

# Insurance could balance the legal scales

By [Sharon Snell](#)

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There is a famous saying taught to lawyers: if you have the law, hammer the law. If you have the facts, hammer the facts. If you have neither the law nor the facts, hammer the table.

Nowadays it doesn't have to end with just hammering the table for a lawyer.



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In the States, there is a product which provides litigation protection insurance, offering lawyers a lifeline if they crash and burn their case. The hope is, it will level the playing field when poor litigants take on large corporates. It's marketed as a solution to the inequities that typically exist in litigation.

## David vs Goliath

They provide coverage for litigation disbursement costs that have been incurred, in the event that the case is lost at trial. Very recently we have seen how Nkosana Makate won his [Please Call Me case](#) against Vodacom. This was despite mobile company using their considerable financial means to drag the matter out right up to the constitutional court in order to discourage Makate.

Generally speaking, a poor litigant's only chance of obtaining justice against a corporate in court, is to find a lawyer who is willing to take their case on a contingency fee basis. This means that the litigant will not pay the lawyer any fee unless the case is won. Lawyers will make a detailed study of the merits of a matter before taking it on contingency.

## Covering disbursement

They will look at how complex the issues are and what the value of the payout would be. High-value payouts are more attractive cases as they increase the amount of contingency fee that the lawyer would be entitled to earn. Typically cases involving personal injuries, medical malpractice and sexual harassment lend themselves to contingency fee arrangements. This type of insurance would cover disbursement costs typically incurred in contingency matters like expert fees, deposition transcripts and travel spent directly on the case and excludes the lawyer's fees.

## Financial risk

There are financial risks which must be taken into account when a case is taken on contingency. This means that only the stronger cases with a higher percentage of a win/ bigger payouts are taken on by lawyers. A similar insurance will change the playing fields once it becomes available in South Africa. Lawyers would be able to take on more contingency matters if the financial risk can be transferred to an insurance provider.

This could increase access to justice for the man in the street in South Africa.

## ABOUT SHARON SNELL

Sharon Snell holds a masters degree in law , and she is the Chief Executive Officer of the National Museum located in Bloemfontein.

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