

IN THE MAGISTRATES' COURT FOR THE DISTRICT OF SANDTON  
held at Randburg (civil)

Case No. 57776/04

the matter between:  
NAFEESA SABIDA

Plaintiff

and  
DISCOVERY HEALTH (PTY) LIMITED

Defendant

**RETURN: SERVICE OF SUMMONS COMMENCING ACTION (ORDINARY)**

**IT IS HEREBY CERTIFIED:**

That on 21 October 2004 at 11h10 at 155 WEST STREET, SANDTON being the principal place of business of DISCOVERY HEALTH (PTY) LIMITED, a copy of the Summons commencing Action (Ordinary) was served to B. Howie, legal adviser of DISCOVERY HEALTH (PTY) LIMITED, after the original document was displayed and the nature and contents thereof explained to her. B. Howie a person apparently not less than sixteen years of age and in the employ of DISCOVERY HEALTH (PTY) LIMITED accepted service. Rule 9 (3)(c).

**SHERIFF CHARGES/EXPENSES:** (You may require that this account be taxed and vouched before payment)

Description	Tarif	QTY	Amount	Description	Tarif	QTY	Amount
Service 06-12 Km	26.00	1	26.00				
Postage (250x176mm)	3.51	1	3.51				
Registration & Seizure	13.40	1	13.40				

TO: THE CLERK OF THE COURT Randburg

Zero rated items	0.00
Sub-total	42.91
VAT	6.01
Total	48.92

Account No.: 58 SILVERWOOD  
TO: KIM WARREN & ASSOCIATES  
Dx - 509 - JOHANNESBURG

Your Reference: MS K WARREN/CDS

Mr A Jonker - Deputy Sheriff

(Properly appointed in terms of Section 6(1) of the Sheriff's Act No. 90/1986)  
Signed at Sandton on 22/10/04

My Reference: 2004/00/26662.00 / PAT

Acting Sheriff Sandton - Ms. M.E. de Kock  
Private Bag X9903, Sandton, 2146  
Tel: +27-11-781-3445  
Fax: +27-11-781-3451

ISSUED BY  
G. T. GEREIK DEUR

Case No

Date

Clerk of the Court

No. of Summons Commenting Action (Ordinary)

SUBMITTED BY KIM WARREN, RAMBAU & ASSOCIATES

97 Central Street

RANDBURG HOUGHTON  
CLERK OF THE COURT JOHANNESBURG

Postal address: P O BOX 47153, PARKLANDS 2121

Tel: (011) 728-7720  
Ref: MS K WARREN/CDS

*[Handwritten Signature]*  
Signature of Plaintiff or his Attorney

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF RANDBURG  
HELD AT RANDBURG

Between  
NAFESA SABIDA Plaintiff

and  
DISCOVERY HEALTH (PTY) LIMITED Defendant

To: DISCOVERY HEALTH (PTY) LIMITED, a Company duly registered and incorporated as such, with limited liability, according to the Company Laws of the Republic of South Africa, having its principal place of business at 155 West Street, Sandton.

YOU are hereby summoned that you do within FIVE (5) days of the service of this summons deliver or cause to be delivered to the CLERK OF THE AFORESAID COURT and also the PLAINTIFF OR HIS ATTORNEY, at the address specified herein, a notice in writing of your intention to defend this action and answer the claim of NAFESA SABIDA, an adult female employed at Pay Squad, 97 Central Street, Houghton, Johannesburg.

- (1) PARTICULARS  
Plaintiff's claim against Defendant is for:
- (a) payment of the R1 203,00 in respect of (SEE PARTICULARS OF CLAIM);
- (b) interest thereon (SEE PARTICULARS OF CLAIM);
- (c) Costs of suit (SEE PARTICULARS OF CLAIM);
- (d) Further and/or alternative relief.

Wherefore plaintiff prays for judgment against the defendant in the said sum, with costs.  
The whole cause of action arose within the jurisdiction of the above Honourable Court.  
Costs if the action is undefended will be as follows:

	Summens	Judgment
Attorney's charges	R 58,00	R 58,00
Court fees	R 20,00	
Rule 33(22) Costs	R 58,78	R 32,83
Messenger's fees (to be added)		
Messenger's fees on re-issue		

Totals R R

Total R R

Stamp: CALU/SH, 2004-10-18, SANDTON

**AND TAKE NOTICE THAT -**

- (a) in default of your paying the amount of the claim and costs within the said period or of your entering a notice of intention to defend you will be held to have admitted the said claim and the plaintiff may proceed therewith and judgment may be given against you in your absence;
- (b) if you pay the said claim and costs within the said period judgment will not be given against you therein and you will save judgment charges. You will also save judgment charges if, within the said period, you lodge with the clerk of the relevant court a consent to judgment;
- (c) if you admit the claim and wish to consent to judgment or wish to undertake to pay the claim in instalments or otherwise, you may approach the plaintiff or his attorney.

**NOTICE:**

- (1) Any person against whom a writ has, in a civil case, given any judgment or made any order, and who has not, within TEN (10) days, signified in full such judgment or order may be called upon by notice in terms of Section 65A(1) of the Act to appear on a specified date before the court in chambers to enable the court to inquire into the financial position of the judgment debtor and to make such order as the court may deem just and equitable.
- (2) If the court is satisfied that-
  - (a) the judgment debtor or, if the judgment debtor is a juristic person, a director or officer of the juristic person has knowledge of the abovementioned notice and that he or she has failed to appear before the court on the date and at the time specified in the notice or;
  - (b) the judgment debtor, director or officer, where the proceedings were postponed in his or her presence to a date and time determined by the court, has failed to appear before the court on that date and at that time; or
  - (c) the judgment debtor, director or officer has failed to remain in attendance at the proceedings or at the proceedings so postponed, the court may, at the request of the judgment creditor or his or her attorney, authorize the issue of a warrant directing a sheriff to arrest the said judgment debtor, director or officer and bring him or her before a competent court to enable that court to conduct a financial inquiry (Section 65A(2) of the Act).
- (3) Any person who -
  - (a) is called upon to appear before a court under a notice in terms of Section 65A(1) or 65A(2)(b) of the Act (where the sheriff in lieu of arresting a person, sends to that person a notice to appear in court) and who wilfully fails to appear before the court on the date and at the time specified in the notice; or
  - (b) where the proceedings were postponed in his or her presence to a date and time determined by the court, wilfully fails to appear before the court on that date and at that time; or
  - (c) wilfully fails to remain in attendance at the relevant proceedings or as that provided so postponed, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months (Section 65(3) of the Act).
- (4) On appearing before the court on the date determined in the notice in terms of Section 65A(1) or (2)(b) of the Act in pursuance of the arrest of the judgment debtor, director or officer under a warrant referred to in Section 65A(2) of the Act or on any date to which the proceedings have been postponed, such judgment debtor, director or officer shall be called upon to give evidence on his or her financial position or that of the juristic person and his or her liability to pay the judgment debt (Section 65(4) of the Act).
- (5) Any person against who a court has, in a civil case, given any judgment or made any order who has not notified in full such judgment or order and paid all costs for which he or she is liable in connection therewith shall, if he or she has changed his or her place of residence, business or employment, within fourteen (14) days from the date of every such change notify the Clerk of the Court who gave such judgment or made such order and the judgment creditor or his or her attorney fully and correctly in writing of his or her new place of residence, business or employment, and by his or her failure to do such judgment debtor shall be guilty of an offence and liable upon conviction to a fine or to imprisonment for a period not exceeding three (3) months (Section 109 of the Act).

(A) Consent to Judgment  
 I admit that I am liable to the Plaintiff as claimed in this summons (or in the amount of R. \_\_\_\_\_ and costs to date) and I consent to judgment accordingly.  
 DATED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_  
 \_\_\_\_\_  
 Defendant

(B) Notice of Intention to Defend:  
 To the Clerk of the Court.  
 I hereby take notice that the defendant hereby notifies his intention to defend this action.  
 DATED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_  
 \_\_\_\_\_  
 Defendant/ Defendant's Attorney

Address  
 Postal Address  
 (Give full address for acceptance of service of process or documents within eight kilometers from the Court-house and also the postal address.)  
 \*Note: The original notice must be filed of record with the Clerk of the Court and a copy thereof served on the plaintiff or his attorney.

**PLAINTIFF'S PARTICULARS OF CLAIM**

1. The Plaintiff is **NAPESA SABBIA**, an adult female employed at Pay Squad CC, 97 Central Street, Houghton, Johannesburg.
2. The Defendant is **DISCOVERY HEALTH (PTY) LIMITED**, a Company duly registered and incorporated as such, with limited liability, according to the Company Laws of the Republic of South Africa, having its principal place of business at 155 West Street, Sandton, Johannesburg.
3. Plaintiff is a member of the medical aid scheme conducted by the Defendant, known as Discovery Health.
4. For the periods set out hereunder, the Plaintiff, in error, paid the amounts set out hereunder to the Defendant, under the *bona fide* reasonable but mistaken belief that the amounts recorded below were compulsory payments required to be paid to the Defendant either in terms of statute or on the terms governing the Plaintiff's membership of the Defendant's medical aid scheme:

January to December 2002 (R39,00 x 12)	R468,00
January to December 2003 (R45,00 x 12)	R540,00
January to May 2004 (R39,00 x 5)	<u>R195,00</u>
TOTAL	R1 203,00
	=====

5. Plaintiff was not obliged to effect payment of the aforesaid amounts to the Defendant, as same constituted an ancillary voluntary charge and was not a compulsory payment, by the Defendant either in terms of statute or on the terms governing the Plaintiff's membership of the Defendant's medical aid scheme.

6. ALTERNATIVE CAUSE OF ACTION

In the event of the above Honourable Court finding that the Plaintiff does not have a cause of action for recovery of the payments referred to in paragraph 4 *supra* based on the *condictio indebiti* then the Defendant avers that the payments in paragraph 4 were made by the Plaintiff to the Defendant *sine causa*.

7. The Defendant has accordingly been unjustly enriched by the amount of R1 203,00 at the expense of the Plaintiff.

**WHEREFORE** Plaintiff prays for judgment against the Defendant for :

- (a) Payment of the sum of R1 203,00;
- (b) Interest on the aforesaid amount *a tempore morae*;
- (c) Costs of suit;
- (d) Alternative relief.

---

**KIM WARREN RAMBAU & ASSOCIATES**  
Plaintiff's Attorneys  
97 Central Street  
HOUGHTON, JOHANNESBURG  
P O BOX 47153, PARKLANDS, 2121  
TEL : (011) 728-7728  
REF : MS K WARREN/CdS

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF RANDBURG  
HELD AT RANDBURG

CASE NO. 157775/04

Between

NAFEESA SABIDA

Plaintiff

And

DISCOVERY HEALTH (PTY) LIMITED

Defendant


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APPEARANCE TO DEFEND

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PLEASE TAKE NOTICE that the Defendant intends defending this action and has appointed the address of its attorneys, set out hereunder, as the address at which it will accept service of all notices and process in this matter.

DATED at SANDTON on this the 28th day of OCTOBER 2004.


  
KNOWLES HUSAIN LINDSAY INC  
Attorneys for Defendant  
4<sup>th</sup> Floor, The Forum  
2 Maude Street  
Sandown, SANDTON  
Tel: (011) 269 7909  
Fax: (011) 883 7518  
DX 42, SANDTON SQUARE  
Ref: Mr M Husain/Ami  
c/o JOHN BROIDO  
1724 Sanlam Centre  
206/214 Jeppe Street  
Johannesburg

TO:  
THE CLERK OF THE COURT  
RANDBURG

AND TO:  
**KIM WARREN, RAMBAU & ASSOCIATES**  
Attorneys for Plaintiff  
97 Central Street  
Houghton, Johannesburg  
P O Box 47153, PARKLANDS, 2121  
Tel: (011) 728-7728  
Ref: Ms K Warren/CdS

Received copy hereof on this the

*26th* day of OCTOBER 2004.

  
\_\_\_\_\_  
For: Plaintiff's Attorneys  
Accepted Without Prejudice  
**KIM WARREN & ASSOCIATES**

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF RANDBURG  
HELD AT RANDBURG CASE NO. 15775/04

Between

NAFEESA SABIDA

Plaintiff

and

DISCOVERY HEALTH (PTY) LIMITED

Defendant

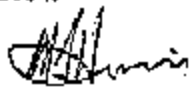
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NOTICE IN TERMS OF RULE 15(1)

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PLEASE TAKE NOTICE that the Defendant hereby applies to the Plaintiff for copies of all of the accounts or documents upon which Plaintiff's action is founded.

DATED at SANDTON on this the 26th day of OCTOBER 2004.

  
KNOWLES HUSAIN LINDSAY INC  
Attorneys for Defendant  
4<sup>th</sup> Floor, The Forum  
2 Mauds Street  
Sandown, SANDTON  
Tel: (011) 289 7909  
Fax: (011) 883 7518  
DX 42, SANDTON SQUARE  
Ref: Mr M Husain/mj  
c/o JOHN BRODIE  
1724 Sanlam Centre  
208/214 Jeppe Street  
Johannesburg



TO:  
THE CLERK OF THE COURT  
RANDBURG

AND TO:  
KIM WARREN, RAMBAU & ASSOCIATES  
Attorneys for Plaintiff  
97 Central Street  
Houghton, Johannesburg  
P O Box 47153, PARKLANDS, 2121  
Tel: (011) 728-7728  
Ref: Ms K Warren/CdS

Received copy hereof on this the

29<sup>th</sup> day of OCTOBER 2004.

  
\_\_\_\_\_  
For: Plaintiff's Attorneys

Accepted Without Prejudice  
KIM WARREN & ASSOCIATES

**IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF RANDBURG**

**HELD AT RANDBURG**

CASE NO : 57775/2004

In the matter between :

**NAFEESA SABIDA**

Applicant

and

**DISCOVERY HEALTH (PTY) LIMITED**

Respondent

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**REPLY TO NOTICE IN TERMS OF RULE 15(1)**

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The Plaintiff's claim is not founded upon any accounts or documents as envisaged in the Rules.

DATED at JOHANNESBURG on this the 30<sup>th</sup> day of NOVEMBER 2004.

  
**KIM WARREN, RAMBAU & ASSOCIATES**  
Plaintiff's Attorneys  
97 Central Street  
HOUGHTON, JOHANNESBURG  
P O BOX 47153, PARKLANDS 2121  
TEL: (011) 728-7728  
REF: MS K WARREN/CdS

KLEIN VAN DIE BIVLE NOF  
2004-12-03 10:51

TO:

THE CLERK OF THE COURT  
RANDBURG

AND TO:

KNOWLES HUSAIN LINDSAY INC  
Defendant's Attorneys  
4<sup>th</sup> Floor, The Forum  
2 Maude Street  
SANDOWN, SANDTON  
TEL : (011) 289-7909  
FAX : (011) 383-7518  
DOCEX 42, SANDTON SQUARE  
REF : MR M HUSAIN/lml  
c/o JOHN BROIDO  
1724 Saniam Centre  
206/214 Jeppe Street  
JOHANNESBURG

RECEIVED A COPY HEREOF ON THE  
02 DAY OF DECEMBER 2004.

*[Handwritten Signature]* 12117  
FOR : DEFENDANT'S ATTORNEYS

JOHN BROIDO  
WITHOUT PREJUDICE

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF RANDBURG  
HELD AT RANDBURG

CASE NO. 157778/04

Between

NAFEESA SABIDA

Plaintiff

and

DISCOVERY HEALTH (PTY) LIMITED

Defendant

---

REQUEST FOR FURTHER PARTICULARS

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PLEASE TAKE NOTICE that the Defendant requests the following further particulars to the Plaintiff's particulars of claim which particulars are reasonably necessary to enable the Defendant to plead :

1. AD PARAGRAPH 3

The Plaintiff is requested to indicate the time period(s) during which she was a member of the Medical Aid Scheme.


2. AD PARAGRAPH 4

2.1. When, where and how were the payments referred to herein made?

2.2. By whom and to whom were such payments made?

- 2.3. Were the payments referred to in paragraph 4 (described in paragraph 5 of the particulars of claim as an "ancillary voluntary charge") the only payments of such nature made by or on behalf of the Plaintiff to the Defendant whilst Plaintiff was a member of the Medical Aid Scheme? If not, Plaintiff is requested to detail all other such payments made by her to the Defendant during the period(s) of her membership of the Medical Aid Scheme.
- 2.4. The Plaintiff is requested to explain in detail her allegation that payments referred to were made :
- 2.4.1. *bona fide*;
- 2.4.2. in the mistaken belief that they were compulsory payments.
- 2.5. Upon what facts and/or circumstances was Plaintiff's alleged belief based that the relevant amounts were compulsory payments required to be paid to the Defendant?
- 2.6. Was Plaintiff's alleged belief based on any representations made to her that the relevant amounts were compulsory payments? If so, who, when and where on behalf of the Defendant made such representations and to whom on behalf of the Plaintiff were such representations made?
- 2.7. Plaintiff is requested to explain precisely how she is alleged to have mistaken the payments as being compulsory.
- 2.8. When did the Plaintiff realise her alleged error?

DATED at SANDTON on this the 28th day of OCTOBER 2004.

  
**KNOWLES HUSAIN LINDEAY INC**  
Attorneys for Defendant  
4<sup>th</sup> Floor, The Forum  
2 Maude Street  
Sandown, SANDTON  
Tel: (011) 289 7909  
Fax: (011) 883 7518  
DX 42, SANDTON SQUARE  
Ref: Mr M Husain/lmi  
c/o JOHN BRODIE  
1724 Sanlam Centre  
208/214 Jeppe Street  
Johannesburg

TO:  
THE CLERK OF THE COURT  
RANDBURG

AND TO:  
**KIM WARREN, RAMBAU & ASSOCIATES**  
Attorneys for Plaintiff  
97 Central Street  
Houghton, Johannesburg  
P O Box 47153, PARKLANDS, 2121  
Tel: (011) 728-7728  
Ref: Ms K Warren/CcS

Received copy hereof on this the  
2<sup>nd</sup> day of OCTOBER 2004.

  
For Plaintiffs Attorneys

Accepted Without Prejudice  
KIM WARREN & ASSOCIATES

**IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF RANDBURG**

**HELD AT RANDBURG**

**CASE NO : 57775/2004**

In the matter between :

**NAFEESA SABIDA**

**Applicant**

and

**DISCOVERY HEALTH (PTY) LIMITED**

**Respondent**

---

**REPLY TO REQUEST FOR FURTHER PARTICULARS**

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1. **AD PARAGRAPH 1**

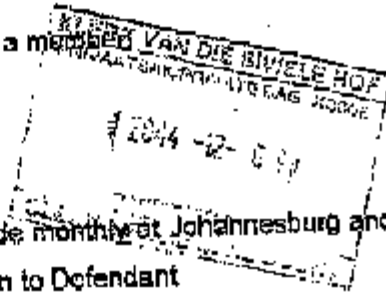
1998 to date. The Plaintiff is currently still a member

2. **AD PARAGRAPH 2.1**

The payments reflected therein were made monthly at Johannesburg and included the Plaintiff's monthly contribution to Defendant

3. **AD PARAGRAPH 2.2**

The payments were made by Plaintiff's employer (Pay Squad CC) on behalf of Plaintiff by way of debit order raised by Defendant.



4. AD PARAGRAPH 2.3

These were the only ancillary voluntary charges paid by the Plaintiff, however, other payments, not constituting ancillary, voluntary charges, were made by the Plaintiff during the period referred to in paragraph 4. The remaining particulars requested herein constitute a matter for evidence, alternatively, are not necessary for pleading, further alternatively, constitute an interrogatory and are accordingly refused.

5. AD PARAGRAPHS 2.4, 2.5, 2.6 AND 2.7

The particulars requested herein constitute a matter for evidence, alternatively, are not necessary for pleading, further alternatively, constitute an interrogatory and are accordingly refused.

6. AD PARAGRAPH 2.8

in and during July 2004.

DATED at JOHANNESBURG on this the 30<sup>th</sup> day of NOVEMBER 2004.

  
 KIM WARREN, RAMBAU & ASSOCIATES  
 Plaintiff's Attorneys  
 97 Central Street  
 HOUGHTON, JOHANNESBURG  
 P O BOX 47153, PARKLANDS 2121  
 TEL: (011) 728-7728  
 REF: MS K WARREN/CdS

TO:

THE CLERK OF THE COURT  
 RANDEBURG



**AND TO:**

**KNOWLES HUSAIN LINDSAY INC**  
 Defendant's Attorneys  
 4<sup>th</sup> Floor, The Forum  
 2 Maude Street  
 SANDOWN, SANDTON  
 TEL : (011) 269-7909  
 FAX : (011) 883-7518  
 DOCEX 42, SANDTON SQUARE  
 REF : MR M HUSAIN/lml  
 c/o JOHN BROIDO  
 1724 Sanlam Centre  
 206/214 Jappa Street  
 JOHANNESBURG

RECEIVED A COPY HEREOF ON THE  
02 DAY OF DECEMBER 2004.

*[Handwritten Signature]* 12:17  
 \_\_\_\_\_  
 FOR: DEFENDANT'S ATTORNEYS

JOHN BROIDO  
 WITHOUT PREJUDICE

**IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF RANDBURG**  
**HELD AT RANDBURG**

**CASE NO: 57775/2004**

In the matter between :

**NAFEESA SABDIA**

Plaintiff

and

**DISCOVERY HEALTH (PTY) LIMITED**

Defendant

---

**NOTICE IN TERMS OF RULE 12(1)(B)**

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**BE PLEASED TO TAKE NOTICE** that the Plaintiff requires the Defendant to file its Ploa in the above action within FIVE (5) days of receipt hereof, failing which the Plaintiff will lodge with the Clerk of the Court a written request for Judgment.

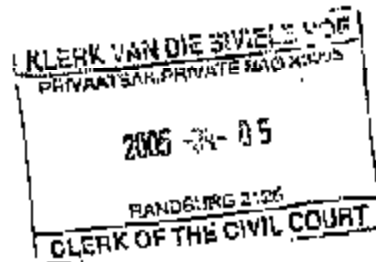
DATED at JOHANNESBURG this 29<sup>th</sup> day of MARCH 2006.



**KIM WARREN, RAMBAU & ASSOCIATES**  
Plaintiff's Attorneys  
97 Central Street  
HOUGHTON, JOHANNESBURG  
P O BOX 47153, PARKLANDS, 2121  
TEL: (011) 728-7728  
RF: MS K WARREN/CdS

TO:

**THE CLERK OF THE COURT  
RANDBURG**



AND TO :

**KNOWLES HUSAIN LINDSAY INC**  
Defendant's Attorneys  
4<sup>th</sup> Floor, The Forum  
2 Mauoë Street  
SANDOWN, SANDTON  
TEL : (011) 269-7909  
FAX : (011) 883-7518  
DOCEX 42, SANDTON SQUARE  
REF : MR M HUSAIN/ml  
c/o JOHN BROIDO  
1724 Sanlam Centre  
208/214 Joppe Street  
JOHANNESBURG

RECEIVED COPY HEREOF THIS  
31 DAY OF MARCH 2005.

  
\_\_\_\_\_  
FOR : DEFENDANT'S ATTORNEYS

JOHN BROIDO  
WITHOUT PREJUDICE

**IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF RANDBURG  
HELD AT RANDBURG**

Case No. 57773/2004

In the matter between:

**NAFEESA SABBIA**

Plaintiff

and

**DISCOVERY HEALTH (PTY) LTD**

Defendant

---

**DEFENDANT'S PLEA**

---

**1. AD PARAGRAPH 1 OF THE PLAINTIFF'S PARTICULARS OF CLAIM (AS AMENDED):**

1.1. The defendant admits the name of the plaintiff.

1.2. Save as aforesaid, the defendant does not admit the allegations herein.

**2. AD PARAGRAPH 2 THEREOF:**

The defendant admits the allegations herein.

**3. AD PARAGRAPH 3 THEREOF:**

3.1. The defendant avers as follow:

3.1.1. At all times material hereto, the defendant was the administrator of the Discovery Health Medical Scheme ("DHMS").

3.1.2. At all times material hereto, DHMS was a medical scheme registered in terms of the Medical Schemes Act 133 of 1998 ("the Act").

3.1.3. At all times material hereto, the defendant has been granted accreditation to administer DHMS in terms of section 88 of the Act.

3.2. The defendant admits that the plaintiff is a member of DHMS.

3.3. The defendant avers that the plaintiff became a member of DHMS in or about October 1997.

3.4. Save as aforesaid, the defendant denies each and every allegation herein as specifically as it is set out herein and denied.

3.5. In particular, and without derogating from the generality of the foregoing, the defendant denies that it conducts a medical aid scheme known as Discovery Health.

4. AD PARAGRAPH 4 THEREOF:

4.1. At all material times during the period from January 2002 to May 2004, the defendant offered a set of services and products ("the benefits") to members of DHMS who elected to receive such benefits.

- 4.2. Members of DHMS who elected to receive the benefits were obliged to pay a monthly fee ("the ancillary services fee") to the defendant in consideration for the benefits.
- 4.3. The benefits at various times included (but were not limited to):
  - 4.3.1. the administration and recovery on behalf of DHMS members of claims falling within the ambit of the Road Accident Fund Act 56 of 1998 and the Compensation for Occupational Injuries and Diseases Act 130 of 1993;
  - 4.3.2. access to "Discovery Rapid Response", a facility that enabled the defendant to dispatch emergency services to members of DHMS;
  - 4.3.3. access to "Discovery World", an Internet facility;
  - 4.3.4. access to "Express Claims", a service whereby members of DHMS might have their claims paid on a daily basis.
- 4.4. The ancillary services fee was paid on behalf of the plaintiff to the defendant in every month during the period from January 2002 to May 2004.
- 4.5. The ancillary services fee was paid on behalf of the plaintiff to the defendant as follows:
  - 4.5.1. For the period January to December 2002, a total amount of R468 (made up of 12 monthly payments of R39) was paid on

behalf of the plaintiff to the defendant as the ancillary services fee.

4.5.2. For the period January to December 2003, a total amount of R540 (made up of 12 monthly payments of R45) was paid on behalf of the plaintiff to the defendant as the ancillary services fee.

4.5.3. For the period January to May 2004, a total amount of R195 (made up of 5 monthly payments of R39) was paid on behalf of the plaintiff to the defendant as the ancillary services fee.

4.6. On every occasion on which the ancillary services fee was paid to the defendant on behalf of the plaintiff in the manner aforesaid, an express contract *alternatively* a tacit contract was concluded between the plaintiff and the defendant in terms of which the defendant was obliged to provide the benefits to the plaintiff and the plaintiff was obliged to pay the ancillary services fee to the defendant in consideration for the benefits.

4.7. The ancillary services fee was paid to the defendant on behalf of the plaintiff during the period from January 2002 to May 2004 in discharge of the plaintiff's obligation under the aforesaid contract or contracts.

4.8. At all material times during the period from January 2002 to May 2004, the defendant made available the benefits to the plaintiff in terms of the aforesaid contract or contracts.

4.9. *In the alternative to paragraphs 4.6 to 4.8 above:*

4.9.1. At all material times during the period from January 2002 to May 2004, the plaintiff conducted herself in a manner that created the reasonable impression that she had elected to receive the benefits from the defendant and had agreed to pay the ancillary services fee to the defendant.

4.9.2. The defendant reasonably relied upon the plaintiff's conduct as aforesaid in order to make available the benefits to the plaintiff during the period from January 2002 to May 2004.

4.9.3. In the premises, the plaintiff was obliged to pay the ancillary services fee to the defendant during the period from January 2002 to May 2004.

4.10. Save as aforesaid, the defendant denies each and every allegation in this paragraph as if specifically set out herein and denied.

5. AD PARAGRAPH 5 THEREOF:

5.1. The defendant admits that the ancillary services fee was not a compulsory payment in terms of statute.

5.2. Save as aforesaid, the defendant denies each and every allegation in this paragraph as if specifically set out herein and denied.

5.3. In particular, and without derogating from the generality of the foregoing, the defendant denies that the plaintiff was not obliged to effect payment of



the ancillary services fee and repeats what is stated in paragraphs 4.6 to 4.8 above.

6. **AD PARAGRAPH 6 THEREOF:**

6.1. The defendant denies each and every allegation in this paragraph as specifically as if set out herein and denied.

6.2. In particular, and without derogating from the generality of the foregoing, the defendant denies that the payment of the ancillary services fee was *sine cause* and repeats what is stated in paragraphs 4.6 to 4.9 above.

7. **AD PARAGRAPH 7 THEREOF:**

7.1. The defendant denies each and every allegation in this paragraph as if specifically set out herein and denied.

7.2. In particular, and without derogating from the generality of the foregoing, the defendant denies that it has been unjustly enriched and, in amplification of this denial, pleads as follows.

7.2.1. The defendant repeats what is stated in paragraphs 4.1 to 4.9 above.

7.2.2. During the period from January 2002 to May 2004, the defendant provided the benefits to the plaintiff as counter-performance for the payment of the ancillary services fee.

7.2.3. The plaintiff received the benefits (alternatively was entitled to receive the benefits) during the period from January 2002 to May 2004.

7.2.4. The value of the benefits provided by the defendant to the plaintiff during the period from January 2002 to May 2004 was R1 203,00.

7.2.5. In the premises, the defendant has not been enriched at the expense of the plaintiff (whether in the amount R1 203,00 or at all).

PLAW IS AMOUNT  
RMB 15 4100017

WHEREFORE the defendant prays that the plaintiff's claim may be dismissed with costs.

---

**CONDITIONAL CLAIM IN RECONVENTION**

---

The first defendant proffers this conditional claim in reconvention against the plaintiff only in the event of it being found that the plaintiff is entitled to the relief claimed in the claim in convention.

1. The plaintiff in reconvention is the defendant in convention.
2. The defendant in reconvention is the plaintiff in convention.

3. The parties will hereinafter be referred to as they are referred to in the claim in convention.
4. The defendant is the administrator of the Discovery Health Medical Scheme ("DHMS").
5. DHMS is a medical scheme registered in terms of the Medical Schemes Act 131 of 1998 ("the Act").
6. The defendant has been granted accreditation to administer DHMS in terms of section 58 of the Act.
7. The plaintiff became a member of DHMS in or about October 1997, and has remained a member of DHMS to the present time.
8. At all material times during the period from January 2003 to May 2004, the defendant offered a set of services and products ("the benefits") to members of DHMS who elected to receive such benefits.
9. Members of DHMS who elected to receive the benefits were obliged to pay a monthly fee ("the ancillary services fee") to the defendant as consideration for the benefits.
10. The benefits at various times included (but were not limited to):
  - 10.1. the administration and recovery on behalf of DHMS members of claims falling within the ambit of the Road Accident Fund Act 56 of 1996 and the Compensation for Occupational Injuries and Diseases Act 130 of 1993;

- 10.2. access to "Discovery Rapid Response", a facility that enabled the defendant to dispatch emergency services to members of DHMS;
  - 10.3. access to "Discovery World", an internet facility;
  - 10.4. access to "Express Claims", a service whereby members of DHMS might have their claims paid on a daily basis.
11. During the period from January 2002 to May 2004, the ancillary services fee was paid on behalf of the plaintiff to the defendant as follows.
- 11.1. For the period January to December 2002, a total amount of R488 (made up of 12 monthly payments of R39) was paid on behalf of the plaintiff to the defendant as the ancillary services fee.
  - 11.2. For the period January to December 2003, a total amount of R540 (made up of 12 monthly payments of R45) was paid on behalf of the plaintiff to the defendant as the ancillary services fee.
  - 11.3. For the period January to May 2004, a total amount of R195 (made up of 5 monthly payments of R39) was paid on behalf of the plaintiff to the defendant as the ancillary services fee.
12. In the premises, the total amount of the ancillary services fee paid to the defendant on behalf of the plaintiff during the period from January 2002 to May 2004 was R1 203,00.
13. In the claim in convention, the defendant has pleaded that there was a contract between the plaintiff and the defendant in terms of which the plaintiff elected to

receive the benefits from the defendant and the plaintiff was obliged to pay the ancillary services fee to the defendant during the period from January 2002 to May 2004.

14. In the event of this Honourable Court finding that there was no contract between the plaintiff and the defendant in terms of which the plaintiff elected to receive the benefits from the defendant and the plaintiff was obliged to pay the ancillary services fee to the defendant, then the defendant claims from the plaintiff on the grounds set out hereunder.
15. During the period from January 2002 to May 2004, the defendant provided the benefits to the plaintiff as counter-performance for the payment of the ancillary services fee.
16. The plaintiff received the benefits (alternatively was entitled to receive the benefits) during the period from January 2002 to May 2004.
17. The value of the benefits provided by the defendant to the plaintiff during the period from January 2002 to May 2004 was R1 203,00.
18. If the plaintiff succeeds in the claim in convention, then as a matter of law the plaintiff will be obliged to restore to the defendant the value of the benefits that she received during the period from January 2002 to May 2004 (such benefits having been rendered in counter-performance for the payment of the ancillary services fee).

19. *Further or in the alternative:*

- 19.1. During the period from January 2002 to May 2004, the defendant made the benefits available to the plaintiff in the *bona fide* and reasonable belief that it was obliged to do so in terms of a contract concluded between the plaintiff and the defendant in terms of which the plaintiff elected to receive the benefits from the defendant and the plaintiff agreed to pay the ancillary services fee to the defendant.
- 19.2. In the event that this Honourable Court finds that no such contract existed, it will follow that the aforesaid belief on the part of the defendant was mistaken in law and/or in fact.
- 19.3. The value of the benefits provided by the defendant to the plaintiff during the period from January 2002 to May 2004 was R1 203,00.
- 19.4. The plaintiff appropriated the benefits during the period from January 2002 to May 2004, thereby enriching herself and impoverishing the defendant in the amount of R1 203,00.
- 19.5. In the premises, the plaintiff has been unjustly enriched at the expense of the defendant in the sum of R1 203,00.

19.6. *In the alternative to paragraphs 19.1 to 19.5:*

19.6.1. During the period from January 2002 to May 2004, the defendant made the benefits available to the plaintiff in circumstances where it was not obliged to do so.

19.6.2. The value of the benefits provided by the defendant to the plaintiff during the period from January 2002 to May 2004 was R1 203,00.

19.6.3. The plaintiff appropriated the benefits during the period from January 2002 to May 2004, thereby enriching herself and impoverishing the defendant in the amount of R1 203,00.

19.6.4. In the premises, the plaintiff has been unjustly enriched at the expense of the defendant in the sum of R1 203,00.

20. The defendant is accordingly entitled to payment of the aforesaid amount of R1 203,00.

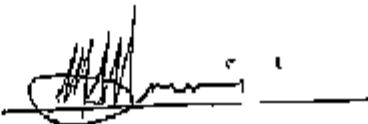
## WHEREFORE

The defendant prays for judgment against the plaintiff for:

1. payment of the sum of R1 203,00;

2. interest thereon in terms of section 2A of the Prescribed Rate of Interest Act 55 of 1975 from the date of service of this conditional claim in reconvention;
3. costs of suit;
4. further and/or alternative relief.

DATED at Johannesburg this 11<sup>th</sup> day of APRIL 2005.



**KNOWLES HUSAIN LINDSAY INC**  
*Attorneys for the defendant*  
Ref. Mr M J Hucain (DISC8735-  
005K)  
4<sup>th</sup> Floor, The Forum  
2 Mauds Street  
Sandown  
Sandton  
Tel (011) 289 7653  
Fax (011) 883 7518

**TO: THE CLERK OF THE COURT  
RANDBURG**

**AND TO:**

**KIM WARREN RAMBAU & ASSOCIATES**  
*Attorneys for the plaintiff*  
97 Central Street  
Houghton  
Johannesburg  
Ref: Ms K Warren/CdS



RECEIVED A COPY  
HEREOF THIS *11<sup>th</sup>* DAY OF  
*April*, 2005.



PLAINTIFF'S ATTORNEYS

Accepted Without Prejudice  
KIM WARREN, RAMBAU  
& ASSOCIATES



1.2.1 Who acted on behalf of Defendant?

1.2.2 Who acted on behalf of Plaintiff?

1.2.3 When was the agreement concluded?

1.2.4 Where was the agreement concluded?

1.2.5 Each and every term, condition and stipulation of the agreement is required.

2. AD PARAGRAPHS 4.1, 4.2 AND 4.3

2.1 Precisely what benefits were offered to members of DHMS?

2.2 Precisely when was each benefit offered to Plaintiff?

2.3 Were members of DHMS advised that they were not obliged to accept the benefits. If so :

2.3.1 Was Plaintiff advised of this fact orally or in writing? If in writing, a copy is required.

2.3.2 Who acted on behalf of Defendant in furnishing Plaintiff with this information?

2.3.3 When was Plaintiff furnished with this information?

2.3.4 Where was Plaintiff furnished with this information?

2.3.5 Each and every term, condition and stipulation of this advice is required?

2.4 Were members of DHMS advised that a charge would be levied if they accepted the benefits. If so :

2.4.1 Was Plaintiff advised of this fact orally or in writing? If in writing, a copy is required.

2.4.2 Who acted on behalf of Defendant in furnishing Plaintiff with this information?

2.4.3 When was Plaintiff furnished with this information?

2.4.4 Where was Plaintiff furnished with this information?

2.4.5 Each and every term, condition and stipulation of this advice is required?

2.6 Did Plaintiff elect to receive the benefits? If so, was such election oral or in writing? If in writing, a copy is required and if oral, Defendant is required to state the following :

2.5.1 To whom on behalf of Defendant was such election notified?

2.5.2 Who acted on behalf of Plaintiff in providing such notification?

2.5.3 When did Plaintiff elect to receive the benefits?

2.5.4 Where did the election take place?

2.6 Was Plaintiff ever advised by Defendant of her entitlement to the benefits? If so, was the advice oral or in writing? If in writing, a copy is required and if oral Defendant is required to state the following :

2.6.1 Who on behalf of Defendant advised Plaintiff of such entitlement?

2.6.2 Who on behalf of Plaintiff received such advice?

2.6.3 Where was such advice given?

2.6.4 When was such advice given?

2.6.5 Each and every term, condition and stipulation of the said advice is required.

2.7 How was the ancillary service fee calculated?

5. AD PARAGRAPH 4.6

Did the Plaintiff at any stage use the benefits? If so, precise details are required.

6. AD PARAGRAPH 4.8

6.1 How did Defendant advise Plaintiff that these services had been made available to her? If in writing, a copy is required and if oral, Defendant is required to state the following :

6.1.1 Who acted on behalf of Defendant in providing such advice?

6.1.2 Who acted on behalf of Plaintiff in receiving such advice?

6.1.3 When was Plaintiff advised that these services were made available?

6.1.4 Each and every term, condition and stipulation of the said advice is required.

7. AD PARAGRAPH 4.9.1

Precisely what conduct of Plaintiff does Defendant rely on to draw the inference that Plaintiff created the impression that she had elected to receive the benefits?

8. AD PARAGRAPH 7.2.2

Precisely how did Defendant provide the benefits to Plaintiff?

9. AD PARAGRAPH 7.2.4

Precisely how is the sum of R1 203,00 calculated?

AD CONDITIONAL CLAIM IN RECONVENTION

10. AD PARAGRAPH 15

10.1 Full and precise details are required as to how the Defendant provided the benefits to the Plaintiff.

10.2 Did Defendant advise Plaintiff that the benefits were available to her? If so, Defendant is required to state if such advice was oral or in writing. If in writing, a copy is required and if oral, Defendant is required to state the following :

10.2.1 Who acted on behalf of Defendant in providing such advice?

10.2.2 Who acted on behalf of Plaintiff in receiving such advice?

10.2.3 When was Plaintiff advised that those benefits were made available?

10.2.4 Each and every term, condition and stipulation of the said advice is required.

11. AD PARAGRAPH 16

Did Plaintiff in fact utilize any of the benefits? If so, full and precise details are required.

12. AD PARAGRAPH 17

Precisely how is the sum of R1 203,00 calculated?

13. AD PARAGRAPH 18

Precisely what benefits were received by Plaintiff during the period January 2002 to May 2004? Full and precise details setting out each benefit received by Plaintiff and the value of each benefit is required.

14. **AD PARAGRAPH 19.3**

14.1 Precisely what benefits were provided by Defendant to Plaintiff during the period January 2002 to May 2004?

14.2 The value of each benefit is required.

15. **AD PARAGRAPH 19.6.3**

15.1 Precisely how did Plaintiff appropriate the benefits during the period January 2002 to May 2004? Full and precise details of each and every appropriation are required setting out the following :

15.1.1 The manner in which the benefit was appropriated;

15.1.2 The manner in which the Plaintiff notified the Defendant that she was appropriating the benefit;

15.1.3 The value of each benefit appropriated.

16. On what basis does the Defendant allege that it is entitled to interest on its conditional counterclaim from date of service of the conditional claim?

DATED at JOHANNESBURG on this the 28<sup>th</sup> day of APRIL 2004.



*Kim Warren*

**KIM WARREN, RAMBAU & ASSOCIATES**  
Plaintiff's Attorneys  
97 Central Street  
HOUGHTON, JOHANNESBURG  
P O BOX 47163, PARKLANDS 2121  
TEL: (011) 728-7728  
REF: MS K WARREN/CdS

**TO:**

**THE CLERK OF THE COURT  
RANDBURG**

**AND TO:**

**KNOWLES HUSAIN LINDSAY INC**  
Defendant's Attorneys  
4<sup>th</sup> Floor, The Forum  
2 Maude Street  
SANDOWN, SANDTON  
TEL : (011) 269-7909  
FAX : (011) 883-7518  
DOCEX 42, SANDTON SQUARE  
REF : MR M HUSAIN/lml  
c/o JOHN BROIDO  
1724 Sanlam Centre  
206/214 Jappe Street  
JOHANNESBURG

RECEIVED A COPY HEREOF ON THE  
3 DAY OF May 2005.

*Kim Warren*  
FOR : DEFENDANT'S ATTORNEYS

KNOWLES HUSAIN LINDSAY INC.  
WITHOUT PREJUDICE  
TIME 10:55

**IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF RANDBURG**

**HELD AT RANDBURG**

**CASE NO : 57775/2004**

In the matter between :

**NAFEESA SABIDA**

**Applicant**

and

**DISCOVERY HEALTH (PTY) LIMITED**

**Respondent**

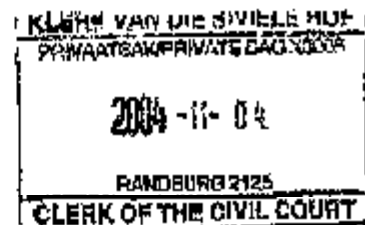
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**APPLICATION FOR SUMMARY JUDGMENT**

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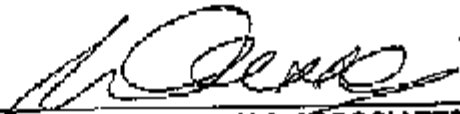
**PLEASE TAKE NOTICE** that application will be made to the above Honourable Court on **23 NOVEMBER 2004** at **09h00** or so soon thereafter as the matter may be heard for leave to enter Summary Judgment against the Respondent as claimed in the Applicant's Summons, that is for:

1. Payment of the sum of **R1 203,00**;
2. Interest on the sum of **R1 203,00** *a tempore morae*;
3. Costs of suit;
4. Further and/or alternative relief.



TAKE NOTICE FURTHER that the Affidavit of **NAFEESA SABDIA**, annexed hereto will be used in support of this application and the Respondent may reply thereto by way of Affidavit or in such other manner as the Rules of Court provide, such reply to be furnished by no later than noon on the day preceding the application.

DATED at JOHANNESBURG on this the \_\_\_\_\_ day of NOVEMBER 2004.

  
**KIM WARREN, RAMBAU & ASSOCIATES**  
 Applicant's Attorneys  
 97 Central Street  
 HOUGHTON, JOHANNESBURG  
 P O BOX 47153, PARKLANDS 2121  
 TEL: (011) 728-7728  
 REF: MS K WARREN/CdS

TO:

THE CLERK OF THE COURT  
 RANDBURG

AND TO:

**KNOWLES HUSAIN LINDSAY INC**  
 Respondent's Attorneys  
 4<sup>th</sup> Floor, The Forum  
 2 Maude Street  
 SANDOWN, SANDTON  
 TEL : (011) 268-7809  
 FAX : (011) 883-7518  
 DOCFX 42, SANDTON SQUARE  
 REF : MR M HUSAIN/Imi  
 c/o JOHN BROIDO  
 1724 Sanlam Centre  
 206/214 Jeppe Street  
 JOHANNESBURG

RECEIVED A COPY HEREOF ON THE  
 03 DAY OF NOVEMBER 2004.

  
 FOR : RESPONDENT'S ATTORNEYS

JOHN BROIDO  
 WITHOUT PREJUDICE

**IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF RANDBURG**

**HELD AT RANDBURG**

**CASE NO: 97775/2004**

In the matter between :

**NAFEESA SABDIA**

Applicant

and

**DISCOVERY HEALTH (PTY) LIMITED**

Respondent

---

**AFFIDAVIT**

---

I, the undersigned,

**NAFEESA SABDIA**

do hereby make oath and say that-

1. I am the Applicant in the above matter.
2. The facts herein contained are within my own personal knowledge and, to the best of my knowledge and belief, both true and correct.
3. I can swear positively to the facts verifying the cause of action herein, together with the amount claimed.



- 4. I verify that the Respondent is indebted to me on the grounds and in the amount set out in the summons and as set out in the application to which this Affidavit is annexed.
- 5. I verify believe that the Respondent does not have a bona fide defence to my claim and that the Appearance to Defend has been entered solely for the purposes of delay.

WHEREFORE I pray that it may please this Honourable Court to enter Summary Judgment against the Respondent as claimed in the Summons together with the costs thereof.

*[Signature]*  
DEPONENT

THUS SIGNED AND SWORN TO BEFORE ME at JOHANNESBURG on this the 1st day of ~~OCTOBER~~ <sup>NOVEMBER</sup> 2004 by the Deponent, she having acknowledged that she knows and understands the contents of this Affidavit, has no objection to taking the prescribed oath and considers same to be binding on her conscience.

*[Signature]*  
COMMISSIONER OF OATHS  
**SHARUSHA MOODLEY**  
Commissioner of Oaths  
Practising Attorney R.S.A.  
Ground Floor Suite, Block A  
87 Central Street, Houghton  
Johannesburg

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF RANDBURG  
HELD AT RANDBURG

CASE NO. 057775/04

Between

NAFEESA SABIDA

Plaintiff

and

DISCOVERY HEALTH (PTY) LIMITED

Defendant

---

FILING SHEET - SECURITY IN TERMS OF RULE 14(3)(b)

---

PRESENTED FOR SERVICE AND FILING BY :



KNOWLES HUSAIN LINDSAY INC  
Attorneys for Defendant  
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Ref: Mr M. Husain/lml


TO:  
THE CLERK OF THE COURT  
RANDBURG

AND TO:

**KIM WARREN, RAMBAU & ASSOCIATES**  
Attorneys for Plaintiff  
97 Central Street  
Houghton, Johannesburg  
P O Box 47153, PARKLANDS, 2121  
Tel: (011) 728-7728  
Ref: Ms K Warren/CdS

Received copy hereof on this the

*17th* day of NOVEMBER 2004.

  
\_\_\_\_\_  
For Plaintiff's Attorneys

Accepted Without Prejudice  
KIM WARREN & ASSOCIATES

