

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case No: 58950/2021

In the matter between:

THE PRUDENTIAL AUTHORITY

Applicant

And:

3SIXTY LIFE LIMITED

First respondent

**NATIONAL UNION OF METAL WORKERS OF SOUTH
AFRICA**

Second respondent

SUPPLEMENTARY REPLYING AFFIDAVIT

I, the undersigned

SUZETTE JEANNE VOGELSANG

state under oath that:

1. I am the Head of the Banking, Insurance and Financial Markets Infrastructure Supervision Department of the applicant ("the Authority").
2. I deposed to affidavits previously filed in this matter on behalf of the Authority. I remain authorised to represent the Authority in these proceedings.
3. Unless the context indicates otherwise, I have personal knowledge of the facts set out in this affidavit and they are, to the best of my belief, true and correct.

OVERVIEW OF THIS AFFIDAVIT

4. The supplementary answering affidavit delivered by Mr Msibi exceeds 120 pages and was served at 20h20 on Monday, 7 March 2022. The Authority's supplementary replying

affidavit was according to the Court order due on Thursday 10 March 2022. The Authority required information from the curator and her BDO support team in order to complete this affidavit and some of this information was only received in the afternoon of 12 March 2022. It was not possible for the Authority's reply to be finalised by 10 March 2022 due to the volume of Mr Msibi's supplementary affidavit and the issues raised therein, in respect of which the Authority was busy collating information and providing it to its attorneys.

5. The Authority asks for condonation for the late filing of this affidavit together with the application for leave to file this affidavit. It is submitted that the delay of about one court day is not excessive. It will not cause any prejudice to any of the parties and was due to circumstances beyond the Authority's control.
6. Furthermore, the provisional curator, Ms Yashoda Ram ("Ms Ram") delivered correspondence via her attorneys of record in the afternoon of 10 March 2022, seeking the parties' consent to be joined to the proceedings. As a result of Ms Ram seeking to be joined to these proceedings, further additions had to be made to this affidavit.
7. Mr Msibi's supplementary answering affidavit traverses a significant amount of material. I respectfully submit, however, that the material issues in dispute before the above Honourable Court remain relatively crisp.
8. I will endeavour in this affidavit to focus on those issues. In particular, I will demonstrate that the Authority acted reasonably and in good faith in obtaining the provisional curatorship order on 21 December 2021 and was within its statutory rights to obtain such an order. I will also demonstrate that the Authority did not act with any malice in obtaining the ex parte order.
9. I address the following issues in turn:



- 9.1. First, I reiterate the relevant statutory framework which entitled the Authority to approach the above Honourable Court on an urgent and ex parte basis on 21 December 2021;
- 9.2. Second, I set out the chronology of events since the hearing before the Honourable Justice Dippenaar on 3 February 2022, which have a material bearing on the current proceedings;
- 9.3. Third, I detail the reasons as to why the provisional curatorship order ought to be made final; and
- 9.4. Fourth, I briefly deal with Mr Msibi's supplementary answering affidavit on a paragraph-by-paragraph basis to the extent necessary.

RELEVANT STATUTORY FRAMEWORK

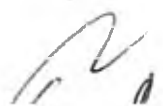
10. As set out in the founding affidavit, the Authority applied to have 3Sixty Life Limited ("3Sixty") placed under provisional curatorship in terms of section 54(1)(a) of the Insurance Act, 2017 ("the Insurance Act") read with section 5 of the Financial Institutions (Protection of Funds) Act, 2001 ("the Financial Institutions Act").

Section 54(1) of the Insurance Act states:

"Despite any other law—

the court may, on application by the Prudential Authority; or

(b) the Prudential Authority may by agreement with an insurer or controlling company and without the intervention of the court, appoint a curator in terms of section 5 of the Financial Institutions (Protection of Funds) Act in respect of any insurer or controlling company."



11. Section 5(1) of the Protection of Funds Act states that:
- "The registrar may, on an ex parte basis, apply to a division of the High Court having jurisdiction for the appointment of a curator to take control of, and to manage the whole or any part of, the business of an institution."*
12. There was therefore nothing untoward about the Authority approaching the above Honourable Court on an ex parte basis to obtain the 21 December 2021 court order, as the Authority was at all times acting within its statutory rights.
13. Furthermore, section 5(6) of the Protection of Funds Act states:
- "The curator acts under the control of the registrar who made the application under subsection (1) and in accordance with guidelines prescribed by the registrar by notice in the Gazette, and the curator may apply to that registrar for instructions with regard to any matter arising out of, or in connection with, the control and management of the business of the institution."* (emphasis added)
14. Paragraph 7.1 of the 21 December 2021 order mirrors the provisions of section 5(6) and states that the curator is *"authorised to take immediate control of, manage and investigate 3Sixty's business, together with all assets and interests relating to such business, such authority to be exercised subject to the control of the applicant in accordance with the provisions of section 5(6) of the Financial Institutions Act, and with all such rights and obligations as may be pertaining thereto."* (emphasis added)
15. I submit therefore that the provisional curator – and indeed any team appointed to work with her - ought to be acting at all times in relation to her position as provisional curator under the control of the Authority.



CHRONOLOGY OF EVENTS SINCE 3 FEBRUARY 2022

16. Due to the fact that the First Respondent in its supplementary answering affidavit seeks to place heavy reliance on the provisional curator's interim report of 21 February 2022, I consider it appropriate to place information before this Court regarding how that report came about, and why this Court ought to treat it with caution.
17. On 3 February 2022, the Honourable Justice Dippenaar granted the order at 007-8 to 9 on Caselines.
18. Following the order, and on or about 15 February 2022, the Authority instituted an urgent variation application.
19. The Authority sought to vary the 21 December 2021 court order, specifically paragraph 4¹, by replacing "Yashoda Ram" with "Tinashe Mashoko". The reason for the Authority instituting the urgent variation application was because the Authority had become aware that Ms Ram's credentials were misrepresented to the Authority and to the above Honourable Court. The Authority no longer believed that Ms Ram was a suitable candidate for the position of provisional curator, primarily on the basis that the Authority no longer had faith in her integrity.
20. The specific facts set out in the founding affidavit to the urgent variation application are set out in pages 032-4 to 22 on Caselines.
21. Ms Ram did not oppose the urgent variation application but filed two "explanatory" affidavits.² The hearing of the urgent variation application proceeded on 22 February

¹ Caselines, 007-2

² Caselines, 034-1 to 73 and 048-4 to 81



2022 before the Honourable Justice Fischer. Unfortunately, the urgent variation order application was not granted for lack of urgency on 3 March 2022.³

22. Since the hearing date of 22 February 2022, further events have come to light which have only served to intensify the Authority's concerns regarding Ms Ram's integrity. These issues relate firstly to Ms Ram's reluctance to continue working with the BDO support teams and secondly, to various contradictions in Ms Ram's about turn on pertinent issues relating to the business of 3Sixty since the urgent variation application was instituted. I elaborate on these two issues in more detail below.

Ms Ram's reluctance to work with the BDO support teams:

23. The urgent variation application was instituted and served on Ms Ram and her employer, BDO Advisory Services (Pty) Ltd ("BDO"), on or about 15 February 2022.
24. On 16 February 2022, Ms Ram addressed an email to, amongst others, Mr Msibi, stating that she will *"be offline for the next few days however Alethia and the team will conclude on the report"*. A copy of this email is attached as annexure "RA1".
25. The report referred to was the interim report on the Internal Recapitalisation Plan due to be delivered on 21 February 2022, as ordered by the Honourable Justice Dippenaar on 3 February 2022.⁴
26. On 17 February 2022, Ms Ram filed her first explanatory affidavit in the urgent variation application. In paragraph 31 of this explanatory affidavit⁵, she correctly states that her appointment as provisional curator remained in place and she had been ordered to deliver the interim report.

³ Caselines, 053-1 to 11

⁴ Caselines, 007-9 at para 2

⁵ Caselines, 034-19

27. On the same day, the Authority's attorneys of record addressed an email to Ms Ram's attorneys stating that *"Your client is correct that as things presently stand, she remains the provisional curator. In these circumstances, we trust that your client will comply with the 3 February 2022 court order and will file her interim report."*
28. Ms Ram's attorneys responded stating that *"our client has been suspended from her employment with BDO (as now widely published by several media outlets), the result of which is that she has no access to her emails, the BDO platform and support team. Consequently, our client is hamstrung from completing her duties, in terms of the court order, and she will notify the Honourable Court regarding same."*
29. A copy of this email chain is attached as annexure **"RA2"**.
30. The stance adopted by Ms Ram was disingenuous as BDO's attorneys of record had addressed correspondence to Ms Ram's attorneys on 18 February 2022 in which BDO confirms that it will continue to provide whatever support and resources Ms Ram required to fulfil her mandate as provisional curator. Ms Ram's attorneys responded on the same day claiming that she was still unable to access the BDO systems and that BDO ought to lift her suspension should she be expected to continue in her role as provisional curator.
31. BDO's attorneys disputed this and once again confirmed that Ms Ram enjoyed full access to the system and was invited to contact the CEO of BDO, Mr Mark Stewart, or a representative from its IT department, Mr Nico Fourie, should she experience any difficulties with accessing the BDO systems.
32. A copy of the exchange of emails between BDO's attorneys and Ms Ram's attorneys on 18 February 2022 is attached as annexure **"RA3"**.



33. By 24 February 2022, Ms Ram continued to allege that she was not able to access the BDO systems.
34. This prompted a further response from BDO's attorneys stating that, amongst others, BDO's IT department had attempted to assist her, but she was not responding to them. A representative had even offered to travel to her to assist her. It was also recorded that Ms Ram had been *"deliberately obstructive in not allowing [BDO] to support her in resolving whatever IT issues she alleges to be having. Her profile is still active on the BDO systems, and it is clear that she does have access to her emails and other programs."* A copy of this letter is attached as annexure **"RA4"**.
35. On the same day, it came to the BDO's support teams' attention that the BDO support team members assisting the curator, no longer had access to the 3Sixty e-mail archive system.
36. Upon making enquiries, the support team was advised by an employee of 3Sixty that access by all BDO employees to the system had been revoked on Ms Ram's express instructions.
37. Ms Alethia Chetty from BDO therefore addressed a letter to Ms Ram on 24 February 2022, stating that since commencement of the curatorship, the BDO support team has had access to the particular archive system for purposes of fulfilling their obligations to both the provisional curator and the Authority.
38. Ms Ram was therefore requested to immediately take steps to re-instate this access in order to allow the BDO support teams to continue to perform its obligations. A copy of this letter is attached as annexure **"RA5"**.



39. On 25 February 2022, a letter was addressed by BDO's attorneys to Ms Ram's attorneys in which BDO's attorneys advised her attorneys that in addition to the email archive system, the BDO support teams no longer had access to 3Sixty's VPN, Payroll system and the Secure File Transfer Protocol (SFTP) Servers. These systems were required by the BDO support team to properly carry out their duties as the teams supporting the provisional curator. In fact, soon after the 21 December 2021 court order had been granted, Ms Ram instructed the relevant employees at 3Sixty to grant access to her and the support teams.
40. The access had been removed on the instructions of Ms Ram. Ms Ram was requested to re-instate full access to the BDO support teams. A copy of this letter is attached as annexure "RA6".
41. Ms Ram's attorneys responded on the same day advising that Ms Ram had taken steps to reinstate access to the UI Play system. It was further stated that the BDO support team did not require access to the email archive system as the access that was previously granted was *"simply to monitor emails and in no manner or form prevents the BDO team from performing their duties. If the BDO team require any urgent emails, they can contact [Ms Ram] directly who shall then supply them with the necessary information. Having said this, our client will also contact the relevant persons at VOX to ensure that the necessary access is restored."* A copy of this letter is attached as annexure "RA7".
42. It is worth noting that Ms Ram does not deny that she revoked the access of the BDO support teams to the various systems, nor does she provide a reason for her actions and in particular, the change in her previous stance that her support team needed access to all 3Sixty's systems.



43. By 4 March 2022, the issue of access had still not been resolved, and a further letter was addressed by BDO's attorneys to Ms Ram's attorneys stating, amongst others, that the BDO support teams still did not have access to the relevant systems. A copy of this letter is attached as annexure "RA8".
44. We are advised that at the time of delivering this affidavit, the BDO support teams' access to the Vox email system had still not been fully re-instated.
45. I pause to mention that Ms Ram was not appointed as the provisional curator on the basis of only her individual credentials. Ms Ram was appointed by the Authority on the basis of a proposal submitted to it by BDO and on the basis that Ms Ram would be supported in her duties as provisional curator by BDO employees, with the requisite actuarial, accounting and tax expertise.
46. It was always the intention, and indeed the practice until the urgent variation application was instituted, that Ms Ram carried out her duties with the support of the teams from BDO.
47. Prior to the urgent variation application, Ms Ram attended meetings with the Authority and 3Sixty together with representatives from the BDO support teams, and copied her team members in emails to the Authority, the Authority's attorneys and members of 3Sixty.
48. It is therefore surprising that post the institution of the urgent variation application that Ms Ram sought to isolate herself from the BDO support teams, attempted to carry out her duties in isolation and without regard to the input of the very experts who have been appointed to assist her.



Contradictions of Ms Ram

49. A key example of Ms Ram attempting to carry out her duties in isolation is the delivery of the interim report on the Internal Recapitalisation Plan on 21 February 2022. In her report, Ms Ram draws the following conclusions:
- 49.1. the facts presented in her report together with the expert opinions she sourced showed that if the Authority had considered the disposal transaction prior to placing 3Sixty under curatorship, *"the curatorship would not have been deemed necessary, based on solvency alone and the outcomes of the internal recapitalisation plan proposed at the time"*⁶;
- 49.2. notwithstanding other allegations put forward by the Authority, curatorship should be opposed⁷;
- 49.3. one has to consider the motives of all parties concerned⁸; and
- 49.4. the various other matters alleged in the founding affidavit of the Authority have **not** been considered by the provisional curator⁹.
50. I have dealt with the Authority's response to the above in the supplementary affidavit delivered by the Authority¹⁰ and I need not repeat those averments here.
51. What I do wish to draw to the above Honourable Court's attention is the fact that the BDO support team made repeated attempts to work together with Ms Ram in submitting the interim report. She did not, however, discuss her draft interim report with the BDO

⁶ Caselines 045-9 para 1

⁷ Caselines 045-19 para 2

⁸ Caselines 045-19 para 3

⁹ Caselines 045-19 para 4

¹⁰ Caselines, 052-7 to 52

support teams before finalising it. Neither did she send a copy of the draft interim report to the BDO support teams for input .

52. I have detailed in the Authority's supplementary affidavit the conclusions drawn by BDO's actuarial, accounting and tax teams in regard to the Internal Recapitalisation Plan, which conclusions do not support the provisional curator's findings in her report dated 21 February 2022.
53. Ms Ram suggested that she had not attached the opinion of experts from BDO because she was suspended and therefore she was not in a position to discuss or verify the findings of these experts. She is, however, not playing open cards with the above Honourable Court when stating this.
54. The BDO support teams provided Ms Ram with the draft reports on numerous occasions prior to the filing of her interim report. I attach the cover emails addressed by the BDO team members to Ms Ram which attached the relevant draft and final reports as annexures "RA8.1" to "RA8.2".
55. It is evident from the email chains that Ms Ram was provided with versions of the relevant reports to assist her in preparing her interim report from as early as 19 February 2022.
56. I also attach as annexure "RA9", an email from Ms Alethia Chetty to Ms Ram on 15 February 2022 which requested Ms Ram to attend a meeting with the BDO support team to discuss deliverables in respect of the interim report.
57. In light of the above, BDO's attorneys addressed a letter to Ms Ram's attorneys on 24 February 2022, stating, amongst others, that:



57.1. Her appointment as curator was as a result of her employment with BDO. It was based on the fact that her functions would be supported by the expert teams within BDO, and any such other external experts as may be approved by the Authority;

57.2. It is apparent that Ms Ram is performing her functions as provisional curator to the exclusion of the involvement and support of the BDO support teams, and contrary to BDO's recommendations;

57.3. BDO's expert teams do not agree with the conclusions contained in the interim report on the Internal Recapitalisation Plan delivered by Ms Ram; and

57.4. Ms Ram was reminded that should she proceed to take steps that put 3Sixty, its policy holders, or any third parties at risk, she may be held personally liable for such losses.

58. A copy of this letter is attached as annexure "RA10".

59. Ms Ram's attorneys responded on 25 February 2022 stating, amongst others, that:

59.1. The draft reports submitted by the BDO support teams differed to her report;

59.2. She had concerns regarding the lack of communication from the BDO support teams. This is disingenuous as annexure RA9 demonstrates that the BDO support teams attempted to engage with Ms Ram from as far back as 15 February 2022;

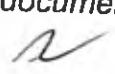
59.3. The draft reports ought not to have been provided to the Authority; and

59.4. She was required in terms of the court order to deliver her report by 15h00 on 21 February 2022, and therefore her report had already been submitted when she

had received the final reports. I note that paragraph 2 of the court order of 3 February 2022¹¹ does not stipulate a time for filing. Even if such a time period was imposed, Ms Ram could have sought condonation or filed a supplementary affidavit to responsibly deal with the BDO reports instead of ignoring them. She took the trouble of filing a supplementary explanatory affidavit in the urgent variation application.

60. Even if Ms Ram differed with the reports prepared by the BDO support teams (which she is entitled to do), she did not explain those differences in her interim report and the reasons for her disagreement.
61. A copy of this letter is attached as annexure "RA11".
62. Ms Ram's approach in her interim report is also surprising because, as stated in the Authority's supplementary affidavit, Ms Ram had stated at the meetings on 28 and 29 January 2022, that in addition to the concerns regarding the Internal Recapitalisation Plan, even if the disposal transaction remedied the solvency issues that 3Sixty was facing, in her view, the business of 3Sixty was being mismanaged, there was a lack of governance and therefore 3Sixty should remain under curatorship.
63. Ms Ram herself stated in an email to Mr Leon Jordaan (Lead Legal Counsel contracted to the Authority) on 15 January 2022, that the proposed disposal agreement had "*obvious flaws*". A copy of this email is attached as annexure "RA12".
64. On 16 January 2022, Ms Ram addressed a further email to the Authority describing the disposal agreement as "*lawfully unsound*". A copy of this email is attached as annexure "RA13".

¹¹ Caselines, 007-9

65. Ms Ram's about turn did not end with the Internal Recapitalisation Plan.
66. Ms Ram suggested in paragraph 35 of her explanatory affidavit that the Authority "*ought never to have placed the first respondent under curatorship*". This is completely at odds with her previous statements that there were serious governance issues (aside from the solvency concerns) at 3Sixty and that the curatorship ought to remain in place. For example:
- 66.1. On 22 January 2022, Ms Ram addressed an email to the Authority and its attorneys providing her comments on the answering affidavits delivered by Mr Msibi and Mr Jim. She states, amongst others, that "*During the time of provisional curatorship we have sourced/requested access to various documents that will serve to invalidate many statements made throughout the affidavit itself, and annexures.*" A copy of this email is attached as annexure "RA13.1";
- 66.2. On 24 January 2022, Ms Ram addressed a WhatsApp message to Mr Leon Jordaan. This was shortly after the affidavits deposed to by Mr Msibi and Mr Jim were delivered on 21 January 2022. The WhatsApp read as follows "*... Just checking on the notice to oppose and what the plan of action is. After having read all of it, the primary matter at the date of opposition is they are still not solvent nor have financial statements*". A copy of a screenshot of this WhatsApp message is attached as annexure "RA13.2".
- 66.3. On 25 January 2022, following a meeting between the Authority, the BDO team and the Authority's attorneys regarding the next steps following the answering affidavits received by the first and second respondents on 21 January 2022, Ms Ram addressed an email to myself stating, amongst others, that she would share for the purposes of preparing the draft replying affidavit "*Emails and documents*"
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relating to misappropriation of funds". A copy of this email is attached as annexure "RA13.3";

- 66.4. On 26 January 2022, Ms Ram addressed an email to the Authority and its attorneys, providing further information for the preparation of the draft replying affidavit and stating that "*given the evidence we have at hand, are there grounds for criminal charges and would that be a separate/new matter?*". A copy of this email is attached as annexure "RA13.4";
- 66.5. On 28 January 2022, Ms Ram addressed an email to me and other members of the Authority and the Authority's attorneys, stating that 3Sixty was attempting to effect payments to non-executive directors which she had not approved. In her email she states that "*if curatorship is opposed these payments happen freely leaving no surplus to build up reserves to pay claims and remain solvent.*" A copy of this email is attached as annexure "RA14"; and
- 66.6. On 11 February 2022, Ms Ram addressed an email to her support team from BDO which related to the investigations which the BDO support teams were conducting on the governance issues at 3Sixty. Ms Ram states that "*The draw down on with profits fund is a critical aspect of not treating customers fairly/contravention of policyholder protection*" and "*My thinking for the above is the culture of no governance or non compliance to statutory requirements existed prior to curatorship. [and] The disregard for curatorship is merely a symptom of their chronic lack of risk management and proper governance and of roles and responsibilities.*" Interestingly, Ms Ram also states that "*I would like us to cover intergroup payments in this interim report as it is one of the reasons they have both a solvency and liquidity issue - excessive and unplanned operational expenses.*" I note that despite her own comments, intergroup payments did not

feature in Ms Ram's interim report. A copy of this email is attached as annexure "RA15".

67. Even if Ms Ram suggests that she was only required to submit an interim report on the Internal Recapitalisation Plan, it does not explain why she chose to set out in her report that 3Sixty ought not to have been placed in curatorship, when from the contents of her interim report, she indicated that she based the interim report largely on the contents of the Milliman Report and without having regard to the fact that "*the other matters alleged in the Founding Affidavit of the Applicant had not been considered in the report*". If she was going to offer a comment on whether 3Sixty ought to have been placed under curatorship, or 3Sixty remaining under curatorship, one would have expected her to have considered "*all of the other matters alleged in the Founding Affidavit of the Applicant*". Her failure to do so indicates that she was not applying an independent mind to the relevant questions and instead it seems that she was reacting with vengeance and only wanted to try to embarrass the Authority.
68. If Ms Ram truly believed her statement in paragraph 35 of her explanatory affidavit in the urgent variation application, it is difficult to understand why she signed a confirmatory affidavit supporting the opposition of the first and second respondents' anticipation of the return date and why she so eagerly assisted the Authority in preparing the draft replying affidavit in this application.
69. Ms Ram also had concerns that representatives from 3Sixty were forging messages which were intended to appear to be messages from her.
70. She sought advice from the Authority's legal team stating that "*I have scanned the system this morning and am alerting you to doctoring of evidence, including whatsapp messages made to look as though they are from me, where messages are sent on a*

word document with profile pictures stored from my actual profile and then pieced together to appear to have been sent by me."

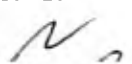
71. The Authority's attorneys advised her that she should consider taking the information to the SAPS to open a criminal case. Ms Ram responded stating that "*I will take this up with SAPS because the content of what they are claiming I said is making me feel nauseous this morning.*" A copy of this email chain is attached as annexure **RA16**".
72. Bearing this in mind, and the serious allegations that she was levelling, if Ms Ram intended commenting on whether 3Sixty ought to have been placed under curatorship or whether it should remain under curatorship, one would have expected her to disclose this to the above Honourable Court when she filed her interim report on 21 February 2022, even if she subsequently concluded that there was no doctoring of her messages.
73. It also appears that Ms Ram has been leaking confidential information to an investigative journalist from amaBhungane. On 11 February 2022, Ms Ram forwarded a confidential email from a staff member at NUMSA that was sent to the Council for Medical Schemes, the FSCA and the Authority. It was copied to Ms Ram.
74. Ms Ram had on 10 February 2022 forwarded the email from the NUMSA staff member to, amongst others, the Authority's attorneys, Dean Benn (the Lead Legal Counsel in the SARB contracted to support the Authority), Leon Jordaan (a contractor to the SARB supporting Mr Benn) and me. This email read as follows "*Please see attached and advise consideration for report back to court on the interim curator's report and other supplementary submissions being prepared.*" A copy of the email containing the letters from the staff member at NUMSA is attached as annexure "**RA16A**". We have redacted the name of the NUMSA staff member and their email addresses in order to protect the identity of the whistle-blower.



75. A short while later, Ms Ram sends a WhatsApp message which was accessed by Mr Jordaan, the Authority's attorneys and me. In this exchange of WhatsApp messages, Ms Ram states *"Good afternoon all. The email received from Numsa refers. @Suzette Vogelsang you are the only other recipient on there and it is marked confidential but directly impacts our case so not sure if we forward on or not? On first read I have the following: 1. It makes the second respondents submission null and void as it is clear the organisation was not consulted and have the polar opposite view. 1. It brings into question the first respondent entire submission as stated "abuse of power" and acting in his own best interests and not that of the license, the policyholders or shareholder."*
76. The Authority's attorneys responded to Ms Ram stating that *"You and Suzette presumably did not undertake to keep it confidential. If so, you can pass it on."*
77. Mr Jordaan responded to state *"Can I suggest we hold off on further circulation of that correspondence until the PA and Legal have had time to discuss it further."* Ms Ram thereafter states *"Let me recall it. Please don't open"*.
78. Mr Jordaan queries who else Ms Ram had circulated the email to, and she responds *"Just this group. But I have recalled it".* She further states *"I presume further circulation means outside this group @Leon Jordaan? Which I had not done. I will await further instruction."*
79. Mr Jordaan responded to say *"Perfect. It was also sent to Mvelase [Peter] by Numsa and he passed it to us internally so all good."* Ms Ram ends the conversation by stating *"OK. I was having heart palpitations that I did something wrong."*
80. A copy of the screenshot of these WhatsApp messages are attached as annexure **"RA16B"**.

81. Ms Ram after the exchange of these messages recalled the email which she had forwarded to, amongst others, the Authority's attorneys and me on 10 February 2022. I attach a copy of the recall notification as annexure "RA16C".
82. The Authority did not give Ms Ram consent to send the email from NUMSA and the attachments to any party. It is clear from annexure RA16B that the Authority made this clear to her and she undertook not to pass it on until she received a contrary instruction from the Authority.
83. It also seems from the emails attached as annexures "RA16D" to "RA16E" that Ms Ram had sent emails to journalists on 1 and 9 February 2022 incorporating information that was proprietary to 3Sixty. The Authority did not give her permission to share these emails neither did she ask.
84. It is unacceptable that Ms Ram, holding the fiduciary position of a court-appointed provisional curator, and while she was operating in her role as such, could send confidential material, received from both an apparent whistle-blower within Numsa, as well as from apparent business records of the very entity to which she had been appointed as provisional curator, to an outside party who was conducting an investigation into the affairs of the NUMSA group and 3Sixty itself. Her actions are clearly contrary to her general duties as set in paragraph 3(3)(a) of the guidelines issued by the then registrar of the Financial Services Board on 6 March 2015, under section 5(6) of the Financial Institutions Act (which is still in force and applicable to curators appointed by the court in terms of that Act), which state:

"3. General duties of curator

- 1) *Where a curator is appointed by a court in terms of section 5 (1) of the Act, the powers and duties of the curator are set out in the Court Order in accordance with section 5 (5).*
- 2) *Where a curator is appointed by the registrar by agreement with the institution in terms of section 5 (10) of the Act, the powers and duties of the curator are set out in the letter of appointment in accordance with section 5 (11).*
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(3) A curator, when exercising the powers and carrying out the duties set out in the Court Order contemplated in section 5 (5) or in the letter of appointment contemplated in section 5 (11) of the Act, must

a) at all times exercise the powers and carry out the duties honestly, fairly, with due care, skill and diligence and in the best interest of the institution and investors"

85. This too corroborates the Authority's concerns about Ms Ram's integrity and I have been instructed that BDO has served charges in this regard on Ms Ram. In addition, it is a clear breach of her fiduciary duties and she is not acting in the best interests of 3Sixty.
86. I can point to many other instances where Ms Ram reported that even if the solvency issues at 3Sixty were remedied by the disposal agreement, 3Sixty ought to remain in curatorship because of governance lapses and mismanagement. However, given the tight timelines within which this affidavit has had to be prepared, it has not been possible for me to give details of each instance.
87. It is, however, clear from the detail above that the Authority's suspicions regarding Ms Ram are reasonable.
88. In his answering affidavit, Mr Msibi stated that he does not believe that Ms Ram is a suitable candidate for the role of provisional curator. He repeats this in the supplementary answering affidavit.
89. The Authority is disappointed to state that in light of recent events, it now agrees with Mr Msibi that she is not suitable to remain as curator. The Authority has concerns about both Ms Ram's integrity and her competence. In relation to competence, she for example met with us regularly since the 21 December 2021 court order, undertook to keep minutes of these meetings and to provide the Authority with the minutes. The minutes if accurate, would serve as her fortnightly reports to the Authority. Despite many meetings that we had with Ms Ram prior to the urgent variation application, she has to date not provided the Authority with the minutes of the meetings that were held. She

also failed to attend meetings with the Authority post the institution of the urgent variation application, even though she correctly adopted the position that she remained the provisional curator until a court ordered otherwise. I note that the BDO support teams attended all the updated meetings with the Authority post the urgent variation application without fail.


90. I also need to bring to the above Honourable Court's attention that Ms Ram sent an email to Marnus Fourie, who is part of the BDO support teams to advise him that she was at Sandton Mediclinic, after she had a "blackout" and was rushed to the clinic. She also advised that she was unable to work and she requested Mr Fourie to step in until she was discharged. A copy of this email is attached as annexure "RA16.1". Mr Fourie then received a Whatsapp message on 7 March 2022 at 19:55, informing him that Ms Ram has been discharged. However, Ms Ram shared a doctor's note indicating that she will be offline until she is better. The date of the note booked her off from 7 March 2022 to 14 March 2022. Despite asking Mr Fourie to step in for her in her absence, she refused to authorise that Mr Fourie be given access to the Vox email system, even though he had access to the system prior to the urgent variation application. Their access was only revoked once the urgent variation application had been instituted. This is another example of Ms Ram not having the best interests of policyholders at heart and acting contrary to the Authority's directions that the support teams' access to all of 3Sixty's systems be reinstated. A copy of this email is attached as annexure "RA16.2".
91. I also attach as annexure "RA16.3" an email chain that Mr Mothapo (an actuary that consults to 3Sixty) had exchanged with Mr Msibi and copied to Ms Ram. The first email is dated 25 February 2022 and reads as follows *"Kindly find attached an invoice for actuarial consulting services for Feb – 22. The Jan – 21 QRT (sic) is yet to be delivered,*



but included in this invoice. So you can hold on the invoice (sic) until that deliverable is submitted."

92. On 1 March 2022, Mr Mothapo sends a further email, which is copied to Ms Ram and which reads as follows *"Further to below, I have revised invoice to get as much as possible in 2022 financial year so that it does not appears to be a bad year. There were few late activities on NFS price increase I would like to include."* This suggests that invoicing was being manipulated and there is no indication that Ms Ram raised concerns about this with Mr Mothapo. She certainly did not raise any issues about this with the Authority.
93. On 4 March 2022, and after various demands that were made by the Authority's attorneys, the attached report (annexure "RA16.4") was emailed by Ms Ram to the Authority. Her suggestion in paragraph 1.3 of this report that no documented reports were required is a distortion of the true facts. We, as the Authority, had agreed that the meetings would serve as her reports to the Authority, provided that she minuted the meetings and provided those minutes to the Authority. To date, she has not provided any such minutes.
94. I note that in paragraph 2.2.2.3 Ms Ram records that an overview of the system that UIPlay is responsible for was requested and that full access be granted to the curator and the support team. She fails to indicate whether the system overview was provided. She also conveniently leaves out that she had revoked the access of the support team to the 3Sixty system after the urgent variation application had been instituted.
95. She mentions that a meeting was held with the Group CFO to discuss the Property Transaction, but she gives no details of what transpired during this meeting.



96. She mentions that she also met with the first line actuarial function to discuss SAM QRT's, but again gives no further detail regarding the outcome of this meeting.
 97. Ms Ram then described in paragraph 2.2.7 a meeting that had been held on 4 January 2022 and further information and data was requested at this meeting. She however, gives no indication of how much of this information and data was provided, who studied and analysed the data and what the outcome of the analysis is.
 98. I also note the reference in paragraph 3.4 of this report to the "erroneous nature of the contract itself". This is a reference to the contract in terms of which properties were going to be transferred from Doves (3Sixty's holding company) to 3Sixty.
 99. She mentions the interim report on the Internal Recapitalisation Plan that was filed with the above Honourable Court on 21 February 2022 in paragraph 5, but fails to mention that she had been provided with actuarial, accounting, tax and legal opinions regarding the property transaction. Ms Ram also does not report on what her analysis of those reports are.
 100. It is clear that this report was wholly inadequate.
 101. I respectfully leave it up to the above Honourable Court to determine whether Ms Ram should remain the curator or whether she ought to be removed from her position. I trust that the above Honourable Court will take into account that Ms Ram has adopted the position that the continued curatorship is not necessary, and that both the Authority and Mr Msibi are of the view that she is no longer suitable to fulfil the role of curator in deciding whether Ms Ram should remain the curator, if the rule nisi is not discharged. If the above Honourable Court is minded to remove Ms Ram as curator, the Authority recommends that Tinashe Mashoko from the BDO Actuarial Team be appointed as the curator.
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REASONS FOR PROVISIONAL CURATORSHIP TO BE MADE FINAL

102. Mr Msibi persists with the allegation that the Authority acted with haste and is mala fides in applying to the above Honourable Court to have it placed under curatorship.
103. This is denied.
104. In amplification, the Authority's CEO, Mr Kuben Naidoo ("Mr Naidoo"), has confirmed that this was not the case. He has deposed to a confirmatory affidavit regarding this issue, as he is ultimately the person within the Authority that must and did take the final decisions for the Authority to approach the above Honourable Court.
105. In his affidavit Mr Naidoo denies that there was any haste in approaching the above Honourable Court as well as any mala fides.
106. Specifically, Mr Naidoo confirms the following:
- 106.1. The issue of taking regulatory action on 3Sixty was considered on three occasions. Only on the third occasion was the recommendation made to apply to the court for curatorship. There is therefore no basis for the allegations of haste or even mala fides. If the Authority was so intent on placing 3Sixty under curatorship, it would have done so at the earliest opportunity.
- 106.2. The application to put 3Sixty into curatorship was ultimately aimed at protecting policy holders and the integrity of the financial system.
- 106.3. It was a decision not made in haste or with malice.
- 106.4. It was a rational decision based on concerns from almost three years of intensive supervision of the entity.
- 106.5. The issue regarding capital is but one of the Authority's concerns.

106.6. This however is a symptom, following years of concern about governance, the risk culture and the lack of prudence in the entity.

106.7. The Authority's forward-looking approach to supervision highlighted weaknesses in governance at 3Sixty.

106.8. In most cases, speaking generally, weak governance leads to capital and liquidity stresses down the line. Poor governance and weak management are almost always leading indicators of capital and liquidity stresses.

106.9. This is precisely what has happened at 3Sixty.

106.10. 3Sixty has been on the Authority's watch list for almost three years. The reason for this includes prudential and market conduct related matters. At its heart, these are matters initially related to governance failures.

106.11. Being on the watch list means that:

106.11.1. the entity is under intensive supervision;

106.11.2. as CEO of the Authority, he is updated monthly regarding developments in the entity;

106.11.3. the governors of the South African Reserve Bank ("SARB") sitting as the board of the Authority in the form of the Prudential Committee, chaired by the governor of the SARB, receive monthly updates on the entity.

106.11.4. he has personally attended meetings with members of 3Sixty's board, management and trade union officials to raise and address concerns with 3Sixty's governance and sustainability.

- 106.12. Following significant concerns over 3Sixty's governance, the Authority instituted an independent investigation into the affairs of 3Sixty. Deloitte was commissioned to conduct the investigation.
- 106.13. In summary, the findings of Deloitte showed that there were significant gaps in governance and the risk culture and that there was a blurring of the lines of expenditures between entities in the group and between the group and Numsa Investment Company and Numsa.
- 106.14. Over the course of the past two years, the Authority sought to get 3Sixty to attend to the recommendations in the Deloitte report. There was some progress in doing so though this progress was slow.
- 106.15. The Authority works closely with the Financial Sector Conduct Authority ("FSCA").
- 106.16. There were significant concerns at the FSCA about 3Sixty's market conduct practices.
- 106.17. A combination of poor management and Covid-19 severely impacted 3Sixty's financial sustainability.
- 106.18. The Authority understood that Covid-19 would have a significant detrimental effect on many insurers, especially insurers that were reliant on a narrow business model in other words, on firms that lacked a diverse income stream. There were several smaller life insurers that saw their Solvency Capital Ratios (SCRs) decline to below the required regulatory minimum. In each case, the supervisor would work closely with the relevant entity to 'nurse the entity back to financial health'.

- 106.19. With 3Sixty too, the frontline supervision team at the Authority attempted to work with it to remedy the weak capital and solvency position. Following the third wave of Covid-19 infections (in about the middle of 2021), the Authority was of the view that 3Sixty's solvency position had deteriorated, it was in a critical state and that it required more capital to remain sustainable.
- 106.20. It was not just that its SCR coverage ratio had dropped below the minimum requirement, but that there was a legitimate concern that 3Sixty could become insolvent. Its MCR coverage ratio was dropping to a point where it became negative and was projected to drop further.
- 106.21. The Authority's first concern is the policy holders, not shareholders or other internal stakeholders. It was concerned that if it did not act, it could jeopardise the welfare of policy holders.
- 106.22. The SARB has a committee called the Prudential Authority Regulatory Action Committee ("PARAC"). PARAC is chaired by different deputy governors (a person other than the CEO of the Authority) of SARB. PARAC makes recommendations to the CEO of the Authority on all regulatory or enforcement actions under various pieces of legislation including the FIC Act, the Banks Act, Mutual Banks Act and the Insurance Act.
- 106.23. On three occasions (6 October 2021, 4 November 2021 and 8 December 2021), the frontline supervision team supervising 3Sixty approached PARAC with the view of taking firmer regulatory action to compel the entity to raise its level of capital.

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- 106.24. 3Sixty was given several deadlines to inject additional capital. After missing all of the deadlines, 3Sixty came up with the idea of transferring some of the properties in their group to recapitalise the business.
- 106.25. The plan was not desirable. In short:
- 106.26. Firstly, the information provided to the Authority in early December 2021, lacked sufficient detail to reasonably satisfy the Authority of the viability thereof. As a matter of fact, the structure of the proposed disposal agreement was not made known to the Authority until after the provisional curatorship order was granted on 21 December 2021.
- 106.27. Secondly, there was considerable uncertainty as to the value and the degree of encumbrance of the properties.
- 106.28. Thirdly, and contrary to Mr Msibi's view that a large portion of the properties could be "easily" sold in about three to six months, the Authority was concerned that the time to sell the properties in the present market would be lengthy, compromising any attempt to protect policy holders were something to go wrong. A period of three to six months, especially in relation to solvency concerns, can be by no stretch of the imagination, be seen as a short period of time.
- 106.29. Even if this property plan was a viable plan, 3Sixty had already missed numerous deadlines to recapitalise and the previous plans to recapitalise it did not come to fruition.

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- 106.30. In late September 2021, the Authority became concerned about the liquidity position of 3Sixty. It also came to our attention (via the FSCA) that 3Sixty was slow to pay certain claims.
- 106.31. Once an insurance company becomes illiquid and its capital position is very weak, it is only a matter of time before the insurance company would collapse.
- 106.32. One of the more difficult judgements for a regulator is when to act to put a firm into curatorship. Too early and the shareholders complain of prejudice, too late and policy holders lose out. It is our legal mandate to prioritise the policy holders (or depositors in the case of a bank) in our decision-making.
- 106.33. Only on the third occasion (which was on 8 December 2021 and after the previous two occasions on 6 October 2021 and 4 November 2021), or third visit to PARAC, did PARAC resolve to recommend to the CEO of the Authority to apply to the courts for curatorship on an ex parte basis. Mr Naidoo consulted with the other governors of the SARB before approving the commencement of the regulatory action. It was decided to approach the court on an urgent ex parte basis to put 3Sixty into curatorship to protect the interests of policyholders as a last resort, only once all other avenues were exhausted. It was not a decision made by the frontline supervisors but a decision made after following appropriate rigorous governance process.
- 106.34. I respectfully submit that the role of the above Honourable Court is not to determine whether the regulator acted too early or too late. The above Honourable Court should assess whether the regulator had reasonable grounds to put 3Sixty into curatorship.



- 106.35. Curatorship is designed to save a company if it can be saved. We have several examples in South Africa of successful curatorships. These include Resolution Life that was placed under curatorship in 2012 and African Bank Limited which was placed under curatorship in 2014. Both of these entities are no longer under curatorship and are still operating in the financial services sector in South Africa.
- 106.36. Contrary to the supplementary answering affidavit by Mr Msibi, there is no evidence that the Authority has acted in bad faith or mala fides. There is no evidence that the Authority acted in a prejudicial manner. Neither did it act in a hasty manner. The Authority gave 3Sixty ample opportunities to remedy its solvency position for over a year.
- 106.37. Assuming that the above Honourable Court decides that the Authority should not have put 3Sixty under curatorship, if 3Sixty then collapses, what legal remedy will policy holders have in this regard? It is the Authority's legislative mandate to protect policy holders. The Authority does not always succeed. It acknowledges that sometimes it fails to protect all policy holders to the full extent.
- 106.38. The Authority has acted rationally and fairly. It gave 3Sixty a few years to remedy its governance shortcomings. It gave 3Sixty many months to inject the required capital. The board in a regulated sector have obligations under the law and to their policy holders. The board and management of 3Sixty came up short in this regard.
- 106.39. In the circumstances, it cannot be said that the Authority acted with haste, when the decision to take regulatory action was deferred on two occasions despite recommendations to PARAC, and when 3Sixty was given every

opportunity for more than a year to resolve its liquidity and solvency challenges and to recapitalise.

106.40. It cannot be that the Authority's only concern was capitalisation and liquidity, when this was a symptom of systematic governance failures over a period of time – such time preceding Covid-19.

The Authority did not act improperly or in haste

107. The test at this stage of the proceedings is whether it is desirable for the interim order placing 3Sixty under curatorship to be made final.

108. I am advised that disputes of fact, as well as 3Sixty's denial of the facts and conclusions arrived at by the Authority, are not a bar to a final order being granted.

109. It is precisely because the Authority, which is the regulatory body vested with the statutory power to regulate insurance companies such as 3Sixty, continues to have genuine concerns about the solvency, management, blatant non-compliance with statutes by 3Sixty, that it should remain under curatorship.

110. Only an independent person, in the form of a curator, with high integrity, can properly investigate the genuine concerns raised by the Authority in its various affidavits. The former board of 3Sixty simply cannot do so.

111. The Authority submits that there are three main issues as to why the provisional curatorship order ought to be made final:

111.1. Firstly, the Internal Recapitalisation Plan will not – in the Authority's view, which is shared by other experts from BDO - resolve the solvency issues of 3Sixty;



111.2. Secondly, 3Sixty has failed to produce audited financial statements for 2020 and 2021; and

111.3. Thirdly, governance issues at 3Sixty.

112. I will address each of the above-mentioned issues below.

The Internal Recapitalisation Plan

113. The Authority's supplementary affidavit¹² set out in detail the Authority's concerns with the Internal Recapitalisation Plan. I do not repeat those averments here but I do wish to emphasise the following points:

113.1. For the purposes of the present enquiry, the Authority need not show whether the Internal Recapitalisation Plan will or will not restore 3Sixty's solvency position.

113.2. It suffices for the Authority to demonstrate that it has a reasonable belief that such a plan will not be sufficient to do so.

113.3. I submit that the reasons set out in the founding affidavit¹³, replying affidavit¹⁴ and supplementary affidavit¹⁵ filed by the Authority demonstrate its reasonable belief that the Internal Recapitalisation Plan is inadequate.

113.4. Despite 3Sixty's attempts to convince the above Honourable Court that the properties are not encumbered, they have provided no evidence in support of this contention.

113.5. For the reasons set out in the supplementary affidavit, the Authority agrees with the views expressed by BDO's Actuarial Team that in view of the lease back of

¹² Caselines 052-7 to 112

¹³ Caselines, 003-1 to 38

¹⁴ Caselines, 019-1 to 62

¹⁵ Caselines, 052-7 to 112



the properties to Doves, the full value of the assets will be impacted because the assets are encumbered.

113.6. The Milliman Report, on which the provisional curator relies in her interim report, provides numerous disclaimers and qualifications, one such disclaimer being that an area of uncertainty identified by Milliman was whether the properties were potentially encumbered.¹⁶ Furthermore, the Milliman Report states that "*There is therefore a possibility that the PA may consider the properties encumbered and not allow the full recognition of the properties as EOF or possibly no recognition at all.*"

113.7. An insurer cannot use encumbered assets as part of its solvency calculation without the prior approval of the Authority. This is because it does not have carte blanche to realise that asset as there is a real right held over it. Therefore, the Internal Recapitalisation Plan has inherent difficulties and the Authority is unlikely to approve it. This is a further factor which adds to the Authority's reasonable belief that the Internal Recapitalisation Plan will not remedy 3Sixty's solvency deficiencies.

113.8. A further legitimate concern of the Authority is that even if the properties are transferred to 3Sixty by Doves, Doves currently operates their business from the properties.

113.9. Therefore, if 3Sixty were to sell the properties in an attempt to increase its liquidity, it would be directly preventing its 100% shareholder from operating its business and inadvertently impacting on the very business of 3Sixty itself. This is an absurd outcome which 3Sixty fails to address.

¹⁶ Caselines, 045-169 at para 6.3.2




113.10. Even the Milliman Report, on which the provisional curator bases her support for the Internal Recapitalisation Plan, identifies this risk and states "*An assessment of the encumbrance of the properties is beyond our scope. However, the lease of the properties to Doves, 3Sixty's parent, could be viewed as a limitation on the use or disposal of the properties. Doves controls 3Sixty. Doves has a clear operational need to operate from the properties involved. The lease proposed in the disposal agreement is a month-by-month lease, which means that a sale of the property to a third party could easily result in termination of the lease.*"

113.11. It is astonishing that both 3Sixty and the provisional curator opt to not meaningfully engage with this issue.

114. I respectfully submit that the Authority's concerns regarding the Internal Recapitalisation Plan are reasonable, genuine and legitimate, as opposed to resulting from any malfeasance or improper motive as alleged by Mr Msibi and the provisional curator.

115. The fact from which 3Sixty cannot escape is that since November 2020, 3Sixty's SCR cover requirements have been below the minimum requirements and shortly thereafter its MCR cover requirements followed suit.

116. Despite over 12 months of indulgence and plans proposed to the Authority, none of the plans proposed by 3Sixty were able to remedy its solvency position. In addition, the Internal Recapitalisation Plan, for the reasons previously stated by the Authority, is hardly the "silver bullet" on which the first respondent can rely to escape the need for the curatorship. It will still not remedy its SCR cover ratio position and the other governance and mismanagement concerns.



Failure to produce audited financial statements

117. The sobering reality is that 3Sixty has failed to provide audited financial statements for the past two financial years.
118. Mr Msibi places the blame on the auditors of 3Sixty. He, however, offers no proof of the auditor's alleged blameworthiness nor does he give the Authority or the above Honourable Court the comfort that if the Board of 3Sixty remains in control that the audit will be finalised.
119. The Authority has also placed before the above Honourable Court an affidavit from the auditors¹⁷ which records, amongst others, that:
- 119.1. The auditors experienced challenges in obtaining audit information and samples of supporting documentation from 3Sixty for the conclusion of the audited financial statements for the financial year ended December 2020; and
- 119.2. The audit of 3Sixty has been impeded by the lack of support provided by the management of 3Sixty and the auditors have been unable to complete the evidence gathering procedures to support the audit opinion.
120. Furthermore, a number of Reportable Irregularities ("RI's") had been identified by the Auditors in 2020, many of which have not been addressed. Some of these RI's had been mentioned in the founding affidavit¹⁸ and in respect of these, I am advised that since 2020, the status of the stated RI's are:
- 120.1. Irregularly incurred expenses, approved by the then Chief Executive Officer of 3Sixty, with no value being received by 3Sixty: I am advised that the invoices in

¹⁷ Caselines, 053-113 to 116

¹⁸ Caselines, 003-11 to 12 at paras 33.3.2 and 33.3.3

respect of these irregularly incurred expenses totalled approximately R14 million. 3Sixty has taken no steps to recover these funds. Neither I nor the BDO support teams are aware of a criminal case being pursued against the previous CEO and save for terminating his employment, it does not appear that further steps have been taken to recover these funds; and

120.2. 3Sixty reducing its share capital without approval of the Authority, in contravention of section 38 of the Insurance Act: Section 38(1) states, amongst others, that an insurer or controlling company that is a profit company may not, without the approval of the Authority reduce its share capital. No such approval was requested from the Authority and neither was such approval granted. It appears that there was indeed a breach of sections 38 of the Insurance Act. There is the potential for 3Sixty to be sanctioned in this regard as the actions of 3Sixty has the potential to further negatively impact its financial position.

121. On this ground alone, it is desirable for the curatorship to continue.

Governance issues

122. It is important to highlight to the above Honourable Court that the Authority's concerns regarding 3Sixty's governance issues have existed for at least two years prior to obtaining the urgent ex parte court order on 21 December 2021. I attach correspondence exchanged between the Authority and the NUMSA Investment Company in which the Authority highlighted the many governance concerns relating to 3Sixty from as far back as 25 November 2019. This exchange of correspondence culminated in the Authority appointing Deloitte to do an investigation. I attach as annexures "RA17.1" to "RA17.4" the relevant correspondence.

123. In addition to the abovementioned statements made by the provisional curator regarding her concerns of the governance of 3Sixty, the BDO support teams have reported to the Authority the following:

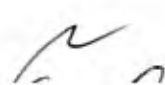
123.1. 3Sixty's board of directors (prior to being divested of their powers as a consequence of the 21 December 2021 court order) consisted of 5 independent and 6 non-independent members (if Ms Ellan Cornish and Ms Olu Lathaga are included). Thus, not majority independent. This is in contravention of the Prudential Standard: Governance and Operational Standards for Insurers ("GOI")², section (5.1)(a) which requires that the board to be majority independent.

123.2. In a letter granting approval by the Authority on 30 June 2020 of the conversion of 3Sixty's registration to that of a licenced insurer, , concerns were raised relating to the knowledge of and support available to the individual who was to serve as the Head of Risk Management in addition to his role as the Head of Compliance. The Authority at that stage requested for a dedicated Head of Risk Management to be appointed. To date, this does not appear to have been done.

123.3. There are currently two directors (Ms Ellan Cornish and Ms Olu Lathaga) on the Board of 3Sixty that have not been approved by the Authority. Despite this, Ms Lathaga is reflected as a directors on the CIPC documentation and Ms Cornish is reflected as a director on 3Sixty's website. In the email attached as annexure "RA17.5" it states that the Authority still requires outstanding proof of payment and/or documentation in order to approve their appointments; and

123.4. Mr Msibi serves on 13 boards in the NUMSA group (see details set out in annexure "RA17.6") and Ms Olu Luthaga (the Chief Financial Officer of the 3Sixty

Group) serves on 14 boards in the NUMSA group (see details set out in annexure "RA17.6"). Although there is no piece of legislation that indicates that the above is not permitted, it does increase the risk of lack of segregation of duties and potential conflicts of interest.

- 123.5. BDO noted vacancies in key control functions dating back to 2018 and these vacancies for extended periods of time is bound to weaken effective decision making within 3Sixty and oversight by the board of 3Sixty. This is also contrary to regulatory requirements.
- 123.6. In terms of an executive salaries agreement, 3Sixty is liable to pay 30% of the remuneration of the Group's CFO, Company Secretary, Chief Information Officer, Enterprise Risk Executive, Human Resources Executive, Marketing Executive, Business Development Executive, Strategist and Supply Chain Executive. Further analysis is required in order to determine whether the amounts invoiced and paid in this regard equate to 30% of the amounts due to the abovementioned persons in terms of their employment contract or are commensurate with the service provided, as required by the outsourcing Prudential Standard GOI 5 applicable to licensed insurers.
- 123.7. The BDO support teams found examples of claims that were paid out by 3Sixty, despite documentation suggesting that the claims were rejected. The BDO support teams have reached out to individuals at 3Sixty for comment on this issue but is still awaiting feedback.
- 123.8. The BDO support teams also found instances of payments to policyholders where there is a 449% difference between the cover amount and the paid amount.
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- 123.9. The BDO support teams also identified a number of claims that were over-paid.
124. The BDO support teams are of the view that apart from the solvency challenges faced by 3Sixty, there are serious issues relating to premium increases that were implemented in an inconsistent fashion amongst policyholders and without approval from the FSCA. Ongoing investigations remain necessary to quantify liabilities that may arise to policyholders by virtue of violations of Policyholder Protection Rules ("PPR's").
125. The governance concerns, the previous RI's that were reported by the 3Sixty's auditors and the recommendations contained in the Deloitte report have not all been addressed by 3Sixty.
126. I also pause to mention that on 9 March 2022, I addressed an email to Ms Ram referring to the statements she had made during the meetings on 28, 29 and 31 January 2022 regarding the issues of governance and mismanagement at 3Sixty and requesting her to identify the relevant persons in the BDO support team to respond with the requisite information in this regard.
127. Her attorneys responded on the same day, stating that Ms Ram would respond to my email directly. By 15h24 on 10 March 2022, Ms Ram still had not reverted to me and I sent a further email in response to Ms Ram's attorneys' email of 9 March 2022, following up on my request, particularly because the deadline for the filing of this affidavit by the Authority was looming.
128. Ms Ram responded at 16h36 to my email stating that while it had initially *"appeared that there were intergroup transactions that could not be accounted for, and the support team attempted to find evidence of this, none was found. All payments were either governed by the appropriate contract, SLA or agreement and hence the allegation could not be substantiated. Annexure 1 provided the emails from your attorneys that confirm the*

information sourced could not be used as it was not specific, and no further evidence was found.” The reference to the Authority’s attorneys saying that the information sourced could not be used, without adding that the Authority’s attorney had advised Ms Ram at the meeting late afternoon on 31 January 2022, that she needed to check with 3Sixty’s bankers when the payments to directors were effected on 21 December 2021, which was the date of the grant and communication of the provisional curatorship order to Mr Msibi. Unfortunately, her email of 10 March 2022 does not address this at all.

129. Ms Ram also suggested that the matters of governance were addressed as all appointments of Directors were approved by the Authority and the requisite contracts and documentation were in place for same. She however, did not provide the Authority with copies of the requisite contracts and documentation. In any event as identified in my previous affidavits, the issues relating to governance did not only relate to whether the appointments of all directors were approved by the Authority. This information in her email of 10 March 2022 also contradicts information that the Authority recently received from the BDO support teams, which I am sure the BDO support teams have shared with Ms Ram and which I hope Ms Ram will refer to when she submits her final report on Tuesday, 15 March 2022.
130. A copy of this email chain attached as annexure “RA18”.
131. The BDO support teams have advised me that they have not completed an investigation in regard to the control environment for payment of commissions and the implementation of relevant controls where gaps are identified.
132. The BDO support teams also think that it is necessary that the correct accounting treatment for various transactions be investigated, including the R70 million transferred

in the 2021 financial year from With-Profit Policyholder Funds and whether these funds have been reimbursed.

133. The review of the 2021 financial statements and accounting records for accuracy, validity and completeness have still not been completed by Ms Ram and her support team.

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134. This affidavit has been prepared under extreme time pressure. It is therefore not possible to deal comprehensively with each and every allegation contained in the supplementary answering affidavit.

135. To the extent that any allegation in the supplementary answering affidavit has not been expressly addressed, it should not be taken to be admitted. Any allegation that is not dealt with and is inconsistent with the allegations in this affidavit, my previous affidavits filed in this application (including the urgent variation application), they are denied as if expressly traversed.

Ad paragraph 1

136. For the reasons set out in the replying affidavit, I deny that Mr Msibi is authorised to depose to the affidavit on behalf of 3Sixty.

Ad paragraph 2

137. Mr Msibi states that he consulted with Mr Mothapo. I note that Mr Mothapo's confirmatory affidavit does not state that he agrees with the submissions in Mr Msibi's affidavit, but rather he only refers to the fact that he consulted with Mr Msibi. This suggests that Mr Mothapo too is not convinced that the Internal Recapitalisation Plan will address the solvency issues faced by 3Sixty.
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Ad paragraph 4

138. I deny that the Authority failed to make full and fair disclosure of the material facts and that it failed to make out a case for the relief claimed.

Ad paragraph 7

139. On condition the Authority is given leave to file this supplementary replying affidavit, the Authority does not oppose Mr Msibi being granted leave to file his supplementary answering affidavit.

Ad paragraph 14

140. I note the quoted portions of the Honourable Justice Fischer's judgment. I submit that it is misleading for Mr Msibi to state, with reference to the judgment that "*the court held that: ..*" and then proceed to quote passages from the judgment that did not actually relate to the reasons for the dismissal of the application, which dismissal was based solely on the fact that the Honourable Justice Fischer did not consider the application to be urgent.
141. I respectfully submit that the selective quotation is an attempt to create the impression that the Honourable Justice Fischer came to certain conclusions when in fact in most cases, she is recounting the versions put to her.
142. Insofar as the content of the quoted portions of the judgment is concerned, I confirm that the Authority did not have sight of Ms Ram's report dated 21 February 2022, prior to it being submitted to the above Honourable Court.
143. In addition, it was only upon seeing paragraph 35 of Ms Ram's explanatory affidavit in the urgent variation application that the Authority was made aware of Ms Ram's view on the Internal Recapitalisation Plan. As explained in detail above, in all of the

engagements with Ms Ram prior to the urgent variation application, Ms Ram had supported the continued curatorship of 3Sixty, due to not only the solvency issues faced by 3Sixty, but the governance and mismanagement issues as well.

144. I submit that it is not Ms Ram's place to question the above Honourable Court or the Authority on the decision to seek and grant the curatorship order. The Authority had to demonstrate to the above Honourable Court that it had good cause to bring the curatorship application and I respectfully submit that the Authority had done so.
145. The Authority did not have sufficient details of the proposed disposal agreement when it applied to court in December 2021. The Authority was presented with a high level proposal and although figures were provided to the Authority, these were unaudited figures, which was a further concern in addition to the abovementioned reservations which the Authority had regarding the ability of the proposed property transaction to restore the solvency position in the short-term.
146. I reiterate that in circumstances where 3Sixty was financially unsound, and has been for many months, the Authority believed it prudent and in the best interest of the policyholders to place the insurer under curatorship.
147. For the abovementioned reasons, the urgent variation application, despite being unsuccessful, was necessary for the Authority to institute as it had to play open cards with the above Honourable Court and indicate that it had been misled and lost faith in the integrity of Ms Ram. Mr Msibi had himself gone to great lengths in his answering affidavits to raise concerns about the suitability of Ms Ram. He also reiterates in his supplementary answering affidavit that Ms Ram is not suitable.



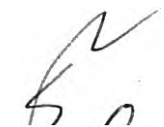
Ad paragraph 18

148. I deny that there was a need for the Authority to do background checks in regard to Ms Ram. She was proposed to the Authority by BDO. BDO is a well-known highly regarded professional services firm and it has successfully done work previously for the Authority. BDO submitted her resume to the Authority and there was no reason to doubt that what had been provided had been factually inaccurate.
149. Before the institution of the curatorship application, I together with colleagues from the Authority met with Ms Ram and other individuals from BDO. Ms Ram made a good impression in the meeting and we were comfortable that she had the requisite experience and together with the BDO support teams, she could play the role of curator.
150. It is only when she revealed on the afternoon of Monday, 31 January 2022 that she did not have a Bachelor's degree in Actuarial Science and she had not completed the CERA qualification, the Authority was placed on guard and the need for an investigation regarding her credentials became necessary.

Ad paragraph 19

151. For reasons set out in previous affidavits I deposed to, and this affidavit, these allegations are denied.

Ad paragraph 20

152. Mr Msibi misreads my initial founding affidavit. The board of 3Sixty's inability to recapitalise 3Sixty to restore it to financial soundness was only one of the reasons. More
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fundamentally, this situation had been perpetuated for over twelve months. In addition to that, various other grounds for the curatorship were set out in the founding affidavit¹⁹.

Ad paragraph 21

153. It was not for the Authority to raise concerns with the Internal Recapitalisation Plan. Instead, it was incumbent on 3Sixty to present a complete comprehensible and workable plan with full supporting information. It failed to do this.

Ad paragraph 23

154. It is correct that the interim report filed by the curator on 21 February 2022 relied significantly on an assessment by Milliman, but the provisional curator also failed to have regard to the qualifications contained in the Milliman Report and her own actuarial team's opinion, which was available to her before she filed the interim report and which she did not disclose to the Court that she was in possession of at the time of filing the interim report.

Ad paragraph 24

155. For reasons set out in the replying affidavit in the urgent variation application, and earlier in this affidavit, I deny that the Internal Recapitalisation Plan is viable and resolves the solvency challenges faced by 3Sixty. Even if contrary to the true facts it did, as set out earlier, there are various other issues that require 3Sixty to remain under curatorship.

¹⁹ Caselines, 003-10 to 12

Ad paragraph 25

156. For reasons set out in the supplementary affidavit that I filed in this application, I persist with the denial that the Internal Recapitalisation Plan will significantly improve 3Sixty's financial soundness.

Ad paragraphs 26 to 28

157. I deny that I have breached the undertaking previously made. While there is an indication that some of the properties can be realised quickly, properties worth almost half of the total value of the properties may not be easy to realise in the short term.


158. I also deny that the Authority has not identified significant risks in relation to 3Sixty's business and that the conditions attached to my previous undertaking have all been met.

Ad paragraph 29

159. 3Sixty had failed to provide sufficient detail regarding its Internal Recapitalisation Plan and cannot now complain about the Authority applying to place it in curatorship.

160. It relies on a quote from the interim report filed by the curator without acknowledging that that the report expressly stated that apart from the Milliman Report, the curator has considered nothing else.

161. Bearing in mind that for over a year 3Sixty's MCR and SCR covers were negative and plans to remedy the position of 3Sixty, as presented by its directors, had not materialised for over a year, I am astonished that Mr Msibi would under oath state that the curatorship order was not necessary.



162. Mr Msibi is also incorrect in suggesting that it was only the solvency issues that resulted in 3Sixty being placed under curatorship.

Ad paragraph 30

163. Even accepting the fact that properties worth R65 840 000 can easily be sold within three to six months, suggests that only this amount should be taken into account in determining whether the property transaction could successfully restore 3Sixty to financial soundness.

164. 3Sixty provides no information about the lease to Doves and what impact that has on whether the entire value of the properties can be taken into account when measuring solvency.

165. The quoted paragraph in paragraph 30.5 ignores the fact that 3Sixty failed to improve its financial position and move to a positive SCR. Only a SCR cover greater than 1 is considered financially sound. In addition, its MCR cover was also negative and its financial position was deteriorating, despite being granted an indulgence by the Authority for over a year to restore its financial soundness position.

166. Save as aforesaid, these allegations are denied.

Ad paragraphs 31 to 33

167. These allegations are denied.

Ad paragraph 34

168. The Authority denies that 3Sixty's financial soundness challenges is limited to the Covid-19 pandemic.



169. 3Sixty's troubles started way before Covid-19 and they were on the Authority's "watch-list" even before March 2020. In any event, even if contrary to the true facts, 3Sixty's problems were indeed limited to the Covid-19 pandemic, they have been given more than sufficient time by the Authority to improve its financial soundness position and they failed to bring to fruition a number of plans which they previously submitted to the Authority.

170. Save as aforesaid, these allegations are denied.

Ad paragraph 35

171. I deny that the Authority has acted in bad faith or unjustly to 3Sixty.

Ad paragraph 36

172. It is difficult for me to meaningfully deal with this allegation, without Mr Msibi disclosing the insurers that he is referring to.

173. While there are a few insurers with SCR covers that are below 1, other safeguards such as monthly reporting and adherence to committed capitalisation plans, are being tracked by the Authority.

174. If these committed plans do not achieve the desired result, the Authority will not hesitate to apply to place them under curatorship or take the necessary regulatory action.

175. 3Sixty conveniently ignores the fact that it submitted various plans for recapitalisation, which did not come to fruition and they have been trading with a negative MCR and SCR cover for longer than 12 months.

176. If there is anybody that is in bad faith, it is Mr Msibi, who is unappreciative of the significant indulgences granted by the Authority to 3Sixty.



Ad paragraphs 37 and 38

177. Annexure KMS3 is not an unqualified confirmation that the Internal Recapitalisation Plan materially improves the capital adequacy position of 3Sixty. The Independent Head of 3Sixty's Actuarial Function states specifically in paragraph 5 of his confirmatory affidavit that *"Such improvement would be dependent on the fair value of the properties being accurate, that the properties are fully recognised on the 3Sixty balance sheet and that they are not considered to be encumbered. One would need to rely on other professionals to confirm these facts."*
178. As is previously set out, there are experts from the BDO support teams that are of the view that the properties cannot be fully recognised on 3Sixty's balance sheet and that regard the properties as encumbered.
179. In these circumstances, I respectfully submit that it remains necessary for 3Sixty to be kept under curatorship.
180. Save as set out above, these allegations are denied.

Ad paragraphs 39 to 49

181. I refer to what is set out in my supplementary affidavit in this application and what is set out earlier in this affidavit and I deny the contents of these paragraphs to the extent that they are inconsistent with what was set out in my previous affidavits regarding the Milliman Report.

Ad paragraphs 50 to 67

182. 3Sixty claims that BDO's report should be relevant to the extent that the provisional curator decides to incorporate it in her report. One would expect the provisional curator to include in her reports to the above Honourable Court, all reports in her possession

and her views about those reports so that the above Honourable Court has all the relevant information to make an informed decision.

183. In the circumstances, the suggestion that the Authority attempted to bring BDO reports "through the backdoor", is unfortunate and without merit.
184. The accusation that BDO stands to make significant financial gains from the continued curatorship of 3Sixty ignores the fact that BDO is a well-regarded professional services firm that will not likely impair their integrity simply for financial gain. One would expect Mr Msibi to use proper expert opinion to demonstrate the flaws in BDO's reasoning instead of relying on vague and generalised so-called deficiencies.
185. The reference to the correct interpretation of the lease between Doves and 3Sixty suggests that the disposal agreement is not clear enough. Instead of suggesting that BDO should be suggesting amendments for clarity, one would have expected 3Sixty to make available clear and unambiguous agreements.
186. The fact that 3Sixty can cancel the lease on a month's notice does not deal with the practical issue that Doves wholly owns 3Sixty, it conducts its business from a number of the properties that are meant to be the subject of the disposal agreement and it would create significant damage to Doves business if the leases were cancelled with one months' notice.
187. The suggestion that the board of directors of 3Sixty act independently of Doves ignores the fact that there are some common directors.
188. The belief of Mr Msibi set out in paragraph 61 is without any factual foundation.



189. Based on Mr Mashoko's qualifications and experience and based on the interactions the Authority has had with him, while he was supporting the provisional curator, the Authority denies that he lacks the necessary experience.
190. There was nothing untoward about Mr Mashoko not including Milliman in a meeting with 3Sixty's actuarial function. As previously pointed out, Ms Ram appointed Milliman without seeking the Authority's permission to do so and thus acted outside of the control of the Authority, contrary to the prescriptions of the law.
191. The Authority denies that Milliman had to be independent only in relation to 3Sixty. Ms Ram did an about turn in her views about the Internal Recapitalisation Plan and the need for 3Sixty to remain under curatorship, only after the Authority instituted the urgent variation application.
192. She therefore had a motive to try to embarrass the Authority by using the Milliman report, without appreciating that the Milliman report contained various qualifications and did not unconditionally give her a basis to form the view that the Internal Recapitalisation Plan resolved the financial challenges faced by 3Sixty.
193. While it is correct that there are differences of opinion in regard to the BDO reports and 3Sixty's Internal Recapitalisation Plan restoring financial soundness, the Authority does not agree with Mr Msibi's submission that that is a basis to discharge the rule nisi and 3Sixty "to resolve the technical details". To the contrary, it is a basis to continue with the curatorship and once 3Sixty can produce the necessary expert reports to convince the Authority that its financial soundness position is adequately remedied and the other concerns which the Authority has is addressed, the Authority at that stage can apply to take 3Sixty out of curatorship.



194. In circumstances where 3Sixty was given more than 12 months to restore its solvency challenges, it is preposterous for Mr Msibi to suggest that the Authority acted recklessly and hastily. As is set out earlier, the Authority only applied to place 3Sixty under curatorship after giving 3Sixty various indulgences and after the third submission to PARAC.

195. Save as set out above, these allegations are denied.

Ad paragraphs 68 to 72

196. I deny that all relevant information relating to the Internal Recapitalisation Plan was submitted.

197. There were no valuations from experts in regard to the properties.

198. There were no Deeds Office search reports confirming which of the properties were subject to mortgage bonds and the balances under those mortgage bonds.

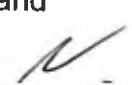
199. 3Sixty criticises the Authority for not requesting further information. But given the indulgences that were given by the Authority to 3Sixty and the previous plans submitted by 3Sixty which did not come to fruition, it was incumbent on 3Sixty to provide full and comprehensive details regarding the Internal Recapitalisation Plan, including the relevant expert reports.

200. The signed statement of 3Sixty's Independent Head of Actuarial Function is inconsistent with paragraph 5 of the Independent Head of Actuarial Function's supporting affidavit (annexure KMS3).

201. The supporting affidavit of the Independent Head of Actuarial Function does not say that the inference being drawn by the Authority is incompetent. Instead it simply records that no inference should be drawn from his failure to respond to a question.

202. I deny that the Authority has not made out a case for the placing of 3Sixty under curatorship.
203. The Authority prides itself on seeing empowered companies thrive in the market and the Authority denies that it went against the economic transformation trajectory of South Africa. To the contrary, the Authority was obliged to act after 3Sixty failed for over a year to meet minimum capital requirements.
204. Save as set out above, these allegations are denied.

Ad paragraphs 73 to 77

205. I stand by the allegations contained in the replying affidavit and I also refer to the supporting affidavit provided by the auditors of 3Sixty.
206. It is incorrect to suggest that the auditors have a conflict of interest. 3Sixty only tried to change its auditors after its auditors persisted with the demand for the information that it required in order to properly conduct the audit.
207. No explanation is provided by 3Sixty for why it could not comply with a simple request from the auditors.
208. It is not the Authority's function to reconcile differences in opinion between the auditors and 3Sixty's actuaries. If Mr Msibi genuinely believed that the auditors were acting unprofessionally, as acting CEO, he would have referred the auditors to SAICA or IRBA. There is no indication that he did so.
209. Mr Msibi has misread the auditor's affidavit. He only deals with when the properties may be recognised in 3Sixty's financial statements and this is not inconsistent with what is set out in annexure KMS6. The contradiction that Mr Msibi refers to does not exist and is not detailed in his supplementary answering affidavit.
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210. KMS7 also does not support Mr Msibi's contentions in paragraph 77.

211. Save as set out above, these allegations are denied.

Ad paragraphs 78 to 94

212. Details of the mismanagement were not known to us until the provisional curator and her support teams brought that to the Authority's attention.

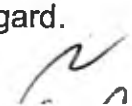
213. The Deloitte report was referred to by the Authority, after Mr Msibi referred to it in his answering affidavit (without attaching a copy of the report) and tried to suggest that no material adverse findings were made by Deloitte. This is incorrect and necessitated the attachment of the Deloitte report to the replying affidavit.

214. The Authority's email of 2 February 2021 was an invitation to 3Sixty's management to meet with it, and the Authority was expecting management to revert with a few dates and times for a meeting. Unfortunately, the Authority did not receive a response from management at 3Sixty.

215. I deny that it is true that the Deloitte investigation and its report contains no material adverse findings. The report speaks for itself and further argument will be addressed.

216. The Authority supervises over 240 financial institutions. The Authority does not have an unlimited budget in order to employ people and has constrained resources.

217. It is therefore being unduly critical of the Authority to suggest that it should have followed up on implementation of the recommendations in the Deloitte report. If Mr Msibi was a responsible CEO and committed to good governance and compliance, he would have expeditiously put the necessary measures in place to carry out the Deloitte recommendations and he would have regularly reported to the Authority in this regard.



218. It is ironic that Mr Msibi accuses the Authority of misleading the Court, when in fact he has failed to carry out his responsibilities.
219. The suggestion that if 3Sixty was concerned about the report it would have not brought it to the court's attention is devoid of truth. If 3Sixty had nothing to hide as it claims, it would have attached the report to Mr Msibi's answering affidavit. The only reasonable inference to draw from his failure to do so is that the report did not provide the support for his contentions made in the answering affidavit.
220. The suggestion that the report contained no material adverse findings is concerning. It suggests that Mr Msibi, as the acting CEO does not have the ability to comprehend the irregularities identified by Deloitte. Apart from his failure to ensure that the Deloitte recommendations were fully carried into effect, he does not even comprehend the seriousness of the findings.
221. The reliance on section 1.3 of the Deloitte report for the failure to attach it to the answering affidavit is misguided. The Authority provided the report to 3Sixty. 3Sixty did not instruct Deloitte and were not constrained by any restrictions that Deloitte may have placed on its report. In addition, 3Sixty could have requested the Authority and / or Deloitte to provide consent for the report to be attached to Mr Msibi's answering affidavit, even if Mr Msibi was badly advised about restrictions relating to making the report available to the above Honourable Court.
222. If the reasons for not attaching the report were genuine, the reasons would have been fully set out in Mr Msibi's answering affidavit.
223. Mr Msibi's reliance on section 1.3 of the report is an ex post facto dishonest account in order to justify Mr Msibi's failure to attach the Deloitte report.



224. It is also a pity that Mr Msibi seems to downplay the irregularities identified by Deloitte, despite conceding that 3Sixty paid for the birthday party of the leader of NUMSA. The suggestion that this was a marketing initiative to strengthen relations with NUMSA members and leaders demonstrates a clear lack of judgment on the part of Mr Msibi. The Investment arm of NUMSA owns Doves, which in turns owns 3Sixty. Why then is there a need to market to NUMSA? This again is a dishonest account and provides further substantiation for the need to keep 3Sixty under curatorship.
225. I note the admission that a laptop and software was purchased for Mr Jim's daughter. Mr Msibi suggests that she used the laptop at 3Sixty's office and it remained the property of 3Sixty. No explanation is provided for what the laptop was being used for by Mr Jim's daughter and there is also no indication as to whether she was employed by 3Sixty.
226. In these circumstances the attempt to justify the purchase of the laptop is astonishing.
227. I note that Mr Msibi accepts that it was not good business practice to pay an amount of R1 million as sponsorship expenses on behalf of a subsidiary in the Group, in lieu of commission. There is, however, no indication that attempts were made to recover the R1 million from the subsidiary.
228. Despite the extent of irregular expenses, Mr Msibi unfortunately tries to downplay it by suggesting they amounting to no more than 0.59% of 3Sixty's annual premium income. The reality is annual premium income should be guarded and should not in any way be misappropriated. It does not help if a senior person in an entity concedes that they only misappropriated an insignificant amount from an entity. It remains misappropriation and goes to the very heart of the trust relationship. It demonstrates again the lack of judgment of Mr Msibi.



229. Mr Msibi states very proudly that the 2018 and 2019 financial statements were audited and 3Sixty received a clean audit opinion. I am surprised, however, that Mr Msibi did not fully take the court into his confidence and mentioned that in 2020, the auditors had reported reportable irregularities at 3Sixty to IRBA.
230. In paragraph 87.1 of Mr Msibi's supplementary affidavit, he states that they have commenced on an exercise to put the relevant agreements in place. This suggests that despite about one and a half years having elapsed since the Deloitte report, the recommendation to have agreements in place with related parties had only recently commenced. No explanation is provided for why this was not completed already.
231. In paragraphs 88.1 and 89.1 Mr Msibi alleges that two of the recommendations of Deloitte has been implemented, but no details are provided of how and when these recommendations have been complied with.
232. In paragraph 90.1, Mr Msibi alleges that the recommendation to improve governance was implemented but again gives no details as to how this recommendation was implemented.
233. I also deny that most of the recommendations contained in the Deloitte report, were implemented. If that was the case, full details would have been provided by Mr Msibi.
234. Save as aforesaid, these allegations are denied.

Ad paragraphs 95 to 104

235. I deny that the Authority misled the above Honourable Court.

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236. I refer again to annexure PA11 to the Authority's replying affidavit²⁰. CINPF legitimately had concerns about the solvency position of 3Sixty long before it was placed under curatorship.
237. I refer to annexure KMS8 to the supplementary answering affidavit and note that 3Sixty was given an opportunity to present to the trustees of CINPF.
238. It seems that despite the board of 3Sixty having being divested of its powers to act on behalf of 3Sixty, it went ahead with the presentation to CINPF. This again gives rise to concerns about the board of 3Sixty.
239. I deny that the placing of 3Sixty under curatorship was the sole reason for CINPF terminating its relationship with 3Sixty.
240. I deny that the curatorship should be discharged.
241. Save as set out above, these allegations are denied.

Ad paragraphs 105 to 127

242. To suggest that policyholders are not at risk when for over a year, 3Sixty has been unable to remedy its financial solvency position and when premium income has been misappropriated, for example for birthday parties, is just disingenuous.
243. I deny that I have made misleading statements without any proof. In fact, on Mr Msibi's own version, premium income was spent on a birthday party and no attempts have been made to recover this misappropriation from the directors that authorised the use of premium income for this.

²⁰ Caselines, 019-33

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244. The information set out in paragraph 152 of the replying affidavit²¹ was provided to me by the provisional curator. There is no basis to suggest that I had been caught in a lie.
245. It is also disingenuous for Mr Msibi to suggest that it is untrue that 3Sixty was facing a liquidity crisis, when in correspondence, it conceded this (see annexure FA32).
246. There is also no justification to the accusation that the Authority misled the Court by creating the impression that a member of the CINPF wrote to the Authority just before it launched its curatorship application. The CINPF letter was attached to the founding affidavit as annexure FA7.
247. The curatorship has not disrupted any policyholder's insurance cover and valid claims continue to be paid during the period of curatorship.
248. Presumably the reference to annexure KM11 in paragraph 118 of Mr Msibi's supplementary answering affidavit was a typo and Mr Msibi intended to refer to annexure KMS17 to the answering affidavit.
249. Mr Msibi accuses the Authority of misrepresenting 3Sixty's actual repayment of the loan from With-Profit Policyholder Funds but fails to highlight that the loan has not been fully repaid and there remains an amount of approximately R56 million due to the With-Profit Policyholder Fund.
250. The Head of the Independent Actuarial Function also indicated that there was the possibility that the loan would have to be extended beyond 31 December 2022.
251. Instead of referring to social media complaints against other insurers, one would have expected Mr Msibi to deal with whether there were merits to the complaints. If so, when were the complaints resolved and how long did the consumer have to wait for the

²¹ Caselines, 019-29



resolution of the complaint. If the complaint was without justification, one would have expected from Mr Msibi an indication of why the complaint had no merit.

252. The Authority has never received annexure KMS9. Annexure PA17 is clearly marked "draft" and is referred to in the replying affidavit as the draft ORSA report. The Authority received the draft report from the provisional curator and did not ever receive the final report.
253. The allegations that the Authority was hell-bent on deceiving and misleading the court to achieve nefarious motives is therefore false.
254. I deny that the Authority has no qualms to mislead and lie to the court.
255. Save as set out above, these allegations are denied.

Ad paragraphs 128 to 130

256. Given that Ms Ram's qualifications was received from BDO, a well-regarded professional services firm, I deny that it was necessary for the Authority to request proof of Ms Ram's qualifications.
257. The content of paragraph 282 was based on the information contained in the resume of Ms Ram that we received from BDO, and the further details that she shared with us and the Authority's attorneys on 29 January 2022.
258. In circumstances where 3Sixty was given over a year to remedy its solvency challenges, it is laughable for Mr Msibi to suggest that the Authority is hell-bent on destroying an insurer owned and managed by Historically Disadvantaged South Africans.
259. Mr Msibi also accuses me of condescending racism. There is no factual foundation to this accusation. I deny that paragraph 282 of the replying affidavit amounts to

condescending racism. Our courts have previously held that racism allegations are very serious allegations and should not lightly be made. It is a pity that Mr Msibi has not taken heed of this.

260. Save as aforesaid, these allegations are denied.

Ad paragraphs 131 to 133

261. I refer to what is set out previously about the concerns relating to the Internal Recapitalisation Plan and deny that there was any attempt by the Authority to mislead the above Honourable Court.

Ad paragraph 134

262. These allegations are denied.


Ad paragraphs 135 to 136

263. Bearing in mind that the Internal Recapitalisation Plan was presented to the Authority early in December 2021, after a number of previous plans failed to come to fruition, even if it is correct that management of 3Sixty had commenced the process of VAT registration, one would have expected 3Sixty to have applied for VAT registration early in December 2021.

264. Save as set out above, these allegations are denied.

Ad paragraphs 137 to 144

265. To the extent that these allegations are inconsistent with the allegations contained in the replying and supplementary affidavits, they are denied.



Ad paragraphs 145 to 154

266. The Authority denies that:

266.1. 3Sixty had made out a case for the discharge of the rule nisi;

266.2. good grounds for curatorship were not present and the Authority has failed to exercise due care;

266.3. "without more" the Authority alleged that its urgent variation application to replace the curator influenced her objectivity. Bearing in mind the contents of her interim report and the earlier information she provided to the Authority and its attorneys on 28 and 29 January 2022, the allegation that she had been influenced by the variation application is sufficiently substantiated;

266.4. it is in the interests of justice for the rule nisi to be discharged;

266.5. the provisional curatorship is an unjustified, egregious and considerably prejudicial interference by the Authority. To the contrary, the Authority had provided 3Sixty with more than a year to resolve its solvency, governance and management challenges, and it failed to do so;

266.6. curatorship is a last resort. Liquidation would be the last resort;

266.7. the Authority failed to make full and fair disclosure to the above Honourable Court;

266.8. there is any basis for a personal costs order against Mr Naidoo, Mr Peter and myself;

266.9. there is any basis for a costs order against the Authority; and

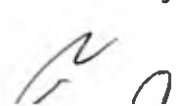
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266.10. there is any basis for the Authority to be held responsible for the advice of Mr Mothapo (bearing in mind that the Authority had granted 3Sixty over a year to resolve its challenges, one questions whether 3Sixty has been receiving adequate advice).

LEAVE TO FILE THIS AFFIDAVIT

267. Given that the first respondent delivered a voluminous supplementary affidavit, the Authority was required to consult with its attorneys at length to prepare this affidavit and was required to source information from the BDO support teams. Some of this information was only received during the course of 10 and 11 March 2022. In addition, in the afternoon of 10 March 2022, Ms Ram sought the consent of the parties to be joined to these proceedings. This necessitated the inclusion of a number of additional averments in this affidavit.
268. The respondents and Ms Ram will not be prejudiced by the filing of this affidavit, as they will have sufficient time before the hearing of this matter to consider the contents of this affidavit. By contrast, the Authority will be prejudiced if this affidavit is not admitted, as the matter will then be adjudicated without all the relevant facts being before the court.
269. Much of the information contained in this affidavit was not available to the Authority at the time of delivery of the supplementary affidavit.
270. The Authority accordingly seeks leave to file this further affidavit.
271. The confirmatory affidavits of Mr Naidoo, Ms Chetty, Mr Fourie, Ms Earley, Mr Roberts, Mr Mashoko, Ms Suleman and Mr Maswera will be delivered together with this affidavit.

WHEREFORE save for abiding by the decision of the above Honourable Court on the identity of the curator, the Authority prays for:

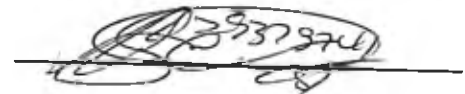


1. Condonation for the late filing of this affidavit;
2. Leave to file this affidavit; and
3. An order confirming the rule nisi, subject to the above Honourable Court's view about whether Ms Ram should remain the curator or whether she should be replaced.



DEPONENT

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at GARDFONTEIN on this 12 day of MARCH 2022, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.

COMMISSIONER OF OATHS

Full names: LEFA VINCENT SERUHA

Address: 277 JOHANNY CLAASSENS
STREET, GARDFONTEIN,
PRETORIA

Capacity: POLICE CONSTABLE
293797 4-1