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IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Local Division, Pretoria

CASE NO: **2023-134420**

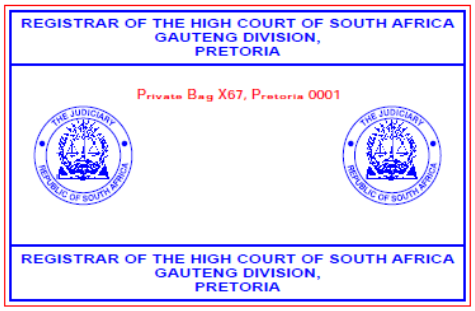
In the matter between:

THE ROAD ACCIDENT FUND	Plaintiff / Applicant / Appellant
and	
THE LEGAL PRACTICE COUNCIL,THE BOARD OF SHERIFFS,THE SHERIFF PRETORIA CENTRAL,THE SHERIFF PRETORIA EAST,THE SHERIFF CENTURION EAST,THE SHERIFF JOHANNESBURG CENTRAL,THE SHERIFF CAPE TOWN,THE SHERIFF EAST LONDON,THE SHERIFF DURBAN CENTRAL,THE PRETORIA ASSOCIATION OF ATTORNEYS,THE JOHANNESBURG ATTORNEYS ASSOCIATION	Defendant / Respondent

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Founding Affidavit

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ELECTRONICALLY SIGNED BY:

Registrar of High Court of South Africa , Gauteng Local Division,Pretoria

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NUMBER: _____

In the matter between:

THE ROAD ACCIDENT FUND	APPLICANT
and	
THE LEGAL PRACTICE COUNCIL	FIRST RESPONDENT
THE BOARD OF SHERIFFS	SECOND RESPONDENT
THE SHERIFF, PRETORIA CENTRAL	THIRD RESPONDENT
THE SHERIFF, PRETORIA EAST	FOURTH RESPONDENT
THE SHERIFF, CENTURION EAST	FIFTH RESPONDENT
THE SHERIFF, JOHANNESBURG CENTRAL	SIXTH RESPONDENT
THE SHERIFF, CAPE TOWN	SEVENTH RESPONDENT
THE SHERIFF, EAST LONDON	EIGHTH RESPONDENT
THE SHERIFF, DURBAN CENTRAL	NINTH RESPONDENT
THE PRETORIA ASSOCIATION OF ATTORNEYS	TENTH RESPONDENT
THE JOHANNESBURG ATTORNEYS ASSOCIATION	ELEVENTH RESPONDENT

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FOUNDING AFFIDAVIT

I, the undersigned,

COLLINS PHUTJANE LETSOALO

J.M

do hereby declare under oath that:

1.

1.1 I am a major male and the Chief Executive Officer of the Road Accident Fund (**'the RAF', the "Fund"**), which is the applicant herein.

1.2 The contents of this affidavit are true and correct, and fall within my personal knowledge, unless otherwise indicated.

1.3 If I make submissions of a legal nature I do so upon the advice furnished to me by the RAF's legal advisers.



INTRODUCTION

2.

2.1 The RAF operates under a funding mechanism which is deeply impacted by variables beyond its direct influence.

2.2 The inherent financial instability of the Fund stems from fluctuating payment of the Levy to the RAF, and it is dependent on external market dynamics and also the sheer number of claims against the Fund which grows each year.

2.3 The initial design of the RAF framework did not envision that the RAF would be a fully self-sufficient entity, capable of meeting all claims with one immediate lump sum payment where there are hundreds of thousands of claims against the Fund that it must administer and process.

2.4 The RAF's financial problems further stem from the fact that approximately 500 000 people are injured in motor vehicle related accidents *per annum*.

2.5 The damages claims that flow therefrom, are not only for the direct damages caused through injury but also the indirect damages that flow from such injuries which the RAF is liable for.

2.6 The RAF's financial instability, as Professor Klopper (a renowned expert of the RAF Act) once opined, is not so much the system that delivers the compensation, but the fact that South Africa has one of the highest road crash incidences internationally. The professor noted that no compensation system however devised could survive if faced with as many claims as the RAF receives.

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2.7 The RAF's structure markedly differs from insurance models, where there is a direct correlation between the premium collected and the risk assumed by the insurer.

2.8 The RAF's financial situation is intricately tied to a legislative process. The RAF Fuel Levy is managed by the South African Revenue Service, and it is integrated into the Customs and Excise Act through specific schedules, thus making its allocation to the RAF a matter of legislative discretion.

2.9 Such funds, transferred from the National Treasury to the RAF, represents the limit of financial resources available to the fund.

2.10 Consequently, the RAF is compelled to meticulously manage its spending through limited resources controlled by external variables.

2.11 The RAF has no alternative but to execute payments as its financial situation permits to prevent a collapse of the Fund.

2.12 In stark reality, the RAF faces a significant fiscal challenge.

2.12.1. It lacks the capital to settle all claims by lump sum as they fall due;

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2.12.2 The Court continues to make orders directing the RAF to make payment of capital compensation within 14 days of such orders;

2.12.3 The RAF is unable to make payment of claims as they fall within 14 days as ordered by the Court;

2.12.4 The RAF is only able to process payments within 180 days;

2.12.5 Because there are thousands of orders that the RAF must make payment of the RAF must queue the claims on its Requested But Not Yet Paid list (**'the RNYP list'**) and then implement structured payment thereof that is equitable;

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2.12.6 The RAF must therefore prioritize the settlement and processing of the oldest claims first that have passed the quality assurance and fraud prevention protocols;

2.12.7 In order to do so, the RAF requires a suspension on writs to prevent parties from, for instance, attaching the RAF's assets after 15 days to obtain preferential payment before other (usually unrepresented) claimants that have been waiting 180 days;

2.12.8 The majority of parties agree to wait in a queue to receive payment of their claims from the RAF;

2.12.9 The minority of parties involved in third party claims however refuse to wait in a queue unless the Court has granted the orders sought;

2.12.10 The calamitous situation, therefore is:

2.12.10.1 If the RAF does not approach the Court for the orders sought then a minority of parties will rush to attach the

J.M

RAF's assets (as they did before April 2021, and again during September 2021 to August 2023 when there was no reprieve) for orders that state that payment must be made within 14 days of the order;

2.12.10.2 They will do so as they did before regardless of the fact that thousands of claimants are waiting in the queue, and have been doing so for much longer than 14 days;

2.12.10.3 This causes a snowball effect where more and more parties refuse to wait in a queue;

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2.12.10.4 Such parties then also rush to attach the RAF's (very limited) assets;

2.12.10.5 Not long thereafter the RAF will collapse under the overwhelming pressure of writs and attachments of its assets.

2.12.11 The RAF therefore continues to require a suspension every six months because of the conduct of a minority of parties that refuse to agree to wait 180 days without this Court granting a moratorium.

2.13 Imagining thousands of claimants rushing to attach the RAF's limited assets and the spiralling effect thereof is enough proof that extraordinary circumstances exist why the orders sought should be granted.

2.14 The RAF shows herein what the RAF's position was in November 2020 (when the first application was made for a reprieve) and how close to a collapse the RAF was. The RAF then shows the impact that the Court's reprieves have had on the RAF and shows the necessity for the orders sought herein.

2.15 The following topics are dealt with in this application in support of the relief sought in the notice of motion:

2.15.1 The parties are introduced;

2.15.2 Service of this application is explained;

2.15.3 The Court's jurisdiction is established;

2.15.4 The legal basis for the application is set out;

2.15.5 The necessity for a further suspension on capital awards, and interest, is provided, and why a suspension on legal costs, as envisaged herein, should be granted;

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2.15.6 The RAF then deals individually with the case for a suspension of writs based on capital awards, legal costs, and interest;

2.15.7 The increase in writs against the RAF is discussed. On a month to month basis in 2023/2024 up to 23 October 2023 (the most up to date information available at the time of filing hereof), writs against the RAF increased by 61%;

2.15.8 The RAF's progress regarding new systems being introduced to streamline the process are discussed;

2.15.9 The RAF's substantial compliance with the Court's August 2023 order, and its quality assurance and fraud prevention protocols;

2.15.10 The requirements for the relief sought:

2.15.10.1 The RAF's *prima facie* right, alternatively, its clear right to the relief sought;

2.15.10.2 Reasonable apprehension of harm if the orders sought are not granted;

2.15.10.3 Balance of convenience;

2.15.10.4 Absence of a realistic alternative remedy;

2.15.10.5 The Court's inherent jurisdiction to prevent substantial injustice.

2.15.11 The relief sought;

2.15.12 The RAF's request for a special allocation.

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THE PARTIES

The applicant

3.

The applicant is the Road Accident Fund, a national public entity per schedule 3A of the Public Finance Management Act, 1 of 1999, duly established in terms of section 2 (1) of the RAF Act, with its principal place of business situated at 2 Eco Glades office park, 420 Witch-Hazel Avenue, Centurion. The object of the RAF is the payment of compensation in accordance with the RAF Act for loss or damage wrongfully caused by the driving of motor vehicles. The powers and functions of the Fund include, but are not limited to, as set out by section 4 of the RAF Act, the stipulation of the terms and conditions upon which claims for the compensation contemplated in section 3 of the RAF Act shall be administered, and the management and utilisation of the money of the Fund for purposes connected with or resulting from the exercise of its powers or the performance of its duties.

The respondents

4.

4.1 The first respondent is the Legal Practice Council, a national, statutory body established in terms of section 4 of the Legal Practice Act, 28 of 2014. The LPC and its provincial councils regulate the affairs of and exercise jurisdiction over all legal practitioners. The LPC has its national office at Building 20, Thornhill office park, 94 Bekker road, Vorna Valley.

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4.2 The second respondent is the Board of Sheriffs, a national statutory body established by section 7 of the Sheriff's Act, 90 of 1986, as amended, regulating the affairs of all Sheriffs of the Court, with its head office situated at 88 Loop street, Cape Town.

4.3 The third respondent is the Sheriff, Pretoria Central, in its capacity as the Sheriff for the district of Pretoria Central appointed as such in terms of section 2 of the Sheriffs Act, 90 of 1986, with its main place of business situated at 424 Pretorius street, Pretoria Central.

4.4 The fourth respondent is the Sheriff, Pretoria East, in her capacity as the Sheriff for the district of Pretoria East, appointed as such in terms of section 2 of the Sheriffs Act, 90 of 1986.

4.5 The fifth respondent is the Sheriff Centurion East, appointed as such in terms of section 2 of the Sheriffs Act, 90 of 1986, situated at 33 Kersieboom Crescent, Swatkop.

4.6 The sixth respondent is the Sheriff Johannesburg Central, appointed as such in terms of section 2 of the Sheriffs Act, 90 of 1986, situated at 21 Hubert street, Westgate, Johannesburg.

4.7 The seventh respondent is the Sheriff, Cape Town West, appointed as such in terms of section 2 of the Sheriffs Act, 90 of 1986, situated at 60 Commercial Street, Cape Town.

4.8 The eighth respondent is the Sheriff, East London, appointed as such in terms of section 2 of the Sheriffs Act, 90 of 1986, situated at 2 Currie Street, Quigney, East London.

4.9 The ninth respondent is the Sheriff Durban Coastal, appointed as such in terms of section 2 of the Sheriffs Act, 90 of 1986, situated at 25 Adrain Road, Windermere, Berea, Durban.

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4.10 The tenth respondent is the Pretoria Attorneys Association, a voluntary association of attorneys with independent *locus standi* and a body corporate with independent legal capacity in terms of its constitution, situated at Room 5.15, Fifth floor, High Court Building, Madiba Street, Pretoria.

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4.11 The eleventh respondent is the Johannesburg Attorneys Association, a voluntary association with independent *locus standi* and a body corporate with independent legal capacity in terms of its constitution, situated at Room 028 High Court Building, Von Brandis Square, corner of Von Brandis, Pritchard and Smal Streets, Johannesburg.

The respondents are joined hereto insofar as they may have an interest in the outcome of this application. No relief is sought against those respondents, except in the event of opposition, in which event the RAF will seek costs as prayed for against a party that opposes the relief sought in this application.

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SERVICE OF THE APPLICATION

6.

As this application involves thousands of claimants across the country, and as it is not practical or feasible to give personal notice to each of those claimants, the RAF will give notice hereof as set out below.

6.1 As the application only involves court orders that have already been granted, or settlements that have already been reached, most if not all parties that may be impacted thereby are represented by attorneys. The RAF has on its database over 2800 firms of attorneys who are part of its mailing list. The RAF will email the advertisement attached hereto as **Annexure "A1"** together with a copy of the Rule 16A notice attached hereto as **Annexure "A2"** to all firms of attorneys on the RAF's database of attorneys. The attorneys, and their clients, can then make an informed decision about their potential involvement (if at all) in this application.

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6.2 The Legal Practice Council (**'the LPC'**) will be requested to circulate a copy of the above advertisement and Rule 16A notice to all of its members who are legal practitioners. By doing so, as many legal practitioners as possible who may represent claimants will have been given notice of this application. Legal practitioners, upon receiving notice, are encouraged to bring to the attention of any client who might have an interest in this matter the content of this application.

6.3 The RAF will submit a separate, *ex parte* application for substituted service.

6.4 It is important to note that in the above advertisement and the Rule 16A notice is an embedded direct electronic link to this application and all of its annexures. By entering the link into a browser (a cellphone, or a computer) anywhere in the world, the person

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will have instant access hereto. This will facilitate immediate, and nationwide, access to this application and the content thereof.

6.5 The above Rule 16A notice will be advertised calling upon any interested person or party to take notice of the relief sought and should any such person wish to oppose or join the application as an *amicus* they can apply to do so as set out therein.

6.6 The Board of Sheriffs is joined hereto and is requested to disseminate this application to all of its members across the country. If any other Sheriff wishes to join they can make application to do so.

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7.

Personal service is not possible in this application due to the number of parties that may be impacted. By giving notice as aforesaid, as many persons as reasonably possible would have received notice of the application. This approach has been consistently applied in the RAF's previous applications to suspend writs.

JURISDICTION

8.

This Honourable Court has jurisdiction over this application, as evidenced by several compelling factors:

8.1 Firstly, the preponderance of Road Accident Fund matters, including the resultant court orders and settlement agreements, are adjudicated in Gauteng;

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8.2 Secondly, Gauteng serves as the primary region for the issuance of writs of execution and warrants of attachment against the RAF;

8.3 Thirdly and most notably, the RAF's significant movable assets, particularly those of highest value and commonly subject to attachment, are located in Gauteng. This includes the RAF's bank account, over which this Court exercises jurisdiction. Regarding the RAF's bank account, it is noteworthy that while writs of execution and warrants of attachment are distributed to various bank branches nationwide, they are ultimately processed at the bank's head office in Gauteng. Here, legal assessments are made to determine their validity and enforceability. Attachments of the bank account, if validated, are executed within Gauteng;

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8.4 Historically, all previous RAF applications seeking nationwide suspension of writs have been initiated in Gauteng;

8.5 Notably, a Full Court, convened by the Judge President in 2020/2021, first granted such an application in Gauteng. Subsequent extensions thereof and ancillary orders were issued by the Pretoria High Court;

8.6 The Legal Practice Council is *domiciled* within this Court's area of jurisdiction.

9.

Furthermore, this Court may assume jurisdiction over additional respondents not typically within its domain when it serves to avoid inconvenience. In such cases, the Court holds jurisdiction over a substantial portion of the RAF's action.

10.

The principles of convenience, justice, and pragmatism thus endorse this Court's jurisdiction over the entire cause of action. Moreover, section 21 (2) of the Superior Courts Act, 10 of 2013 (**'the Superior Courts Act'**), states that:

> *"[a] division also has jurisdiction over any person residing or being outside its area of jurisdiction who is joined as a party to any cause in relation to which such court has jurisdiction or who in terms of a third party notice becomes a party to such a cause, if the person resides or is within the area of jurisdiction of any other division."*

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11.

Exercising jurisdiction in this matter over all concerned parties will preclude the need for multiple actions and applications, thereby averting potential inconvenience, expense, and the risk of conflicting judgment on identical causes.

12.

Consequently, the RAF asserts that this Court is fully empowered to adjudicate this application. In light of these facts, it is evident that the Pretoria High Court is vested with the requisite jurisdiction to preside over and resolve this case.

THE ROAD ACCIDENT FUND'S APPLICATION

13.

This is an application brought in terms of Rule 45A of the Uniform Rules of Court read with Section 173 of the Constitution.

14.

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The orders sought, to suspend writs based on orders for, or ancillary to, personal compensation awards against the RAF for the periods set out in the notice of motion, is to prevent overwhelming the RAF with attachments causing the collapse of the system leaving thousands of social security beneficiaries without relief and medical care. Substantial injustice and inequality will arise should that happen. This application is brought under the extraordinary circumstances to prevent this from happening.

15.

The RAF's acute financial distress restricts its ability to immediately disburse lump sum payments for all claims against the RAF on the RAF's Requested But Not Yet Paid list ("**the RNYP list**"). As a result the RAF must adopt a prioritization strategy, focusing on settling the oldest claims first *a priore tempore*.

16.

This approach is contingent on the availability of funds, which are allocated to the RAF at irregular intervals. Due to the legislative funding model, there is an inherent delay in the

compensation process, affecting the timely settlement of newer claims which compounds the RAF's problems on a monthly basis.

17.

The RAF recorded a deficit of R 8.43 billion for the 2022/2023 financial year, which was largely due to not seeing an increase in the Levy over the past 2 years, against a backdrop of an average 6.9% increase in inflation during the same period.

18.

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The impact of the increase in claims liability against the RAF when compared with previous years exacerbated the deficit. The increase in the claims liability was mainly driven by a net increase of 32% in claims for which offers were made, but not yet requested, compared to the 2021/2022 financial year. As of October 2023, the Net balance of the Requested Not Yet Paid claims is R 21.43 billion.

19.

At first glance the increase in the RNYP list appears to imply that progress has deteriorated but that is not the case as what the increase shows is that the RAF has made headway in settling matters earlier so that more claims are registered on the RNYP list faster than they were before. The RAF's drive to reduce the backlog of claims and to settle claims within 120 days has the resulting impact of increasing the claims offers not yet accepted and therefore also increasing the claims expenditure.

20.

This is clear from the fact that of the R 21.43 billion on the RNYP list only R 3.85 billion (17.97%) are claims over 180 days.

21.

Claims on the RAF's RNYP list aged 0 to 150 days total R 14 727 717 509 which is 68.72% of the RAF's RNYP. The remaining claims, those aged 150 days to 180 days, total R2,873,098,152 which is 13.41% of the RNYP list.

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22.

In the last 18 months, the RAF processed 178,375 personal capital claim payments totaling R47.89 billion, averaging 9,910 claims per month, at R 2.66 billion. Monthly, the RAF spent R603.5 million on plaintiff attorney legal costs (excluding interest, Sheriff, and writ costs) and made 171,704 individual payments totaling R10.86 billion. The average monthly interest cost was R30.4 million, with 10,252 payments totaling R547.32 million. Despite a marked increase in the volume of claims against the RAF, there has been no corresponding *augmentum* in the RAF Levy to align with the surge.

23.

The RAF is still managing largely to make payment of capital awards within 180 days from the date of Court orders or settlements. The payment period fluctuates depending on the Levy and maturity of claims for that month.

24.

From settlement to date of payment for plaintiff legal costs the RAF currently on average takes 217 days. The period is dependent on the above variables as well.

25.

Since 22 August 2022 to 23 October 2023 the average days from settlement date to payment request date is 46.6 days, across 6,731 payment transactions loaded for plaintiff attorney capital matters. The average number of days have increased but considering the increase in claims, and the other variables that are set out below, the increase is marginal and the RAF's employee's commitment is admirable.

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Personal Claims - Plaintiff Capital Payments Requested from 22 Aug 2023

Month / Year	# of Transactions	Average of Days - Settlement to Request
Aug 2023	1 528	46,3
Sep 2023	3 461	46,0
Oct 2023	1 742	48,0
Total	6 731	46,6

26.

In 2020 the projections the RAF had were that by the end of March 2023, if the RAF had continued with its highly litigious and ineffective operating model, the RNYP list would have increased to R 51 billion and would have exceeded the annual RAF Fuel Levy income received.

This did not occur due to the RAF's new management's urgent intervention, and this Court's urgent assistance.

27.

The RAF's new management implemented the 2020/2025 strategy which has already shown its success in ensuring that the RNYP did not increase to R51 billion by March 2023 and as the majority of claims on the RNYP list are claims aged 0 to 180 days and not older than 180 days. The RAF's strategy presents the best opportunity to see the RAF on a sustainable and operational path. The RAF's focus is on optimizing what works and managing the inherent risks that come with implementing a turnaround strategy. Some of the challenges the 2020/2025 plan addresses are –

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27.1 The long turnaround time to settle claims by aiming to settle claims within 120 days;

27.2 The RAF's high claims liability;

27.3 The RAF's litigious operating model; and

27.4 The RAF's legal costs. The RAF's biggest impediment to its target remains the 90% of claims in the backlog, which were lodged without the required minimum information to enable the Fund to make a settlement offer.

28.

It is paramount to underscore that the RAF stands unique among State entities in South Africa, having not sought financial rescue from the Government. This is largely attributable to the

Court's *auxilium* in halting writ executions. Every time a pause of executions has been ordered the RAF has been able to better manage its affairs, and to implement more strategies and programs to turn it around. Without such judicial intervention, the RAF would find itself in exigent need of a State bailout.

BACKGROUND TO PREVIOUS ORDERS

November 2020 to April 2021

29.

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29.1 In November 2020 the RAF faced escalating delays in processing payments, anticipated to burgeon from 187 to 331 days.

29.2 By year's end, an average delay of 261 days loomed. The RAF's RNYP was at R17.6 billion, with a foreboding surge to R 33.3 billion (with a large portion thereof projected to be claims aged 180 days and over).

29.3 The RAF was not capable of implementing an equitable payment system (oldest to newest *a priore tempore*) due to the conduct of the minority of parties involved whilst the majority of parties involved accepted a reasonable delay.

29.4 Certain attorneys, exploiting and abusing the execution process, expropriated over R 2 billion from the RAF.

29.5 Before November 2020 there was no suspension of writs and therefore whichever party attached the RAF's assets first, would be paid by the RAF, regardless of the prejudice or impact on other claimants.

29.6 The RAF was on the verge of collapse and the RAF Board was considering instituting Section 21 (2)(a) of the RAF Act.

29.7 The above disastrous state was how the RAF's new management found the RAF when they were appointed to turn it around.

29.8 The RAF then approached the Court for first time for extraordinary relief suspending all writs and attachments of orders already granted or settlements already reached where the orders had not aged 180 days.

29.9 An agreement reached between the RAF and parties, which agreement was noted by Justice Louw in November 2020, laid the foundation for subsequent orders. A copy of Justice Louw's order is attached as **Annexure "A3"**.

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29.10 Led by Justice Lamont, the Full Court in December 2020 extended Justice Louw's order until 1 February 2021 or until a Full Bench hearing of the application, whichever came first. A copy of the Full Court's order is attached as **Annexure "A4"**.

29.11 With Justice Meyer presiding, the Full Court in January 2021 extended the order until 16 March 2021, the scheduled date for the main application hearing. A copy of the Full Court's order is attached as **Annexure "A5"**.

29.12 The Full Court in April 2021, discharged the temporary order and granted the RAF protection against executions and attachments until 30 April 2021.

29.13 On April 9th, 2021, Justice Meyer, with Justices Adams and Van der Westhuizen concurring, handed down a judgment providing continued protection to the RAF and claimants, establishing the basis for future operational stability. A copy of the Full Court's judgment is attached as **Annexure "A6"**.

29.14 The Full Court ordered as follows:

"[45] In the result the following order is made:

(a) *The temporary order made by the full court of this division on 9 December 2020, and extended by this court on 16 March 2021, is discharged.*

(b) *All writs of execution and attachments against the applicant based on court orders already granted or settlements already reached in terms of the Road Accident Fund Act, 56 of 1996 (the RAF Act) are suspended until 30 April 2021.*

(c) *The applicant is to pay all claims based on court orders already granted or settlements already reached in terms of the RAF Act, which are older than 180 days as from the date of the court order or date of the settlement reached, on or before 30 April 2021, provided that the applicant has been notified by any attorneys who represent claimants that have such claims that are older than 180 days of the existence of such claims in accordance with paragraph 3 of this court's order made on 16 March 2021.*

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(d) *All writs of execution and warrants of attachment against the applicant based on court orders already granted or settlements already reached in terms of the RAF Act, which are not older than 180 days as from the date of the court order of date of the settlement reached, are suspended from 1 May 2021 until 12 September 2021.*

(e) *The applicant is to take all reasonable steps to:*

(i) *register court orders or written settlement agreements for claims instituted in terms of the RAF Act against the applicant, on its list of payments in order of the date that the court order was granted or the date of the settlement agreement;*

(ii) *ensure that court orders or written settlement agreements for claims in terms of the RAF Act for payment are registered on the applicant's payment list within 30 business days of receipt of the court order or settlement agreement;*

(iii) *ensure that court orders or settlement agreements for claims as set out above that have not been captured on its payment list will be captured in historical chronological order from the date that the court order was granted by the court or the written settlement agreement was entered into;*

(iv) *provide all attorneys on its database of email addresses of attorneys involved in third-party matters against the Road Accident Fund with updated payment lists on a bi-monthly basis from April 2021 onwards.*

(f) *The applicant is to continue with its process of making payment of the oldest claims first by date of court order or date of written settlement agreement a priore tempore.*

(g) *Any party may approach the court during September 2021 to vary, extend or amend this order.*

(h) *This order and the order made by this court on 16 March 2021 shall forthwith be published by the applicant:*

(i) *to all practicing attorneys through the Legal Practice Council;*

(ii) *by email to all of the applicant's list of attorneys on its database;*

(iii) *to the Minister of Transport and the Minister of Finance by service on the State Attorney;*

(iv) *by publication in two national newspapers.*

(i) *No order is made in respect of each counter application, except that the applicant is to pay the costs of each counter application.*

(j) *The applicant is to pay the costs of each opposing respondent's opposition of the application, including all reserved costs and the costs of two counsel, one of whom a senior counsel, whenever so employed."*

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29.15 From April 2021 to September 2021 the Full Court's order had positive effects on the RAF which were that:

29.15.1 The RAF was able to make payment of claims on the RNYP list from oldest to newest *a priore tempore* within 180 days;

29.15.2 The RAF was able to recoup over R2 billion in duplicate payments which certain attorneys stole from the RAF;

28.15.3 The RAF was able to stop the unlawful practice of certain attorneys attaching the fund's assets to obtain preferential payment regardless of the impact on other claimants that had been waiting for much longer in the payment queue;

29.15.4 In April 2021 the RNYP was R15,060,894,437. By September 2021 the closing balance was R13,406,577,717. The RNYP in November 2020 to April 2021 showed a high liability of claims aged 120 days and older.

J.M

The decrease in the RNYP was therefore because the RAF was able to make headwind with the backlog of the oldest claims;

29.15.5 Additionally, the RAF was able to stabilize its operations and avert a collapse because of the Court's intervention.

September 2021 to August 2022

30.

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30.1 In September 2021 the Full Court's 6-month reprieve lapsed.

30.2 The RAF applied for an urgent extension to enable the fund to continue stabilizing its operations and to stagger payments in an equitable manner to claimants. The Court denied the RAF's urgent application. The RAF was therefore without protection / a reprieve from September 2021 to August 2022.

30.3 The impact of having no protection for a year was that capital claims over 180 days on the RAF's RNYP list increased. The RNYP opening balance was R 13 406 577.717 and the closing balance was R 16 499 141.27. During this period the RAF constantly had to be in Court to apply for individual suspension orders to prevent unlawful and invalid conduct.

39.4 Certain attorneys again attempted to obtain duplicate payments based on the same orders of Court (as they did before April 2021).

30.5 The RAF again, as it did before the reprieve, pushed its limits of operation and, rather than focusing on improving the RAF's *res angustae*, the RAF's management had to focus on keeping the RAF afloat.

30.6 The spending on Sheriff and writ costs increased, which the RAF could hardly afford to happen. Save to state that the Court's denial of the RAF's request for an urgent extension of the Full Court's order markedly stymied the RAF's progress.

30.7 In August 2022 the Court granted the RAF's first extension application after the Court denied the RAF's request for an urgent extension in September 2021. A copy of the court's order is attached as **Annexure "A7"**.

30.8 The order was effective for 6 months and in those months the RAF again made progress in processing claims over 180 days and earlier.

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30.9 The RAF's RNYP had an opening balance of R 16 499 141.271 and had a closing balance of R 15 620 805.710. Moreover, because of the Court's intervention the RAF was able to implement quality assurance protocols, oversight over claims and the assessment thereof in order to improve safeguards against theft, fraud, and maladministration, which was rife before November 2020.

March 2023

31.

31.1 In March 2023 the RAF was in the same position it was in September 2021 when the Full Court's relief lapsed for the first time.

31.2 Unlike in September 2021 this Court granted the RAF an extension of the relief after the respondents in that application consented thereto pending the outcome of a hearing later in the year.

31.3 The respondents thereto agreed to the above March order knowing how disastrous it is for the RAF and *their clients* when there is no reprieve.

31.4 Because of the Court's intervention the RAF made significant payments and continued to make progress in implementing safeguards.

31.5 A copy of Justice Swanepoel's order is attached as **Annexure "A8".**

March 2023 to present

32.

32.1 Justice Swanepoel's order was temporary. His order was set to lapse six months thereafter.

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32.2 After Justice Swanepoel's order, the RAF brought a separate application for interim relief to suspend writs based on interest and costs pending the hearing of the above main application later in the year.

32.3 The Court was approached on an urgent basis and on 19 April 2023 Justice Tolmay struck the matter from the roll for lack of urgency. The matter was then heard by Justice Nyathi in the normal course. *Without hearing the merits of the application*, the Court erroneously dismissed the interim application on the merits after argument of whether a supplementary affidavit by the RAF should be permitted.

32.4 Before the protection that was granted by Swanepoel J in March 2023 could lapse in September 2023, the matter was heard by Justice Van Niewenhuizen in August 2023. Van Niewenhuizen J granted further protection to the RAF as set out in **Annexure "A9"** hereto. That order expires on 16 February 2024. The RAF therefore herein applies for a suspension of writs as set out in the notice of motion in order to prevent the recurrence of the RAF's November 2020, and September 2021 to August 2022 situation, where the RAF was left unprotected and the effect thereof is clear from the above empirical evidence.

J.M

32.5 When this Court's judicial reprieve is active, the RAF can successfully process claims *a priore tempore*, and effectively reduce the RAF's backlog. Claims aged 0 to 150 days currently total 68.72% on the RNYP list which is proof that the RAF is able to process more claims faster than it did before the reprieve.

32.6 Absent the reprieve, claim payments cannot follow in sequence, leading to an escalation in the historical backlog of claims aged 150 days and over. Continuous growth of that category of claims will precipitate the Fund's collapse.

THE PROBLEM



33.

33.1 As the RAF is unable to fully cover all claims by lump sum payment as they fall due 14 days after an order is made, the RAF faces one of two critical outcomes.

33.2 Initially, the system may evolve into a *'first-come, first-served'* model, where the earliest attachment of the fund's assets are paid out, regardless of the age of the order, disregarding the broader impact on other claimants.

33.3 This approach will lead to a domino effect, reminiscent of a financial institution experiencing a *'run on the bank'*, ultimately risking the collapse of the RAF due to overwhelming demand such as the RAF was facing before the reprieve.

33.4 The second scenario is that claims are queued and paid from oldest to newest when funds are paid to the RAF from the levy. The RAF can only do so with this Court's moratorium on executions, as certain parties refuse to agree to a moratorium in orders that are still granted daily in the Courts. Those parties, as they did before, will attach the RAF's assets no matter what, if there is no reprieve.

34.

The 1st scenario, resulting in the RAF's inability to pay any future claims, clearly indicates substantial injustice if the orders sought are not granted and meets the exceptional circumstances requirement for the relief sought.

35.

The 2nd scenario allows the RAF to continue paying claims, albeit with a reasonable delay factored into settlements and orders, as prayed for herein.

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36.

36.1 The Court, exercising its inherent jurisdiction under section 173 of the Constitution and Rule 45A of the Uniform Rules of Court, can grant relief to ensure that the RAF does not return to the 1st scenario.

36.2 The judicial safeguard as prayed for in the notice of motion is necessitated by the RAF's approach to the Court every six months, a situation engendered by the minority of attorneys who refuse to agree to a reasonable delay being built into court orders presented to the Court when orders are made.

36.3 Moreover, there is notable omission on plaintiff attorney's part to inform the Court of the RAF's inability to make payment within 14 days of the Court's orders which is still the standard order granted, despite it being common knowledge that the RAF cannot make payment thereof in such short period.

36.4 This cycle casts the RAF in a continuous quest for judicial reprieve to maintain its financial stability all of which increases the RAF's legal costs when all of this can be averted if all orders state that payment should be made within 180 days.

J.M

36.5 The RAF is still in the unfortunate position where certain attorneys even *accept to receive payment* within 180 days when matters are settled, but they then approach the Court with draft orders which say that payment should be made after 14 days.

37.

The RAF simply cannot waste further legal costs on having to approach the Court a thousand times to vary all of those orders to state that payment should be made – as was agreed - within 180 days, or to ask the Court to suspend each individual order, in a thousand different and separate applications.

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38.

The RAF therefore applies for 3 main moratoriums. The first is a moratorium on the execution of capital awards, the second is for legal costs, and the last is for interest on the capital awards in personal compensation matters.

SUSPENSION OF CAPITAL

39.

Because of the RAF's precarious financial situation it is imperative to consider the implication if the application to suspend writs based on capital awards is not granted as prayed for. At the core of the RAF's predicament is its liquidity crisis.

40.

The RAF receives significant funds per month but it is nowhere near enough to immediately cover the RAF's future actuarial liabilities in one lump sum payment. The Fund's current liabilities significantly outweigh its liquid assets, leading to a negative working capital situation. This imbalance is symptomatic of cash flow insufficiency, where the inflow of funds, sourced from the RAF fuel levy, is insufficient to meet the outflow of demands, constituted by *inter alia* personal claim settlements (capital, interest, and legal costs).

41.

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The continual uptrend in new claims being instituted against the RAF, leading to *inter alia* higher legal costs having to be paid to plaintiff attorneys, together with the fact that the RAF Fuel Levy is not comparable to the current inflation rate, shows that if the RAF is not able to manage payments by suspending writs until they have aged as prayed for in the notice of motion, that it is not hard to imagine the impact that it would have on the RAF and consequently on thousands of claimants (and future claimant's ability to have a social security net when they are injured in motor vehicle accidents).

42.

The mismatch between current assets and liabilities, creates an untenable position where the RAF cannot meet its short-term obligations without the Court's assistance as a minority of attorney/parties refuse to wait for a reasonable period.

f.M

43.

The actuarial liability of the RAF, if the Auditor Generals of South Africa's calculations are used, (which calculations are not accepted by the RAF and are currently subject to litigation), is R500 billion which shows the growing number of claims against the RAF outpacing the RAF's income growth which has not kept abreast with inflation.

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In the 2023 budget review by the National Treasury titled *'Revenue Trends and Tax Proposals'* it was stated that to reduce pressure on households and businesses, no changes were made to the general fuel levy ('GFL') or the RAF Levy in the 2022 budget. Additionally temporary relief was provided for four months at a cost of R 10.5 billion. In 2023/24, government will again *'keep these levies unchanged, leading to revenue foregone of R 4 billion'*. The 93 Octane price was set for the RAF Levy at R 2.18 and for diesel at R 2.18 in 2021/2022. In 2022/23 and 2023/2024 the RAF Fuel Levy remained the same.

45.

The document further stated that Government implemented the diesel refund system in 2000 to provide full or partial relief for the general fuel levy and the RAF Levy to primary sectors. The refund system is in place for the farming, forestry, fishing, and mining sectors. The document further stated that:

> *'In light of the current electricity crisis, a similar refund on the RAF levy for diesel used in the manufacturing process (such as for generators) will be extended to the manufacturers of foodstuff. This will take effect from 1 April 2023, with refund*

payments taking place once the system is developed, and will be in place for two years until 31 March 2025.'

46.

In Parliament's 2023 budget and division of revenue brief it was stated that the 2023 budget proposed R13 billion in tax relief to which approximately 69 per cent is from renewable energy incentives. The non-adjustment to the fuel levy and the RAF Levy was also to provide *'significant relief in the context of high inflation and an exacerbated cost of living crisis.'* The Government's budget review document published by the Reserve Bank further made it clear that the main tax proposals for fiscal 2023/2024 include no increase for the RAF Fuel Levy. The annual report by SARS for 2022/2023 stated that the tax relief that was granted was aimed at providing support to households and the economy by not adjusting the GFL and the RAF Levy, while fully adjusting the personal income tax brackets for inflation. A report by Price Waterhouse Cooper stated that

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'The RAF Levy was not increased in 2022 in order to support households and the economy. Given that the RAF is in financial distress, we expect at least an inflationary increase in the RAF levy in Budget 2023'

(Emphasis added)

47.

Copies of the above documents are attached as **Annexure 'A10.1', 'A10.2', 'A10.3' and 'A10.4'**.

48.

Whilst the RAF Levy was not increased to keep abreast with inflation, the RAF's situation aggravated by the high incidence of litigation against the RAF, which escalates legal costs and further drains the RAF's limited financial resources.

49.

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Monthly the RAF spent R 603.5 million on plaintiff attorney legal costs alone (excluding interest, Sheriff, and writ costs) totalling R 10.86 billion.

50.

The situation is further exacerbated by the fact that the number of writs that have been issued against the RAF have increased by 61% to 861 writs a month on average in 2023/2024 up to 23 October 2023. The average monthly value of these writs is R170.1 million, average interest claimed is R5.9 million, average monthly sheriff cost claimed is R1.57 million, and writ/other fees claimed is R135,530 per month.

51.

Should the Court not grant the orders as *impetrated*, this prevailing trend is poised to persist unimpeded, culminating in a profoundly inequitable allocation of the Levy because of the abuse of the execution process, with far reaching and unfavourable implications.

SUSPENSION OF COSTS

52.

The RAF further approaches the Court for an order that all writs of execution and warrants of attachment against the RAF based on orders already granted in respect of legal costs for a plaintiff in personal compensation claims against the RAF be suspended –

52.1 In matters where the bill of costs has been settled with the RAF internally within six months from the date that the order was granted, or from when the settlement was reached, then the suspension will be for 180 days determined from the date of the settlement of the bill of costs;

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52.2 In matters where the bill of costs has been settled with the RAF internally, but the date when it was settled exceeded six months from when the order was granted, or the settlement was reached, then the suspension duration will be calculated as follows – 180 days, reduced by each day beyond the six month mark, until reaching a minimum suspension of 45 days;

52.3 In cases where the bill of costs is not settled internally with the RAF but had to be taxed by the Taxing Master, then the suspension will be for 45 days post-taxation by the Taxing Master;

52.4 That the suspension period shall be the earlier of the three conditions set by the orders prayed for above.

53.

Where previously the majority of writs were taxed by the Taxing Master, the RAF is making good progress in settling more bills of costs internally within six months from the date that the Court makes a capital award.

54.

The RAF has been making such progress *inter alia* by appointing more internal staff dedicated to reviewing cost bills submitted. Frequent block settlements are held to reduce the number of matters set down for taxation with the Taxing master and to reduce the time it takes to process those claims. Recently the RAF appointed external law firms who will be dedicated to reviewing and settling of bills of costs when the RAF is unable to settle a bill internally or the RAF's internal systems are overwhelmed at a particular period by the number of bills submitted. Those firms will further assist the RAF with its backlog in settling bills of costs and in reviewing previous awards made by the Taxing Master where such awards were excessive, erroneously made and/or not competent.

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55.

It takes considerable resources to review and validate all bills submitted.

55.1 In the Pretoria region alone, the average daily receipt of emails concerning bills of legal costs is approximately 500. These bills comprise 50 to 100 pages of documentation. Upon submission, the bill is assigned to a legal cost officer responsible for its validation, including all supporting documents.

55.2 This process entails verifying that the bill aligns with the settled agreement or the granted judgment, ensuring that it does not contain overstated, luxurious, or attorney-and-own client items if costs were awarded on party-and-party scale.

55.3 Owing to the division of damage heads, most RAF cases necessitate processing a bill of costs after each settlement, as well as for interlocutory applications. Consequently, multiple bills are presented to the RAF at various settlement stages. A key task of the legal cost unit is to validate items on an addendum bill against previous payments, preventing duplicate item processing, a common occurrence.

55.4 Plaintiff attorneys frequently omit prior bills and court orders in submissions of outstanding taxed bills, causing payment delays until these documents are provided. The RAF's cost unit's due diligence includes ensuring that, in cases of mandate changes, attorneys provide evidence of mandate termination and new power of attorney communication to the previous attorney.

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55.5 The new attorney must be registered as a vendor in the RAF system and present a current financial year tax compliance certificate. Absent these requirements, legal cost payment processing is deferred.

55.6 Occasionally, attorneys submit taxed bills without a court stamp on the allocator, delaying payment processing until the allocator is duly signed and stamped by the taxing master. In cases of overstated taxed bills, the legal cost unit engages the firm about concerning items.

55.7 This process involves a comprehensive bill reassessment, providing detailed reasons for each disputed item. Contested bills, averaging a minimum of 400-line items, require several days for reassessment and preparation of a referral memorandum. Due to the high volume of taxed bills, the unit prioritizes matters based on the oldest taxation date.

F.M

After a bill of cost is validated by the legal cost officer, it proceeds to the approver for further validation.

55.8 On average, the RAF captured 3,724 bills a month in 2022/2023, and 3,828 bills a month in 2023/2024, while on average settling 2,508 per month in 2022/2023 and 1,930 bills a month in 2023/2024. These numbers are proof of the sheer number of bills the RAF has to consider, review, and validate. The decrease in bills per month from 2022/2023 to 2023/2024 is because of the timing of this application, and because of the RAF's efforts to reduce the backlog in bills of cost.

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56.

From settlement to date of payment for plaintiff legal costs the RAF currently on average takes 217 days. The RAF's request therefore for 180 days from the date of settlement thereof is indicative of the RAF's effort to further reduce this period by being able to manage its financial affairs with a reprieve.

57.

Because of the RAF's financial position and the fact that the RAF has on average only been able to process such payments within 217 days the RAF clearly requires a stay on execution after the bills have been settled, or after the bills have been taxed by the Taxing Master. When an application was made earlier this year by the RAF to suspend writs in respect of legal costs the request was for a suspension of 6 months after the date that the bill is taxed with the Taxing Master. Justice Van Niewenhuizen did not grant the request as the Court found that it would have been unreasonable for parties to wait a further 6 months after they had already waited 18 months for a hearing with the Taxing Master. Therefore, the unreasonableness was the 24 months that they had to wait to receive payment of legal costs.

f.M

58.

The RAF's request herein for a suspension for *inter alia* 6 months from the date of settlement of those bills, as set out in the notice of motion, will therefore be for a far shorter period that what the RAF previously requested (i.e. 12 months, instead of 24 months) and the incentive will be there for parties to settle their bills with the RAF long before a date with the Taxing Master can be obtained for the taxation of bills.

59.

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The internal taxation of bills will save the RAF costs, and will lead to more bills being settled earlier than before thereby unclogging the Taxing Master's roll. It will further lead to less bills being taxed without the RAF's representations. This court's order will therefore indirectly have the above impact on the process.

60.

In the past certain parties have used the fact that the RAF receives orders from across the country to exploit this fact by giving notice of taxation at odd addresses, with the ulterior motive to have the bills taxed for inflated amounts *'unopposed'*.

61.

A few examples of this, and the abuse that it leads to, which this Court's order can have a positive impact on, are

61.1 **Annexure "A11.1"** is a matter where the taxed bill totalled R 672 442,08. According to the RAF's calculations the bill should not have been for more than R 171 666,90.

S.M

61.2 **Annexure "A11.2"** is a matter where the taxed bill totalled R 2 047 001,84. According to the RAF's calculations the bill should not have been for more than R 581 648,64 (about 4 x less than the taxed amount).

61.3 **Annexure "A11.3"** is a matter where the bill was taxed for R 497 579,48. According to the RAF's calculations the amount should not have been more than R 181 069,10.

62.

The RAF therefore moves for a suspension on executions and attachments for legal costs as prayed for in the notice of motion.

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SUSPENSION OF INTEREST

63.

63.1 The RAF further applies for an order that all writs of execution and warrants of attachment against the RAF based on claims for interest on capital awards already paid to claimants which are not older than 180 days from the date of payment of the capital amount be suspended for a period of 14 days.

63.2 Justice Van der Westhuizen in August 2023 agreed with the RAF in this regard and made an order as prayed for herein.

63.3 The Court's order lapses in February 2024. As a result, should an order not be issued prior to then, the RAF will be left unprotected.

63.4 The reasons provided herein above regarding capital, and legal costs, similarly apply to payment of interest. Where the situation differs is when the RAF is able to ascertain

how much interest should be paid in a certain matter, and the date when such amount is registered on the RAF's RNYP list.

63.5 Once the RAF has made payment, the RAF is able to ascertain the amount of interest that is payable. The RAF therefore registers the interest claimed on the amount that has been paid on the RNYP list on that date and queues the interest payment on the RNYP list to be paid *a priore tempore*.

63.6 Therefore the RAF applies for an order in this regard as set out in the notice of motion attached hereto.

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NEW SYSTEMS

64.

64.1 The RAF's system of capturing orders relevant to this (and the previous) applications in terms of Rule 45A in a mailbox dedicated thereto has shown its benefit but what is troubling is that the mailbox is abused by parties.

64.2 This leads to the RAF not being able to register all orders received within 30 days (as prayed for in the notice of motion).

64.3 The current average days from settlement to registration is about 45 days. Some parties send the same order multiple times to the mailbox. This not only causes a backlog of emails to be opened and processed but creates the additional administrative stressor in that orders that are processed need to be checked against a database to ensure that the order has not been processed *and registered on the RNYP list* multiple times by the RAF already.

64.4 Certain attorneys that send the same order multiple times to the same or various email addresses have the ulterior motive to try and receive duplicate payment on the same order as they did in 2020.

64.5 The RAF continues to struggle with this issue and can only solve the issue with the assistance of attorneys/parties. The RAF's failure to register orders within 30 days is therefore certainly not deliberate.

65.

The RAF has established a new call centre. The call centre was established as a Customer Relation Management Contact Centre, which was as a response to the centralised solution to attend to queries and anything related to claims. The establishment of a contact centre is for the RAF to move towards digitisation, improving query handling and reducing costs. It furthermore intends to enable more efficient and effective claims processes and to ensure that the process was being completed as it should and as soon as possible. There are currently about 300 agents that are at the call centre.

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65.1 The idle time before a call is attended to is currently 3 seconds and can sometimes get to 20 seconds;

65.2 Once a query is lodged, a ticket number is issued to the caller lodging the query. There have been 84 628 calls with 68% of these calls leading to tickets. Out of the 84 628 calls received during July to September 2023, there has been an average call answer of 90.79%;

65.3 Assistance is available in 3 languages being English, Sepedi and Zulu;

65.4 The average handling time or length of a call handled by the agents is 7 minutes and 40 seconds. This is usually because there is information gathering, tracking of the case's progress under query and communicating these updates with the customer;

J.M

65.5 There is an increased customer satisfaction rating over the past few months. The customer satisfaction rating recently was 86.67% indicative of the commitment to the quality of service rendered.

66.

The creation of the contact centre has improved efficiency in attending to queries and the speedy resolution thereof. This will further assist the RAF in reducing the average amount of days that it currently takes to register orders.

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COMPLIANCE WITH AUGUST 2023 ORDER

67.

67.1 The RAF confirms that it substantially complied with the Court's order that was granted in August 2023. Certain attorneys who represent claimants, and whose matters did not appear on the RNYP list, provided the RAF with a list of such claimants' claims and the RAF placed as many matters on the RNYP list as was possible within that period. What was stated herein above regarding attorneys/parties sending multiple duplicate emails, and how this aggravates and dramatically slows down the process is repeated. Not all attorneys complied with the Court's order.

67.2 The RAF paid claims, based on Court orders already granted, or settlements already reached, in terms of the RAF Act, which were older than 180 days as from the date of the Court order, or the date of the settlement.

67.3 Claims that were not paid or processed by the RAF and claims that are currently on the RAF's RNYP list which are over 180 days (17.97% of the RNYP list), are because the documents/information that were submitted to the RAF did not pass the quality

assurance protocols to prevent *inter alia* fraud, theft and invalid/non-complaint payment submissions being process by the accounting officer of the RAF.

67.4 As soon as those attorney/parties file the necessary documents, information or repay duplicate payments then payments can be effected.

67.5 Just a few of the examples in this regard are -

67.5.1 claims under investigation for fraud;

67.5.2 claims where invalid mortality affidavits and invalid identification documents were submitted;

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67.5.3 claims where no ID numbers were submitted and claims where the executorship letters from the Master are pending, or the parties refuse to file same;

67.5.4 disputes over mandate transfers between attorneys and claimants and firms of attorneys that refuse to repay duplicate payments;

67.5.5 claims for past medical expenses based on invalid vouchers or unrelated expenses;

67.5.6 matters where attorneys are suspended by the LPC, matters where there are warrants of arrest, taxed bills of costs which are submitted to the fund without a substantiating order and matters where there are no tax clearance certificates.

68.

The RAF informs attorneys/parties of the defective submissions, and requests that they file competent information as soon as possible.

69.

The faster these submissions are made to the RAF the faster payments can be effected. The efficiency of this process heavily depends on the responsiveness of the attorneys/parties. In many cases, there are delays in receiving the required information from the attorneys/parties, which in turn delays the settlement of the claims.

70.

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The RAF must operate within a specific legal and procedural framework. This means that every claim must adhere to established guidelines and requirements. Any deviation or non-compliance leads to delay caused by the attorney/party.

71.

The rigorous examination of information and documents is a critical measure to deter fraud and to verify the legitimacy and compliance of all claims in accordance with international standards for social benefit funds payments. These include, but are not limited to, the focus on risk management and compliance (the identification, assessment, and mitigation of risk that could impact the Fund's sustainability), fraud prevention and control (developing and implementing measures to detect, prevent, and address fraud), and financial sustainability (a focus on long-term financial health).

72.

The RAF continued to distribute the RNYP list bi-monthly and to make payment of claims from oldest to newest *a priore tempore*.

f.M

73.

The RAF team's efforts in clearing as many payments as possible illustrates their commitment to complying with this Court's orders, whilst still complying with their statutory duty to thoroughly verify and validate information submitted to prevent fraud, invalid claims being paid and duplicate submissions not being processed which is a mammoth task considering the number of claims/emails received.

74.

The RAF's accounting officer is expected to thoroughly supervise all payments that are made.

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75.

The RAF has demonstrated a commitment to fulfilling its obligations under challenging circumstances. The RAF is dedicated to keep improving and keep making progress if the orders sought are granted. The RAF's proactive measure to enhance oversight and accountability, implicitly acknowledges the broader national landscape's complexities and seeks to establish a more robust framework to safeguard against similar pitfalls that other SOEs experienced in the past.

REQUIREMENTS FOR RELIEF

76.

In seeking the relief set out in the notice of motion, the RAF must prove that it has a *prima facie*, alternatively a clear right, a reasonable apprehension of harm, absence of an alternative

remedy and that the balance of convenience favors the granting of the relief and/or that the Court should exercise its inherent jurisdiction to prevent substantial injustice which is the collapse of the RAF and the unequitable distribution of the Levy to a small minority of parties that abuse the system when there is no moratorium.

***PRIMA FACIE* RIGHT**

77.

For all of the reasons set out herein the applicant submits that it has a *prima facie* and clear right to the relief sought.

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78.

The right is premised on the following:

78.1 Section 3 of the RAF Act states that the object of the RAF shall be the payment of compensation in accordance with the Act for loss or damage wrongfully caused by the driving of a motor vehicle;

78.2 The RAF makes payment of compensation in accordance therewith from the RAF Fuel Levy which fluctuates, and is dependent on various factors outside of the control of the Fund;

78.3 The RAF receives thousands of new claims per year which increases the RNYP list and its liabilities;

78.4 Attorney's legal fees amount to billions of Rands per year that the RAF must pay which means less money to pay to claimants;

78.5 The RAF does not have the funds available to make payment of all claims by lump sum as they fall due. The RAF is only able to make payment of claims as set out herein;

78.6 Because of this, the RAF must delay payment of claims for a reasonable period;

78.7 The structured approach is the only equitable and fair way in which all claims can be paid without collapsing the fund;

78.8 The RAF's approach is based on section 7, 9, 10, 12 and 27 of the Constitution, 1996:

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78.8.1 Section 7 (1) of the Constitution states that the bill of rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people and affirms the democratic values of human dignity, equality, and freedom;

78.8.2 Section 7 (2) states that the State must respect, protect, promote, and fulfil the rights in the bill of rights;

78.8.3 Section 9 (1) of the Constitution state that everyone is equal before the law and has the right to equal protection and benefit of the law;

78.8.4 Section 10 of the Constitution states that everyone has inherent dignity and the right to have their dignity respected and protected;

78.8.5 Section 12 (1)(c) of the Constitution states that everyone has the right to freedom and security of the person, which includes the right to be free from all forms of violence from either public or private sources;

F.M

78.8.6 Section 27 (1) of the Constitution states that everyone has the right to have access to health care services, sufficient food and water and social security, including if they are unable to support themselves and their dependants, appropriate social assistance;

78.8.7 Section 27 (2) of the Constitution states that the State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of those rights.

79.

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There is clear evidence of what occurs if the Court's protections are not in place. If the orders are not granted then the RAF's assets will again be attached, and removed, as they were during the periods when no protection was effective which will cause irreparable damage to the RAF and claimants.

80.

By granting the relief the Court would be preventing substantial injustice, parties abusing and using the execution process for ulterior and illegal means and will be ensuring that the RAF is able to fairly administer claims.

80.1 If the relief sought is not granted, then the RAF's assets will again be attached by parties to obtain payment before their claims are next in line to be paid from the RAF's limited resources;

80.2 The removal of operational assets impedes the rights of thousands of other claimants who are awaiting payment of their debts as well as those who have undertakings for medical expenses;

80.3 The removal and sale of the RAF's assets render the RAF operationally paralyzed which inevitably result in claims not being processed and victims not being compensated.

81.

The RAF therefore submits that it is has a *prima facie* and clear right to the relief sought herein.

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REASONABLE APPREHENSION OF HARM

82.

For all of the reasons set out herein, the RAF has a reasonable apprehension of harm should the orders not be granted.

83.

Furthermore,

83.1 thousands of claimants in the long run would suffer tremendous prejudice if the orders were not granted;

83.2 it will ensure that payments are paid in a just and equitable way that will promote the interests of justice;

83.3 the RAF will be overrun with writs (as it was before April 2021 and whilst the Full Court's relief had lapsed) leading to parties abusing the execution process and attempting to obtain preferential or illegal payment through the RAF Fuel Levy.

83.4 the granting of the orders sought is necessary to prevent the RAF's implosion and resultant constitutional crisis where the RAF will no longer be able to fulfil its obligations to provide social security and access to health care services for claimants and if section 21 (2)(a) of the RAF Act is triggered, it will lead to a dire situation of injured uncompensated victims.

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84.

The result of the above will be significant chaos and it will significantly prejudice claimants from all over South Africa.

84.1 The RAF's internal safeguards will be left unprotected;

84.2 The internal reconciliation processes will be put in disarray;

84.3 The execution process will be abused, and as before, attorneys will attempt to obtain duplicate payments;

84.4 Claimants will not know by when they can expect payment;

84.5 The RAF will be overrun by attachments and removals of its assets which in turn threatens its stability;

84.6 The removal of assets and the sale thereof will wreak havoc on the RAF's offices, and essential operations;

84.7 Once execution is completed, the steps that were taken against the RAF cannot be undone;

84.8 The attachment of assets will mean that the RAF would not be able to meet its statutory object and mandate;

84.9 The RAF would lose the tools of its trade.

85.

The unintended consequences of the order sought not being granted will be that the expected date of payment, which is currently about 180 days, will increase as it did before the Full Court's April 2021 order.

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86.

Before that order the projection was that the payment delay from settlement to payment would have increased gradually from 187 days to 331 days. The reasonable apprehension of harm is therefore not only to the RAF but also for claimants. This application is therefore furthermore not only brought on behalf of the RAF but also in terms of section 38 of the Constitution as the RAF submits that if the orders are not granted it would threaten the rights of thousands of unrepresented claimants as well.

BALANCE OF CONVENIENCE

87.

This application is aimed at keeping the RAF operational and avoiding injustice being done to injured road accident victims.

87.1 Because of the Court's intervention the RAF has made progress in implementing an equitable payment system. If the orders are not granted then the RAF's progress will be negatively impacted;

87.2 When the Full Court's protection lapsed in 2021 and the RAF was left unprotected until August 2022 the RAF was again overrun by writs and parties attempted to circumvent the payment principles determined by the Court;

87.3 Because of the Court's intervention in April 2021 and thereafter in August 2022, March 2023 and August 2023 the RAF was able to focus on creating an improved, efficient claims processing system, which has accessible services, effective financial systems, optimal ICT services, improved people management and an assured control environment to ensure the RAF's future viability. The progress that has been made is threatened if the orders are not granted;

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87.4 The Court's assistance in April 2021, August 2022, March 2023, and August 2023 led to the RAF being able to stop certain parties from abusing its system and to ensure fair payment of the Levy;

87.5 The Court's previous intervention improved the rights of unrepresented claimants who were impacted by the unlawful conduct before April 2021;

87.6 During the period that the RAF was not protected certain attorneys made it exceedingly harder to make payment from oldest to newest as they again attempted to jump the queue to receive preferential payment;

f.M

87.7 There are still newly requested claims that contribute to the high number of matters 180 days and over, which is exacerbated by parties who delay informing the RAF thereof or who do not cooperate.

88.

The balance of convenience therefore favors the granting of the relief.

ABSENCE OF ALTERNATIVE REMEDY

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89.

89.1 The applicant has no other effective remedy to balance the rights of the RAF and that of all claimants.

89.2 The only other remedy would be for the RAF to bring thousands of applications to suspend each writ that is issued by parties nationwide. This will effectively lead to the RAF being in Court every week.

89.3 With respect that is not an effective alternative remedy. By granting the relief the Court would be ensuring that claimants are treated equally and with dignity whereas the converse would happen if the relief were not granted.

89.4 By granting the orders sought the Court will be promoting the functional and orderly distribution of public funds and the administration of the RAF and thereby preventing chaos and the RAF's collapse.

CONDONATION

90.

The RAF further applies for condonation for any non-compliance with the Court's rules based on the exceptional nature of this application. The Court's current reprieve expires on 16 February 2024 and should the orders sought not be granted then the relief will lapse and the RAF will be left unprotected. Any interested parties have been given until 8 January 2024 to file a notice of intention to oppose, and until 22 January 2024 to file an answering affidavit (if any) which is a reasonable amount of time.



91.

The RAF could not bring this application until it had enough information on the effect of the moratorium for at least a couple of months.

92.

To have brought the application earlier would have been premature in that the information required to support the application was not available. Of course the collation of the evidence, consultation with the responsible officials and the drafting of the application took a considerable period as well. The application was brought as soon as enough information was available, and the application could be finalized.

93.

The RAF will address a letter to the Deputy Judge President requesting a special allocation for this application.

THE RELIEF SOUGHT

94.

Wherefore the RAF moves for the orders sought in the notice of motion.

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DEPONENT

Signed and sworn before me at Sandton this 18th day of December **2023** after the deponent declared that **HE** is familiar with the content of this statement and regards the prescribed oath as binding on **HIS** conscience and has no objection against taking the said prescribed oath. There has been compliance with the requirements of the Regulations contained in Government Gazette R 1258, dated 21 July 1972 [as amended].

COMMISSIONER OF OATHS

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