

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

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**REPLYING AFFIDAVIT**

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I, the undersigned

**SUZETTE JEANNE VOGELSANG**

state under oath that:

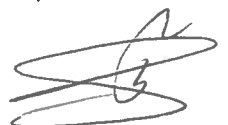
1. I am the Head of the Banking, Insurance and Financial Markets Infrastructure Supervision Department of the applicant (**the Authority**).
2. I deposed to the founding affidavit in this application. I remain duly authorised to depose to this affidavit on the applicant's behalf.
3. I have read the answering affidavits of Mr Khandani Msibi (**Mr Msibi**) on behalf of 3Sixty Life Limited (**3Sixty**) and Mr Irvin Jim (**Mr Jim**) on behalf of the National Union of Metal Workers of South Africa (**NUMSA**). The purpose of this affidavit is to reply to Mr Msibi and Mr Jim's affidavits.



4. 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. Where I rely on information provided to me by individuals in the office of the applicant, and the provisional curator, their brief confirmatory affidavits will accompany this affidavit. Unfortunately in the limited time available to the applicant to file its replying affidavit, it was not possible to prepare comprehensive confirmatory affidavits.

## INTRODUCTION

5. Despite the voluminous answering affidavits filed by 3Sixty and NUMSA, which traverses a significant amount of material, I respectfully submit that the material issues in dispute are relatively crisp.
6. I will endeavour in this affidavit to focus on those issues. In particular, I will demonstrate that the applicant acted reasonably in obtaining the provisional curatorship order and within its statutory rights. I also demonstrate that the applicant did not act with any malfeasance in obtaining the ex parte order.
7. I address the following issues in turn:
- 7.1. First, I explain the abuse of process on the part of the respondents and to the extent necessary, the applicant seeks condonation for the filing of this replying affidavit one day before the hearing of this application;
- 7.2. Second, I set out the chronology of events since the provisional curator, Ms Yashoda Ram, took up her position at 3Sixty and her findings which have a material bearing on the current proceedings;
- 7.3. Third, I reiterate the relevant statutory framework which entitled the applicant to approach the above Honourable Court on an urgent and ex parte basis; and



7.4. Fourth, I deal with the answering affidavit paragraph-by-paragraph to the extent necessary

8. Even though the applicant has prioritised this matter, it will for reasons that follow be evident why this affidavit could only be filed today. The applicant has been severely prejudiced in having to file this affidavit in response to affidavits which exceed 900 pages. The applicant therefore reserves its right to supplement this replying affidavit, if the matter is struck from the roll on 1 February 2022.

## **ABUSE OF PROCESS**

9. The rule nisi was granted on an urgent ex parte basis on 21 December 2021 by the Honourable Acting Justice Crutchfield<sup>1</sup>. Paragraph 8 of the rule nisi stated that the return date is 12 April 2022. On the same day, the order was brought to the attention of the deponent to 3Sixty's answering affidavit, Mr Msibi and representatives of the board of directors of 3Sixty.
10. Paragraph 11 of the court order advised that 3Sixty, or any other interested party wishing to oppose the confirmation of the rule nisi, was to file their opposition by 21 January 2022<sup>2</sup>.
11. 3Sixty's attorneys served its opposing papers on the applicant's attorneys of record at 21h51 on Friday, 21 January 2022. NUMSA's attorneys served its opposing papers on the attorneys of record at 22h47 on the same evening. Copies of the emails under cover

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<sup>1</sup> Caselines 007-01 to 7

<sup>2</sup> Caselines 007- 7



of which 3Sixty and NUMSA served their opposing papers are attached as annexure "PA1" and "PA2" respectively.

12. Together with their opposing papers, 3Sixty and NUMSA delivered a notice in terms of Rule 6(8) of the Uniform Rules of Court, anticipating the return date to 1 February 2022.
13. Bearing in mind the 1 February 2022 set down date, the applicant was in essence given three court days within which to file its replying affidavit, despite the fact that 3Sixty and NUMSA took a month to deliver their notices of opposition and answering affidavits. The answering affidavits exceed 900 pages and I submit that the time periods imposed by 3Sixty and NUMSA are grossly unreasonable, if one has regard to the information to be gathered by the applicant and consultations with the applicant's legal representatives as well as the provisional curator and her team in formulating its replying affidavit. The applicant has been significantly prejudiced by these unreasonable time periods.
14. The applicant's attorneys of record therefore addressed a letter to 3Sixty and NUMSA's attorneys on 25 January 2022, stating that the opposing papers were delivered well after court hours on 21 January 2022, and the applicant is severely prejudiced by the short time period imposed on it. The respondents were requested to afford the applicant the usual 10 days within which to deliver its replying affidavit, and an expedited hearing date can be obtained thereafter. 3Sixty and NUMSA were warned that should they fail to do so, a punitive cost order will be sought. A copy of this letter is attached as annexure "PA3".
15. 3Sixty's attorneys responded on the same day declining the request for the usual time periods. NUMSA's attorneys addressed a letter on 26 January 2022 stating that their client would consider extending the time periods, on the condition that the applicant provides its immediate agreement to "suspend the operation of the provisional



curatorship order and remove the curator, and whilst the application is pending before court, agree that the management of 3Sixty Life Limited will be vested in the board of directors and/or managers of 3Sixty Life Limited." Copies of 3Sixty and NUMSA's letters are attached as annexures "PA4" and "PA5" respectively.

16. The applicant's attorneys responded on 26 January 2022 stating that the applicant cannot provide such an undertaking and advising that the replying affidavit would be filed in due course. A copy of this letter is attached as annexure "PA6".
17. The applicant and its legal representatives worked tirelessly to collate all of the relevant information, consult and prepare this replying affidavit prior to the hearing on 1 February 2022. The applicant's team, the provisional curator and her team met with the applicant's attorneys the whole of Friday and Saturday (29 and 30 January 2022). Further documents that the applicant's attorneys requested were searched for on Sunday, 30 January 2022. I submit that in the circumstances, the applicant has delivered its replying affidavit as soon as practicably possible and to the extent necessary, the applicant respectfully seeks the above Honourable Court's condonation for delivering this replying affidavit a day prior to the hearing of the application.
18. The following is also relevant in regard to the application for condonation:
  - 18.1. A substantial set of papers were filed by 3Sixty and NUMSA very late on Friday evening (21 January 2022). Despite this, they were immediately emailed by the applicant's attorneys to the internal legal advisors at the applicant on that Friday evening. It was forwarded to me by the applicant's internal legal advisors on 25 January 2022;
  - 18.2. The applicant's internal legal advisors and the applicant's attorneys spent the weekend and Monday, 24 January 2022, digesting the contents of the answering

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affidavits and the annexures and a meeting was set up for Tuesday, 25 January 2022. After the applicant's internal legal advisors completed considering the answering affidavits, they emailed a copy of the papers to me;

18.3. At this meeting of 25 January 2022, the applicant's attorneys identified the information that they required in order to start preparing the draft replying affidavit. The applicant had to liaise with the provisional curator and also search its records and this occurred on Wednesday and Thursday (26 and 27 January 2022);

18.4. The applicant then met with its attorneys on Friday and Saturday (28 and 29 January 2022) and also spent time searching for additional information and considering an incomplete copy of the draft replying affidavit. The applicant met again with its attorneys on Monday, 31 January 2022 in order to finalise this replying affidavit.

19. If the above Honourable Court believes that this affidavit was filed late, I respectfully request the above Honourable Court to condone the late filing of this affidavit.

20. I am advised that the above Honourable Court may condone the late filing of an affidavit on good cause shown. In considering a request for condonation, a court will consider the explanation for the delay, the degree of negligence of the persons responsible for the non-compliance with the Rules, the importance of the matter and the degree of prejudice that will be suffered by the applicant, if condonation is refused.

21. I respectfully submit that:

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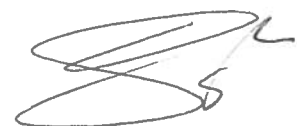
- 21.1. It is clear from what is set out above that the applicant acted expeditiously and has a reasonable explanation for filing this affidavit a day before the hearing on 1 February 2022; and
- 21.2. The matter is important not only for the applicant but also for policyholders;
- 21.3. The applicant would be severely prejudiced if the request for condonation is denied and 3Sixty and NUMSA would have the application to discharge the rule nisi determined without all relevant information.

### **CHRONOLOGY OF EVENTS AND FINDINGS OF PROVISIONAL CURATOR**

22. The provisional curator met with 3Sixty on 22 December 2021 and interviewed Mr Msibi (the Acting CEO of 3Sixty), its Chief Financial Officer and the Chief Operating Officer. An overview of the business and the series of events leading to the provisional curatorship being granted was the focus of the initial meeting. A co-operative approach was agreed to and it was further agreed that further requests for information to assess the financial position of 3Sixty, together with the recapitalisation plans will be provided. It was also agreed that details relating to operational issues and the IT system would be dealt with in the next few days.
23. On 23 December 2021 at 08h30 the provisional curator held a meeting with Ronelle Brits, who is the CEO of UiPlay, a 3Sixty Group entity responsible for, inter alia, the IT systems and data of 3Sixty. An overview of the IT system was requested by the provisional curator with full access to be granted to the provisional curator and her support team. Despite this being agreed to, there were delays in giving the provisional curator and her support team access to the IT system. Eventually on 25 January 2022, the provisional curator and her support team were given access to the IT system.



24. On the same day (23 December 2021) at 12h00 the provisional curator held a meeting with Ms Olu Luthaga, the Group Chief Financial Officer (**Ms Luthaga**), to discuss the Property Transaction that was proposed by 3Sixty to the applicant to recapitalise 3Sixty.
25. On the same day at 15h00 the provisional curator held a meeting with Mr Ranti Mothapo (**Mr Mothapo**) to discuss actuarial and solvency matters.
26. Following these meetings, extensive data request lists were sent out by the provisional curator's team.
27. The provisional curator advises me that the consistent and overwhelming delay in providing information in an organised manner points to a lack of systems and controls, lack of governance structures and clarity of roles and responsibilities, as well as the potential lack of data integrity.
28. I am further advised by the provisional curator that the challenges with requesting IT system access and data has persisted. At times, the provisional curator and her support team were questioned as to the motive behind requests and were met with hostility.
29. On 24 December 2021, the provisional curator was requested to approve daily claims. This was the first request for the payment of claims. The provisional curator responded that sufficient evidence, process documentation and validation of adjudication must be provided before payment of any claim would be approved. 3Sixty requested that this issue be dealt with after Christmas. A meeting was held on 27 December 2021 in which the claims process was presented, and relevant documentation then requested.
30. I am also advised that to date, the payment of valid claims that have been presented to the provisional curator, had all been approved by the provisional curator. Despite this, I attach as annexure "**PA7**" an email which was sent by 3Sixty to Mercedes Benz on 24





January 2022 which suggests 3Sixty cannot afford to pay claims because it is under provisional curatorship.

31. The provisional curator also advised me that on 27 December 2021 a request for a Special Board Meeting was circulated, in the guise of discussing Supplier Payments and Business as Usual procedures.. The provisional curator was surprised to be presented with matters unrelated to supplier payments. One of these additional matters related to the Property Transaction which formed part of 3Sixty's Internal Recapitalisation Plan. The provisional curator informed the attendees that she would need to obtain advice from experts on the valuation of the properties, the tax implications of the property transaction and legal advice as well. Ms Luthaga queried whether 2 weeks would be sufficient to provide an update, to which the provisional curator advised that the relevant experts are out of office and the transaction should not be rushed through without taking proper advice to ensure that the transaction is sound.
32. On 29 December 2021 at 12h00 a meeting was held with Mbali Mhlangeni, Ellan Cornish and Nobuhle Nkosi (3Sixty executive directors) on the Claims Approval Process. Once again, the provisional curator requested that the full claims acceptance and adjudication be explained, documented and shared with her team to enable a more efficient approval process.
33. On 30 and 31 December 2021, the provisional curator dealt with the first Quantitative Reporting Templates (QRT) Submission. Mr Mothapo delayed her review and approval until the last minute and rushed through explanations in an incoherent manner. The data contained in the QRT had not been reconciled to 3Sixty's financials nor to raw data. No supporting documentation on approach, assumptions, methodologies and models used were provided to the provisional curator.



34. On 4 January 2021, the provisional curator called a meeting to address the data still required, including requests for finance documents (management accounts, expense management documents, income statements, optimisation and business planning documents), risk and compliance documents, legal documents, distribution (policy admin) documents, procurement documents, director fees schedules, letter of Appointment of the Head Actuarial Function (**HAF**), broker contracts and service level agreements, intermediary FAIS and FICA documents, commission calculations and details of control functions as governed by the Governance and Operational Standards for Insurers ("**GOIS**").
35. I am advised by the provisional curator that the employees of 3Sixty have failed to provide all of the requested information and the provisional curator will have to take steps to remedy the defects in processes and the lack of documented processes.
36. I am advised by the provisional curator that certain staff members at 3Sixty are genuinely willing and prepared to improve processes and procedures, but the board members (specifically Ms Luthaga and Mr Msibi) of 3Sixty would constantly interfere and prevent them from carrying out their duties. This explains the high staff turnover rate, and the gaps in effective management of 3Sixty.

37.

#### **RELEVANT STATUTORY FRAMEWORK**

38. As set out in the founding affidavit, the applicant applied to have 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**).

39. Section 54(1) of the Insurance Act states:

“Despite any other law—

(a) 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.”

40. 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.”

## **AD SERIATIM**

41. As is explained above, 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 answering affidavits.

42. To the extent that any allegation in the answering affidavits have 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, it is denied as if expressly traversed.



## 3SIXTY'S ANSWERING AFFIDAVIT

### Ad paragraph 1

43. I note that as per paragraph 5<sup>3</sup> of the rule nisi granted on 21 December 2021, the management of 3Sixty is divested from its powers. Therefore, the resolution attached as annexure "KM1" to the answering affidavit is not legally valid and I submit that Mr Msibi has no authority to depose to the answering affidavit and oppose these proceedings in his capacity as an "Acting Chief Executive Officer".

### Ad paragraph 2

44. Doves Group in about 1959, through a series of transactions, acquired industry respected funeral directing companies and pursuant to these acquisitions, Homes Trust Funeral Services was formed and was part of the Metropolitan Life stable.
45. In 1989, the senior management team purchased Metropolitan Life's shareholding and changed the name of the company to HTG Group. It formed its own life insurance company in 1993, which became known as HTG Life.
46. The name of this entity subsequently changed to Union Life, then to 360 Life Insurance Company Limited and subsequently to 3Sixty Life Limited.
47. Doves owns 100% of the shares in 3Sixty Life Limited. 3Sixty Global Solutions Group (Proprietary) Limited owns 100% of Doves and NUMSA Investment Company owns 100% of 3Sixty Global Solutions Group (Proprietary) Limited.
48. Save as set out above, these allegations are denied.

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<sup>3</sup> Caselines, 007-2



**Ad paragraphs 3 to 5**

49. I deny that Ms Msibi has personal knowledge of all of the allegations contained in 3Sixty's answering affidavit.

**Ad paragraph 7**

50. This allegation is admitted.

**Ad paragraph 8**

51. For reasons that will become evident later in this affidavit, this allegation is denied.

**Ad paragraph 9**

52. These allegations are denied.

53. Since 3Sixty was placed under curatorship, the valid claims of policyholders that have been brought to the provisional curator's attention are being paid.

54. The office of the Ombudsman for Long Term Insurance (**Ombud**) requested a meeting with the provisional curator. The Ombud's office disclosed to the provisional curator that claims worth R1.2 million has not been paid and a significant portion of this dates back to the period prior to curatorship. The Ombud's office is of the view that the bulk of these claims have not been paid because of incompetence at 3Sixty. An example of a ruling by the Ombud against 3Sixty is attached annexure "**PA7.1**".

55. The provisional curator has requested the team at 3Sixty to investigate the reasons for non-payment of these claims and if the provisional curator forms the view that the claims ought to have been paid, she will arrange for them to be paid.

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56. The provisional curator has also identified that the teams that deal with claims at 3Sixty have been rejecting certain claims for illegitimate reasons. The provisional curator is in the process of taking steps to remedy this situation. In particular there is correspondence to a NUMSA scheme attached as annexure PA7 above that states claims are not being processed due to the curatorship. This correspondence was sent to a NUMSA scheme without the knowledge or approval of the provisional curator.
57. No employees have been dismissed or retrenched since the provisional curatorship order and currently there are no plans to retrench any 3Sixty employees.
58. Instead, there have been inflated directors' fees paid to the directors of 3Sixty and this is contributing to its failure to meet minimum capital requirements. On 26 January 2022, an email was sent to a representative from the provisional curator's office and there was a request for directors' fees for non-executive directors to be paid. This is peculiar bearing in mind that these directors currently do not play any role as management of 3Sixty is vested in the provisional curator, as per paragraphs 7.1 and 7.2 the court order dated 21 December 2021.
59. There are also unexplained transfers from 3Sixty's bank accounts to various group entities that are not governed by outsourcing agreements nor commensurate with services provided.

**Ad paragraph 10**

60. These allegations are not relevant to the curatorship application and accordingly the applicant does not for present purposes dispute these allegations.

**Ad paragraph 11**

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61. I deny that 3Sixty has demonstrated that the order for provisional curatorship is unjustified, egregious and prejudicial interference by the applicant.
62. I deny that the rights and interests of 3Sixty's policyholders are being prejudiced and that the order should be discharged.

**Ad paragraph 12**

63. These allegations are denied.
64. On 9 November 2021 (as is evident from annexure FA30 to the founding affidavit), the applicant advised 3Sixty that it would be prohibited from taking on any new business should it fail to recapitalise by 1 December 2021. The prohibition was placed on the business as a measure to not further increase the liabilities of 3Sixty and to prevent its solvency position from further deteriorating. This prohibition would remain in place until the maintenance of a financially sound condition and the implementation of the short term recapitalisation in order to meet the level of the minimum capital requirement have been addressed to the satisfaction of the applicant.
65. On 7 December 2021, 3Sixty addressed the letter attached as annexure FA32 to the founding affidavit to the applicant and pursuant thereto the applicant clarified its position in relation to the prohibition of new business. On 13 December 2021, the applicant addressed a letter to 3Sixty in which the applicant stated, amongst others, that the effect and reason for the prohibition of writing new business, is to prevent the insurance company from taking on new insurance business, and the related party insurance liabilities, and to either maintain or reduce its existing insurance liabilities. 3Sixty was also advised that it was permitted to continue to renew policies relating to existing group schemes that come up for review or renewal. However, 3Sixty may not enter into any

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new group schemes or reinstate any group schemes that have already lapsed. A copy of this letter is attached as annexure "PA8.1".

66. The teams that were dealing with consideration and payment of claims at 3Sixty remain the same. The only difference is that their recommendation regarding acceptance or rejection of a claim is now subject to the direction of the provisional curator.
67. As mentioned earlier in this affidavit, payment of claims has continued during curatorship and the provisional curator is also addressing those claims that may have been illegitimately rejected prior to the curatorship.
68. 3Sixty has been allowed to continue to renew its group scheme policies and they are only not permitted to write new business. The suggestion that there will be no business left to be salvaged in April 2022 is disingenuous and not true.
69. I, together with other representatives from the applicant and the legal services department, met the deponent to 3Sixty's answering affidavit and other directors on 21 December 2021 via Microsoft Teams (namely, the day the order was granted) and disclosed to him details of the order granted earlier that day. After the meeting the order was emailed to him. Mr Msibi confirmed that he had accepted formal notification of the provisional curatorship, as is evident from annexure "PA8.2".
70. The next day, 22 December 2021, the provisional curator met with Mr Msibi and handed to him a hardcopy of the order and the founding papers in this application.
71. I refer to what is set out earlier in this affidavit and respectfully submit that 3Sixty has adopted an unreasonable attitude and has abused the processes of court. There is no basis for the urgency contended for.

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72. I am advised that Rule 6(8) does not give a party carte blanche to assert an entitlement to bring a reconsideration application on very short notice in a manner that it is inconvenient to the court and prejudicial to the other party. The circumstances of each case and considerations of convenience and fairness are pivotal when the court exercises its discretion to allow the anticipation of the return date. For reasons set out earlier in this affidavit, and also if one takes into account that the answering affidavits exceeded 900 pages, there can be no justification for insisting that the hearing proceeds on 1 February 2022.
73. Despite the provisional curatorship, the business continues more or less on the lines that it did immediately prior to the provisional curatorship, but subject to controls that the provisional curator has put in place. In the circumstances I respectfully submit that on 1 February 2022, this application should be struck from the roll for lack of urgency.
74. The applicant has been severely prejudiced by the truncated, unilateral and unreasonable time periods imposed by 3Sixty for the filing of this replying affidavit.
75. If things were as dire as 3Sixty suggests, 3Sixty would not have waited until late evening on 21 January 2022, to deliver its answering affidavit. It would have done so much earlier.

**Ad paragraph 13**

76. 3Sixty overlooks the fact that section 54 of the Insurance Act read with the section 5 Financial Institutions (Protection of Funds) Act, expressly provides for the interim order to be sought on an ex parte basis.
77. There is good reason for this. If prior notice is given, the directors and employees of 3Sixty could have frustrated the purposes of curatorship.

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78. I deny that 3Sixty was not granted an opportunity to make representations. It is clear from the founding papers that there was extensive engagement between 3Sixty and the applicant, before the applicant applied for the provisional curatorship.
79. I also deny that 3Sixty was forced to set its opposition down on an urgent basis and that any imbalance, injustice and oppression flowed from the order granted on 21 December 2021.

**Ad paragraph 14 and 15**

80. I deny that:

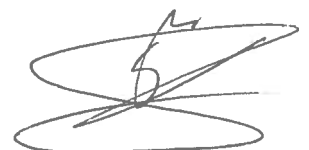
- 80.1. There was no full disclosure of material facts and that the applicant failed to make full and fair disclosure. It is clear from the founding papers that the correspondence exchanged between the parties was placed before the above Honourable Court;
- 80.2. There was a suppression of facts by the applicant and that there is any basis for the rescission of the interim order;
- 80.3. The court's discretion was exercised injudiciously when the interim order was granted; and
- 80.4. There exists any basis for the setting aside of the ex parte order.

**Ad paragraph 16 and 17**

81. These allegations are denied.

**Ad paragraphs 18 to 20**

82. These allegations are denied.

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83. 3Sixty has not secured audited financial statements since December 2019. For this reason, the applicant is not comfortable with the management accounts (regulatory returns) that 3Sixty has shared with the applicant. The applicant has found inconsistencies in the regulatory returns received from 3Sixty.
84. The management and directors continued to disregard their fiduciary duties and responsibilities of acting in the best interest of policyholders and the capital held to operate the insurance license was perpetually not sufficient. The remedial action that 3Sixty alluded to rectify the position did not come to fruition and the final proposal that they presented was not acceptable to the applicant for reasons set out in the founding affidavit.
85. The provisional curator, being experienced in matters of solvency, was appointed to assist 3Sixty to be restored to a financially sound position and to make it sustainable.
86. In direct contrast to these allegations, the applicant was acting in the best interests of policyholders as well as 3Sixty, by opting for provisional curatorship in the hope that the business can be handed back in a solvent and stable position.
87. The opposition to the applicant's efforts to restore 3Sixty to a financially sound and stable position is therefore regrettable.
88. The application for the provisional curatorship order was not one that had been taken lightly and without giving 3Sixty an opportunity to restore itself to a financially sound and stable position. In fact, they were given 12 months to remedy the situation which they failed to do and in fact, their financial position worsened.
89. The capital held by 3Sixty was below the prescribed MCR (**Minimum Capital Requirements**) level, and „indicates that inadequate actuarial modelling was done to

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calculate the future value of the insurance obligations, nor was the products priced in a manner that allows for sufficient capital to be set aside each month to build up a buffer.

90. Operating below the MCR for the period that 3Sixty did, is an indication of the tolerance and co-operation provided by the applicant, as this is the absolute minimum, leaving no margin for adverse claims experience, expense overruns or any other shock to the balance sheet.
91. Covid-19 is, by definition, an adverse experience and holding the absolute minimum amount of capital instead of an additional buffer over what is required SCR, ultimately caught up with 3Sixty.
92. All claims that the applicant was intolerant, biased or acting maliciously are therefore invalid, based on a time and intervention basis to allow for better operational strategies to be implemented in order to build up the capital.
93. The opportunity to source funding therefore had to be handed over to an independent, and adequately skilled individual, due to 3Sixty's management, board and shareholders, failing to do so over a period of time sufficient to engage the market, and or optimise operations.
94. The various strategies set out later in this affidavit verify that sufficient time and grace was provided to restore capital, yet none were achieved.

**Ad paragraph 21**

95. Again, 3Sixty demonstrates that it is not familiar with the provisions of the Insurance Act as read with the Financial Institutions (Protection of Funds) Act. These expressly contemplate an ex parte application for a provisional curatorship order to be sought.
96. I deny that there was anything untoward about an ex parte application.

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**Ad paragraph 22.1**


97. The example provided in paragraph 22.1 is not the board of 3Sixty being magnanimous. The LACDT ought not to have been taken into account in the first place in the calculation of the SCR. Furthermore, there was a regulatory duty on the management and the board to fully disclose such information, and concealing it would have attracted regulatory action once discovered by the applicant.

**Ad paragraph 22.2**

98. Regarding the With-Profit Policyholder Funds withdrawals by 3Sixty:
99. 3Sixty fails to disclose that an amount of R70 million was withdrawn from the With-Profit policyholder funds without prior approval from its Independent Head of Actuarial Function in January 2021. , This is a requirement from a governance perspective.
100. On or about 23 September 2021, 3Sixty advised the applicant that it would require a further withdrawal from the With-Profit policyholder fund as it would not be able to meet their monthly obligations in October 2021.
101. As stated in annexure KM5, they later retracted this statement as the claims were not as high as initially thought, they withdrew their bonus from the with-profit funds and cancelled unprofitable business. This retraction of the notification was very peculiar.
102. This initial alert to the applicant left the applicant with concerns as to why 3Sixty had initially thought they would not be able to meet their obligations in October 2021.

**Ad paragraph 22.3**

103. It is correct that Gerdus Dixon of Deloitte was appointed by the applicant and that a report was prepared. I deny that there were no material adverse findings made in the



report. The report made certain recommendations and 3Sixty failed to follow up on those recommendations. The fact that the applicant did not follow up on the implementation of these recommendations, and rather shifted its focus to restoring the solvency of 3Sixty, does not mean that the applicant thought nothing should be done in relation to these recommendations. These recommendations should still be implemented.

104. I deny that any statements made in the founding affidavit were defamatory in nature or were made with malicious intent.

105. Save as aforesaid, the remaining allegations contained in this paragraph are denied.

**Ad paragraph 22.4**

106. Premiums were increased, but an application for exemption was submitted after the increase had already been implemented.

107. It is also clear from the FSCA's letter attached as annexure "PA9", that the FSCA did not approve the application.

**Ad paragraphs 22.5 and 22.6**

108. For reasons set out in the founding affidavit, and in this affidavit, the applicant no longer believes that 3Sixty's directors are fit and proper.

**Ad paragraph 23**

109. The applicant denies that it misled the above Honourable Court in December 2021 and that there is any basis for proceeding with the anticipation of the return date on 1 February 2022.

**Ad paragraph 24**

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110. To the extent that the grounds for the application are correctly summarised, they are admitted.

**Ad paragraph 25**

111. These allegations are denied.

**Ad paragraphs 26 to 28**

112. I deny the allegations in these paragraphs. The QRT's were indeed used by the applicant to assess the solvency of 3Sixty.

113. The authority has relied on the QRT's received from 3Sixty and these are in fact attached to the founding affidavit as annexures FA2.1 to 2.11. It is therefore incorrect to state that the applicant only referred to management accounts to the absence of QRTs'.

**Ad paragraph 29**

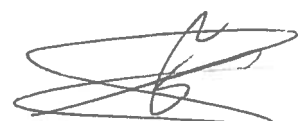
114. The point regarding the deferred tax asset was used in the founding affidavit as an illustration of the applicant's concerns regarding the accuracy of 3Sixty's unaudited financial statements.

115. I also deny that deferred tax assets have no impact on the SCR. The removal of the deferred tax assets in fact deteriorates the SCR cover even further.

**Ad paragraph 30**

116. The applicant notes the contents of the paragraph but I submit that this does not improve the solvency position in any way.

**Ad paragraph 31**

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117. I deny that the applicant acted on "suspicions". The contents of the founding affidavit and the annexures thereto, clearly demonstrate the factual basis on which the application was instituted and the order was granted.

**Ad paragraph 33**

118. The steps set out by 3Sixty in the meeting of 6 December 2021 and its letter dated 7 December 2021 did not allay the applicant's concerns in any manner as the submissions were wholly incomplete and void of any credible steps taken up to that point.

**Ad paragraphs 34 to 36**

119. The applicant denies that 3Sixty proved able to recapitalise and that it has not adequately considered the internal recapitalisation plan.

120. An internal recapitalisation plan was presented to the applicant at a meeting on 6 December 2021, after the applicant was advised that the investment by Salt EB, submitted previously as a recapitalisation plan to restore solvency, would not take place in 2021.

121. I deny that the applicant did not adequately consider the internal recapitalisation plan. If one has regard to paragraphs 35.39.5 and 35.40.2 of the founding affidavit, it is clear that the applicant was not taking into account the full R180 million and had deducted the R50 million that served as security for Doves' obligations. The recapitalisation plan, as also set out in the founding affidavit, was wholly incomplete and at that stage did not provide the applicant with the assurance it required that the plan would resolve the solvency issues.

122. It is also clear from the letter attached as annexure FA32 to the founding affidavit that 3Sixty acknowledged that it was yet to resolve the SCR issue. It is therefore

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disingenuous for 3Sixty to now suggest that there were misrepresentations by the applicant.

123. Save as set out above, these allegations are denied. In any event, the calculations that are set out in annexure KM9 are not calculations that the applicant's actuary agrees with. It is also telling that 3Sixty's actuary does not set out whether or not the SCR will be, as is required, above 1. In fact, if a property portfolio of R122 million is properly taken into account, together with other factors such as operating expenses in relation to the properties, and how marketable the properties are, the SCR of 3Sixty at the time was still less than 1, and this was acknowledged in the 7 December 2021 letter (annexure FA32 to the founding affidavit) from 3Sixty to the applicant.
124. Save as set out above, these allegations are denied.

**Ad paragraph 37**

125. The claims that were paid in September 2021 were paid after numerous concerns about the way 3Sixty's business was being conducted were raised by the FSCA. The concerns of the FSCA is evident from annexure FA22 to the founding affidavit.
126. The worth of the property portfolio, which is according to 3Sixty, R122 million, did not allow 3Sixty to meet the SCR. 3Sixty's SCR remained below 1 even after properly taking into account the property portfolio of R122 million.
127. The applicant was not aware of the legal advice received by 3Sixty and 3Sixty did not share such legal advice with the applicant. It is therefore preposterous to suggest that such legal advice should have been disclosed to the above Honourable Court.
128. There is no indication from the answering affidavits that the registration of transfer documents have been lodged with the Deeds Registry and it therefore seems that the



applicant's prediction that it is highly improbable that the transfer of properties would occur by 31 January 2022, had proved correct.

129. The applicant denies that it engaged in "reckless speculation".
130. The applicant does not agree that it is the signature of the agreement by both parties that is the critical event. 3Sixty would not be able to realise any of the properties if they needed to meet claims, if the properties were not registered in its name.
131. I deny that the applicant has engaged in unjustified speculation. The valuation certificates attached as annexure KM11 to the answering affidavit was not previously provided to the applicant. The valuation is in any event more than one year old. The applicant was only provided with a spreadsheet containing a list of properties and their values.
132. In the limited time available to the applicant to deliver this affidavit prior to 1 February 2022, it has not been possible to cause independent valuers to be appointed. This again demonstrates the prejudice being suffered by the applicant in having to deal with the answering affidavit within highly unreasonable time periods set by the respondents.
133. The applicant denies that the Internal Recapitalisation Plan submitted by 3Sixty is viable and significantly improves 3Sixty's financial soundness.
134. At no stage, did 3Sixty's actuary indicate that 3Sixty had become financially sound. To the contrary, if one has regard to the table at the end of annexure KM9, it is clear that 3Sixty's SCR remained below 1. It is therefore unfortunate for 3Sixty to try to accuse the applicant of failing to disclose the true facts to the above Honourable Court. Instead, it is the deponent to the answering affidavit that is trying to distort the true factual position.

**Ad paragraphs 39 to 44**

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135. If one has regard to annexure KM12, it is clear that information required by the auditors was not timeously provided to them. In fact, as late as 21 September 2021, the auditors had only been provided with a draft report by the actuary.
136. The deponent to the answering affidavit is not being candid by suggesting that the delays were caused by the auditor.
137. It is also disappointing for the deponent to the answering affidavit to downplay the failure to ensure that audited financial statements for 3Sixty is prepared. The last set of audited financial statements that were produced for 3Sixty is at 31 December 2019.
138. If one has regard to the delays in the finalisation of the audit for the 2020 financial year, together with the following:
- 138.1. the applicant has been engaging with 3Sixty since about December 2020;
- 138.2. the applicant only applied to place it under provisional curatorship after about a year and after numerous undertakings by 3Sixty had not been met; and
- 138.3. after the FSCA expressed concerns about the way 3Sixty was conducting business and certain complaints were raised about the failure of 3Sixty to timeously honour claims;
- there is no basis to suggest that the application for provisional curatorship was an inappropriate response by the applicant.
139. Ultimately the board is responsible for ensuring that audited financial statements are produced within four months of the financial year end and they have failed to ensure that this occurred.

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140. To place the blame at the door of the auditors is an attempt to transfer such responsibility to the auditors. The board of directors should not be allowed to escape from their responsibilities.

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

**Ad paragraph 45**

142. Annexure KM14 to the answering affidavit does not suggest that 3Sixty is in a sound financial position. To the contrary, it does not currently meet the SCR and MCR.

143. The suggestion that after the properties are transferred, 3Sixty will be in a sound financial position, is not supported by any information contained on annexure KM14.

**Ad paragraph 46**

144. While there may be executive turnover at small insurance companies, this is certainly not at a high rate. The turnover at 3Sixty was uncharacteristic of the industry and is a cause for concern. With stable executive management in place, even through COVID-19 times, early interventions could have been introduced to mitigate certain of the risks created by the COVID-19 pandemic. The majority of small insurance companies have survived, despite the challenges posed by the COVID-19 pandemic.

**Ad paragraph 47**

145. The applicant did not criticise 3Sixty's board for dismissing its CEO.

146. The dismissal of the CEO, does, however, illustrate that the applicant had insufficient controls in its business to control irregular and unauthorised expenditure.

**Ad paragraphs 48 and 49**

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147. Again, 3Sixty concedes that it did not have proper controls in its business and that was a basis for the removal of the CEO. Any organisation which loses its chief executive officer and chief financial officer (key executives) in quick succession will find it difficult to thrive. I deny that the applicant failed to disclose material facts to the above Honourable Court and that it was overzealous in placing 3Sixty under provisional curatorship.

148. I deny that there is any ground for the discharge of the order.

**Ad paragraphs 50 to 52**

149. As stated earlier, the payment of claims in September 2021 is pursuant to concerns that had been raised by the FSCA and were not paid out of 3Sixty's own volition.

150. I deny that the payment of the claims in September 2021 is an indication that 3Sixty was not facing a liquidity crisis.

**Ad paragraph 53**

151. 3Sixty shares no details of the suspicions that the claims were uncharacteristically high and why a long investigation was necessary. The only reasonable inference to be drawn in these circumstances is that there was no merit to the suspicions and that because it was in a financially unsound position, the payment of claims were being delayed.

**Ad paragraphs 54 to 57**

152. The applicant disputes that no policy of insurance is in place between 3Sixty and CINPF members. The provisional curator has access to emails which suggests that there are policies in place between 3Sixty and CINPF.

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153. While 3Sixty contends that the claim of R36 million due by 3Sixty to CINPF is unfounded, it gives no indication of whether CINPF have valid claims against 3Sixty.
154. I also attach a complaint received from the Concerned Citizens Forum addressed to CINPF members which raised concerns with the situation at 3Sixty and stating that policies are at risk. I attach a copy of this complaint as annexure "PA10."
155. I deny that there are legitimate grounds for setting aside the provisional curatorship order.

**Ad paragraphs 58 to 65**

156. 3Sixty fails to disclose that funds from the With-profit Policyholder fund had been withdrawn without the prior permission of the Independent Head of the Actuarial Function.
157. It is remarkable that despite the references to 3Sixty experiencing a liquidity strain, and in order to avoid defaulting on claims to policyholders, 3Sixty required a R70 million loan from the With-Profit Policyholder funds in January 2021, 3Sixty tries to suggest that it is not facing liquidity challenges.
158. If 3Sixty was in a financially sound position, it would not have required a R70 million loan.
159. It is also disingenuous to suggest that there has been a repayment of R14 million to the With-Profit Policyholder fund, as no such R14 million was transferred from 3Sixty back to the With-Profit Policyholder Fund. Instead, 3Sixty contends that it is entitled to administration fees amounting to R14 million from the with-profit fund and it is not going to insist on the With-Profit Fund paying that amount but rather to off-set the R14 million against the R70 million loan.



160. 3Sixty was unable to repay the full amount of the loan in 2021 and the loan has now been rolled over for another twelve months. The applicant therefore maintains that the With-Profit policyholders as well as other policyholders are at risk.
161. Save as set out above, these allegations are denied.

**Ad paragraph 66**

162. Various undertakings relating to the recapitalisation made by 3Sixty to the applicant were not adhered to. 3Sixty had a period of one year to make itself financially sound and failed to do so.
163. I deny that the applicant has not acted in good faith and the applicant gave 3Sixty more than a reasonable time to become financially sound.

**Ad paragraphs 67 to 83**

164. Most insurance companies have an internal SCR cover target which is more than the SCR cover of 1 that is required and that would take into account management assumptions.
165. The standard formula as it stands, had been arrived at during the consultation process on the Insurance Act, 2018, after a presentation to Parliament was made by a number of small insurers, including 3Sixty, who complained that the standard formula was too onerous for small insurers, in particular due to the impact one of the components making up the formula, the life catastrophe SCR, would have on small insurers.
166. Parliament then instructed that the life catastrophe SCR component of the standard formula be revisited. This was done and a new standard formula was presented again to Parliament, which was ultimately accepted and implemented.

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167. The current version of the standard formula came into effect in July 2018, as part of the Insurance Act.
168. 3Sixty did not apply to court to review and set aside the standard formula and it cannot therefore now, be seen to be complaining about the standard formula.
169. In addition, the Insurance Act allows an insurance company to apply for a different formula to be applied to it, if it is able to satisfy the applicant that the standard formula is not applicable and does not reflect the risks it is exposed to. No such application was received by the applicant from 3Sixty.
170. 3Sixty also fails to indicate that it could have sufficiently mitigated some of its risks by taking out reinsurance. Reinsurance is a mechanism to reduce the amount of insurance obligations and in turn their solvency capital requirements, thereby contributing to an improved financial soundness position. It failed to do so.
171. It is correct that the applicant permitted insurers that were experiencing conditions of financial unsoundness to continue operations, but this was only if their MCR cover was above 1, but their SCR cover was below 1.
172. An indulgence was granted to 3Sixty. Its SCR cover was below 1 from about September 2020 and the applicant allowed it to continue trading and take steps to improve its SCR cover until December 2021. Despite numerous undertakings from 3Sixty, its SCR cover did not improve during this period.
173. I should also point out that 3Sixty's MCR cover also dipped below 1 in about December 2020.
174. Save as set out above, these allegations are denied.

**Ad paragraphs 84 to 91**

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175. I have no knowledge of these allegations, but as is evident from the letter attached as annexure "PA9, the FSCA denies that it acted in an untoward fashion and its conduct led to the collapse of the Salt EB transaction.
176. Save as set out above, these allegations are denied.

**Ad paragraphs 92 to 104**

177. 3Sixty had not received a portfolio of properties by 1 December 2021 (which is the date by which the applicant required 3Sixty to complete its recapitalisation) and there is no explanation for why the completion of the transfer of the properties have not taken place. Neither is there an explanation for why Doves did not realise the properties and invest the sale of the properties as capital into 3Sixty.
178. I deny that the applicant has not acted in good faith and that the applicant has acted with undue haste and recklessness. It is unfortunate that such serious allegations are made against the applicant when the applicant gave 3Sixty almost a year to improve its MCR and SCR cover.
179. I deny that the applicant's concerns are speculative and unsubstantiated. 3Sixty failed to share with the applicant the draft sale agreements, when the internal recapitalisation plan was first presented, which was prior to the curatorship order being granted, and neither did they share with the applicant the valuations that they had in place. The applicant was only provided with a spreadsheet containing a list of properties and their alleged values.
180. Challenges with realising commercial property during the COVID-19 pandemic is well known and it should therefore not have come as a surprise to 3Sixty that there was

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reason to doubt the R122 million, as the value that would be realised from the sale of the properties, should the need to realise the properties arise.

181. I deny that the FSCA delayed the Salt EB transaction.
182. If the property portfolio is as worthy as 3Sixty suggests, they ought to have had no difficulty in securing external funding, with Doves guaranteeing their obligations and the property portfolio serving as security for Doves' obligations.
183. I deny that the applicant deliberately attempted to mislead the above Honourable Court. As pointed out earlier, even after taking into account the property portfolio, 3Sixty's SCR cover was still below 1 and therefore inadequate.
184. 3Sixty misunderstands the import of the joint statement. The applicant never intended to give insurance companies endless indulgences to have SCR covers below 1. 3Sixty operated with MCR and SCR cover less than 1 for over a year.
185. I deny that the recapitalisation plan was disregarded. The applicant was not convinced that the recapitalisation plan would allow 3Sixty to meet its SCR cover requirements, based on what was submitted to the applicant.
186. The fact that the SCR cover may have improved to 75% ignores the reality that the cover was still below 100% and therefore inadequate.
187. The information set out in annexure KM14 is not backed up by any evidence.
188. The suggestion that 3Sixty does not have a crisis is disingenuous, because as late as 7 December 2021 (see FA32 to the founding affidavit), 3Sixty acknowledged that it was yet to resolve its regulatory SCR.

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189. As is set out in the founding affidavit and earlier in this affidavit, there have been delays in the payment of claims by 3Sixty.
190. The R14 million reduction of the loan was not in fact a cash payment of R14 million from 3Sixty to the With-Profit Fund.
191. The fact that there are 53 properties is a clear indication that the process of selling the properties and realising the value will be a challenging and time consuming one.
192. I note the suggestion that an independent property valuator has indicated that 50% of the properties could be realised within three months. If that was the case, why have the properties not already been realised and why have the sale proceeds not been used by Doves to recapitalise 3Sixty.
193. The fact that the sale agreements may become irreversible, is not an indication that that immediately improves 3Sixty's financial soundness.
194. If the provisional curatorship is allowed to continue, the provisional curator will appoint expert valuers to value the property portfolio and she will be in the best position to advise the applicant and the above Honourable Court if the property portfolio is as valuable as 3Sixty suggests it is and whether it makes 3Sixty financially sound.
195. There is a suggestion that the economic interest in the properties could have been transferred before 31 December 2021, but there are no allegations regarding when draft agreements were prepared and why those agreements were not signed before 21 December 2021, when the internal recapitalisation plan had been presented to the applicant on 6 December 2021.

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196. I should also point out that annexures KM21 and KM22 had been secured a few weeks after the provisional curatorship had been granted. It was in any event not shared with the applicant prior to the delivery of the answering affidavit.
197. I am advised by the provisional curator that she was not being obstructive when she allowed the provisional offer to lapse.
198. None of the independent valuation reports had been shared by 3Sixty or Doves with the applicant.
199. I deny that the applicant has not acted responsibly, before approaching the above Honourable Court.
200. Save as set out above, the remaining allegations are denied.

**Ad paragraphs 105 to 116**

201. In some instances and if circumstances warrant it, the applicant applies immediately for the liquidation of an insurance company. For example, Saxum Insurance was placed into liquidation without first being placed under curatorship. The applicant applies for provisional curatorship when it believes that with possible restructuring via input from an independent curator, the business of the insurance company can become such that the MCR and SCR cover levels required by the applicant are met or governance failures or internal control failures can be addressed via input from an independent party.
202. 3Sixty correctly identifies that New Era Life Insurance had been lifted out of curatorship. The fact that the business at the time of the lifting may have been different from the nature of the business when it was first placed in curatorship. is not due to the curatorship and it cannot be stated that the curatorship was destructive to the business.,

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The business ran into trouble because the majority shareholder had encumbered the assets of New Era Life Insurance for his personal obligations.

203. The allegations in paragraph 108 of 3Sixty's answering affidavit create the impression that Resolution Life no longer exists. While Resolution Life has had two name changes, and today exists as Viva Life Insurance and it had a change in shareholding, the company still exists and operates. The curatorship facilitated the introduction of new shareholders and capital to allow the company to survive.
204. It is not correct to say that the provisional curatorship of 3Sixty would most likely result in the liquidation of 3Sixty. The provisional curatorship still allows the current owners to introduce the necessary capital to meet the MCR and SCR cover levels and if there is cooperation between management of 3Sixty and the provisional curator, a liquidation could most certainly be avoided.
205. It is a myth to suggest that the curatorship is devastating and disempowering to workers. Workers will have the comfort of an independent party like the provisional curator, who is an experienced actuary with skills in the insurance market as well and under her guidance and management's cooperation, the appropriate restructuring can occur in order to ensure that 3Sixty is not liquidated.
206. The purpose of the curatorship application is not to prevent or lessen competition in the life insurance market. Instead, it is an attempt to assist 3Sixty in restructuring or finding alternative capital so that the current regulatory failures by 3Sixty can be addressed and policyholders can be protected.
207. Thus far, no employees of 3Sixty have been retrenched or dismissed. I therefore deny that jobs at 3Sixty are at risk due to the curatorship.

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208. The Transport Sector Retirement Fund (**TSR**) had prior to curatorship given notice of termination and one of the reasons cited was that 3Sixty had failed to secure reinsurance for its obligations. Consequently, the termination by TSR was due to a failure by 3Sixty's management and not due to the curatorship.
209. The provisional curator has written to both CINPF and the BMW Fund (who are also major contributors to the revenue of 3Sixty) about the curatorship and they have not raised any concerns about the provisional curatorship order.
210. The Chairman of CINPF had in fact prior to the curatorship written to the applicant ("on an urgent basis") expressing concerns about the financial soundness of 3Sixty. A copy of this letter is attached as annexure "**PA11**".
211. The provisional curator denies that she is causing delays in payments and service provider invoices. There have been instances in which claims were not paid timeously, but this is because 3Sixty had not liaised with the provisional curator and without the provisional curator's permission addressed letters to NUMSA saying that claims will not be paid because of the provisional curatorship.
212. This is despite the fact that the provisional curator has been approving payments of claims almost on a daily basis from about one day after she was appointed.
213. On 23 December 2021, Ms Luthaga gave the provisional curator some details about the property transaction referred to in paragraph 114.3 of the answering affidavit. The provisional curator emailed her on the same day and asked her to send the provisional curator the draft agreements, tax and legal opinions and other supporting documents so that she could tick the boxes regarding the valuation of the properties, the impact on MCR and SCR and the inter-company transactions that would be triggered between 3Sixty and Doves.

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214. On 23 December 2021, the provisional curator received a draft disposal agreement, which is the agreement referred to in paragraph 114.3 of the answering affidavit, and the tax opinion. Valuations for the properties were not attached. A copy of these emails referred to in this and the previous paragraph are attached as annexure "PA12". The disposal agreement had been sent to the provisional curator for information purposes. Some of the documents shared on 23 December 2021 were out dated and the provisional curator requested updated documents.
215. On 5 January 2022, the provisional curator was sent a 3Sixty board resolution by Ms Luthaga relating to the property transaction referred to in paragraph 114.3 of 3Sixty's answering affidavit. Her covering email read as follows:
- "As discussed earlier, this is the resolution that we plan to circulate to all Board members first thing tomorrow morning.*
- This is for your information. If you have any concerns kindly let me know."*
216. On 6 January 2022, Ms Luthaga requested a 3Sixty employee to circulate the resolution. A copy of the emails of 5 and 6 January 2022 together with the draft board resolution are attached as annexures "PA13".
217. On 12 January 2022, the provisional curator received the valuation reports for the properties.
218. On 14 January 2022 Ms Luthaga sent an email to the provisional curator with an amended draft of the disposal agreement. She was asked to sign the agreement by 17h00 that day. She was not prepared to do so, because she had sent the draft disposal agreement to her tax expert and she wanted input from experts regarding the valuations set out in the appendix to the agreement.

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219. The provisional curator could not understand why such pressure was being put on her when the parties to the agreement are related parties.
220. Bearing in mind that the valuations were only received by the provisional curator on 12 January 2022 and she needs her team to consider the valuations and that they relate to 53 different properties, 3Sixty is unfairly criticising the provisional curator for not signing the disposal agreement.
221. The provisional curator's team is still busy with its exercise to verify the valuations.
222. The provisional curator also requested a copy of the lease agreements referenced in the disposal agreement, but she was advised that the lease agreements are not in place and would only be concluded after the disposal agreement was signed.
223. If:
- 223.1. The values can be verified;
- 223.2. It would be easy to realise those properties;
- 223.3. The sale proceeds result in 3Sixty's MCR and SCR covers exceeding 1; and
- 223.4. The provisional curator's report does not identify any significant issues or risks relating to the business of 3Sixty;
- the applicant will consider applying for the discharge of the rule nisi.
224. I deny that curatorship is undesirable on the facts related to this case. The reality is that over a year had been provided to 3Sixty to meet the relevant requirements, and they failed to do so.





225. The reference to allegations of improper motives is mischievous. Bearing in mind that the applicant engaged with 3Sixty for over a year, it is clear that the curatorship application was not influenced by any improper motive.
226. The applicant denies that curatorship was not an appropriate regulatory intervention on the facts of this case.
227. Save as aforesaid, the allegations contained in these paragraphs are denied.

**Ad paragraphs 117 to 119**

228. For reasons set out earlier in this affidavit, the applicant denies that the Internal Recapitalisation Plan was dismissed unfairly and irrationally.
229. The shareholder in 3Sixty did not need to transfer the properties to 3Sixty. It could either have realised the properties and transferred the sales proceeds to 3Sixty. It could also have offered the properties to a funder to serve as security for loans granted and the proceeds of the loans could have been invested in 3Sixty. 3Sixty is therefore being disingenuous by suggesting that the curatorship has been detrimental.
230. The applicant also denies that the premium and benefit review was successfully and fully implemented. 3Sixty's attempts to increase premiums were found by the FSCA to have contravened the Policyholder Protection Rules. 3Sixty applied for exemption, but the FSCA declined the application for exemption.
231. The preliminary investigations conducted by the provisional curator's team, indicates that NUMSA policyholders have not had to pay an increase in premiums for about 10 years. This was mentioned to the provisional curator by Mr Msibi, when she first met with him. The explanation provided to the provisional curator at the time suggested that there was no proper analysis done in regard to the NUMSA book of business and



therefore an increase in premiums was not easy to justify. The provisional curator's team need time to investigate this properly.

232. It has come to the attention of the provisional curator that the forecasts prepared by 3Sixty's actuary suggests that the expenses were not decreasing but instead were increasing. A copy of this forecast is attached as "PA14".
233. 3Sixty states in paragraph 117.3.2 of its answering affidavit that its operational expenses averaged R18 million per month for the financial year ending 31 December 2021, i.e. R210 million for the annum. This is not borne out by the regulatory reports which were submitted by 3Sixty to the applicant. According to the Q3 2021 regulatory report, the operating expenses for the immediately preceding 12 month period was R141 945 000.00, which when divided by 12 amounts to R11 828 750 per month, which is significantly less than the R15 million referred to in paragraph 117.3.2 and suggests that the reports sent to the applicant were inaccurate. If there was a typo in paragraph 117.3.2, and the reference to 31 December 2021, should have read 31 December 2020, the Q4 2020 regulatory report, reflected operating expenses for the 2020 year as R113 939 000.00, i.e. approximately R9.4 million per month (attached as annexure "PA15"). The fact that the regulatory reports submitted to the applicant do not corroborate 3Sixty's own records only serves to heighten the applicant's concerns regarding 3Sixty's financial soundness and internal governance.
234. The under-reporting of the operating expenses would have boosted the MCR cover in the sense that an accurately reported operating expense would have increased the MCR and decreased the MCR cover. The MCR cover for 2020 and 2021 would have been less than what the applicant was led to believe, which might have led to the applicant instituting supervisory action sooner, which could have avoided the current dilemma. Such underreporting / misreporting has exacerbated the situation of 3Sixty.



235. Prior to instituting the application for provisional curatorship, I consulted with Roelof Jooste Steynberg, who is an experienced actuary and part of the Capital Team within the applicant. It, it is therefore incorrect to suggest that there was an absence of an actuary from this application.
236. I deny that the applicant did not exercise due care and diligence in dealing with this matter and rushed into many inaccurate conclusions on financial soundness.
237. The fact that 3Sixty's Net Asset Value (**NAV**) decreased from R29 million in July 2021 to R19 million in August 2021 is a clear indication that there was reason for concern. The fact that it may have gone up to R23 million in October 2021 still does not address the significant drop that previously occurred. More fundamentally, it is not clear why they do not produce updated figures as at December 2021 or at least the end of November 2021. The NAV for November 2021, as is evident from annexure "PA16" is approximately R12 million. Conveniently, 3Sixty does not disclose this to the above Honourable Court.
238. The above Honourable Court will be requested to draw a negative inference in this regard.
239. I should also highlight that the numbers reflected in the audited financial statements and derived from the accounting standards are very different and generally more positive for a company than the measurements that occur in relation to SCR and MCR covers. The measurement tools used by the applicant for all insurers is SCR and MCR covers..

**Ad paragraphs 119 and 120**

240. The allegations contained in this paragraph are denied. The applicant bases its solvency assessments solely on Eligible Own Funds.

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241. The applicant denies the remaining allegations contained in these paragraphs.

### **Ad paragraph 121**

242. I note the concession by 3Sixty that its MCR cover was negative from July 2021 to October 2021. There was a deterioration in the MCR cover in the months of August and September 2021. While there was a small improvement in October 2021, the MCR cover was still significantly less than where it ought to have been. This is despite the fact that 3Sixty had been granted an indulgence by the applicant from December 2020 to improve its MCR and SCR covers.

243. I also emphasise that 3Sixty has been trading with negative MCR and SCR covers since at least January 2021. Consequently, it is fallacious to now accuse the applicant of acting in an ill-advised and rushed fashion.

244. As at the end of November 2021, 3Sixty's MCR cover was -1.69, which is only marginally better than the MCR cover of -1.70 for October 2021, but still significantly less than what is prescribed and required by the applicant.

### **Ad paragraphs 122 and 123**

245. I note 3Sixty's concession that the SCR cover deteriorated from July 2021 to September 2021. While there was an improvement in October 2021, it was a marginal improvement to -0.66, which is still significantly less than what is required in terms of the Prudential Standards.

246. 3Sixty also misleads the above Honourable Court by suggesting that there was an improvement in SCR cover in November 2021. To the contrary, there was a deterioration in November 2021, with the SCR cover going back down to -0.69 as is evident from the November 2021 monthly report submitted by 3Sixty and attached as annexure "PA16".



247. I should also highlight that the marginal improvement of SCR cover from September 2021 to October 2021 does not really help, as the SCR cover of -0.66 is still significantly less than the required 1.

248. The remaining allegations contained in these paragraphs are denied.

#### **Ad paragraphs 124 to 126**

249. Own Risk and Solvency Assessment (**ORSA**) is not meant to replace the MCR and SCR cover requirements. ORSA gives more information to the regulator as to the own assessment of the company's solvency position as signed off by the board of directors of a company. The ORSA reflects how future business plans impact the future risk profile of the company and its solvency position on a base case and under certain stresses. It is therefore a forward looking assessment. It is important to note that the ORSA is based on a number of assumptions and I need not explain how during COVID times, assumptions can prove to be incorrect. For example, 3Sixty's ORSA of 2019 would not have reflected challenges to 3Sixty's ability to meet SCR and MCR cover requirements in 2020 and 2021.

250. 3Sixty has not submitted a May 2021 ORSA to the applicant.

251. I also attach as annexure "**PA17**" a draft ORSA prepared as recently as 14 January 2022 by 3Sixty's actuary, who records the following in paragraph 1.8: "*As of 30 November 2021, the Company is insolvent on a Solvency Assessment and Management ("SAM") basis with own funds to meet the MCR and SCR estimated at -R59.980 million and -R44.048 million respectively.*"

252. Accordingly, 3Sixty's own actuary has confirmed that it is in an insolvent position and it is therefore surprising that 3Sixty tries to suggest that there was no justification for the

provisional curatorship, particularly when one has regard to the fact that it had been given an opportunity since about December 2020 to improve its financial soundness and it failed to do so.

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

**Ad paragraph 127**

254. I deny that the applicant have misled the above Honourable Court.

255. I have already addressed the reasons for the provisional curatorship in the founding affidavit and the criticisms levelled by 3Sixty.

256. The remaining allegations contained in this paragraph are denied.

**Ad paragraph 128**

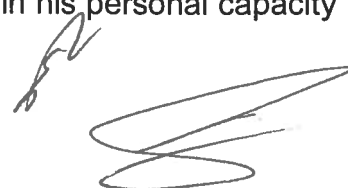
257. The allegations in this paragraph overlook the fact that 3Sixty was allowed, in conjunction with independent professionals it chose to use, to improve its MCR and SCR covers and bring it to 1 or above and it failed to do so.

258. The allegations are therefore denied.

**Ad paragraphs 129 to 131**

259. The allegations in these paragraphs ignore the fact that the audited financial statements of 3Sixty for the year ending 2020 have still not been produced and are late. This also makes it more difficult for the applicant to rely on figures provided in the monthly reports by 3Sixty to the applicant.

260. The applicant approved the appointment of the Independent Head of the Actuarial Function to be Mr Peter Withey. Mr Peter Withey is appointed in his personal capacity



but he is employed by KPMG. Annexure KM14 to 3Sixty's answering affidavit, is signed by Mr Withey, appears on the letterhead of Matlotlo Inc. When I queried why this was the case, I was advised by Mr Withey that he is carrying out his functions pursuant to a contract that was concluded with Matlotlo Inc. and not 3Sixty. This is an unusual situation as this was not disclosed to the applicant to enable the applicant to adequately assess and recommend certain controls relating to the engagement between the actuarial function and the HAF. In other words, Mr Withey, who is the HAF for 3Sixty, which is a prescribed statutory role, is contracted to that role by the head of the First Line Actuarial Function of 3Sixty, Mr Mothapo, whose work he is required to oversee.

261. I am also amused to see the suggestion that the applicant should have relied upon the Independent External Auditor, when earlier in the answering affidavit, 3Sixty levels criticism at the Independent External Auditor and accuses the external auditor of delaying the finalisation of the audited financial statements for 2020.
262. The remaining allegations contained in these paragraphs are denied.

**Ad paragraphs 132 to 133**

263. 3Sixty chooses not to attach the Deloitte report and I submit that they do so for cynical reasons. They were aware that the report highlights a number of material adverse findings. These adverse findings included the following:

- 263.1. Historic expense payments during 2018 and 2019 where the commercial benefits to 3Sixty are unclear. The beneficiaries of these payments were NUMSA, its members and leadership;



263.2. The carrying value of a loan receivable from Doves Group in the financial statements and annual regulatory return was not presented on a basis consistent with the requirements of IFRS and the Insurance Act;

263.3. Related party transactions that either have no underlying agreement or the agreement is incomplete or the agreement included terms that were not enforceable were identified;

263.4. Loans advanced to related parties where the requirements of the Companies Act and the Insurance Act as it relates to financial assistance were not complied with. Also no evidence was found that the loans were approved by 3Sixty's board of directors prior to it being advanced;

263.5. A matter raised at an audit committee meeting was not followed up timeously;

263.6. A loan from 3Sixty to 3Sixty Group partly funded the acquisition of shares in Salt EB. The loan was interest free and repaid five months later; and

263.7. There was no evidence that 3Sixty funded Biopharmaceuticals directly or indirectly.

A copy of the Deloitte report, together with the cover letter under which it was sent to 3Sixty by the applicant, is attached as annexures "PA18" and "PA19".

264. The Deloitte report highlights the internal governance failures at 3Sixty.

265. It is therefore surprising that 3Sixty seems to suggest that the Deloitte report exonerated it.

**Ad paragraph 133**





266. The appointment of a statutory manager can only occur with the approval of 3Sixty. In circumstances where 3Sixty clearly does not fully appreciate the deficiencies in its financial soundness and internal governance, it would not have agreed to the appointment of a statutory manager.

**Ad paragraphs 134 to 135**

267. The provisional curator is Head: Actuarial, Predictive Analytics and Insurance Innovation at BDO Advisory Services (Pty) Ltd (**BDO**).

268. Together with the team that supports the provisional curator, there is collectively over 80 years of actuarial, risk and valuation experience.

269. Prior to joining BDO, she was a Financial Advisor (primarily developing products and selling life products) from 2006 to 2008 at Old Mutual. She thereafter joined Deloitte in 2008 in the actuarial team as an Actuarial Analyst until 2011.

270. In 2011, the provisional curator moved to The Strategy and Innovation Team at Deloitte.

271. While at Deloitte, the provisional curator was involved in rendering services to a number of insurance companies including support in the SAM Project.

272. In 2013, the provisional curator was head hunted by KPMG's Financial Risk Management Team and was a manager within the actuarial team. The team serviced a number of insurance clients.

273. In about 2015, the provisional curator was head hunted again and she joined Zurich Insurance Company as the Head of Pricing. Zurich subsequently decided to divest from South Africa and its business was sold to Fairfax trading as Bryte Insurance.



274. The provisional curator was then offered a position at Telesure as a Business Development Actuary. In April 2017, she was promoted to General Manager: Commercial Strategy and in March 2018, she was promoted to Group Marketing Actuary at an executive level which oversaw the operations of Dial Direct, First for Women, Auto and General, Budget, and One Life. Telesure is an insurance group.
275. In 2019, the provisional curator consulted to Pineapple, which is an insurtech company. While she consulted to Pineapple, she assisted with raising funding for a venture capital fund and via other forms of convertible debt instruments.
276. In November 2020, due to the COVID pandemic impacting the life insurance industry, the provisional curator was appointed as an Actuarial Specialist at PWC and serviced a number of PWC's insurance clients and helped them navigate the challenges posed by the COVID pandemic.
277. In August 2021, BDO approached the provisional curator and in September 2021, BDO appointed her as the Head of Actuarial, Predictive Analytics and Insurance Innovation.
278. The provisional curator has 17 years of experience in relation to insurance companies and her team have a combined over 80 years' experience of advising insurance companies.
279. The provisional curator is also a member of the Advisory Board of GirlCode, which is a non-profit organisation that promotes girls developing the necessary skills to become programmers. She is responsible for raising funds for GirlCode and has done so via engagements with a number of multinational companies.

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280. I also attach as annexures “PA19.1” the summarised CV’s of Tinashe Mashoko, Tapiwe Maswera, Tawanda Chituku and David Chimsitu, who are some of the members of the team that are assisting the provisional curator.
281. I therefore deny that the provisional curator is not suitably qualified. During the hearing of the urgent application on 21 December 2021, the Honourable Acting Justice Crutchfield requested the applicant’s counsel to take her through the resume of the provisional curator and was satisfied that she was an appropriate person to appoint.
282. I should also mention that I am not aware of any other black female in South Africa that has the credentials of the provisional curator and that has the support of team members that are as experienced as the individuals mentioned in the previous paragraph. The appointment of the provisional curator demonstrates the applicant’s commitment to support transformation and build capacity amongst black professionals.
283. I deny that the applicant has failed to act responsibly with care and diligence.
284. Save as set out above, the remaining allegations are denied.

**Ad paragraph 136**

285. I have already dealt with the provisional curator’s reasons for refusing to sign the agreement with Doves earlier in this affidavit. The provisional curator denies that she was remiss in signing the agreement and I agree with her reasons for electing not to do so.
286. When the agreement had been sent to the provisional curator for the first time, it was sent to her for information purposes and she was not asked to counter-sign the agreement within 14 days.

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287. The provisional curator did not request a two day extension until 14 January 2022 to finalise a review of municipal accounts.
288. I have no idea why a deadline was being on imposed on the provisional curator. These are related entities and there was no need to rush through the instruction, when the provisional curator's team was still working on verifying the valuations for the 53 properties.
289. The provisional curator cannot be presented with a *fait accompli* and be pressured into signing an agreement without being satisfied about the values and without getting advice about tax and legal implications.

**Ad paragraphs 137 to 139**

290. 3Sixty gratuitously attacks the provisional curator, the FCSA and the applicant, but fails to appreciate its inability to address regulatory requirements for over a year.
291. I refer to the letter attached earlier from the FSCA, from which it is clear that the FSCA disputes 3Sixty's allegations.
292. More importantly, despite criticising the FSCA's decisions, 3Sixty has taken no steps to review and set aside or appeal against the decisions of the FSCA. Those decisions therefore remain binding and there is no basis for the court to take into account unjustified attacks of those decisions.
293. Save as aforesaid, these allegations are denied.

**Ad paragraph 141**

294. I persist with the allegations contained in the founding affidavit and deny that there have been material facts that were omitted.

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**Ad paragraph 142**

295. I deny these allegations.

**Ad paragraph 143**

296. There is no merit to these allegations.

297. I also refer to the Deloitte report referred to above and that report clearly highlights that the applicant has legitimate concerns about the payment of unauthorised expenses and internal governance failures.

298. Save as aforesaid, the remaining allegations in this paragraph are denied.

**Ad paragraph 144**

299. For reasons set out in the founding affidavit, and earlier in this affidavit, these allegations are denied.

**Ad paragraph 145**

300. I am sure that the payments that are being made to individuals at NUMSA are not common knowledge and if the policyholders were aware of this, they would raise concerns.

301. As recorded in the Deloitte report, 3Sixty funded a party for Mr Jim's birthday and for the laptop of his daughter.

302. It is clear from the Deloitte report that 3Sixty has not been properly managed.

303. It is also clear from the social media messages attached as annexure "PA20" that policyholders of 3Sixty have not been entirely happy with the way 3Sixty was dealing with them.



304. The allegations contained in this paragraph are therefore denied.

**Ad paragraphs 146 to 148**

305. I refer to what is set out in the founding affidavit and earlier in this affidavit, and I deny these allegations.

**Ad paragraph 149**

306. I refer to what is set out earlier in this affidavit and deny these allegations.

307. I deny that the applicant has been unreasonable. 3Sixty already has had over a year to recapitalise and it failed to do so. In addition, 3Sixty's financial position had worsened.

308. The remaining allegations contained in this paragraph are denied.

**Ad paragraph 150**

309. These allegations have been denied. If the applicant was acting in bad faith, it would have already in July 2021 applied to place 3Sixty under curatorship.

**Ad paragraphs 151 and 152**

310. The applicant denies these allegations.

**Ad paragraphs 153 to 158**

311. I refer to what is set out in the founding affidavit and earlier in this affidavit and deny that the grounds for applying to place 3Sixty under curatorship are "invalid suspicions" and that a case for the provisional curatorship order and relief claimed on 21 December 2021 has not been made out.

312. The remaining allegations contained in these paragraphs are denied.

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**Ad paragraph 159**

313. 3Sixty is being disingenuous by trying to blame all of its challenges on the COVID-19 pandemic. It is clear from the Deloitte report that payment of unauthorised expenses and lapses in governance occurred even before March 2020, when the COVID-19 pandemic hit South Africa.

314. I refer to what is set out earlier in this affidavit about the FSCA and the Independent Head of Actuarial Function.

315. I deny that management and directors of 3Sixty incorrectly thought that the business had a liquidity strain. The business indeed had such a strain in September 2021 and this strain continues.

316. The remaining allegations contained in these paragraphs are denied.

**Ad paragraph 160**

317. The bulk of these allegations have been dealt with earlier in this affidavit.

318. I also refer to what is set out in the founding affidavit and earlier in this affidavit and I deny these allegations.

**Ad paragraph 161**

319. The applicant denies these allegations.

320. I refer to what is set out in the founding affidavit and earlier in this affidavit and respectfully submit that a proper case for urgency and for the order granted on 21 December 2021 was made out.

**Ad paragraph 163**A handwritten signature in blue ink, consisting of a stylized 'E' followed by a large, sweeping flourish.

321. The revenue lost by 3Sixty was due to its own incompetence and not due to the provisional curatorship. In this regard I refer to what is set out earlier in this affidavit regarding the termination by TRS.
322. The fact that four of the six insurers previously placed under curatorship were liquidated, does not mean that 3Sixty will be liquidated. If 3Sixty cooperates with the provisional curator and the provisional curator is allowed to conclude her investigations and implement restructuring, it may not be necessary to apply for the liquidation of 3Sixty.
323. If governance failures and misappropriation of funds continue to occur, the applicant may be left with little alternative but to apply for 3Sixty's liquidation. It is, however, too early to speculate on this. Interestingly, 3Sixty has only quoted the refusal to sign the disposal agreement as the reason for the provisional curator's inexperience. Given that they have been dealing with her for over a month, if she indeed was as inexperienced as they are making her out to be, they would have relied on numerous other examples to justify the contention that she is not suitable to fulfil the role of provisional curator.

**Ad paragraphs 164 to 166**

324. These allegations are denied.
325. The applicant seeks the striking off of this matter from the roll and the costs should be the costs in the cause of the curatorship.

WHEREFORE the applicant prays that 3Sixty's attempts anticipate the return date be struck from the roll for lack of urgency and the costs should be costs in the curatorship. Alternatively, 3Sixty's opposition to the provisional curatorship order should be dismissed with costs.

**NUMSA'S ANSWERING AFFIDAVIT**

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326. I reiterate that this this affidavit has been prepared under extreme time pressure. It is therefore not possible to deal comprehensively with each and every allegation contained in NUMSA's answering affidavit.
327. I submit that the majority of NUMSA's allegations contained in its answering affidavit have been addressed above.
328. Therefore, to the extent that any allegation in NUMSA's 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, is denied as if expressly traversed.

**Ad paragraphs 3 to 5**

329. I deny that NUMSA's Constitution, particularly clause 2(d)(iv)(14) as quoted by the deponent to the answering affidavit, clothes him with the necessary authority to institute the application for leave to be joined as a second respondent to this application.
330. In the absence of an appropriately worded resolution or delegation of authority, I submit that Mr Jim is not authorised to institute the joinder application on behalf of NUMSA and on this basis alone, NUMSA's request for relief ought to be dismissed.
331. I also deny that Mr Jim has personal knowledge of the facts contained in NUMSA's answering affidavit.

**Ad paragraph 9**

332. I have addressed the citation of 3Sixty above, and in particular, its previous name changes.

**Ad paragraphs 27 to 30**

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333. For the reasons set out above, I deny that the applicant has incorrectly asserted or misrepresented that the financial position of 3Sixty poses a risk to policyholders.
334. Furthermore, the risks of insolvency is a forward-looking measurement and therefore, whether 3Sixty has paid all NUMSA's claims in the past (which is denied), is not relevant for the current application. The issue is whether 3Sixty is in a position to meet its future obligations based on its current financial position.
335. I also respectfully submit that the issue of liquidity and solvency is not a matter of opinion. It is a matter of fact and the applicant has demonstrated that the requisite MCR and SCR covers have not been achieved, despite the applicant granting 3Sixty an indulgence since December 2020.
336. Save as aforesaid, the allegations contained in these paragraphs are denied.

**Ad paragraph 32**

337. Save to correct that the return date as per the rule nisi is 12 April 2022, these allegations are admitted.

**Ad paragraph 33**

338. NUMSA has not specified the date on which it became aware of the 21 December 2021 court order. I suspect that it is vague in this regard, because it became aware of the court order shortly after it was granted and despite this, it waited about a month to file its answering affidavit.

**Ad paragraph 35**

339. For the reasons set out above, I deny that the provisional curatorship was unwarranted.

**Ad paragraph 38**

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340. I deny that the applicant failed to disclose any material facts to the above Honourable Court when obtaining the rule nisi.

**Ad paragraph 40**

341. I find it odd that despite contending that 3Sixty is not in any financial difficulty, NUMSA suggests that it may be worthwhile for the above Honourable Court to "give 3Sixty's management strict and clear timelines to resolve any issues relating to its financial soundness."

342. Mr Jim fails to mention that 3Sixty funded his birthday party.

343. Save as aforesaid, the allegations in this paragraph are denied.

**Ad paragraphs 41 to 46**

344. For the reasons set out above, I deny that the applicant failed to make full disclosure to the above Honourable Court when obtaining the rule nisi.

345. NUMSA also seems not to appreciate that past payment history is not a guarantee that future claims will be paid.

346. Save as aforesaid, the allegations contained in these paragraphs are denied.

**Ad paragraph 47**

347. I note Mr Jim's admission that he has no knowledge of 3Sixty's financial position. That on its own disqualifies NUMSA from seeking relief from the above Honourable Court.

348. Without knowing 3Sixty's financial position, Mr Jim is not in a position to indicate that there is no risk to policyholders.

349. The remaining allegations contained in this paragraph are denied.

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**Ad paragraph 48**

350. Mr Jim's inability to comment on complaints regarding claims by members of CINPF is noted and this too disqualifies NUMSA from seeking relief from the above Honourable Court.

**Ad paragraph 49**

351. The allegations contained in this paragraph are denied.

**Ad paragraph 50**

352. Mr Jim is not qualified to comment on whether risk to policyholders is "more imagined than real".

353. The allegations contained in this paragraph are denied.

**Ad paragraph 51**

354. The allegations contained in this paragraph are denied.

**Ad paragraphs 52 to 63**

355. Payment of past claims is not an indication that an insurer remains in a position to pay future claims.

356. Mr Jim is not the author of the documents attached as annexures "IJ2" and "IJ3" to his affidavit. As such, these documents constitute inadmissible hearsay evidence.

357. Having conceded that Mr Jim does not know the financial position of 3Sixty, there is no basis for him to conclude that "None of the reasons for the delays were as a result of potential insolvency of 3Sixty".

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358. The remaining allegations contained in these paragraphs are denied.

**Ad paragraphs 64 to 74**

359. Again, Mr Jim is testifying about information which does not fall within his personal knowledge. The allegations contained in these paragraphs constitute inadmissible hearsay evidence. They are denied.

360. In any event, the NFS Claims Report was not provided to the applicant.

**Ad paragraphs 75 to 78**

361. For reasons set out earlier in this affidavit, I deny that the curatorship has had dire effects on policy holders or has caused "anxiety and panic amongst policyholders".

362. New business has been suspended not by virtue of the curatorship but even before the curatorship order had been granted, because Sixty could not for over a year meet the SCR cover requirements.

363. The remaining allegations contained in these paragraphs are denied.

**Ad paragraphs 79 to 82**

364. For reasons set out earlier in this affidavit, these allegations are denied.


**Ad paragraphs 83 to 85**

365. The applicant denies that NUMSA had made out a case for the relief it claims and humbly submits that NUMSA's application should be dismissed with costs, including the costs attendant on the employment of senior counsel.

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**CONCLUSION**

366. For all the reasons set out above, the applicant prays that NUMSA's application be dismissed with costs, including the costs of senior counsel, alternatively NUMSA's application be struck from the roll for lack of urgency, together with costs including the costs attendant upon the employment of senior counsel.


**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 Sandton on this 31 day of January 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:

Address:

Capacity:

**Candice Leigh Grieve**  
 15 Alice Lane  
 Sandton  
 Commissioner of Oaths Ex Officio  
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