know is that, over a 12 month period, when he was already judge president, John Hlope was being paid a salary of R10,000 a month by Oasis Group Holdings – a confidential arrangement that most certainly must offend the Judicial Services Board when they get to hear of it.

Oasis's detailed accounts reveal that every month, from April 2002 until March 2003, Hlope was paid a R10,000 "consulting fee". Explanatory notes provided for the auditors list J Hlope under "Consultants" and declare: "He serves on the board of trustees of one of our retirement funds" and, even more serious, "He provides expert legal advice."

Mr Nose's better-informed friends will note that Judge Hlope secretly went onto Oasis's payroll after Oasis had got into a legal dispute with his colleague on the bench, Judge Siraj Desai. Desai had, allegedly, at a meeting, called them "disgraceful" and "xenophobic", while, in private, he is said to have described the owners as "scum" and "a bunch of thugs".

Oasis needed the judge president's consent to sue a judge. Hlope gave it. No wonder Desai is challenging Oasis to prove that Hlope's permission was "properly sought and given"!

What is the judge president trying to do? Prove that a black judge can do anything he likes – and get away with it?

LEADING THE WAY: Could that be Judge Hlope on his way to another insurance company do?

Confuzed shells came close to blowing up our own ships, say naval gazers

RECENTLY, WHILE sharing a pipe with a fellow soak from navy days – you didn't know? – Mr Nose got talking about those allegedly dud shell fuzes that local arms company Reutech is said to be flogging to India and other potential belligerents. (See *nose*76.)

So it came that he was reminded that shells with uncannily similar defects were already a serious issue in the SA Navy way back in the Eighties and early Nineties. Those shells weren't only prematurely triggered by the cellphones of sailors calling their lovers, as has now been alleged (they'd deserve to get their heads blasted off), but also by the launching ship's own radar that was supposed to be guiding the shells to their target!

All that saved the ship which was firing the shells from self-destruction was the shells' arming mechanism. That was ever so fortunately set to become active only some milliseconds after firing, so that they could only be triggered – and explode – a safe distance from the ship. The navy spent many millions trying to fix the premature explosion problem. If the latest story is to be believed, they may not have succeeded.

While we're busy scandaling about Reutech, remember how, in October 2003, a team of Reutech thugs raided the premises of the SA Defence Force's once favourite friend, Richard Young, and drove off with a bakkie-load of computer consoles (built for the navy's new ships at a cost of mega-millions) without paying for them? (See *nose*51.) At the time Reutech brazenly claimed they were within their rights. They weren't. Reutech Radar Systems last year saw a secret arbitration hearing on the subject going horribly wrong, and quietly paid Young's CCII R15m for the consoles, plus many more millions in interest and legal costs. So Mr Nose's navy friends say – and they are never wrong.

Men of steal

THERE IS hardly a bigger story in South Africa – financially speaking, at least. Yet it made only a short, single column on page 16 of the *Cape Argus* on 8 March last year: "The dispute over attempts to distribute the R10-billion surpluses in the engineering and metal industries retirement funds will now have to be resolved by the high court," it stated blandly.

What further reports there have been on the subject, have generally appeared only on the internet: on 23 June 2005 a press release appeared on National Union of Metalworkers' (Numsa's) website under the headline "Numsa and Seifsa to settle R11-billion surplus dispute." [Note the small disparity in figures – but then what's a billion here or there between friends?]

Despite the talk of settlement, the case has continued on its way, largely unnoticed, through the legal system for the past year: a dozen worthies of the Steel and Engineering Industries Federation of South Africa – how boring can you get? - want the high court to tell them whether they should be

HAVING HIS WAY? Michael Pimstein, chairman of Seifsa and CE of Macsteel SA

South Africa's metal and engineering industry barons are scheming to snatch billions from their poor former employees to make themselves even richer

administering their industry's pension funds in terms of the Pension Funds Act, or the Labour Relations Act. A year down the line, the case has reached the Supreme Court of Appeals in Bloemfontein, where a hearing date is shortly to be set.

It may sound boring, but we know better. Ask yourself: How have pension funds established by the industrial council (now bargaining council) for the metal industries managed to accumulate a surplus of some R11-billion? Those same pension funds that for decades have been the laughing stock of the industry because of their mediocre returns and the pathetic benefits they have always paid their members.

Was it the fund managers' amazing investment skills that had unexpectedly produced such embarrassingly large profits? Or had they, perhaps, employed grossly incompetent actuaries who had over many decades vastly over-estimated the funds' liability to pensioners?

Actually, neither of the above. The surplus is in fact the outcome of a scheme of extortion devised and operated over the past 40 years by the employers' federation, Seifsa to rip off the poor in order to, secretly, further advantage its rich and powerful members.

To get some idea of just how rich and powerful, consider who some of the Seifsa directors and its pension fund trustees have included:

- Michael Pimstein, chairman of Seifsa and CE of Macsteel SA, which over the past two decades has grown into South Africa's biggest steel exporter and distributor, and one of its biggest manufacturers.
- Richard Savage, Chris Murray and Luigi Matteucci, who over many years have featured prominently in the management of Seifsa's affairs, are all directors of major companies in the Anglo American stable such as Haggie Ltd and Highveld Steel.
- Leslie Boyd, besides being a director of various of these Anglo companies, was also a director of Bill Venter's Atron and Altech.
- Carl Grim is a director of Grinaker Construction.

The Metal Industries Group Life and Provident Fund, later renamed The Engineering Industries Pension Fund – the first fund in question – was established by an Industrial Council agree-

Picture: Business Day

NOT ENTIRELY HAPPY: Seifsa chief executive Brian Angus

ment that was concluded in accordance with the provisions of the Labour Relations Act, on 2 May 1957. An earlier Engineering Industries Pension Fund was similarly established by way of an Industrial Council agreement at about the same time. In 1991 the latter fund was absorbed into and replaced by a new fund, perversely named The Metal Industries Group Provident Fund, and also established in terms of the Labour Relations Act. That is the second Seifsa-managed fund in question.

Section 2 of the Pension Funds Act (Act 24 of 1956) is clear: "The provisions of this Act shall *not* [our italics] apply in relation to any pension fund which has been established in terms of a collective agreement concluded in a council in terms of the Labour Relations Act."

So what's the problem, you ask? According to Statute, the Pension Funds Act does *not* apply; the Labour Relations Act *does* apply.

There are, however, many other problems – all of Seifsa's making.

All employers and employees in the steel and engineering industries have since the late 1960s been obliged (by various edicts issued in terms of the Labour Relations Act) to contribute to one or other of the above-named retirement funds.

Each month an amount equivalent to 12% of the wage of every employee in the industry must be paid to one of the funds – 6% by the employer, plus 6% deducted from the employee's wages.

With up to half a million employees, the scheme soon generated a massive cash flow – hundreds of millions each year.

In April 1968 Seifsa instigated an application by the then named Engineering Industries Pension Fund to the Registrar of Pension Funds to be registered in terms of the Pension Funds Act. The Metal Industries Group Provident Fund followed with a similar application in 1972.

Why the industry bosses should have wanted the funds registered under the Pension Funds Act was not clear, until we uncovered a little secret that for all these years has been withheld from the funds' members, the public at large – and now even the courts adjudicating the matter: Seifsa had a special arrangement with the Registrar of Pensions.

The Labour Relations Act – the one that should correctly apply to these retirement funds – stipulates that money surplus to their immediate needs may only be invested in extremely conservative investments such as government stock and bank savings accounts and fixed deposits.

The Pension Funds Act is similarly conservative about where the trustees of a pension fund registered under that Act may invest its money. In addition, it specifically prohibits a registered fund from investing any of its assets in the business of an employer who participates in the pension scheme or participated in its establishment – with one exception: the minister, (or the registrar, to whom he has delegated the authority) can grant certain funds a special exemption from this prohibition.

As early as June 1970, the (then named) Engineering Industries Pension Fund applied for and was granted such an exemption. Shortly after its registration two years later, the Metal Industries fund, too, was granted the exemption. Both exemptions were regularly extended thereafter – until December 1995.

From the documents we have obtained, it appears that the exemption allowed the pension funds to invest in any or all of their participating employer companies – up to 5% of the total funds available in each such company.

Using this exemption Seifsa bosses secretly invested the pension fund billions – most of it extracted from unwilling small competitors and their employees – in their own companies. Which might explain why their investments performed so poorly.

Not surprisingly, Seifsa lobbied aggressively to get the reach of the funds extended, persuading the minister of manpower to promulgate regulations that forced more and more unwilling employers and employees, in industries only tenuously related to steel or engineering, to contribute to their funds.

Did the scheme at least fulfil a valuable social function? Hardly. Pensions paid by the fund were notoriously bad. That's if the contributors qualified for a pension at all. Most did not. In terms of the rules of the funds, only employees who had contributed for at least 10 years qualified for an old-age pension.

Well over one million workers who at one time or another over the past 30 years were employed in the steel and engineering industries are no longer employed there. Most simply lost their jobs due to fluctuations in the economy. Close on a million of these former employees had contributed to the industry pension funds for less than 10 years.

So, if they didn't qualify for a pension, what happened to the money they contributed, and to the money that their employers had been obliged to contribute on their behalf?

If they were literate and well-enough informed, they might have known to apply to Seifsa's fund administrators for a refund of their contributions – in which case they got only their own contributions back, with next-to-no interest (as little as one percent at a time when interest rates were running in excess of 20%).

The funds kept the amount that the employers of these unfortunate employees had contributed – and, of course, most of the interest.

The Seifsa-managed funds were so comfortable in their new deal under the Pension Funds Act that they amended their constitutions to reflect it.

In the copy of the Engineering Industries Pension Fund constitution filed at the office of the Registrar of Financial Institutions (which today performs the functions of the old Registrar of Pension Funds), paragraph 12 deals with "Winding Up". It reads:

"The fund may be wound up at any time subject to the unanimous agreement of Seifsa and the employers' organisations [they are listed in a separate document], whereupon the distribution and winding up provisions set out in the rules shall apply, *in so far as they are consistent with the Pension Funds Act, No 24 of 1956, and any*

Seifsa bosses secretly invested the pension fund billions – most of it extracted from unwilling small competitors and their employees – in their own companies

subsequent amendments to such Act [our italics]."

Exactly the same clause appears in the constitution filed for the Metal Industries fund.

Such a provision in the fund's constitution would almost certainly be something a court would have to consider when determining whether the Pension Funds Act or the Labour Relations Act should determine how the surplus is distributed.

But now the curious bit: In the (we note uncertified) copy of the Pension Fund's Constitution that is attached to the present court application brought by Seifsa's nominated trustees, Paragraph 12 deals, as in our copy, with winding up – but the words printed in italics are not there!

When, one wonders, was the long-standing requirement that the fund's rules regarding distribution and winding-up should be consistent with the Pension Funds Act deleted, why – and at who's suggestion?

When considering these thorny questions, one would, of course, have to keep another clause of the Pension Fund's constitution in mind: paragraph 5 (c), which relates to "Secrecy". It reads:

"The members of the Board of Management shall regard as strictly confidential all information disclosed to them in connection with the administration of the fund. No security shall be required of the members of the Board of Management nor shall they be required to furnish security under the Trust Property Control Act."

Indeed.

Seifsa and its fund managers remained staunchly loyal to the Pension Funds Act. When, in a 1993 high court case, Seifsa was formally accused of having invalidly registered the industry's funds under the Pension Funds Act, then Secretary of the Industrial Council for the Steel and Engineering Industries, David Levy, was produced to declare under oath: "The various pension and provident funds of the applicant are in fact registered in terms of the Pension Funds Act. They comply fully with that Act. The allegations are denied."

But, in December 2001, all that changed when Parliament approved the Pension Funds Second Amendment Act. In his next annual report, Seifsa chief executive Brian Angus, complained that, despite Seifsa's best efforts, none of its objections to "critical elements" of the legislation had been "accommodated".

Of particular concern to Mr Angus: "The Act provides for retrospective payments to be made to those members of retirement funds who have exited from their respective funds over the past 22 years, and in addition deems a number of past legal practices to be illegitimate and improper."

The Act obliges pension funds (those registered under the Pension Funds Act) which have a current surplus to attempt to trace all members who have left the funds (referred to as "exits") from January 1980, and to pay an additional amount to these individuals should their exit benefits have been less than those to be specified in the Act.

Probably of even more concern to Seifsa's members, in view of what we now know about those special exemptions, was Angus's next observation: "The Act defines various circumstances now considered to constitute improper use of a pension fund's surplus. Under these circumstances, the affected employers are required to refund all these monies to the fund in question, notwithstanding the fact that actions taken may have been completely legal and approved by the Financial Services Board at their time of implementation.

"Seifsa believes that these provisions of the Act are likely to have a number of highly undesirable consequences for South African employers," he concluded.

Having been spurned by Seifsa for all those years, suddenly the Labour Relations Act looked so much more appealing. It would allow Seifsa's members to pocket what the Pensions Fund Act might require them to pay out to their former employees.

It was time to reconsider their registration under the Pension Funds Act.

Next issue: Where were the union's trustees when all of this was happening? And more about how Seifsa's men have omitted to tell the whole truth and nothing but the truth – now and in the past.

O, Brother!

When prodigal grandson Joey Milne returned from his globe-trotting adventures to claim his inheritance, there was no fatted calf. He's having to fight sibling David for every cent....

THE FAMILY of the late and legendary mining magnate Joseph Milne is locked in a bitter and long-running legal battle over a multi-million rand inheritance. The main protagonists are the gold-and-diamond king's two grandsons – brothers David and Joseph – with a fringe cast of half-sisters and their offspring in America.

David Milne, 34, is the brother who stayed home and worked for their father Michael Milne in the family property business. Married, with two children, he's bland, shyly-spoken and outwardly conventional.

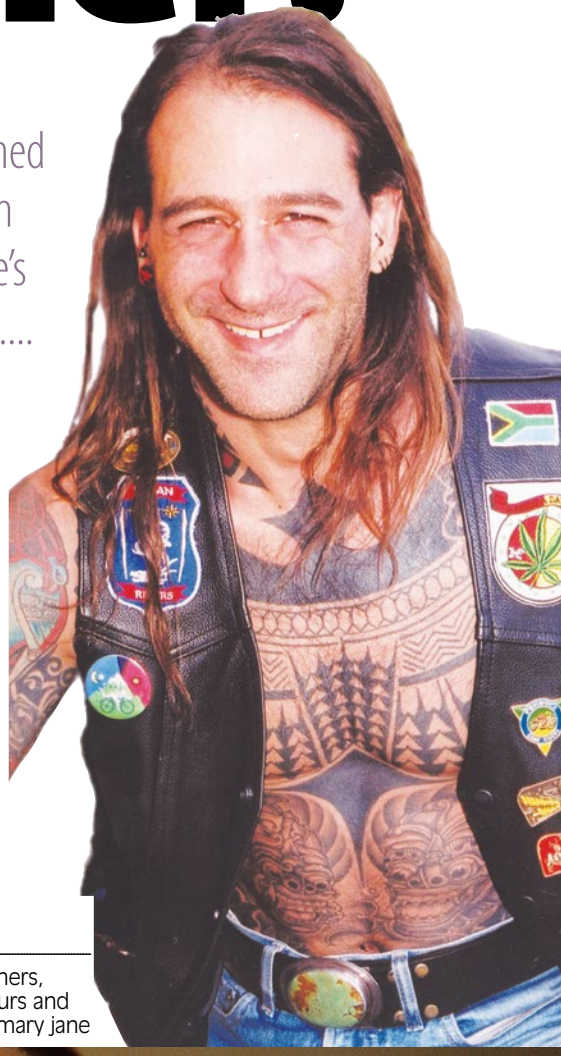
Elder brother Joseph (known as Joey) is 36 this month, a drop-out rebel with shoulder-length hair, body a mosaic of tattoos, a motor bike freak whose favourite residence is his remote mountain home in the Himalayas.

Joey claims that David, in his capacity as a trustee of an estimated R30m family trust fund, has massively benefited himself at Joey's expense and that of "the American family". In June an arbitrator will rule on a host of outstanding disputes, thereby determining who gets what when the balance of the much-diminished trust is distributed.

Our story starts in 1896, when Joseph Minsk was born in the Lithuanian village of Krakenowo. His father was the village rabbi. Young Joseph arrived in South Africa when he was 16 and completed his education at Jeppe High School. His first job was with a Johannesburg wholesaler, where he earned £5 a month, but by 1946 he had become Joseph Milne, one of South Africa's leading mining barons. His Union Free State Mining and Finance headed a group of some 120 companies showing a profit of £4.5m a year.

His first marriage, to Miriam Cohen in 1920, gave him two sons – Raleigh and Michael. Raleigh, the elder, died in 1946 at the age of 25 in a car crash on his way back from collecting a diamond at Kimberley for his fiancée. That left Michael sole heir to their father's fortune.

Home was The White House, a landmark mansion in Birdhaven. (Joseph would proudly tell visitors that it was a replica of the Southern mansion of Mr Wrigley, America's chewing gum king – "except that this one is



THIS JOINT ISN'T BIG ENOUGH: The Milne brothers, Joseph (right) in his birthday suit of many colours and David (below) in 1997 getting acquainted with mary jane

Picture: Sunday Times

BIRDHAVEN JAILBIRD: Grandad Joseph Milne (right) spent three years in prison for fraud, theft and contravention of the Companies Act

bigger".) The pool change rooms were modelled on a Greek temple. The establishment was so luxurious that it was the obvious choice to serve as a set for Jamie Uys's film *King Hendrik*.

But the colourful millionaire was by then awash with problems. The previous year the government had sought (unsuccessfully) to sequestrate his estate for failing to pay £1.2m excess profits duty and penalties. In 1950 he began a three-year spell in prison for fraud, theft and contraventions of the Companies Act. In 1951, while in prison – accompanied by his baby grand piano – he was fined £250 (or three months' hard labour) for "salting" a gold borehole at Erfdeel. (Legend had it that he had surreptitiously dragged his gold wedding ring across the stone core sample to up its gold content.)

The colourful Joseph Milne died after a heart attack in April 1970 at the age of 73, leaving the bulk of his estate to his surviving son Michael, then 46.

By his first marriage, to Hollywood singer and actress Geraldine Cohen – they met when she was singing at Copacabana – Michael had two daughters, Candice and Linda. The couple divorced in 1954 and Geraldine stormed back to California with the girls.

Candice Milne-Simons is now 53 and has a 12-year-old daughter, Tamara. Linda Milne-Grauman, 55, has three sons in their 30s – Adam (pizzeria owner), Rhett (scientist) and Jason (software engineer). The six comprise the "American family" now allied with Joey against David Milne and the trustees of Michael Milne's trust fund.

The battling brothers Joey and David are the sons by Michael Milne's second marriage, to Ruth Rogoff. Joey was born four days after his grandfather's death.

When Joey and David were growing up the famous White House had been sold – it has now been razed to make way for a housing development. The boys' childhood was spent in an equally-grand mansion at 18 Central Street in Lower Houghton.

According to Joey, his was a turbulent upbringing. "My dad [Michael Milne] was a power-hungry control freak. His attitude was the man with the money has all the fun, and the man with the money is going to control everyone else.

"He was not only a control freak; he was very narrow-minded. It was my dad's second marriage and when I was 15 he was over 60. We had nothing in common. I wanted to study sound engineering, even when I was 16. But dad said "you study accounting or you don't study anything".

"Because he was the sole beneficiary of granddad's estate, my dad landed up inheriting a shitload of cash. He wasted a lot of his inheritance; he was quite a big gambler at the casinos, Sun City mostly. He was always on sleeping tablets, which made his moods very erratic. He seriously controlled us.

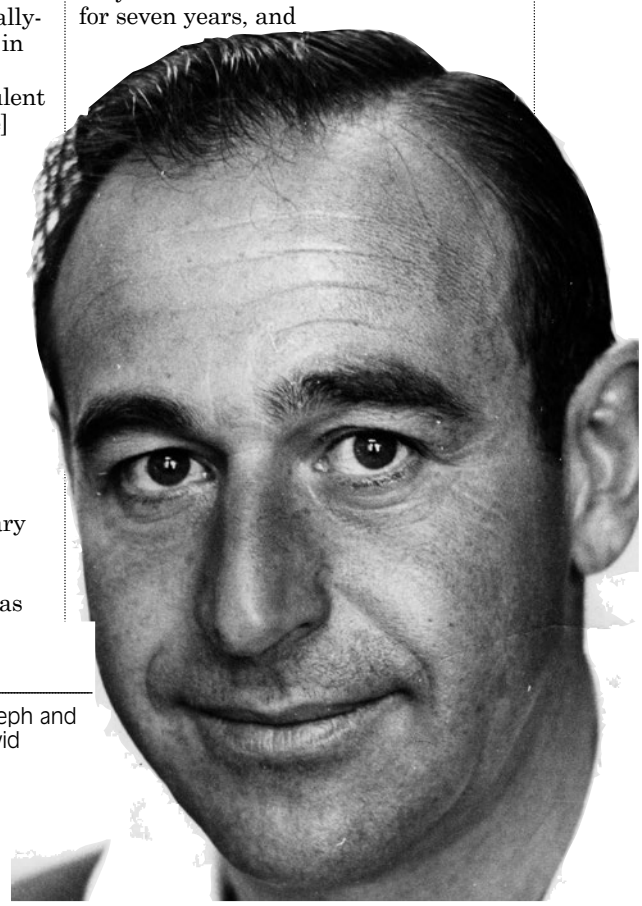
"When we were kids David and I got along very well. He was playing the electric guitar, had long hair and wanted to be a rock star. But when we grew up we seemed to have our differences."

Joey's school years were troubled. "I was dyslexic and had ADD (attention deficit disorder). I couldn't live with my parents. When I was 14 I had a fight with my mother and father and I landed up hitting my dad. They laid a charge against me and the state decided to prosecute. I was given a choice of going to a reformatory – or to boarding school."

So it came to pass that he was shipped off as a boarder to St Andrew's College in Grahamstown. When he was 15 his parents divorced and the following year Joey went very briefly into the army, an infantry career that ended after just weeks, following a leg injury in a motorbike accident.

The rebel son started bodybuilding to strengthen the injured leg, and won titles including Mr Johannesburg (1991) and Mr Southern Africa (lightweight) in 1992. Then, in his early 20s, Joey went travelling, bumming around the world with a backpack on a $1000 a month allowance from his father's trust fund.

America, London, Thailand, Goa, Joey saw the lot. He lived in India for seven years, and



WILL POWER: Michael Milne, son of Joseph and father to battling brothers Joey and David

LEAVING ON A JETPLANE: Gift-laden Candice, 10, (left) and Linda, 12, leaving Johannesburg after a visit to their father in 1962

still has a house in a remote village in the Himalayas, which he says he rents for $1000, payable every five years.

In August 2000 a message to an hotel in Delhi told Joey that his father had died at the age of 77. He flew home to Johannesburg in time for the funeral.

After the funeral came the reading of Michael Milne's will. Under the terms of the Joel Michael Milne Trust, the inheritance was held in the following proportions: David and Joey (35% each); Linda and Candice (10% each) and the 10% balance between Linda and Candy's four children.

On 25 November 1999, nine months before his death, there had been a meeting of the trustees. The ailing Michael Milne was there, with younger son David and accountant Barry Pelkowitz.

The minutes (whose authenticity has been questioned by Joey and the American family) record that "Mike remarked he was a very sick man and he did not have long to live." He "wished to effect the resignation of his previous accountants and to appoint BEP (Pelkowitz) as a trustee with immediate effect".

Since R1m had been given by the trust to both Candy and Linda, plus previous drawings of R500,000 (to Linda) and R300,000 (to Candy), he had decided to revoke their 10% each share of the trust, say the minutes. He wanted David and Joey's interest increased to a 45% interest each, with the remaining 10% in favour of his grandchildren in America.

The minutes state: "It was his [Michael's] intention that the grandchildren benefit not only from the capital of the trust in due course, but also from the current income of the trust [which was] to be distributed by the trustees to such grandchildren as it was earned."

There is a long section in these minutes concerning Joey. Michael Milne explained he had written three "letters of wishes" relating to his elder son, who represented "a special problem". "If Joseph did not comply with the conditions laid down in the letters of wishes, the trustees have the right to cut off both his capital and his income and/or any maintenance being paid to him," say the disputed minutes.

They continue: "If Joseph's behaviour was such that the trustees divested him of his capital, then it would be at their eventual and entire discretion as to what to do with his 45% share of any remaining entitlement. Although not in terms of the trust deed, the trustees should have and did in fact have the utmost power and discretion to cut Joseph off … from any benefits …".

Michael Milne wanted half the capital of his trust fund to be paid out to beneficiaries within 12 months of 22 September 2005 and the remaining half within 12 months of 22 September 2010.

noseweek has in its possession two Letters of Wishes, both signed within five days of each other in October 1997. "I fear that Joseph is addicted to marijuana and/or other dependence-producing substances," reads the first. In view of this, it was Milne's wish that before his son received any benefit from the trust fund, income or capital, he must "submit himself to a drug rehabilitation programme". Joseph must also "consult regularly with a psychiatrist to resolve the many other deep-seated problems that he has".

The wish letter goes on: "I am also most distressed that Joseph is consorting with women not of the Jewish faith." When the trustees exercised their discretion to distribute income/capital, they should note "that if Joseph marries any person who is not a Jewess he shall not be entitled to

receive any benefit and/or monies from the trust".

Nine days after Michael Milne's death came the reading of his will. Linda and Candy were there from America, plus Linda's son Adam Milne, who runs a pizzeria in Portland, Oregon. Barry Pelkowitz surprised them all by reading out an amendment to the trust deed: trust capital and income would now be divided 45% each to David and Joey; the remaining 10% in equal shares to the four American grandchildren. Linda and Candy were cut out as beneficiaries.

At a meeting of the trustees the following day, attorney and police reservist Kevin Hacker, a long-time best friend of David Milne, was appointed as an alternate trustee to David Milne. The minutes record: "The trustees briefly discussed what to do regarding Joseph. Reference was made to the letters of wishes and to the power of the trustees to divest Joseph of any capital and/or maintenance."

On 14 November 2001 the trust-owned Union Free State Gold and Diamond Corp resolved to make a R915,631 dividend payout, allocating R203,186 to David Milne and just R54,392 to Joey.

Joey travelled to London, but was unable to draw his allowance because of exchange restrictions. "I arrived in the middle of winter with three dogs, which I had to put in quarantine. I slept on the streets for two years, living outside Camden Town underground, bumming money to pay the dogs' quarantine."

Adult victims of attention deficit disorder, such as Joey, tend to suffer from inattention, difficulty with communication and problems with managing money. On the plus side, they are often endowed with endless energy, humour, creative thinking and problem-solving skills.

Back in South Africa in 2002, Joey had a brainwave: if he and "the American family" pooled their beneficial percentages in the trust, they would wield 65%, outvoting brother David with his 35%. He contacted half sister Candy in Los Angeles and an alliance was formed.

Candy and Linda were restored as 10% trust beneficiaries each in arbitration presided over by Advocate Michael Kuper SC.

After David Milne made a 2003 offer to purchase the downtown Johannesburg properties owned by the trust, the Joey-American family alliance forced a bid-out and acquired them for R9.3m (David Milne and his consortium pulled out of the bidding at around R9m). The winners scraped up 10% deposit – R930,000 – with the balance to be deducted from their trust entitlements.

For Joey and the Americans it was a triumph. The properties are now held in a new company called Eaglequest Trading 30, whose shares are held 50% on behalf of Joey and 50% by the American family.

Monthly income from the properties is around R250,000. After expenses and an allocation to savings in the company, Joey and the American family each receive R60,000 a month, Joey's share goes into his new JR Milne Trust. (Trustees: his attorney David Singer and financial adviser Robin Fisher.) Joey gets a monthly allowance of R27,500.

The money from the buy-out has brought Joey a new lease of life. His JR Milne Trust has bought him a R1.5m house in Norwood, installed a recording studio in it and recently bought him the love of his life – a R120,000, 300km/h-plus Yamaha YZF-R6 motor bike.

He's in his fourth year of a course in Advanced Sound Engineering and Production at Soul Candi Music in Rosebank, Johannesburg, and plans a career as a producer in electronic and dance music.

Joey's philosophy in life? "I'm a law unto myself. I've got my own set of morals and principles which I can't compromise. My father was a sleeping tablet addict and my mother was an alcoholic. Because I smoked weed I was deemed an addict.

My father was a sleeping tablet addict and my mother was an alcoholic. Because I smoked weed I was deemed an addict

SOUND INVESTMENT: Joey with his music rig

"In London I was staying with people from Colombia in a squat and I did my first line and picked up a cocaine habit. But I've been clean from coke for two years. I'm clean of everything now. I don't drink alcohol. I don't smoke cigarettes. I never went into rehab, but I'm doing this programme with Narcotics Anonymous. I don't even smoke dagga any more. I've got a girlfriend who spends weekends here and I've got my dogs (pugs Snoogy and Pudding Pug) and I've got my bike.

"Most of all, after all these years I've got the career I've wanted since I was 16 – sound engineering."

In a statement to *noseweek*, Kevin Hacker, attorney to the trustees of the Joel Michael Milne Trust, states that the trust was terminated on 28 February 2003 in terms of a court order. The distribution of trust assets to beneficiaries, claims Hacker, has been frustrated by "a number of disputes" which have been referred to Advocate Peter Solomon SC for arbitration, commencing on June 12.

We asked how much David Milne and the rest of the beneficiaries have already received. Hacker's response states that David Milne has received approximately R6,026,539 in loans and awards; Joey approximately R5,666,614 and Michael Milne's four grandchildren in America – Jason, Adam, Rhett and Tamara – approximately R334,423 each.

Hacker says that Michael Milne's daughter Candice has received approximately R2,683,095, and her sister Linda approximately R2,853,089.

After the properties' transaction, Hacker says that funds presently on hand in the trust amount to approximately R4.5m. "We believe that Joseph Milne (Joey) has been fairly treated," he adds.

From North Hollywood, Candice Milne-Simons comments: "Tamara has to be taken from school because the trustees failed to provide for her. Grandpa [Michael Milne] had always paid for the school and remembered her birthday. When he died the trustees were supposed to provide Tamara with education funds and I have yet to receive them. As a result I had to remove Tamara from private school and put her in the Los Angeles public school system. As I do not live in the best neighbourhood in Los Angeles, the school is less than adequate."

From his pizzeria in Portland, Adam Milne comments: "The statements from Kevin Hacker are just not true and are a complete misrepresentation of the facts. The only funds my brothers and I have received from the trust during our lifetime is R50,000 – R12,500 each – three or four years after our grandfather passed away.

"All the children – David, Joey, Candy and Linda – were given houses. My mother (Linda) and aunt (Candy) were given R90,000 each for theirs in the early 1980s. Now David Milne and Kevin Hacker are claiming these gifts were in fact loans, that today amount to R1m each!" David Milne tells *noseweek*: "Much criticism has been levelled at me, in my capacity as a trustee of the trust. Similar criticism has been levelled at my co-trustee Barry Pelkowitz. My siblings, represented by attorney David Singer (who has a conflict of interests relative to his clients' various positions and claims) have launched a number of unwarranted and spurious legal proceedings, all of which have served to increase legal expense and heighten the acrimony which prevails to the detriment of the trust and the beneficiaries.

"I cannot be bullied, pressurised or threatened into settling or capitulating in a manner which causes me to be compromised, as I perceive my siblings, particularly my brother Joseph, to desire."

Regarding the long-standing fallout with brother Joey, he says: "I do not harbour ill-feeling towards Joseph, despite his conduct. I genuinely feared (and remain fearful) for my safety and that of my family – the reason for my taking the steps that I did to prosecute Joseph and secure his restraint. (This is a reference to alleged threats by Joey in 2001 and 2002 to have his brother killed. David, with supporting evidence from their mother, Ruth Milne, brought criminal charges under the domestic violence and intimidation acts. The case was thrown out of court and Joey has not spoken to his mother since.)

Joey's attorney David Singer says: "The total trust assets are reflected at approximately R30m. Approximately R7m-worth of payments made by the companies are under query, including fees paid to Barry Pelkowitz or his firm of some R1m. The disputes in the trust are all matters raised by or for the benefit of David Milne, who in his personal capacity objects to the arbitrator's jurisdiction."

■ Three months ago police made a 5am Sunday raid on Joey's house in Norwood and subsequently charged him and his girlfriend with possession of dagga. Both are out on bail of R6000 and their trial starts on May 5. Joey says it's a plant. "I put my dustbin out in the street on the Thursday and brought it in on Saturday evening. Early on Sunday morning the cops came steaming in. They made straight for the dustbin and pulled out one marijuana plant at the bottom, wrapped in black plastic." ◪

I've got a girlfriend and I've got my dogs (pugs Snoogy and Pudding Pug) and I've got my bike

Chaos, m'Lud

Why was nearly R2m annotated 'Rolls-Royce plc' deposited into the trust account of the law firm of Tiego Moseneke, brother of the deputy chief justice?

Picture: Sunday Times

WHY DID Rolls-Royce plc pay nearly R2m into the trust account of attorney-turned-mining company chairman Tiego Moseneke, younger brother of Deputy Chief Justice Dikgang Moseneke? And where did the money go? Might it all have something to do with a "strictly confidential high security project within the security and justice system"? The arms deal?

These questions still hang in the air despite repeated requests for answers during a recent High Court application by the Law Society of the Northern Provinces to have Tiego Moseneke struck off the roll of attorneys.

WHAT'S YOUR CASE?
Attorney-turned-businessman Tiego Moseneke

Moseneke, now chairman of New Platinum Corporation and busy pushing a reported R2.5bn platinum project with the Sebata Kgomo Consortium at Tjate, was charged with:

- Unprofessional conduct in dealing with clients' affairs.
- Book-keeping contraventions and alleged trust fund shortages.
- Failing to attend three Law Society disciplinary inquiries.

Tiego Moseneke has many friends in Pretoria's legal circles. That, and the fact that the deputy chief justice is his brother, made the case extremely sensitive. It was felt that no judge from the Transvaal

division should sit on the matter, so two out-of-towners, Justices McLaren and Leach – from Pietermaritzburg and Grahamstown respectively – were imported to Pretoria High Court to conduct the January/February hearing. Judgment was reserved.

Today the firm of Moseneke & Partners, which operated from premises in Johannesburg's Rissik Street, is no more. Tiego Moseneke no longer practises as an attorney, preferring to concentrate on his career in the corporate sector.

Court papers show that on 14 June 1999 the sum of R1,945,740 was deposited in his law firm's trust banking account, with the annotation "Rolls-Royce plc". Prior to the deposit, the balance in the trust account was just R2,417.

Trust money is kept by attorneys on behalf of clients, to pay expenses or in anticipation of an attorney's own fees. It is usual when receiving money on trust to open a named ledger account – in this case it would be in the name of Rolls-Royce plc.

But the R1.9m from the global aerospace, defence and energy group was entered as an "unknown deposit" account in the firm's books.

Why was Moseneke so keen to keep the name Rolls-Royce plc out of the ledger? He chose not to go into the witness box, so that and many other questions remain unanswered.

A report prepared by forensic accountant Vincent Faris, presented to court, showed that Rolls-Royce's R1.9m then went out of the trust account in 10 separate payments. Six, totalling R1,090,000, went into Moseneke & Partners' business banking account between June and August 1999.

The rest? On June 15 – the day after the R1.9m was received – R12,000 of it was paid to a client's call deposit account named "Grinaker Project Properties" and R75,000 to the client trust investment account of the Johannesburg Metropolitan Council.

That same day R265,500 went to Moseneke & Partners' investment account with Nedbank Business. This account had been opened on 24 February 1999 with an earlier similar deposit of R265,500 from the firm's trust account.

On 9 July R408,000 of Rolls-Royce's dosh was paid to an account which turned out to be the New Diamond Corporation, of which Moseneke was then chairman.

Between March and April there were four withdrawals from the Nedbank business account: R112,000 to another of the firm's business accounts; two totalling R19,689.42 in "interest" to Gauteng Housing; and R130,000, marked "fate unknown" in accountant Faris's report.

An explanation for the Rolls-Royce payment was offered by Moseneke's advocate Ishmael Semenya. "The evidence of Mr Moseneke [if he had gone into the box] would be that the money ought to have been in business [account] in the first place, because the R1.9m was payment to him for doing the work of Rolls-Royce in its request for a Country Risk Assessment that was asked of him," said Semenya.

"Risk management assessment?" asked Judge McLaren.

"Country risk assessment. It is an international company wanting to come into the country and asks him to do that work for him," replied advocate Semenya.

Moseneke had earlier offered a different explanation. In his answering affidavit to the charges against him he refers to the R1,090,000 portion of Rolls-Royce's money which was subsequently transferred to his firm's business account. "I was directed by clients to so treat the amount which was being made available for the advancement of a strictly confidential high security project within the security and justice system," reads his affidavit.

Accountant Vincent Faris said in court: "There is no evidence to indicate the justification of the transfer of over a million rand from the trust account to the business account in that matter. One would expect either disbursements or fees, references to fees that the firm may have been entitled to.

"There is no evidence in the accounting records to justify the R408,000 paid into the New Diamond account."

Faris, a veteran accountant who is author of the lawyers' bible *Practical Bookkeeping for Legal Purposes*, ripped into Moseneke & Partners. "The lack of narrative in the unknown deposits account; the irregular movement of monies within the various trust investment accounts; the existence of reverse transfers; the failure to open accounts in the names of the individual clients," he listed in evidence.

His conclusion: "The books are incomplete. They are inaccurate. They are totally unreliable, a complete disregard and a disrespect of the trust account. That there were trust cheques used to pay personal and business expenses tells me that the whole state of affairs is totally unacceptable. Chaos, m'Lud, that is all I can say."

So: a confidential high security project within the security and justice system, or a country risk assessment? What was Rolls-Royce shelling out for? "No comment," says Moseneke's attorney Joe Nalane. "Mr Moseneke was a practising attorney at the time and the Rolls-Royce payment is covered by attorney-client confidentiality."

From London, Rolls-Royce plc promises to tell us exactly what that R1.9m was for. But not yet. "We are still going back into the records to find the answer to your query," says spokesman Martin Brodie.

This offer of transparency is refreshing. Certainly a full explanation will help dispel sinister speculation that is ever rife in the wake of the arms deal furore. After all, there was that sweet little deal announced in 2001 whereby Rolls-Royce engines for BAE Systems' Hawk lead-in fighter trainers for the SA Air Force will be assembled and tested in South Africa. Plus an agreement making Denel Aviation the sole supplier of the gearbox for the Rolls-Royce Tay aero engine.

Then in 2002 we had the announcement that Rolls-Royce had won a $400m deal to supply South African Airways with Trent 500 engines for some of the airline's new fleet of Airbus aircraft.

■ These are trying times for Tiego Moseneke. Last September the deputy chief justice's brother was arrested along with fellow New Platinum Corporation director Gopalang Makokwe and former Afrikander Lease chairman Peter Skeat for alleged corruption, fraud and theft totalling R40m. The charges stemmed from Moseneke and Makokwe's time as directors of New Diamond Corporation. Skeat was alleged to have paid a R6.8m bribe to land a contract with NDC while Moseneke was its chairman. Charges against Skeat were dropped in December, but Moseneke and Makokwe are due to appear this month on charges of fraud, theft and contraventions of the Companies Act.

Tiego Moseneke, who lives in style on Pretoria's Waterkloof Ridge, declined our request for comment.

His widely respected brother, Dikgang, was appointed deputy chief justice by President Mbeki last June. ◪

Wir sprechen Liberty Life-isch

THIS IS the story of a man, now in his sixties, who has for many years waged a lonely battle with an insurance giant. The story raises some disturbing issues – the "morality" of insurance companies, the cosy relationship between insurers and the legal profession, and the apparently pliable nature of employment law – can a person be an employee for some purposes but not others, is there one law for a worker whose collar is blue and another for one whose collar is white?

Our much-vaunted Constitution guarantees everyone the right to fair labour practices. The Labour Relations Act achieves this to a large extent, although many employers will tell you that the balance is now too much in favour of the employee. Which is, of course, why some companies are keen to divest themselves of employees in favour of independent contractors.

Some 12,000 people in South Africa are employed as in-house insurance consultants or "tied agents" by South Africa's major assurers. A tied agent is basically an insurance salesman who is contracted to promote and sell the products of a single insurance company. To the public, the tied agent looks very much like an employee of the insurance company. He is, to all intents and purposes, an employee of the company – but, seemingly, only when it suits the company!

David Catlin started as a tied agent with Liberty Life in 1975. After a probationary period of two years (there are other penal similarities in this story!), Catlin started contributing to the company's various schemes – the agents' pension fund, the agents' provident fund, the group life cover, the income protection plan and the medical aid (if there's one thing you get lots of when you work at an insurer, it's insurance!). Catlin was also taxed on a PAYE basis. He certainly always understood himself to be an employee – don't you need to be an employee to belong to a company's pension fund? Certainly the documents which he was given suggested he was – one talked of his being an "incentive remunerated employee" who had "benefits which are available only because of the employer/employee relationship that is, in terms of legislation, seen to exist, although the incentive remuneration provides a sole practitioner basis for taxation" (as you will see they speak a language of their own at Liberty Life). Other documents made it clear that he could not be connected with any other assurance company and that he was required to devote his entire working hours to the service of Liberty Life.

TIED UP: David Catlin

Do you have more rights as a blue-collar worker than as a white-collar one?

Catlin stuck it out and after three years he became an executive consultant, a title bestowed on high-performing in-house agents. At the end of 1997, at 58 and after more than 20 years' service, Catlin "retired". Why the inverted commas? Well, because it's not at all clear what really happened. As far as Catlin is concerned, he retired from the Liberty Life agents' pension fund (as permitted by the rules), although Liberty Life will tell you he did more than that. So what do we know? We know that he did remain a member of the Liberty Life agents' provident fund because the consultant's manual decreed that members couldn't retire from it before the age of 65 – a rule quaintly known as "Donald Gordon's Golden Handcuffs" and, according to Catlin, a contravention of the Second Schedule of the Income Tax Act (we'll save that for another time). We also know that he immediately became a so-called "Active Post Retirement Agent" (we're speaking Liberty Lifeish again of course), whilst retaining his status of Executive Consultant. He signed a "Post Retirement Agency Agreement", which superseded previous agreements and which allowed him to canvass for policies on a part-time basis, with reduced targets. A failure to meet those targets would lead to an automatic

change of status to that of "Inactive Post Retirement Agent", and would also entitle Liberty Life to terminate the agreement, something which, according to a different clause, they could in any event do if they simply felt like it.

Catlin proceeded to work on this basis, whilst drawing his Liberty Life pension. At the end of 1998, the agents' retirement and provident funds were discontinued and transferred to a single umbrella fund, which covered all the agents as well as many other companies. In terms of the new rules, Catlin fell into the category of Executive Consultant and Liberty Life would contribute 17% of Catlin's monthly earnings to this fund. To ensure that he had understood the new scheme correctly, he asked the company for clarification. The e-mail which he received from Deborah Harrold of Liberty Life's Agency and Franchise Services on 18 October 1999 was extraordinarily clear:

"I would like to confirm to you that all the enhanced benefits as quoted in the Blue Glossy Brochure 'Enhanced Benefits for Consultants' are still valid and in force. In addition I would also like to confirm that you fall into category 4 for contribution purposes and the company is presently contributing 17% of your average monthly earnings to the fund on a monthly basis."

Despite this written assurance, the contributions never happened – and, in 2000, Liberty changed its tune, now telling Catlin that the law required employees who retired to do so from all funds operated by the employer, and that Catlin should therefore on his "retirement" have retired from the agents' provident fund as well. What should have happened, Liberty Life said, was that Catlin should have been paid out the provident fund benefits which had accrued at the end of 1997. Catlin was unhappy and took the issue to the Pension Funds Adjudicator, asking for an order that Liberty Life be required to make the 17% contribution until his full retirement.

In the response to this claim, Steven Naylor of Liberty Life's legal department (who one imagines knows about these things) said, significantly we think, that Catlin had "retired from employment and was re-employed", and that the company did not regard "employees who are employed as Active Pensioners" to be eligible for membership of any of the retirement funds operated by Liberty Life. On 7 May 2002, the Pension Funds Adjudicator found in Catlin's favour.

TAKING LIBERTIES? Sir Donald Gordon with white collar and friend

Liberty Life lodged a claim disputing this finding and the Adjudicator called a hearing to resolve the matter. On 15 October 2002, four days before the hearing, Catlin was invited to coffee at Cape Town's Waterfront with a high-ranking Liberty Life manager from Johannesburg, Otto Pretorius, to be told that his contract was being terminated. When he asked why he was being fired, he was told (in front of a witness) that it was because he was in dispute with the company (naughty, naughty!) – something which Liberty Life would later dispute, alleging on affidavit that he was fired for failing to meet targets (but that, too, is another story). A short while later, the Adjudicator closed his file without Catlin's knowledge, apparently on the basis of a fraudulent letter from Liberty Life claiming that Catlin had signed a settlement agreement. Unbelievably, the Adjudicator did not even ask Catlin to confirm the agreement, or for proof of a written agreement.

Catlin took his termination to the Council for Conciliation Mediation and Arbitration (CCMA), alleging wrongful dismissal. Liberty Life's defence was an interesting one – the CCMA had no jurisdiction because Catlin was not an employee but an "independent contractor". Catlin represented himself and, as so often happens in such cases, lost. Catlin was stunned – the judgment seemed to fly in the face of the law and the agreement. After all, Section 200A of the Labour Relations Act says that, until the contrary is proved, a person who renders services to another person is presumed to be an employee, regardless of the form of the contract, if one or more of a number of factors are present. For example:

- Control or direction by the organisation over the manner of the work. There certainly was control here – Catlin had in fact faced a disciplinary enquiry years earlier, and he was throughout his time with Liberty Life required to attend certain meetings.
- That the person forms part of the organisation. Catlin certainly felt part of Liberty Life.
- That they work for the organisation for more than 40 hours per month. Catlin did so at all times.
- That he or she is economically dependent on the organisation. Catlin most certainly was, as was proved by his tax returns which were made available to the CCMA.
- That the person receives the tools of his trade from the organisation. Catlin received his stationery, computer software and the like from Liberty Life.

On top of that, there was the Post Retirement Agency Agreement. Although hardly a model of clarity, or fairness, for that matter (one clause provided that the decision of Liberty Life on the meaning or interpretation of the agreement would be final and binding on Catlin), it did contain many aspects suggestive of an employment relationship. For example, it provided that:

- Catlin would canvass exclusively for Liberty Life.
- Catlin would not "induce other consultants to leave the service" of Liberty Life.
- Catlin would always act in the best interests of Liberty Life.
- All documentation relating to policies would be the property of Liberty Life and open to scrutiny by Liberty Life at any time.
- On termination, Catlin would surrender servicing records concerning policyholders and Liberty Life would be entitled to allocate the servicing of such policyholder, to whom it pleased.
- Finally – this is an interesting one – if any law which relates to agents who are employed by assurance companies, and who perform substantially the same services as Catlin, requires any particular provisions to be incorporated

in such service contracts, those provisions would automatically be incorporated into Catlin's agreement. Why on earth would they have such a provision if they didn't accept that Catlin was in truth an employee?

Catlin, with some confidence therefore, took the matter on review to the Labour Court in Cape Town. To his absolute horror, on 21 June 2004 Judge Ngcamu also found against him. The judgment concentrated heavily on the Post Retirement Agency Agreement and, particularly, those aspects of it which were not in Catlin's favour. For example, the fact that, despite providing for exclusivity, it did make provision for the possibility of Catlin working for other companies as long as he obtained consent from a Liberty Life director or general manager (this, in fact, never happened). Or the fact that the contract required him to take out his own guarantee bond as security for moneys which passed through his hands. The judge also seemed very taken with the decidedly technical point that, because Catlin was paid from premiums paid by policy holders, he was not economically dependent on Liberty Life but the policy holders (on that reasoning you could say that the Pick & Pay cashier is not economically dependent on Pick & Pay, but on its customers!).

There's another side to all this which disturbs Catlin greatly – he wonders whether it is in fact possible to get justice against a major insurance company. Insurers have a lot of clout – indeed some even take judges out to lunch! In September 2003 Catlin consulted with Cape Town law firm Finlay & Tait, who told him that his chances of succeeding with the review to the Labour Court were good. A short while later they told him that they could not act for him because of a conflict – their clients, Standard Bank, have a controlling shareholding in Liberty Life. He tried a number of other major firms and was always told the same thing. Which is not too surprising – a number of large corporations spread their work about to make sure no leading law firms can act against them.

Catlin eventually ended up at Cliffe Decker (ranked number one for three years consecutively in the annual Professional Management Review of top legal firms, you know), who took the matter over shortly before the Labour Court review hearing. They assured Catlin that they had no conflict, but he knows that they are on Standard Bank's conveyancing panel, and there are many aspects of the representation he received which vex him. For example, the fact that he was never given an opportunity to consult with his counsel before the hearing, despite having requested a meeting on a number of occasions; the fact that the colour coded file which he prepared for this case and which highlights all the salient points in a veritable mass of documentation (and which we found very useful in preparing this article) was never made available to his counsel; the fact that he was not shown his counsel's Heads of Argument before the hearing, and the fact that there was no consultation during the hearing – indeed, Catlin says that when he tried to bring matters to his legal advisor's attention he was rebuffed. Needless to say Cliffe Decker denied any impropriety, even disputing that Catlin had expressed an interest in seeing his counsel, and stating that it is uncommon to give the client the Heads of Argument. Predictably enough, Catlin's complaint to the Cape Law Society was rejected.

Catlin also filed a complaint with the Cape Bar Council about the conduct of his counsel, Graham Leslie. He was perturbed by the fact that Leslie didn't explain to the court that the significant delay (which deprived Catlin of the right to file further papers) had been caused by Catlin's inability to find representation, the fact that no consultation took place, the fact

Catlin wonders whether it is possible to get jutice against a major insurance company

Wir sprechen Liberty Life-isch

From previous page that Leslie didn't deal with certain issues such as the Pension Funds Adjudicator's finding, and the fact that he allowed Liberty Life's counsel's to waste time, thereby depriving him of time to respond. What particularly irked Catlin was that Leslie started his summation by saying "I won't be long", – a remark which, Catlin thinks, was not unrelated to the fact that Liberty Life's counsel had a flight to catch. As quickly as you can say "whitewash", the Bar Council dismissed the complaint, holding that the failure to deal with the various issues was not decisive, that Catlin had not been prejudiced by the fact that Leslie had not had a colour-coded file, that the failure not to consult was not unprofessional, blah, blah, blah.

What does it all mean? Well for Catlin, rather a lot of money. If he has to put a figure on it, he reckons he's lost around R2 000 000 in terms of legal costs, lost income and erosion of his pension fund. He estimates that the other Liberty Life agents who found themselves in the same boat would also all have suffered losses in excess of R1,000,000.

For another thing, it must follow that, if Catlin was an independent contractor, so are thousands of others. It would seem that most of those 12,000 tied agents have no employment rights whatsoever (Old Mutual agents are, apparently regarded as employees). The insurers, on the other hand, can avoid all those irksome employment issues, like the Employment Equity Act, by declaring that their agents are independent contractors. In the meantime, are the insurers still deducting all the contributions which they make to their agents' medical aid and retirement funds for Income Tax purposes? Yes, it is a rhetorical question. Which means, of course, that tied agents are employees for tax purposes but not for labour purposes.

Lastly, what about the public? How many people realize that, when they are having the tremendous benefits of Liberty Life's products explained to them by a Liberty Life agent, they are in fact dealing with someone who is not even employed by Liberty Life? Someone whose contract can be terminated whenever it suits the company. Another rhetorical question of course!

"And now at this point in the meeting I'd like to shift the blame away from me and onto someone else."

Glenrand boss backpedals on promise to schoolgirl (15)

IN JANUARY, Glenrand MIB chairman Allan Mansfield promised a full board review and speedy resolution of 15-year-old schoolgirl Thembi Mgcina's R4m claim against the Attorneys Insurance Indemnity Fund (*nose*76). Nothing has come of the promise and, instead, Mansfield has now ordered a cloak of secrecy to be drawn over the whole fiasco.

Readers will recall how Thembi suffered serious head and leg injuries when she was hit by a car near her East Rand township home nearly seven years ago, when she was eight. Her rogue attorney, Admiral Khoza, accepted a totally inadequate R54,000 from the Road Accident Fund for damages and medical expenses – and vanished after handing over just R36,209 of it.

Thembi's new attorney, Anthony Millar of Norman Berger & partners, had Khoza sequestrated and then filed a R4m claim with Khoza's insurer, the Attorneys Insurance Indemnity Fund. The fund is managed by Glenrand.

Last August, when acting high court judge Piet Meyer was determining who was negligent in the 1999 accident (he ruled it was the car driver), the AIIF accepted that it was the insurer of Admiral Khoza. The question of Khoza's alleged professional negligence and how much Thembi was due, would be considered in August.

As previously recounted, last November the AIIF's attorneys filed a special plea claiming that Khoza was not covered for indemnity after all, since he had never completed a claim form!

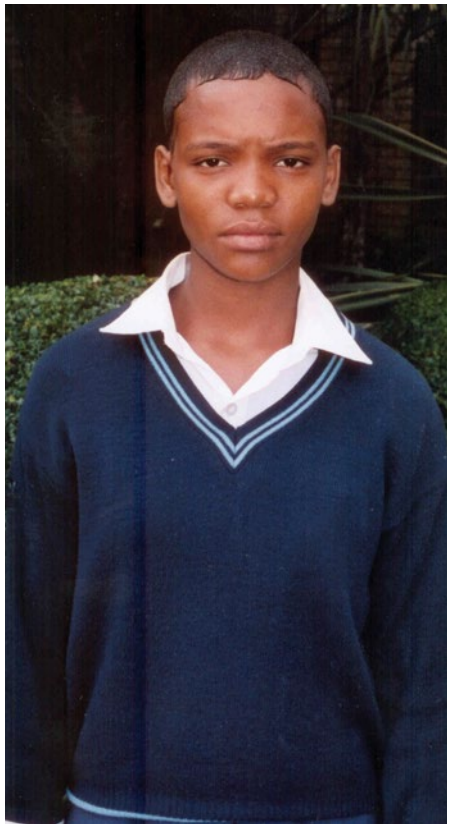
As well as being Glenrand's chairman, Allan Mansfield is managing director of the AIIF. In

January he promised that Thembi's case would be reviewed at a board meeting in the first week of March. "Hopefully, if it can be settled, we will not take months and months."

Mansfield now tells *noseweek*: "Yes, we are looking at it. It was reviewed at the board meeting. There will be an outcome, but we are not going to debate it in the press." He refused to be drawn further.

In the mean time Thembi's attorney, Anthony Millar, has filed an exception to the AIIF's changed plea. "The exception will be set down in court shortly and we are confident that the special plea [in which AIIF, under Glenrand's management, denies liability] will be struck out,"

While the legal wrangles continue, Thembi's near seven-year wait for urgent medical treatment – plastic surgery on one leg, and counselling – continues.



STILL WAITING: Thembi Mgcina

Claim against Vodacom tops R100m

NUMBERSECURE'S CLAIM against service provider giant Vodacom has soared to more than R100m.

In *nose*74 we told how entrepreneur Dieter Sauerbier committed suicide last October 18 after Vodacom rejected his company's Backup4Me (a product that recalls contact data for subscribers who have lost their cellphones).

"Vodacom killed me, in the end I merely pulled the trigger," read a note found on his body.

Sauerbier's co-director at NumberSecure, Kevin Jenkins, had attorneys dispatch a letter of demand to Vodacom, giving it one month to pay R82.9m for alleged unlawful termination of contract. Vodacom's group executive (legal affairs) Jodee Farah replied denying that NumberSecure was entitled to anything and that any action instituted "will be vigorously defended".

Top copyright and trademark advocate Cedric Puckrin SC has been retained for NumberSecure, and last month a summons was issued against Vodacom Service Provider Company for the increased sum of R101,885,865 in damages.

NumberSecure claims that in October 2003 Vodacom executives Barry Blackburn and Barry Sullivan signed an agreement to market Backup4Me. Income over the proposed two-year contract period was projected at R101.9m.

The summons says that Vodacom "refused and/or neglected to implement the agreement" and in September last year wrote to NumberSecure denying it had any agreement with them.

Sauerbier, a brilliant salesman who in the early 1990s played a key role in negotiations that won the Nokia distributorship in South Africa for his then employee, the RF Group, was 57 when he blew his brains out with a silver-plated .38 revolver near his home at Muckleneuk, Pretoria.

SA man accused of race attack in UK

TRUE BRITS (l to r) brothers Mark, Daniel and James Culmer

A YOUNG WHITE South African "of good family" who last March launched an unprovoked attack on a local "coloured" man in the centre of Tunbridge Wells in England, leaving his victim with a broken hip, has been sentenced to eight months' youth custody.

In passing sentence, Judge Philip Statman, who had been shown CCTV footage of South African Nolan du Toit, 20, running at local lad Mark Culmer, 30, outside a pub in Calverley Road, punching him to the ground and then kicking him, said it was clear that the attack was fuelled by drink and that Du Toit had lost control.

In addition to detention, Du Toit – who the judge accepted was "of good family" and whose address was given as Henwick Mill, Lower Bradheath,

Worcester, [UK]) – was ordered to pay his victim £500 in compensation.

Although the prosecution accepted Du Toit's not guilty plea to a charge that the offence was racially aggravated, Culmer's family still believe this to have been the case. "The only reason my son was singled out was because he is of mixed race: although I am white, his mother is of mixed race," Mark's father, Trevor Culmer, told *noseweek*.

"According to witnesses, just prior to the attack, the group with Du Toit – they spoke with South African accents – snidely told him that he should not be in this country (England). This from four people who were not from England themselves, but come from a multi-racial country!"

Mark has an art degree and designs websites and writes cartoon strips for a popular UK golf magazine. On the fateful evening he and a friend (the son of a local architect) had gone to a nearby night club for a drink. "They were both born and raised here, so feel safe knowing they will have friends in most bars in the town," says Trevor. "They did not expect to bump into four young men – recent immigrants from South Africa – with violence on their minds.

"I was myself born here. My father, who was a hero of the Second World War, brought us up strictly and taught us how to behave. (The King pinned a medal on him at Buckingham Palace and there are several books with pictures of him and stories of his action.)

"Following my own father's example, I have taught my three sons, Mark, Daniel and James how to behave. None of them has ever been in trouble with the law."

Security video showed that all four young men – said to be South Africans – were involved in picking on Mark, but the one that police detectives succeeded in identifying, Nolan du Toit, was the one who did most of the damage.

As a result of the assault, Mark was in hospital for two weeks and had a metal plate put into his hip. He walked on crutches for six months and now walks with a bad limp. "He used to love skateboarding and snowboarding but will never be able to do these things again," says his father. "£500 is not much for ruining a young man's life!"

Black day for Nigga trademark

AN AMERICAN actor, obviously upset at not getting an award at the Oscars, tried to steal the limelight by applying to register the N-word as a trademark. If you're not familiar with this little euphemism (as we were not), read on.

The actor Damon Wayans recently applied to register the word "Nigga" as a clothing and retail trademark in the US. We really do try to keep up with popular culture (just loved *The Sound of Music*, *Jaws* and *One Flew Over the Cuckoo's Nest*!), but we have to concede we know nothing about this dude. Anyway, predictably enough, some honky at the US Trade Mark Office turned the application down, on the grounds that the word is immoral and scandalous, being almost universally understood to be derogatory. Why only almost? Because the word "nigga" is apparently ubiquitous in hip-hop music (another area we're not that strong on), and because there is apparently a certain amount of "affectionate" use of the term by black Americans (or should that be African Americans?).

Some American lawyers feel that the chances of appeal are good – but then don't they always! Their optimism is based on the fact that the US Trade Mark Office recently allowed registration of "Dykes on Bikes", on the basis that the application had in fact been filed by a group of cheerful lady cyclists from San Francisco. Which at least gives us some clue as to Damon Wayans' hue.

Trademark laws, almost without exception (probably without exception at all, but we know that if we say that, some nerd is sure to point out that the law in Bhutan or some such place is different), provide that you cannot register brands that are immoral or offensive. But why would you want to?

Some people just get it wrong, of course: like the car company which launched the Pinto in Brazil – where the word means male genitalia of unimpressive dimensions(this is a surprisingly common theme in brands). An equally astute motor company launched the Nova in Spain – where the word means "won't go". And then there are those marketing geniuses who renamed their Pajero vehicle the Montero, in Spanish-speaking countries. Why? Because, even if Pajero does aptly describe the likely

Marketing geniuses had to rename their Pajero vehicle the Montero in Spanish-speaking countries after realising that, even if it does aptly describe the likely purchaser, a Wanker isn't going to be a big seller

Picture: Enpics/The Bigger Picture

US comedian and actor Damon Wayans, who won the award for Favourite Male Performer in a New Television Series at The 28th Annual People's Choice Awards in January 2002

purchaser, a Wanker isn't going to be a big seller.

Others, we understand, just go out of their way to be different and provocative – go figure! Like the company with the perfectly respectable name, French Connection UK, which chose to trade under its irritating little acronym, thereby alienating dyslexics and outraging many others. The UK Trade Mark Office has recently held that the acronym is not offensive because it is neither a swearword nor the phonetic equivalent of one.

Morality is, of course, a somewhat elastic concept and standards vary. Which may explain why Tiny Penis was refused in the UK but accepted in the EU (yes it is hard not to speculate about the individuals who examined these two applications!). Similarly, Jesus was refused in the UK, on the basis that it would offend Christians, but marks incorporating the name have been accepted in the EU. The brand FOOK was refused in the UK, which is perhaps not too surprising given some of the dialects there, but would probably be accepted in many other countries.

What about South Africa? In a country where Tuscan monstrosities rise up majestically above the bushveld, you might think that anything goes. And, to a certain extent, you would be right. So, for example, applications to register Mad About Pussy and Dog's Bum have been accepted. We are, of course, rather partial to smut down here, but religion and race are, we suspect, very different. People tend to be a trifle sensitive about religion (just ask any Danish cartoonist if you can even find one!) and, as for race, well that's just something else. Words or expressions that refer to any of the numerous racial and linguistic groups that make up our rainbow nation won't be accepted, we think. So, don't even think about trying to register any of these now commonly accepted group names:

- Previously Disadvantaged But Doing Fine Now
- Previously Disadvantaged But Still Feeling Strangely Marginalised.
- Presently Disadvantaged And Really Taking Strain
- Presently Disadvantaged But Felt Pretty Isolated In The Old Days Too, So No Change There.

Botswana leads Bushmen into 'places of death'

TOUGH DIAMOND: Veteran feminist Gloria Steinem at a picket of the opening of De Beers' first store in New York last year

THE CONTROVERSIAL new De Beers diamond mine on Bushman land in the Kalahari will be twice as big as was previously announced. (The officially gazetted notice describes an area more than one hundred times as big, but officials have since claimed this was a mistake.)

The Gope mine will now cover 40 square kilometres of the Central Kalahari Reserve. (Or 5,027 square kilometres, if the gazette is to be believed.)

This news is a further blow to the hopes Botswana's Bushmen have of being reinstated on their ancestral land from which the government has been forcibly removing them since 1997.

It is yet another sign that the world, even though it is well aware of the Botswana government's ethnic cleansing policies, is prepared to look the other way when it comes to the Bushmen. This, in spite of the fact that the international community repeatedly vows never to let history's crimes against humanity repeat themselves.

Under the seemingly noble, but wholeheartedly false, guise of giving the Gana and Gwi Bushmen of the Central Kalahari Game Reserve a shot at "developing" and being "educated", Botswana's government has been removing the Bushmen from the Reserve so that it can pursue lucrative diamond mining in partnership with De Beers.

It has dumped them in settlements, leaving them in a generally hopeless situation where alcoholism, physical and sexual abuse as well as HIV/Aids are destroying them. Getting the Bushmen to move (often billed by the Botswana government as "voluntary removal") has involved cutting off the water supply to Bushman communities in the Reserve, restricting their movement completely, barring them from hunting or gathering food, beating them, torturing them and detaining them without trial. As a result, some have already literally been starved to death.

The world averts its gaze, while the Mogae government pursues a policy of ethnic cleansing in the Kalahari

In what has been the longest and most expensive court case in Botswana's history (the court hearing started in June 2004 and is still proceeding), 248 Bushmen and Bakgalakgadi people are trying to get their country's courts to intervene and stop their forced eviction. But a judge, who is clearly sympathetic to his government's purpose, keeps stalling the case, using technicalities – a move clearly designed to exhaust the Bushmen's financial resources and resolve. Furthermore, at strategic points before and during the trial, Botwana's President Festus Mogae has visited the desperately poor Bushmen settlements to bribe them with blankets, sweets and reassurances that he's their "father" who's keeping a "check" on them. Government has also employed PR companies to stage-manage "fact-finding" missions, which include British MPs and other international delegations. The visitors get taken to selected schools and clinics to counter increasingly bad international press.

But some British MPs, like Dianne Abbott, haven't bought the PR. She told the Sunday Telegraph that the relocation centres were "more like refugee camps" than communities. "I am quite convinced that they were moved against their will," she said.

Even the United States, one of Botswana's closest allies, has acknowledged that the Bushmen have been forced to abandon their ancestral land. So why are Britain and the US,

both powerful giants in the international community, not doing more to pressurise Botswana into recognising the Bushmen's rights, as South Africa has done in the Richtersveld, where diamond mining is also an issue?

If Mogae's PR, thuggery and bribery don't work, his government has promised that legal and constitutional amendments will make sure the Bushmen don't take up their right to live on their ancestral land.

Minister of Local Government, Lands and Housing, Margaret Nasha, who oversees the removals, seems to have overcome her initial opposition to forcing the Bushmen off their land. Without international intervention the Bushmen have no chance.

In March, a delegation from First People of the Kalahari had their passports confiscated, preventing them from addressing a session of the United Nations Committee on Elimination of Racial Discrimination (CERD), held in Geneva.

CERD did, nevertheless, raise the issues with Botswana's government. The result? A reprimand, a warning to the Botswana government not to continue relocating the Bushmen. And then? Business as usual for President Mogae, his government and its mission to indulge old racial prejudices – and do what it takes to expand diamond-mining prospects in the Kalahari. The Botswana government and De Beers are 50/50 partners in Debswana, formed in 1969, a year after the country's independence, to exploit the country's diamond resources. Today diamonds make up 50% of the country's GDP and produce 80% of its foreign exchange.

One trip to Botswana to see how the majority of the population continues to live in poverty begs the question: Where does all the loot go? Check the Armani suits in government and the answer is obvious.

And now, with the new Gope mine about to be set up in the heart of Bushman territory, the fat cat potential for the privileged elite – De Beers' favoured partners – looks set to get even better.

So, what does De Beers say about the Bushmen? Mostly that the evictions have nothing to do with them – they're the Botswana government's business.

According to the diamond giant: "The Government has given further assurance that the resettlement programme is designed to give the San access to health and educational services available to all other Botswana people." A nice turn of phrase for these settlements, otherwise better known as "places of death".

If there's indeed no link between De Beers, diamonds and the removals, why is the company, which clearly has the ear and potential to influence the Botswana government's decisions on this subject, not doing anything to stop the removals and the human rights violations? (Mogae once likened the relationship between his government and De Beers to a "Siamese twin", remember?) The respected *Ecologist* magazine recently added its voice to the protests saying: "De Beers is the diamond trade in Botswana, and the diamond trade is killing this ancient culture."

If the Gwi and Gana Bushmen's government, the AU, the UN or big business won't get actively involved in protecting them from blatant human rights abuses, who will? Have we learnt nothing from history?

Picture: IMAGES24.co.za/BeeId

Fuelling around with our food

THE END of cheap oil and the impending fuel crisis have convinced the European Union and the US seriously to tackle their long-standing and worsening addiction to oil, not by kicking the habit, but by guzzling biofuels, made from plant products, instead. These "carbon neutral" fuels – biodiesel or bioethanol – make even committed environmentalists feel okay about getting into their cars.

The comforting theory is that growing biofuel crops and burning their products just moves carbon from plant to atmosphere and back again, in an endless cycle that is supposed not to increase meaningfully atmospheric carbon concentrations. In contrast, burning "bad" fossil fuels like petroleum and coal releases carbon that has been contained in the earth for millennia, into the air. We obviously do not put this back underground, thus atmospheric carbon goes up, driving climate change.

While it might seem like a good idea to switch to biofuels, the snag is that there simply isn't sufficient arable land on which to grow all the biofuel crops needed to satisfy the voracious appetites of the industrialised nations. (One thing Americans apparently won't consider is cutting back on their fuel consumption.)

So, the next phase of colonisation has begun. The industrialised countries are looking to the Third World to feed their addiction: the land is there for the taking, as is cheap labour, and the costs of large, environmentally-damaging plantations, biofuel extraction and refining can all be outsourced, exactly as they were in the extraction of crude oil.

The oil-addicted First World is gearing up to run its gas-guzzlers on our grub

Brazil is already currently the main supplier of ethanol to the UK, and is looking to greatly increasing its exports elsewhere.

Companies dedicated to biodiesel have set their sights on countries in Latin America, Africa, Asia and the Pacific, where they can obtain raw material at competitive prices.

UK-based DI Oils predicted in 2004 that the world market for biodiesel would grow by 14.5% annually to 2.8 million tons by 2010. The Asia Pacific operations of the company, based in Manila, will provide the Philippine Coconut Authority with the opportunity to meet the surge in biodiesel demand from Japan, China, Korea, Taiwan and Australia. DI Oils has fastened on jatropha, a fast-growing, high-yielding tree that can be planted in semi-tropical areas on "wasteland and irrigated with sewerage water". According to its CEO, the company already has plantations totalling 267,000 ha in Ghana, Madagascar, South Africa, India and the Philippines, and intends to expand to 9 million ha.

The Indian government announced a national biodiesel purchase policy in October 2005 that would enable farmers and biodiesel producers to get a support price of 25 rupees per litre for jatropha oil, and intends to bring one

million hectares of land under jatropha cultivation to supply blended diesel within the next few years.

Biodiesel has also provided a much-needed outlet for the glut of genetically modified (GM) crops that consumers are rejecting worldwide. President Lula of Brazil has declared that GM soya is to be used for biofuels and "good soya" for human consumption. Argentina also has plans to transform GM soya into biodiesel.

The biodiesel industry says that, for processing biofuels, large refining plants have to be constructed close to agricultural areas or forests, where the raw material is grown. The biodiesel will then have to be transported to filling stations in the same way as oil.

The oil industry will want to maintain control over the distribution of fuels, and will enter into an agreement with these new companies, as in many cases the supply chain can be very complex.

Everybody wins?

Biodiesel is projected as a business in which everybody does win. We are told that it will help us decrease emissions of CO_2, and help Third World countries increase their exports and improve the quality of life of their rural populations.

The reality is something else. It is said that growing biofuel crops absorb CO_2 from the atmosphere. What biofuel supporters don't say is that this is, of course, also true of whatever plants are growing in an area before a plantation is established.

Biodiesel has provided a much-needed outlet for the glut of genetically modified crops that consumers are rejecting worldwide

In fact, to show some sort of atmospheric carbon benefit, a biofuel crop has to absorb more carbon than the agricultural crop or natural ecosystem it replaces.

In many cases this is not possible. Natural ecosystems hold carbon in the bodies of plants, in the dead plant material (leaf litter, dead wood etc.) that lies on the ground, and very importantly in some ecosystems, in the soil.

By destroying a natural ecosystem to plant biofuel crops, one typically kills all the natural vegetation, burns it and the dead plant material in the area, and ploughs up the soil, liberating soil carbon.

As the industry has plans to expand exponentially, it is likely we will see huge areas of natural habitat destroyed in the name of "environmentally friendly" fuel.

Soya plantations have displaced the

BIOFUEL IN SA: THE FACTLETS

- The SA government allows fuel producers to voluntarily make up to 5% of petroleum fuel volume from biofuels, but under pressure from investors in the biofuel industry, is considering making this mandatory. (Brazil has recently had to drop its mandatory biofuel percentage of autofuel from 25% to 20%, because ethanol producers, exploiting the situation, had driven up the cost of autofuels beyond acceptable levels.)
- The South African government is considering making biodiesel a separate grade of fuel to further boost the industry.
- A company called Ethanol Africa, in which the SA government has a 25.1% stake, is to invest around US$1-billion in eight biofuel plants to make ethanol from maize. The first plant will be built in Bothaville, heart of the Free State mealie-growing region, and will be in full production by mid-2007.
- Mozambique, touting biofuels as "environmentally friendly", launched a high-profile Bio-Fuel National Project in February 2006. The government will encourage investment in the sector all over the country, and in addition to making fuel from sugarcane, will also use other crops such as cassava and Jatropha.
- Work has already begun on Mozambique's initial irrigated sugarcane-for-ethanol project. It will cover 29,000 hectares of land in the Moaba district near the southern part of the Kruger Park. The project involves a World Bank-financed enlargement of the Corumana Dam on the Sabie River. Its reservoir will now back up all the way into the Kruger Park. (Nose-Ark would love to see the Environmental Impact Assessment for this one.)
- Some South African scientists are concerned that *Jatropha curcas*, the Jatropha species proposed for ethanol production in southern Africa, will cause environmental problems as its sister species, *Jatropha gossypifolia*, (which is poisonous to animals) has become an invasive weed in Australia. If *Jatropha curcas* does not produce the returns expected, abandoned fields of the plant will spread seeds through the landscape.

forests of el Chaco in Argentina and the forests in the Pantanal, Atlantic and Chaco areas in Paraguay. Many Brazilian forest areas have been flattened to make way for soya and sugar cane, both biofuel crops.

The Brazilian Atlantic Forest has been reduced to only 10% of its original area. Not only are many forest species now extinct, but the damage to forested watersheds has placed the water supply of Brazil's big coastal cities at risk. In recent years Indonesia has lost millions of hectares of primary forest to crops like oil palm that are likely now to be used for biofuel production.

We must also not forget that greenhouse gases are also liberated during the processing, refining, transport and distribution of biofuel.

Atmospheric CO_2 is therefore likely to be increasing as a result of biofuel industry expansion.

People living in the areas where biofuel crops are grown will also not necessarily benefit from them.

If natural areas are not available to turn into cropland, existing food-producing land must be turned over to growing biofuels. If the demand for biofuels is strong, this will drive food prices up, hurting the landless poor.

Large-scale agriculture, such as is needed to comply with the demand for biofuels is highly dependent on oil derivatives such as fertilisers and pesticides, which, apart from producing CO_2 emissions, are highly polluting.

For example, the production of soya in Argentina could increase to 100 million tons, which involves a huge environmental and social cost to the Argentinean people, such as the displacement of rural populations, growing deforestation and degradation of soils and hence greater hunger and social inequality.

Predictions for Brazil are that it could become the world leader in the substitution of fossil fuels with biofuels, with all the impacts this entails. In Brazil, ethanol has been obtained so far from sugar cane, and it is currently experiencing a boom in exporting sugar cane ethanol. However, a massive expansion of soya farming is happening at the same time, causing millions of hectares of natural rangelands and forests to be ploughed under. The further expansion of ethanol farming will place the natural environment under even more pressure.

Recently, Repsol, Spain's largest oil company, announced that it will invest €300-million (about R2-billion) building six new bio-diesel plants. It's predicted that the raw material will come from oily crops from regions where labour and land is cheap and where GM crops are permitted, i.e., in the southern hemisphere. (Repsol is also big in Argentina, Peru and Ecuador.)

In other words, the poor developing nations will be forced to feed the voracious appetites of rich countries for biofuels at the expense of their own hungry people and suffer the devastation of their natural forests and biodiversity.

The real issue is: Why can't we simply use less fuel – whether petroleum or biofuel?

This piece is based on an article by Dr Elizabeth Bravo and Dr Mae-Wan Ho, originally published by the Institute of Science in Society (www.i-sis.org.uk).

A rosé by any other name...

THEY SURELY survive in some modernised guise, those 1950s blocks of flats I recall as Samrose Court or Doramax Mansions – drab monuments to their owners' wish for life everlasting for their coyly conjoined names (and rents everlasting for the fruit of their loins). The rich have not always shown much taste or imagination in choosing names for their properties, and it seems things are no different when they invest in wineries.

In fact, that twee and tedious trick of blending names to form something new and unexciting also turns up occasionally in the winelands. My wistful memories of Danmarg Place and the like were prompted recently when I attended the launch of a smart and rather good new wine called Anwilka – a significant wine, too, coming from a partnership between Lowell Joooste of Klein Constantia and some eminent Bordeaux wine people. We weren't told the orgins of the name, beyond the fact that it was what the farm was named when the latest owners arrived. But what, surely, could "Anwilka" signify other than the concatenation of Anna and Willem and dear little Kaspar (or Antonio and Wilhelmina and Karriem), in some desperate search for a name to express identity or claim?

I suppose it's modest, as well as odd, of the new owners to have elected to perpetuate the spasm of ego of Anna et al. They could, after all, have joined up bits of their own names (Hubert and Bruno, as well as Lowell). Would Hulobru (punning trendily on "hallo, broer!") strike a better note on the label of an expensive bottle? Or Brunlowbert?

It is, of course, a serious matter, this naming of wines in today's tough market. It's no coincidence, for example, that Britain and the USA are the main markets for Australian wine – apart from anything else, Anglo-Saxons, never noted for their embrace of others' languages, find it cosier to buy wines with a nice easy English name rather than the mucky meaninglessness of Foreign. There are more than a few Hungarian and Bulgarian brands on British supermarket shelves eagerly named after non-exisiting Creeks and Hills and Brooks.

But of course histories and traditions and dynasties must start somewhere, so why not with the names of the contempory investor? Many wineries carry the names of their owners, and that seems a respectable and time-honoured procedure. But when they get tricksy, I have my doubts. In 50 or 100 years (presuming global warming doesn't make Stellenbosch run dry), might people sipping their glass of Tokara occasionally wonder where the name came from? Will they realise that it is another yoking together of what are better apart? – in this case of Thomas (with the h sacrified to clearer pronunciation) and Kara. These are the children of the owner, the rich banker GT Ferreira – who seems to prefer avoiding his full "Gerrit Thomas", so perhaps that's partly why his offspring's names were used. But will, in fact, "Tokara" come to sound more like a South African wine estate and less like that of a Balinese restaurant?

The rich have not always shown much taste in choosing names for their properties, and there is no reason why things should be different when they invest in wineries

Incidentally, another oddity on the Tokara label is a date, "Anno 1722", alongside what I take to be the Ferreira crest. Presumably it is intended to add a bit of spurious historical depth, to let buyers of the expensive bottles feel that this is no nouveau-riche property but an old estate dating from the early years of the colony, like Vergelegen or Constantia. But no, there's no real connection with the wine: this is the date on which a Portuguese sailor was shipwrecked in Table Bay to become the first of the local Ferreiras. Misleading opportunism to find it brandished on each bottle?

The most awful new winelands name I've come across recently belongs to a largeish concern, rather than a farm. A press release early last month announced a change of company name from April 1, and emails flew between some of the hacks, speculating that it must be a premature April Fool's joke – who, after all, would really contemplate changing the fairly innocuous (if slightly megalomaniac) "Omnia" to "the company of wine people"? But the ghastliness of modern brandbuilding knows no depths, it seems, and the name is for real – as is the lack of upper-case letters. I wonder how they restrained themselves from adding in some square brackets – I bet they were sorely tempted.

Today's kids

IT'S A big old family table, teak, a working wood, not much polish to it but plenty of marks where farmhouse sewing machines have scratched it, hot pots have ringed it, seething porridge bleached it, kids have spilled the ink at homework time; a hundred years' worth of family utility. The present kids down that end are a bit beyond the homework, of course, they're twentyish. Two of them. I'm not sure what you call what goes on in their heads, but it's going on. Their laptops are doing whatever laptops do to tables.

They have such focus they don't hear at all what Mrs Joubert is blathering about up this end. Mind you, she is quietly spoken. What she quietly speaks about between her sunken gums and flabby old lips is what swine men are, all of them, not seeming to notice that I myself am of said Schweinerei. She puts her quiet speech down to long oppression, the men of her family, of the world, never permitting her the right to speech. *Maar dit help nie om te kla nie.* I just hold my tongue. Says Mrs Joubert.

You know, says she, my brother-in-law was such a bastard he spent all his time with tarts and all his money too and bimeby my sister got the hell in and met a man from the FullgospelchurchofGaaard who is not such a bastard who didn't drink and of course bimeby she had a baby and her husband who is such a bastard himself said it wasn't his child, like, and he wants to go and *bliksem* this other man who isn't such a bastard but it turns out this other one is a policeman and *bliksems* him instead and arrests him for assault. Oh dear oh dear! I declare. Ja, says Mrs Joubert with lips compressed, nodding. One thing leads to another, I tell you.

Not necessarily, suddenly says Inkazimulo down the other end. In the Big Bang everything happened at the same time. Mrs Joubert slowly turns and blinks, like she's just heard a piece of furniture speaking. If things are consequential, says Kazi, you should be able logically to predict the weather, which means if you go back far enough you will find everything forever is predictable at the moment of the Big Bang, including your sitting here blinking. Jesus! says Mrs Joubert.

A sequential time-line would be an asymptote on curved spacetime, meeting the curve at infinity, says Kazi. Christ! says Mrs Joubert. She turns to me: What's he talking about, man? It's physics, says young James, his mate. You know, it's like van der Merwe sending his son to St John's for a bit of polish, and when he comes home for the holidays v d Merwe says to him Okay, my boy, what did you learn at school? And Junior says Well... English, Zulu, Geometry... and v d M says Geometry?! Okay, say something in Geometry then, and Junior says Phi r squared, and v d M says Blêr sjoepet school, man, everybody know bread are square! Pie are round!

I'm not sure what you call what goes on in their heads, but it's going on. Their laptops are doing whatever laptops do to tables

Mrs Joubert goes entirely numb, opens her mouth a good long while. She slowly turns to me. What's the black one doing that thing for? says she to me in her quiet voice. Kazi, say I, why are you doing physics? So I can go and be an officer on one of our new diesel-electric submarines, says he. On WHAT?! cries Mrs Joubert. To me. On a great big new submarine called the SAS Winifred Madikizela Mandela, says Kazi. Jesus Christ! cries Mrs Joubert (to me), what does he want to do that for? So he can sink us in the Agulhas current when we've been driven into the sea and say good riddance, says James. He's the white one.

The keyboards tickle, the laptops sparkle, the minds are at work again. Mrs J's eyes roam to the cupboard wherein reside a bottle of gin and some lemons and things. All right, say I, who's for tea? Two fingers silently rise down that end. Mrs Joubert's crest falls. Not you, say I, for you I have some nice booze. I go to the kitchen with the gin and pour a quarter tumbler with thin slices of lemon and bitters and Indian tonic and ice; there you go, dearie, say I, you can relax now.

Yes, says Mrs Joubert, my cousin Charmante, now, she has a son who is twenty, you know, and already he is such a bastard, you know, he borrows her car and goes out all night with whores and brings it back without any petrol and it isn't that she has lots of money it's the principle you know what I mean and when she asks about the petrol he just gives her a big sexual squeeze and kisses her on top of her head because he is so tall and she doesn't know how to be cross any more. I'm telling you, man, men are all the same. Too true, say I.

Come to think of it, I wouldn't mind if the SAS Winifred Madikizela Mandela did sink her in the Agulhas current, and good riddance.

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