IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 43873/20

In the matter between:

ROAD ACCIDENT FUND Applicant

and

LANA NEL N.O. First Respondent

VAN DER MERWE ATTORNEYS N.O. Second Respondent

NOTICE OF MOTION

TAKE NOTICE THAT the applicant intends to make an application to this Honourable Court on a date to be arranged with the Registrar for an order in the following terms:

(1) The applicant is afforded a period of 180 days from the date of the grant by this Court of an order in favour of a plaintiff for the payment of damages and legal costs under the Road Accident Fund Act, 56 of 1996 before enforcement proceedings, including the issuing of writs of execution, attachments and sales in execution ("**enforcement proceedings**") are instituted against it;

(2) During the period of 180 days referred to in paragraph (1) above,

2

enforcement proceedings are suspended in terms of the Court's general powers to stay enforcement proceedings, alternatively in terms of Rule 45A of the Uniform Rules of Court;

(3) Any enforcement proceedings by the respondents in the present matter are, to the extent applicable, stayed pending the expiry of the period of 180 days in paragraph (1) above;

(4) The applicant is directed to file a report confirmed on affidavit on or before 8 October 2021 setting out whether and why the arrangement in terms of paragraph (1) above should be uplifted or continued;

(5) The Court will, upon receipt of the report referred to in paragraph (4) above determine whether the arrangement in terms of paragraph (1) above should be uplifted or continued, and if continued, the further period during which it shall be continued and the terms of the continued arrangement;

(6) The applicant shall cause the order granted to be published in a national newspaper within 7 days of the grant of the order and served on the Legal Practice Council for circulation to legal practitioners;

(7) Granting the applicant such further and/or alternative relief that the Court

3

deems appropriate;

(8) Costs of the application in the event of opposition;

TAKE NOTICE FURTHER that the affidavit of **COLLINS PHUTJANE LETSOALO** will be used in support of the application.

TAKE NOTICE FURTHER that the applicant has appointed the address of its attorneys set out below as the address at which it will accept service of notices and other process in these proceedings.

TAKE NOTICE FURTHER that if any of the respondents intends to oppose this application it, he or she is required:

(a) within ten (10) days after receipt of this Notice of Motion to deliver notice to the applicant that it, he or she intends to oppose the application, and in such notice to appoint an address within 15 (fifteen) kilometres of the office of the Registrar at which it, he or she will accept notice and service of all process in these proceedings; and

(b) within fifteen (15) days after receipt of this notice of motion to deliver its, his or her answering affidavit, if any, in answer to the allegations made by the applicant.

DATED AT PRETORIA ON THIS 9th DAY OF OCTOBER 2020

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TO: **THE REGISTRAR OF THE HIGH COURT**
GAUTENG DIVISION, PRETORIA

TO: **THE FIRST RESPONDENT**
MS. LANA NEL N.O
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TO: **THE SECOND RESPONDENT**
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and

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VAN DER MERWE ATTORNEYS N.O. Second Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

COLLINS PHUTJANE LETSOALO

do hereby make oath and state that:

1 I am an adult male Chief Executive Officer of the Road Accident Fund (**the RAF**). I am duly authorized in that capacity to depose to this affidavit and to bring this application.

2 The facts contained in this affidavit are, save where the context indicates otherwise, within my personal knowledge and are to the best of my belief both true and correct.

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3 Where I make submissions of a legal nature, I do so on the advice of the RAF's legal representatives, which advice I believe to be correct.

INTRODUCTION AND THE PARTIES

4 On 10 September 2020 this Court granted a Rule Nisi that operated as an interim interdict with immediate effect.

5 In the Rule Nisi this Court called upon all interested parties to show cause on Wednesday 28 October 2020 why an order should not be made final, that ending finalisation of an application in terms of Rule 45A of the Uniform Rules of Court **(Rule 45A)**, which application is to be instituted within 20 days of the grant of the order:

5.1 The first respondent is to restore, at the applicant's costs, the applicant's possession of the movable property attached and removed in terms of writs of execution, to 38 Ida Street Menlo Park, Pretoria, where the first respondent removed the immovable property from;

5.2 The first respondent is restrained from removing any of the movable property in the applicant's possession.

6 The order was to be published in a national newspaper on 25 September 2020. It was further to be published on the website of the Gauteng and Pretoria

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Attorney's Associations respectively within 3 days, and served by the Sheriff on the second respondent.

7 The applicant was further directed to enrol the matter in accordance with the general practice in this Division.

8 The present application is the one contemplated in the Rule Nisi. It must be brought on or before 9 October 2020, i.e. within 20 days of the grant of the Rule Nisi.

9 The parties to this application are those that are cited in the application resulting in the grant of the Rule Nisi, being the application, the first and second respondents. The present application shall be properly served on the first and second respondents.

10 Since the application raises constitutional issues as appear below, a Rule 16A will also be issued once the application has been delivered. This will allow other interested parties and amici curiae to intervene if they so wish. A copy of the application will also be delivered to the Gauteng and Pretoria's Attorney's Associations as a courtesy even though they are not cited as parties.

11 In addition, there is a pending application to consolidate this application with another application issued in this Court under case number 35838/20 which

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raises similar issues and in which the RAF seeks similar relief. There will be a great deal of overlap in the facts set out in this application as in the application under case number 35838/20.

THE PURPOSE OF THE APPLICATION

12 The RAF approaches this Court for what may be regarded as extraordinary relief. It requires the relief as set out in the notice of motion in order for it to be able to continue to fulfil is statutory object. The object is set out in section 3 of the Road Accident Fund Act, 56 of 1996 **(the RAF Act)**. It is the payment of compensation in accordance with the RAF Act for loss or damage wrongfully caused by the driving of motor vehicles.

13 The RAF is experiencing severe financial difficulties that have been exacerbated by the Covid-19 pandemic. The pandemic has generally caused severe strain on the economy. The RAF is not an exception. However, its liabilities continue to grow. If not managed in the manner sought in this application, there is a real risk of the RAF's finances collapsing completely, or the RAF itself collapsing. This will completely undermine the object of the RAF under section 3 of the RAF Act. The RAF will simply be unable to continue to fulfil its statutory object.

14 The collapse of the RAF's finances and the consequent inability to fulfil its statutory object will threaten the constitutional rights of persons that suffer

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injuries and death pursuant to the driving of motor vehicles, including their dependants. The rights of such victims and their dependants in terms of sections 9, 10, 11 and 27 of the Constitution will be violated or seriously threatened. The security afforded by claims under the RAF Act ensures the realisation of most of these rights in respect of motor vehicle accident victims and their dependants. For this reason, the RAF brings this application not only in its interests but in the interests of motor vehicle accident victims and their dependants and, consequently, in the public interest. It is entitled to do so in terms of section 38(d) of the Constitution of the Republic of South Africa, 1996 (**the Constitution**).

15 The relief that the RAF seeks, as set out in the notice of motion, is one that this Court may grant in terms of its inherent powers to control and regulate its process. This power is expressed in section 173 of the Constitution, under the common law and in Rule 45A of the Uniform Rules of Court. The relief is also competent in terms of sections 38 and 172 of the Constitution, as it involves constitutional rights and the statutory object of the RAF. As submitted above, the RAF's statutory object must be fulfilled in order to realise the rights of victims of motor vehicle accidents and their dependants in terms of sections 9, 10, 11 and 27 of the Constitution.

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16 If it were not for the RAF's dire financial circumstances, this application would not have been brought. The RAF respects its obligation to pay claims and legal costs as determined by the courts. This application does not negate this. It is not motivated by any desire on the part of the RAF to avoid fulfilling its liabilities as determined by the courts. It is motivated by the need to be assisted by the courts in managing and fulfilling such liabilities.

17 In line with what is stated above, the RAF applies for an interim dispensation in which it will be afforded an opportunity to meet claims within a period of 180 days without the threat of execution proceedings, including the issuing of writs of execution, attachments and sales in execution of its property.

18 The RAF acknowledges that legal representatives and their clients are entitled to utilise enforcement mechanisms available in the law to ensure that the RAF meets its liabilities to them as determined by the courts. However, the manner in which enforcement proceedings in the current circumstances in which the RAF is under severe financial constraints mean that if carried out, the enforcement proceedings will close down many of the RAF's branches and threaten it with the collapse of its services. At the very least, if carried out, the enforcement proceedings, including sales in execution of attached assets of the RAF, will severely disrupt the RAF's operations and result in it failing completely to meet its statutory object. The losers will be

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the victims of motor vehicle accidents who would otherwise have their successful claims being met by the RAF.

19 Against the above dire consequences, and the likely serious injustices that may result for motor vehicle accident victims and their dependants, the RAF seeks a dispensation that will, for a temporary period of time (i.e. 180 days), suspend the rights of successful claimants and their legal representatives from instituting enforcement proceedings. If the RAF fails to meet its liabilities to the victims, their dependants and their legal representatives within the period of 180 days, enforcement proceedings may be instituted.

20 As explained more fully below, the RAF seriously requires the breathing space that 180 days will afford it in order to carry out its statutory object. This dispensation is not expected to be permanent. The RAF asks the Court to permit it to report at the end of twelve months, i.e. on or before 8 October 2020, whether its position has changed and whether the dispensation must remain in place. If the dispensation is to remain in place, for this Court to determine how long it shall remain in place and the RAF's further reporting obligations. In this way, the Court will be in a position to achieve a fair balance between the public interest as served by the RAF and the interests of successful claimants.

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21 Seen in the light of what is stated above, it is clear that the RAF's situation and case is exceptional. It calls for exceptional remedies. Under sections 38 and 172 of the Constitution, considered in light also of the common law and Rule 45A, this Court enjoys wide remedial powers to avoid a serious injustice from eventuating. The injustice is significant as it will not only affect the RAF but the public. It will undermine the public interest.

22 For these reasons, seen in light of the facts set out below, I respectfully submit that it would be in the interests of justice for this Court to exercise its inherent powers to come to the aid of the RAF. The specific relief sought is as set out in the notice of motion.

THE FACTS LEADING TO THIS APPLICATION

23 The second respondent is a law firm. It represents claimants that have suffered loss or damages arising from the driving of motor vehicles. In this case it obtained judgments and orders in favour of its clients, i.e. plaintiffs against the RAF, for the payment of various amounts at varying periods. It then obtained six warrants of execution when the RAF did not pay the claims. It threatened the RAF with a sale in execution.

24 The second respondent had the RAF's office furniture removed by the first respondent **(the Sheriff)** at its largest branch in Menlyn on 2 September 2020. A few days later, pursuant to the removal of the aforesaid office, the

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RAF launched an application, on an urgent basis for an interim order that the Sheriff should return the goods removed. This led to the grant of the Rule Nisi as explained above.

25 The RAF obtained similar orders in the High Courts in Cape Town and East London. The orders from the High Courts in Cape Town and East London are attached marked **"FA1" and "FA2"** respectively. Applications similar to the present one will be launched in the High Courts in Cape Town and East London.

26 To the extent that Her Ladyship Justice Van der Schyff referred to the pending application for the liquidation of the RAF in paragraph 5 of her order and reasons, I point out that the liquidation application is due to be heard in this Court during the course of next week. However, it has no effect on the present proceedings. I will therefore not deal with it at all in this affidavit.

THE LEGAL BASES FOR THE APPLICATION

27 As submitted above, I am advised and respectfully submit that this Court has inherent jurisdiction under section 173 of the Constitution and the common law to control and regulate its process. This power extends to issuing orders to stay enforcement proceedings in appropriate circumstances. This will be the case where serious injustice will otherwise result if the power is not exercised in deserving cases. The present is such a deserving case.

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28 In construing and applying this inherent power of the Court, the constitutional rights of victims of motor vehicle accidents and their dependents, especially those listed above, are relevant. Sections 7(2) and 39(2) of the Constitution requires this approach. A further important consideration is the statutory object of the RAF in section 3 of the RAF Act, which must be fulfilled in order to respect, protect, promote and fulfil the aforesaid constitutional rights.

29 In the alternative to this Court's inherent powers under section 173 of the Constitution, the RAF relies on Rule 45A.

30 Rule 45A provides as follows:

> *45A Suspension of orders by the Court.*
>
> *"The court may suspend the execution of any order for such period as it may deem fit."*

31 I am advised that Rule 45A grants the court a discretion to suspend the execution of <u>any order</u> for a period it deems fit. I am advised that this is a very wide discretionary power that is available to the court to stay execution proceedings.

32 I am also advised that as a general rule, the court will grant a stay of execution where real and substantial justice requires such a stay or, put otherwise,

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where injustice will otherwise be done. Sometimes, but not exclusively, this may be where:

32.1 the underlying *causa* of a judgment debt is being disputed; or

32.2 the underlying *causa* of a judgment debt no longer exists; or

32.3 an attempt is made to use the levying of execution for ulterior purposes.

33 I deal with each of the requirements of Rule 45A below. Prior to doing so, I shall deal with the following issues in turn:

33.1 The RAF and its mandate;

33.2 The history of the RAF's funding mechanism;

33.3 The RAF's system for the payment of claims;

33.4 The RAF's precarious financial situation;

33.5 The effect of COVID-19 and the expected projected dates for the RAF to pay the claims that are due and payable;

33.6 How the respective law firms' conduct in question is an attempt to use the levying of execution for ulterior purposes;

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33.7 The injustice that will arise if the order for the stay of enforcement proceedings is not granted in the terms prayed for or on such terms as the Court deems appropriate; and

33.8 Conclusion and costs.

THE RAF AND ITS STATUTORY OBJECT

34 The RAF was established by section 2(1) of the RAF Act. The RAF Act sets out a series of provisions that deal with the object, powers and purpose of the RAF.

35 I have already referred to section 3 of the RAF Act.

36 Section 4 of the RAF Act sets out detailed powers and functions of the RAF. The RAF is empowered to stipulate the terms and conditions on which claims for compensation contemplated in section 3 are to be administered (section 4(1)(a)). It is also empowered to investigate and settle claims arising from loss or damage caused by the driving of a motor vehicle (section 4(1)(b)). In order to achieve these, and other objectives, the RAF is given wide powers in section 4(2) of the RAF Act to purchase goods, sell property, invest money and undertake related activities.

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37 Section 5 of the RAF Act deals with the sources of the RAF's funds. It provides that the RAF must procure the funds that it needs to perform its functions by way both of (a) a Road Accident Fund levy as contemplated in the Customs and Excise Act, 1964 and (b) loans.

38 In addition to these provisions, which delineate the scope of the RAF's powers and functions, the RAF Act deals with the legal implications of the establishment of the RAF.

39 Section 21, with the heading "*Abolition of certain common law claims*", provides that no claim for compensation in respect of loss or damage resulting from bodily injury to or death of any person caused by or arising from the driving of a motor vehicle shall lie against the owner or driver of a motor vehicle or against the employer of a driver (see section 21(1)). This is a wide-reaching provision. While it remains competent for one private individual (or entity) to sue another private individual (or entity) for loss caused by damage to a vehicle in a motor accident, the RAF Act abolished the right of such individuals or entities to claim damages for bodily injury or death. As the law currently stands, claims arising from bodily injury or death caused by the driving of a motor vehicle may only be made to the RAF. In terms of section 21(2) of the RAF Act, the rule described above does not

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apply where the RAF is unable to pay any compensation. This is a significant limitation of the rights of individuals.

40 In order to understand the reason for the RAF's precarious financial position, it is important that I set out briefly the history of the RAF's funding.

THE HISTORY OF THE RAF'S FUNDING MECHANISM

41 The RAF was created by the RAF Act. The RAF Act determined its funding model or mechanism. The RAF's financial problems are not a recent development. They are linked to the funding mechanism, which is set out in more detail below.

42 The liabilities of the RAF have exceeded its income on a month to month basis since approximately 1981. This is an inherent feature of the funding model created by the RAF Act and previous legislation.

43 Since 1996 when the RAF Act came into force, the only two sources of income for the RAF are the fuel levy and loans. I have mentioned these sources above and referred to the relevant provisions of the RAF Act. At the moment, the fuel levy is charged at R1,93 for every litre of petrol sold. The fuel levy provides an inconsistent source of revenue for the Fund because it

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is dependent on various factors (some political, some economic) and which are entirely outside of the RAF's control.

THE RAF'S SYSTEM OF PAYMENT OF CLAIMS

44 There are two ways in which the RAF pays out claims of members of the public who have sustained bodily injuries or to their dependants where victims die as a result of motor-vehicle accidents. These are:

44.1 A non-litigious route in which a claim is submitted to the RAF and the RAF reaches an agreement with the claimant as to the quantum of the claim and it is paid in due course; and

44.2 Court order (almost always and roughly 99% of the time) by way of a settlement and very occasionally in opposed litigation that runs its course.

45 The RAF has traditionally handled claims resolved in both ways in the same way. It has subjected both categories of claims to the staggered payment process that is used to manage the RAF's cash flow.

46 In relation to the first category – claims paid through a non-litigious process – claimants are advised of the time-frame in which to expect payment. This has been anywhere from 120 to 180 days, depending on the circumstances,

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from the time when all of the paperwork is finalised and the final agreed quantum is loaded on the system.

47 Procedurally, the same approach has been applied in the case of claims settled by court order, either pursuant to a settlement agreement or following litigation.

48 Historically (and this is something that the RAF seeks to change as part of its operational overhaul), court orders and settlement agreements have not provided for a delay in payment from the date of the court order confirming the RAF's liability to the actual date of payment of the claim. They have simply determined the quantum of the RAF's liability and made provision for legal costs. In other words, the court orders do not afford the RAF any delay time between the time of the grant of the court order to the date when payment must be made.

49 Despite this, the vast majority of plaintiff attorneys who have obtained such settlements on behalf of their clients have appreciated that the RAF uses a queuing system for the payment of claims. They have therefore allowed their clients to form part of that queue and have waited patiently for the sums provided for in the relevant court orders and settlement agreements to be paid.

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50 However, nothing stops a plaintiff who holds a court order entitling him or her to payment to take steps to institute enforcement proceedings to execute the order.

51 For several years, there has been a minority, but noteworthy, number of attorneys who deal with RAF matters who have not been willing to join the queue and who wish to execute their orders immediately. This has led to the issuing of writs of execution. It is for this reason that part of the RAF's turnaround strategy is to attempt to build a system of reasonable delay into the settlement of litigious claims to prevent the issuing of writs of execution for immediate payment of claims – at least until litigious claims can be substantially reduced or entirely eliminated.

52 While the RAF is still implementing the turnaround strategy, the RAF's financial position has become more precarious, for a number of reasons including the effect of Covid-19. I will deal in detail with these issues below.

THE RAF'S PRECARIOUS FINANCIAL POSITION

53 The RAF is "*technically insolvent*" (to use the words that were once used by the Minister of Transport). This has been true for years (indeed, decades).

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54 The RAF's generally precarious financial position is a matter of public record. It is set out in the letter from the RAF's acting CFO dated 25 June 2020, a copy of which is attached, marked "**FA3**". This is not a recent development. COVID-19 has worsened the financial position for the RAF. It has speeded up the state of concern, as I will show below.

55 The essence of the RAF's acting CFO's letter of 25 June 2020 is that the RAF's income has declined by 50% due to the poor economic climate in South Africa as a result of the COVID-19 pandemic. On the other hand, claims which have either been settled or in respect of which claimants have obtained court orders for the payment of damages, continue to rise and are currently classified as "*requested not yet paid*" (**RNYP**).

56 RNYP claims which have been captured on the RAF's financial system are reflected as outstanding debt which is due for payment to claimants. The total RNYP's is currently around R19 billion. On the other hand, the RAF has experienced a shortfall of approximately R7 billion in fuel levy income in the last three months. The nett result is that the RAF is unable to pay claims as and when claimants procure settlements, alternatively, when they obtain court orders directing the RAF to pay.

57 The RAF has implemented an equitable system of paying claims on the basis that the RNYP claims will be paid from the oldest to the newest. Based on

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the RAF's available monthly fuel levy, the RAF is able to pay on average claims which are 180 days and older.

58 However, certain attorneys for claimants are not prepared to accept this equitable system of paying claims in accordance with available resources, as evident from this application as well as the application under case number 35838/20, which is to be consolidated with the present one. Below I mention examples of other law firms that have also shown a lack of preparedness to follow the RAF's equitable system of payment of claims in accordance with available resources. They have resorted to issuing and serving warrants of execution on the RAF in an attempt to jump the queue and have their clients' claims paid earlier than the remainder of other claimants who await their turn for their claims to be paid based on the age analysis of outstanding RNYP claims.

59 According to the Auditor's Report that appears in the RAF's Annual Financial Statement for the year ended 31 March 2019, the RAF *"incurred a net loss of R55,779,880,000 during the year ended 31 March 2019 and, as of that date the [RAF]'s total liabilities exceed its total assets by R262,114,730,000"*.

60 Furthermore, the Report of the Board, contained in the RAF's Annual Financial Statement for the year ended 31 March 2019, under the heading

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"*Solvency and Going Concern*" states that *"as at 31 March 2019, the entity had an accumulated deficit of R262,208,058,000 and that the entity's total liabilities exceeded its assets by R262,114,730,000."* This report states further that *"the RAF has been technically insolvent for a considerable amount of time"*. It then refers to the funding history of the RAF over the years, with the recent 5c/litre increase, which the Board states it is not hopeful that it would reduce the RAF's accounts payable, which amounted to approximately R11.2 billion as at 31 March 2019. A copy of the extracts of the 2019 Annual Financial Statement is attached hereto marked "**FA4**".

61 According to the as yet approved Annual Financial Statements for the year ended 31 March 2020, under the heading "*Solvency and Going Concern*" it is stated that *"as at 31 March 2020, the entity [RAF] had an accumulated deficit of R322,097,780,000 and that the entity's [RAF's] total liabilities exceeded its assets by R321,932,139,000"*. A copy of the 2020 Annual Financial Statement is attached hereto marked as "**FA5**".

62 In an attempt to set out the RAF's financial position as well as the facts and the legal basis upon which it relies to obtain a further suspension for the execution of writs, for at least 180 days, the RAF obtained an actuarial report (titled Memorandum) from its Senior Manager: Actuarial, Itayi Charpuka. A copy of the Memorandum is attached marked as "**FA6**".

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63 The Memorandum summarises the details of the annual financial reports of the RAF for the past four years, that is from 2017 to-date.

64 The Memorandum contains a table, which shows the value of claims settled by the RAF between the 2017 and the 2020 financial years. These figures were extracted from the RAF's Annual Financial Statements for the period 2017 to 2020.

65 From this table it is apparent that the value of claims settled by the RAF each year was greater than the amount of the fuel levy income that was available to make payments for the settled claims. This has resulted in a build-up of the claims liability for RNYP, which has grown gradually from a value of R8.5 billion as at 31 March 2017 to about R14.9 billion as at 31 March 2020. This is represented in the graph below.

66 The graph shows that the value of claims settled was higher than the value of the fuel levy income that was available to pay for those claims, hence the delay in payment of settled claims over the years.

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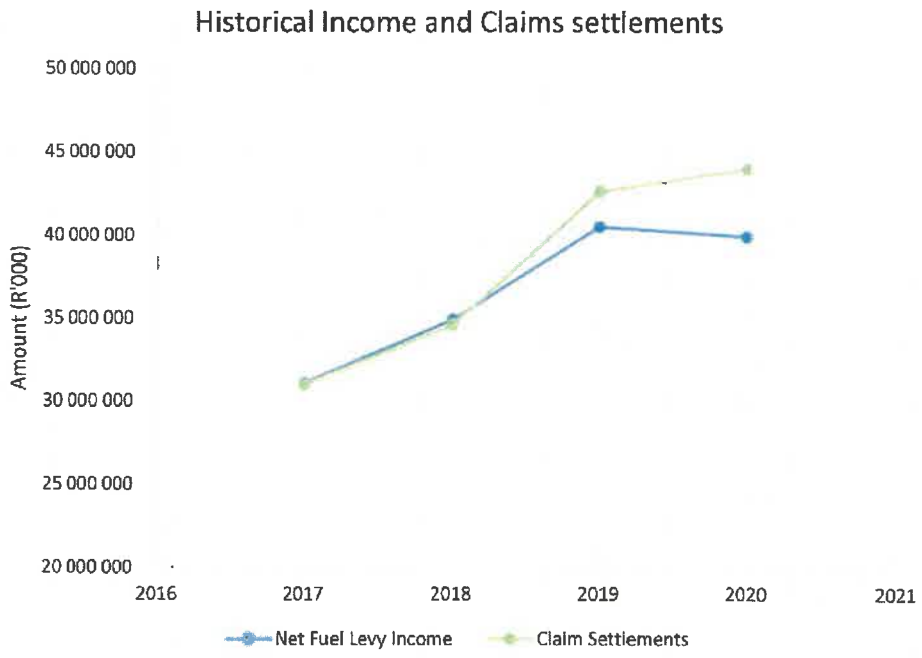

67 The Memorandum also sets out the decrease in the monthly income versus the expenditure between the 2019 and 2020 financial years. This has been shown through a table that sets out a comparison of the RAF's fuel levy income and the value of claims that were settled each month during the 2019 and 2020 financial years.

68 The table below shows that the value of claims settled each month averaged about R4.0 billion, whereas the value of the fuel levy income averaged about R3.6 billion. This resulted in a net deficit of about R403 million each month, which has led to the continuous growth of the liability for the settled but not paid (RNYP) claims.

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RAF Revenue and Claims Expenditure 2019/20FY			
Month	Fuel Levy Revenue Received	Claim Settlements Amount	Paid Claims Amount
Apr-19	R 3,648,226,843	R 2,805,509,169	R3,348,403,264
May-19	R 3,727,892,126	R 3,949,282,035	R2,976,721,712
Jun-19	R 3,461,514,730	R 5,376,800,103	R3,262,146,989
Jul-19	R 3,530,607,193	R 4,368,605,153	R2,929,147,626
Aug-19	R 3,410,770,718	R 4,022,115,905	R2,817,690,834
Sep-19	R 3,201,069,943	R 4,608,751,775	R2,835,386,298
Oct-19	R 3,568,543,301	R 4,689,593,351	R3,019,716,425
Nov-19	R 3,796,988,000	R 4,044,633,201	R3,301,554,398
Dec-19	R 3,458,010,439	R 3,846,883,130	R1,388,362,226
Jan-20	R 3,807,332,144	R 2,149,341,576	R4,919,438,657
Feb-20	R 3,528,323,707	R 3,781,914,759	R3,259,514,169
Mar-20	R 3,495,556,973	R 3,828,032,473	R3,222,592,611
Average 19/20FY	**R 3,552,903,010**	**R 3,955,955,219**	
Monthly Deficit		**R 403,052,209**	

69 Lastly, the Memorandum sets out the impact of the COVID-19 pandemic as at 30 September 2020.

70 The Memorandum also sets out the expected COVID-19 pandemic impact on the RAF's fuel levy income for the next 12 months period, i.e. from 1 October 2020 to 30 September 2021. This information is crucial for the RAF to determine what the effect of the COVID-19 pandemic will be on its fuel levy funding for the next twelve months. It is for this reason that the RAF seeks to prepare a report, confirmed on oath, for this Honourable Court setting out whether and why the arrangement sought in paragraph (1) of the

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Notice of Motion should be uplifted or continued after the expiry of twelve months, i.e. on 8 October 2021.

THE EFFECT OF COVID-19 PANDEMIC ON FUEL LEVY INCOME (APRIL TO SEPTEMBER 2020)

71 As explained above, the RAF's primary source of income is the fuel levy (which dwarfs its income from investments). The RAF's income from the fuel levy has dropped significantly because economic activity has plummeted as a result of the various stages of lockdown that have been imposed by the state. This has necessarily led to a dramatic reduction in the consumption of fuel. When consumers do not purchase fuel, the RAF derives no income from the fuel levy. It is as simple as that. And this has been the experience of the RAF during 2020. It was already the experience of the RAF before that because when the economy does not do well, revenue from the fuel levy drops. But the national state of disaster and the lockdown exacerbated an already dire financial situation.

72 The Memorandum shows a comparison of the fuel levy that was expected to be received over the period 1 April to 30 September 2020 before the COVID-19 pandemic, and the actual fuel levy income that was received over the period. The actual figures are set out in the table below:

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Corona Virus Pandemic impact on RAF Fuel Levy for the period 1 April 2020 to 30 September 2020.								
Cash Flow Projections**	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Sep-20	Total	
Projected RAF fuel levy income (R'000) before Corona	3,795,657	3,795,657	3,795,657	3,909,065	3,909,065	3,909,065	23,114,166	
Projected RAF fuel levy income (R'000) after Corona	3,770,000	2,558,000	1,599,971	1,260,802	2,357,606	3,646,053	15,192,432	
Net Corona Impact (R'000)	-25,657	-1,237,657	-2,195,686	-2,648,263	-1,551,459	-263,012	-7,921,734	-34%

73 What transpires is clear from the table is that the actual fuel levy income that was received over the period 1 April 2020 to 30 September 2020 was R7.9 billion lower than expected due to the impact of the COVID-19 pandemic and the lockdown. This has further reduced the RAF`s ability to pay settled claims in a timely manner. This translates to a 34% decrease in fuel levy income.

INCOME AND EXPENDITURE OVER THE NEXT 12 MONTHS (OCTOBER 2020 TO 30 SEPTEMBER 2021)

74 The table below shows projections of income and expenditure over the next twelve (12) months, i.e. over the period 1 October 2020 to 30 September 2021.

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RAF Income and Expenditure projections for the period 1 October 2020 to 30 September 2021													
Cash Flow Projections**	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21
Claim Settlements (R'000)	4,100,000	4,293,093	4,314,558	4,336,131	4,255,142	4,276,418	4,297,800	4,122,497	4,143,110	4,163,825	4,309,675	4,331,223	4,352,879
Administration Expenses	170,000	250,658	250,658	250,658	250,658	250,658	250,658	365,646	365,646	365,646	365,646	365,646	365,646
Net fuel levy revenue (R'000) after Corona	3,646,053	2,637,396	2,637,396	2,637,396	2,738,073	2,738,073	2,738,073	3,082,898	3,082,898	3,082,898	3,175,010	3,175,010	3,175,010
Net Deficit (R'000)	-623,947	-1,655,697	-1,677,163	-1,698,735	-1,517,068	-1,538,344	-1,559,726	-1,039,599	-1,060,211	-1,080,927	-1,134,664	-1,156,212	-1,177,869
Expected Settled Claims liability (RNYP) Balance (R'000)	17,640,954	19,296,651	20,973,813	22,672,549	24,189,617	25,727,961	27,287,687	28,327,286	29,387,497	30,468,423	31,603,088	32,759,300	33,937,169
Average Revenue (R'000)	2,529,441	2,775,653	2,839,064	2,687,735	2,761,985	2,836,235	2,910,486	2,983,309	3,056,132	3,128,954	3,128,954	3,128,954	3,128,954
Expected Payment Delay (Days)	216	216	229	262	271	281	291	294	298	302	313	325	336

75 The above table shows that:

75.1 The claims settlements are expected to average R4.3 billion a month, whereas the fuel levy income is expected to average about R3 billion a month. Operational costs are expected to average R178 million per month. The expected deficit will average about R1.25 billion per month.

75.2 This will result in an increase in the RNYP from the current level of R17.6 to about R33.3 billion in September 2021. The payment delay from settlement to payment is expected to increase gradually from 187 days to 331 days, with an average payment delay of 261 days. If these projections do not improve, the RAF may be forced to request an extension of the 180 days currently sought. Whether this

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will be required will be reported by the RAF to the Court on or before 8 October 2021.

HUGE GAP BETWEEN REVENUE AND EXPENDITURE

76 The increasing big deficit for settled claims is mainly driven by the increase in claims settlements, without a corresponding increase in the fuel levy income.

77 The fuel levy income is significantly lower relative to the pre-COVID-19 levels, which was also not healthy, due to a significant decrease in economic activity during the state of national disaster and the lockdown. On the other hand, the volumes of claims expected to be settled in the next 12 months has not decreased.

78 The RAF`s claims liability was valued at R315.8 billion as shown in the table below. This is the total liability for claims arising from accidents that occurred before 1 April 2020.

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RAF Claims Liability as at 31 March 2020			
	Reported Claims liability (ORC)	Incurred But Not Reported (IBNR)	Total Liability
Claims Liability (R'm)	212,827	102,955	**315,782**
Claims Liability (R'm)	**212,827**	**102,955**	**315,782**

79 Of the total liability, R212.8 billion is for claims already reported to the RAF and are on the RAF claims system (ORC), and R103 billion is for claims that have been incurred but not yet reported (IBNR) as at valuation date. As such, the volume of claims that are ready to be processed and settled is already high. Thus, the value of claims expected to be processed in the next 12 months will still be quite high, whereas the fuel levy revenue is depressed due to the reduced economic activity. This will lead to the growth in the RNYP balance as shown in the projections above.

80 The benefit of the reduction in road accidents over the lockdown period will only be realised in about 2 to 3 years as it takes new claims to be registered and processed. Thus the RAF's financial position will not improve in the short-term as a result of the reduction in accidents over the lockdown period.

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<u>RAF INCOME AND EXPENDITURE PROJECTIONS FOR THE PERIOD 1 OCTOBER 2020 TO 30 SEPTEMBER 2021</u>

81 RAF's Income and Expenditure projections for the period 1 October 2020 to 30 September 2021 show a serious on-going deficit. I attach, marked as "**FA7**", a copy of the spread sheet of the RAF Income and Expenditure projections for the next twelve months. The notes explain the impact of the lockdown on the fuel levy contributions and payments.

82 I also attach a spreadsheet setting out the Historical Revenue and Expenditure between 2017 and 2020. It is marked "**FA8**". It also sets out the Average Payment Delay in days during the period in question. It is on this basis that the RAF seeks a 180 day payment period from the date of a court order confirming the RAF's liability to pay. As explained above, should this payment delay period improve or worsen in the coming twelve months, the RAF will explain to the Court the reasons and whether this requires the 180 days to be retained or extended in the current form or amended and the period for which the arrangement should remain in place to enable the RAF to fulfil its statutory object.

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IMPACT OF COVID-19 ON THE RAF REGARDING JUDICIAL ATTACHMENTS

83 COVID-19 has had a further adverse impact on the RAF's position in relation to judicial attachments. It has created an environment of increased economic distress, which leads to desperation. There are many firms of attorneys whose sole source of income is RAF work. Those attorneys only get paid when their clients get paid. This increases the volume of attempts to execute against the RAF's assets by attorneys who are unwilling to wait for claims to be paid in terms of the queuing system.

84 Because the RAF has been "*technically insolvent*" for years, there has always been a small number of claims which were the subject matter of attempts to execute against the RAF's assets. This position has worsened as the South African economy has deteriorated, especially with the impact of the COVID-19 pandemic.

85 There are between 2500 to 3000 attorneys that prosecute RAF claims on behalf of their clients. Many of those attorneys deal with huge volumes of claims. They process thousands of claims per month in a systemised way. The attachments during 2019/2020 that I described in my presentation to the Board reflect the endeavours of about 100 attorneys out of the 2500 to 3000

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attorneys that deal with the RAF and have obtained settlements on behalf of their clients.

86 The position therefore is still that the vast majority of attorneys appreciate the constraints within which the RAF operates and are willing to accept the reasonable delays that the RAF needs to impose on the processing of claims (including claims settled by Court order).

87 Despite the numbers of attorneys that do not wish to wait and resort to attachments, their efforts are largely disruptive as they may stop operations in branches of the RAF and adversely impact on its ability to meet its statutory object. These efforts will gain significance in relation to the RAF's operations in the current environment where the RAF's finances have worsened as explained above. The next twelve months may make the position even more precarious if the projections above turn out to be accurate.

88 Not all law firms who have obtained writs of execution against the RAF have done so for proper and *bona fide* purposes. Below I will set out examples of law firms, including the second respondent, who have attempted to use the levying of execution for ulterior purposes.

<u>ULTERIOR PURPOSES</u>

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89 I set out below four examples where different law firms, including the second respondent, attempted to use the levying of execution for ulterior purposes.

The first scenario: The conduct of the second respondent in this case

90 As stated above, the second respondent issued six warrants of execution in the amount of R 6 million. It threatened the RAF with a sale in execution, which was scheduled for 1 September 2020. The following day, the second respondent had the RAF's office furniture removed by the Sheriff at its largest branch in Menlyn.

91 However, the assets that the Sheriff purported to attach were valued at approximately R400 000,00. When the law firm received the Sheriff's return of service and realised the value of the movable assets that were recorded by the Sheriff, it ought to have known that it could never have satisfied the debt of its clients which were valued at R6 million from the R400 000,00 worth of movable assets.

92 Furthermore, prior to the RAF bringing the urgent application it informed the second respondent that the movable assets that it sought to have attached and removed from the RAF's offices in Menlyn, in fact belong to third parties. The second respondent nevertheless went ahead and had the assets removed from the RAF's offices.

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93 The second respondent had also been informed that its clients were not next in line and that he was supposed to wait its client's turn. Instead, it chose to have the warrant of execution issued to be executed and to get the Sheriff to remove the RAF's furniture from its offices. This had the effect of crippling the operations of the RAF.

94 I submit that it is highly unlikely that the law firm had the furniture of the RAF removed from its office with the genuine intention to have its clients' claims paid from the R400 000,00 worth of the furniture, given the amount of the clients' claims. It already knew that most of the movable assets at the RAF's Menlyn office belonged to third parties and that its clients were not next in line for payment by the RAF, whose current liability in respect of claims I have explained above. The second respondent's conduct amounts to the use of the execution process for ulterior purposes.

95 I point out that the six claims of the second respondent's clients that the second respondent obtained warrants of execution for were due to be paid by the RAF in the normal course on 02 October 2020. However, payment could not be made due to the attachment of the RAF's bank accounts held at Absa Bank by the Sheriff Centurion East on 18 September 2020. As a result of this attachment, 5325 payments for the six and other claimants to the estimated value of R 964 million could not be made today.

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96 The RAF has engaged Absa extensively on the issue of attachments of its bank accounts. I provided Absa with a copy of the Court order of 10 September 2020 on the day that it was granted. The engagements between RAF and Absa have a long history by way of meetings and have culminated in letters exchanged between the RAF's attorney to the Sheriff Centurion East and to Absa. Absa has only advised the RAF today at 10h52 that it will continue to honour the writs until the RAF obtains a court order to set aside or suspend the writs. I attach the letter of Malatji & Co to the Sheriff Centurion East [dated 21 September 2020] and to Absa Bank [dated 01 October 2020] as well as from Tim du Toit Attorneys dated 09 October 2020 as annexures **FA 8.1 to 8.3** dealing with the attachment of the RAF's bank accounts.

97 The RAF's Absa bank accounts remain subject to the attachment and in the result no payment transactions can take place. But for the attachment of its bank accounts, the RAF would bear no liability to the second respondent's clients. The RAF brings this application for the general order that it seeks in respect of all future claims as set out in the notice of motion and not in respect of the claims of the second respondent's clients. I return to the issue of attachment of the RAF's bank accounts later below.

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98 In order to show how rampant conduct similar to that of the second respondent is, I set out below further examples of firms of attorneys who are using the levying of execution for ulterior purposes.

The second scenario: The conduct of K Malao Inc

99 On 18 August 2020, a firm of attorneys K Malao Inc (**Malao**) issued a demand on the RAF together with a writ of execution for the payment of an amount of R10 053 307, 97 (ten million and fifty three thousand, three hundred and seven rand and ninety seven cents). Within twenty four hours of making its demand, the firm demanded immediate notification by the RAF so that it could "*hand the writ to the Halfway House Sheriff in Midrand*". Copies of the letter of demand and the writ of execution and the court order are attached, marked "**FA9**".

100 On 18 August 2020, Malao issued a demand on the RAF together with a writ of execution for the payment of an amount of R8 080 030, 00 (eight million eighty thousand and thirty rand). Within twenty four hours from demand, it required notification from the RAF so that it could *"hand the writ to the Halfway House Sheriff in Midrand"*. Copies of the letter of demand, the writ of execution and the court order are attached, marked as "**FA10**".

101 On 20 August 2020 the RAF's attorneys, Malatji & Co Attorneys (**Malatji**), responded to Malao and indicated that the sheriff of Centurion East has

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served on the RAF the aforementioned writs of execution on 19 August 2020. Malatji informed Malao that its intention to hand the aforesaid warrants to the Sheriff Halfway House for execution on Vodacom Limited was unfounded and unlawful. This is because Vodacom is not in possession of any incorporeal property or incorporeal rights of the RAF. Furthermore, that the subscription agreements entered into between Vodacom and the RAF do not constitute either incorporeal property or incorporeal rights which are capable of attachment by the Sheriff in execution of a warrant of execution. Also that subscription rights that accrue to the RAF are not incorporeal rights which have any monetary value capable of attachment by a Sheriff in execution of a judgment debt.

102 Malatji concluded that Malao's warrant of execution issued in that matter was merely an attempt by Malao to not wait for his clients' turn for payment but to apply unwarranted pressure for payment of the judgment debt the firm had obtained for its clients. Also, that this was a manifest attempt by Malao at prioritising its payment of judgment debts over the payments of other tens of thousands of claimants who have been awaiting their payments to be made in accordance with available cash resources of the RAF. Furthermore, the manner in which the firm went about attempting to execute the warrants constituted an abuse of court process.

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103 Malatji requested Malao to withdraw the instructions to the Sheriffs of Centurion East as well as Halfway House to execute these patently defective warrants of execution, alternatively to agree to hold the execution of the warrants in abeyance pending a court application to have the warrants set aside. The RAF undertook to have the application to stay the warrants of execution served on Malao by no later than Monday, 31 August 2020. A copy of Malatji's letter is attached, marked "**FA11**".

104 On 27 August 2020, Vodacom's attorneys, Farah and Parker Attorneys addressed a letter to Malao on behalf of Vodacom, attaching the letter that they had addressed to the Sheriff Halfway House - Alexandra on the same day. They stated that the two notices that were issued by Malao were invalid and that Vodacom is simply not able or permitted to comply with them. They invited Malao to instruct the Sheriff to withdraw the notices in question. A copy of this letter, which was copied to Malatji, is attached, marked "**FA12**".

105 Malao's attempt to attach and execute on subscription contracts that the RAF has with Vodacom is nothing but extortion and an attempt to cripple the RAF's operations. Under no circumstances would the cell phone or telephone subscription contracts for cell phones that the RAF has with Vodacom qualify as the right, title and interest of Malao clients' claim or

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incorporeal rights of the RAF that is held by Vodacom and could satisfy the firms' clients' in the millions of Rands.

The third scenario: Attachment of the RAF's bank accounts

106 On 18 September 2020 the Sheriff Centurion East sent a letter to the RAF acknowledging receipt of writs of execution with a spreadsheet and Notice of Attachment in terms of Rule 45(8) and Rule 45(1) dated 18 September 2020 which were hand delivered to her office. A copy of the letter is attached, marked "**FA13**".

107 As per the Notice of Attachment in terms of Rule 48(8)(c) and Rule 45(12)(a) of the Rules, 182 law firms whose details are contained in the spread sheet titled "*Notice of Attachment in Execution in Incorporeal Property or Right in Property (Rule 45(8) (12)*" issued a writ of execution against the RAF's bank accounts held at ABSA bank as part of the RAF's movable goods, including its incorporeal property.

108 These law firms sought to attach the accounts held by the RAF at ABSA bank "*and all other bank accounts*" for a collective amount of R102 141 650, 76 (one hundred and two million, one hundred and forty one thousand, six hundred and fifty rand and seventy six cents) and all further costs in the execution of the writs. Copies of the Notice of Attachment in terms of Rule

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48(8)(c) and Rule 45(12)(a) of the Rules and the spreadsheet are attached, marked "**FA14**".

109 Once the RAF's bank accounts are attached, it would not be able to settle claims and fulfil its statutory object. Such an attachment is an abuse of process. The attached bank accounts cannot be operated once attached and is clearly a self-help mechanism in that it is an attempt at appropriating the money standing to the credit of the RAF's bank account ahead of payments to many other long awaiting plaintiffs. The step is not bona fide as it may cripple the functioning of the RAF and deprive members of the public that may have claims not to have those claims met at all.

The fourth scenario: The attempt to attach the fuel Levy

110 On 21 September 2020 Mduzulwana attorneys (**Mduzulwana**) addressed a letter to the Minister of Transport (**the Minister**) in which they informed him that they had served a writ of execution at the Minister's office on 18 August 2020. They informed him that they had attached the RAF's incorporeal property or incorporeal rights in property, right to title, interest and levies. They indicated that consequently they did not expect the RAF to receive a fuel levy payment unless the writ of execution is satisfied.

111 In this letter, Mduzulwana attached the relevant writ of execution and informed the Minister that should the RAF's fuel levy payment be made

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before the writ is satisfied, they would bring an urgent application for contempt of court against the Minister and the Department. Copies of the letter, the writ of execution for the amount of R3 987 518.00 (three million, nine hundred and eighty seven thousand, five hundred and eighteen rand) and the court order are attached, marked **"FA15"**.

112 The attempt by Mduzulwana to attach the fuel levy is nothing but an attempt to extort payments from the RAF regardless of its financial situation. Attaching the fuel levy would also frustrate the RAF in fulfilling its statutory object. The approach is clearly an abuse of process.

THE INJUSTICE LIKELY TO ARISE

113 The RAF, under my leadership and with the approval of the Board, is committed to a five-year plan to substantially improve the financial position of the RAF to enable it to meet its liabilities.

114 It was for this reason that after the Acting CFO's letter dated 25 June 2020 that I have referred to above, I engaged with a number of law firms nationally in order to explain the difficulties faced by the RAF as well as the remedial measures that the RAF was trying to put in place in order to ensure that things turn around and that in future the RAF is able to pay claimants within a period shorter than 180 days.

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115 The RAF started meeting plaintiffs' attorneys from the end of June 2020. The plan is to meet the top 200 firms as well as those firms that issued writs and attempted to attach RAF's assets, including bank accounts. It is not practical to meet all the firms at once. The meetings are generally held every Mondays and Tuesdays with an average of five firms seen in a day.

116 The purpose of the meetings is mainly:

116.1 to outline the RAF's operating model; one that aims to be claimant centric and envisions a cordial and closer relationship with all stakeholders, including plaintiff attorneys;

116.2 to outline the financial and other challenges currently facing the RAF;

116.3 to work with firms to reconcile the RNYP book.

117 I attach a copy of a report on the meetings thus far held with the plaintiffs' attorneys marked, "**FA 16**". It sets out the number of firms that the RAF has met with as at 5 October 2020. It also sets out the complaints that were raised by the respective law firms during these meetings with the RAF. They include the following:

117.1 Claims that have been settled with the RAF that are not being requested on the system, cause delays in them queueing for payment;

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117.2 Not receiving expected payments from the RAF; and

117.3 Failure or delay in responding to their queries by both the Treasury Department and Operations

118 The report also sets out failures and successes of the meetings that were held with the plaintiff attorneys. Some of the highlights include the following:

118.1 that some firms withdrew writs of execution obtained against the RAF from different Sheriffs subsequent to the meetings;

118.2 The result that even some law firms refunded the RAF for duplicate payments that had been made by the RAF to them in the past;

118.3 Reconciliations of RNYP's were done for firms that submitted information required and they started being paid.

119 The cooperation that the majority of the law firms have given to RAF in order to assist it manage its financial resources to meet its statutory obligations is necessary to avoid the collapse of the RAF or utter failure to meet its statutory object. The conduct of the other firms, examples of which I have given above, will result in adverse impact on the RAF and significant injustice on the rest of the members of the public that may have claims against the RAF arising from motor vehicle accidents. The conduct that I have described

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under the four scenarios above displays the abuse of execution proceedings for ulterior purposes.

120 In all of the circumstances described above, a good case is made out for this Court to exercise its discretion under section 173 of the Constitution, the common law, alternatively Rule 45A to grant the relief that the RAF seeks. It is in the interests of justice that the relief is granted to protect constitutional rights, the public interest and the RAF's ability to fulfil its statutory object in order to respect, promote and protect constitutional rights and the public interest. Further submissions will be made at the hearing of the application in this regard.

CONCLUSION

121 I am advised and respectfully submit that a proper case is made out for the grant of the relief sought in the notice of motion.

WHEREFORE the applicant prays for an order as set out in the notice of motion.

DEPONENT

Signed and sworn before me at on this the day of 2020 the deponent having acknowledged that he/she knows and understands the contents of this affidavit, has no objection to taking the prescribed oath and that he/she considers it binding on his/her conscience.

COMMISSIONER OF OATHS

FULL NAMES: ______________________

ADDRESS: ______________________

CAPACITY: ______________________

MABATHO MOTIMELE
Practising Attorney RSA
Ex Officio Commissioner of Oaths
1010 Pretorius Street
Hatfield, 0083
Tel: (012) 323 0450 Fax: (012) 323 8157

ms

BOX NO. 31

15/09/2020
[signature]

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION; CAPE TOWN)

CAPE TOWN: Tuesday, 15 September 2020 at Cape Town

Before the Honourable Ms Acting Justice Norton

CASE NO: 12953 / 2020

In the matter between:

ROAD ACCIDENT FUND — Applicant

And

MR. NELSON NTSIBANTSU N.O. — First Respondent

MINITZERS ATTORNEYS N.O. — Second Respondent

THE SHERIFF OF THIS HONOURABLE COURT — Third Respondent

KN

~~[DRAFT]~~ ORDER

Having read the papers filed of record and having heard counsel for the above named Applicant:

It is hereby ordered that:

MS
[signature]

1. Pending the finalisation of an application to be instituted by the Applicant in terms of Uniform Rule 45A to stay the execution of the warrant of execution issued under Western Cape High Court case number: 4781 / 2013 (hereafter "*the warrant*"), which application shall be instituted within **20 (TWENTY)** days of the grant of this order, the First Respondent is interdicted and restrained from removing and/or continuing with the removal of any movable property which has been attached by the First Respondent in terms of the warrant.

2. No order is made as to costs.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN

BY ORDER OF THE COURT

2020 -09- 16

COURT REGISTRAR

WCD-005

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN

MS

IN THE HIGH COURT OF SOUTH AFRICA
EAST LONDON CIRCUIT LOCAL DIVISION

EL904A/2020

BEFORE THE HONOURABLE JUDGE HARTLE

On the 17th SEPTEMBER 2020

In the matter between:

ROAD ACCIDENT FUND	**APPLICANT**
and	
NOMANDLA NDABENI N.O.	**1st RESPONDENT**
(in her capacity as the Sheriff of the High Court, East London)	
MANCOTYWA INCORPORATED	**2nd RESPONDENT**
(in its capacity as instructing attorneys to the Sheriff)	
TA NKELE & SONS ATTORNEYS	**3rd RESPONDENT**
(in its capacity as instructing attorneys to the Sheriff)	
LANDELA BOMELA ATTORNEYS	**4th RESPONDENT**
(in its capacity as instructing attorneys to the Sheriff)	
ROELOFSE MEYER ATTORNEYS	**5th RESPONDENT**
(in its capacity as instructing attorneys to the Sheriff)	

Having heard Mr Kotze for the applicant and having read the papers filed of record;

IT IS ORDERED THAT:

MS

1. The Applicant is granted leave to bring this application as one of urgency as provided for in Rule 6(12) of the Uniform Rules of Court.

2. A Rule Nisi hereby issues, calling upon the Respondents and any interested parties to show cause to this Court, if any, on Tuesday, 13 October 2020 at 09h30, why an order in the following terms should not be made final:

   2.1. Interdicting and restraining the First Respondent from removing and/or continuing with the removal of movable properties in the possession of the Applicant, at its premises at 20 Drury Lane, East London CBD, East London.

   2.2. Directing and ordering the First Respondent to forthwith return any movable property, that has been removed in execution, to the Applicant at its premises at 20 Drury Lane, East London CBD, East London.

   2.3. Interdicting, suspending and/or staying the sales in execution scheduled for Thursday, 17 September 2020 at 12h30 and Friday, 25 September 2020 at 12h30.

   2.4. In the alternative to the foregoing, that the First Respondent be interdicted and restrained from removing the movable property in the possession of the Applicant at any of its premises in the Honourable Court's jurisdiction, pending the finalisation of an application to the Full Bench of the High Court of South Africa, Gauteng Division, Pretoria in terms of Rule 45A of the Uniform Rules of Court under case number 43873/20 in that Division, to be instituted within 20 days of the granting of the order of that Court, which Order was granted on 10 September 2020.

   2.5. In the further alternative to 2.4 above, that the First Respondent be interdicted and restrained from removing the movable property in

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the possession of the Applicant at any of its premises in the Honourable Court's jurisdiction, pending the finalisation of any application setting aside such writs of execution in terms of Rule 45A of the Uniform Rules of Court, or on such other grounds as are permissible, to the applicable courts out of which the writs were issued by the Second to Fifth Respondents, which applications should be instituted within 20 days of the granting of this Order.

3. Paragraph(s) 2.1, 2.2 and 2.3 above shall operate as an interim order with immediate effect, pending the confirmation or discharge of the Rule Nisi.

4. The Applicant is granted leave to serve this Order by way of email and/or by hand delivery, on the Respondents.

BY ORDER OF COURT

ASSISTANT REGISTRAR

N JALI

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE CIRCUIT LOCAL DIVISION,
EAST LONDON

Private Bag X1, East London 5201

2020 -09- 17

ECLDEL-001

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE CIRCUIT LOCAL DIVISION,
EAST LONDON

MS

Road Accident Fund

Email Address: boitumelo@raf.co.za

Contact Number: 012 621 1622

25 June 2020

Plaintiff Attorneys

Dear Messrs.

RE: **FINANCIAL STATUS UPDATE OF THE ROAD ACCIDENT FUND**

1. The above matter regarding the Road Accident Fund Financial Status Update refers.

2. Pursuant to correspondence dated 25 March 2020 on the above matter, it is pertinent for the RAF to provide a comprehensive update in the current cash management status, as well as to share with you relevant statistics in relation to the RAF's financial situation to date.

3. The status update is important in keeping our key stakeholders well informed of the RAF, its operational matters and importantly challenges which tend to affect the RAF's ability to meet its obligations and to foster a relationship of transparency in maintaining good stakeholder relations. To that end, we hereby provide you with this update.

CURRENT CASH MANAGEMENT STATUS

4. The summary below sets out the cash status of the RAF, is at the time of writing this letter, as follows:

4.1 The recent apportionment from the fuel levy received by the RAF has been significantly lower than expected, due to larger diesel rebates claimed. Month on month we have seen a drop in revenue of 4% - 6%;

4.2 The rate at which claims are settled is growing from month to month at approximately 8% - 10%, causing the value of claims Requested But Not Yet Paid (RNYP) to be significantly higher than in previous years.

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4.3 Represented claims account for approximately 94% of our total Requested Not Yet Paid Balance, which necessitates that the RAF pays these claims as and when money becomes available. In months where the RAF receives a higher percentage apportionment in the fuel levy income, we have been able to pay represented claims when they reach an age of 120 - 150 days.

4.4 In months where the fuel levy is lower than our average projection, the RAF has only been able to pay the claims when they reach an age of 180 days.

4.5 In recent months, in an attempt to cover the backlog of payments, our available funds have been depleted within a period of two weeks upon receipt of the fuel levy allocated to the RAF. The implied effect is that we are unable to do frequent payment runs as we had been able to in preceding months as per our norm.

WARRANTS OF EXECUTION, NOTICES OF MOTION FOR THE LIQUIDATION OF THE RAF, NOTICES OF SALE OF EXECUTION, APPLICATIONS FOR CONTEMPT OF COURT AND THREATS OF ARREST OF THE CEO AND OTHER OFFICIALS

5 The attachment of the RAF's Bank account by some plaintiff attorneys seems to be a seriously emerging trend which has significantly impacted on the RAF's ability to make payments in terms of its age analysis approach. This self - help approach has resulted in the RAF being unable to honour planned or scheduled payments due to a sudden unavailability of funds as a result of significant amounts of monies be paid directly by the Bank to the Sheriff.

6 In our effort to manage this unfortunate situation and to ensure that funds are available to pay claims as scheduled, we strongly discourage the issuing of writs and rather encourage direct engagement with the RAF in committing to payment dates and terms.

7 The legal rights of claimants are not disputed by the RAF, however, due regard must be taken that when all funds have been exhausted then none of the above measures will ensure payment. On the contrary it only results in abrasive results, to the prejudice of other claimants who have been prepared to engage towards a constructive outcome with the RAF

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8 The following trends have been observed:

8.1 Plaintiff firms, despite efforts to engage via dedicated communication channels, with proposals for affordable payment plans within our available cash and distribution of such available cash based on the principles of equitable and fair allocation, have continued to issue large numbers of writs.

8.2 Unfortunately, given the material disruption these firms cause to the RAF (operationally and as far as cash flow management are concerned) and the magnitude of the pressure they apply to the Sheriff, payments to a few firms take place, contrary to what is equitable in terms of our available cash. This comes at the expense of many other firms that could have benefitted from an equitable distribution of funds.

IMPACT OF COVID-19 ON RAF'S OPERATIONS

9 It is by now commonly known that on 15 March 2020, President Cyril Ramaphosa announced the declaration of a national state of disaster following the World Health Organisation declaring the COVID-19 outbreak as a pandemic as well as measures that must be implemented in South Africa and a subsequent lockdown which resulted in closure of most business in the country, except for essential services providers.

10 It is further noted that during the aforesaid period, the RAF offices were closed in strict adherence to the COVID-19 regulations and guidelines. Whereas we note the inconvenience and unenviable position that you and/or your clients were subjected to as a result of the lockdown, we shall strive to use our best endeavours to ensure that we effect payments, subject to availability of funds.

11 COVID-19 lockdown had the effect of reducing fuel sales volumes and has resulted in reduced RAF fuel levy income. We estimate a worst case scenario of 60% reduction in fuel levy income amounting to R8,925 billion over the first three months from June 2020 to August 2020, 35% reduction in fuel levy income amounting to R5,421 billion over the next four months from September 2020 to December 2020 and 30% for the last three months of the financial year i.e. January 2021 to March 2021, amounting to R3,438 billion. Thus, a total expected decline in fuel levy of R17,680 billion for the period from June 2020 to March 2021. In the absence of any cash injection, the outstanding claims requested but not yet paid (RNYP) will also increase by R17,680 billion.

MS

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MS

12 With the reduction in fuel levy, the Road Accident will not be able to honour all its financial commitments for the months of June 2020 to March 2021. Thus, the less than expected fuel levy at an average of about R743 million per month for the three months of June 2020 to August 2020 will only be able to pay critical services. The other categories of claims will not be met.

PRACTICAL ENGAGEMENTS WITH THE TREASURY DEPARTMENT

13 The Treasury Department's dedicated email address remain active to facilitate the ongoing engagement between RAF and its claims stakeholders. The email address is as follows:

Dedicated Inboxes	Email Addresses	Turnaround time
Plaintiff Attorneys	PlaintiffattorneyPaymentQueries@raf.co.za	2 business Days

14 In an effort to foster better engagement and streamline communications channels, below follows the by now familiar useful notes when engaging with the RAF Treasury Department, which we continue to include it as we often still need to refer service providers and claimants to these notes.

15 The payment days referred to are calculated from the date an item was requested for payment by the Region, NOT when it was settled (settlement dates are not captured on our system). This allows us to do cash flow forecasting and practise cash management.

16 When sending an email to the address indicated above, please ensure that you clearly indicate name of your firm and the RAF link or reference number in question as the subject line on your correspondence.

17 Consolidate your enquiries in one correspondence.

18 The individuals overseeing the e-mail address will not accept phone calls or engage with you personally.

19 Please do not contact the RAF Treasury Department on their personal cell phones or social media platforms. They are not permitted to accept phone calls after hours or respond to communication via any other platform, except via a RAF e-mail address, or the RAF official website, or official social media platforms.

MS

20 For items NOT yet requested for payment you need to engage with the relevant Region's Claims Department. In this regard, please refer to our website for the contact details of the Regional Offices.

21 Please ensure that you allow a couple of days between the payment commitment by the RAF and that which you commit to your client.

22 The confidentiality of the payment information shared needs to be borne in mind constantly to ensure the safety of our claimants.

23 Please note that once a writ has been issued on a matter, the original payment request is cancelled and it is re-requested against the Sheriff. The RAF does not determine the priorities of the Sheriff and you need to engage directly with the Sheriff both in terms of when payment to the Sheriff is expected, as well as when you can expect payment from the Sheriff.

24 A remittance advice in terms of these payments is submitted to the Sheriff and should be obtained from such Sheriff. Once payment is made to the Sheriff, the RAF has adhered to its legal obligations and is no longer accountable for any amounts. The relationship then becomes one between yourself and the Sheriff's Office.

25 We are aware that many of you experience frustrations with the process to capture settled claims for payment and we are aware of our shortcomings in this regard that need to be attended to. Please continue engaging with the relevant Region. The importance of establishing a relationship with the Regions cannot be emphasised enough.

26 The Treasury and Operations staff must be engaged professionally. Abusive and disrespectful correspondence is not appreciated.

PAYMENT DAYS

27 Please be reminded that the payment days we currently endeavor to honour are 180 days from the date of request for payment. Claims will be paid from the oldest to the newest in order to keep the ageing more current.

MS

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MS

CONCLUSION

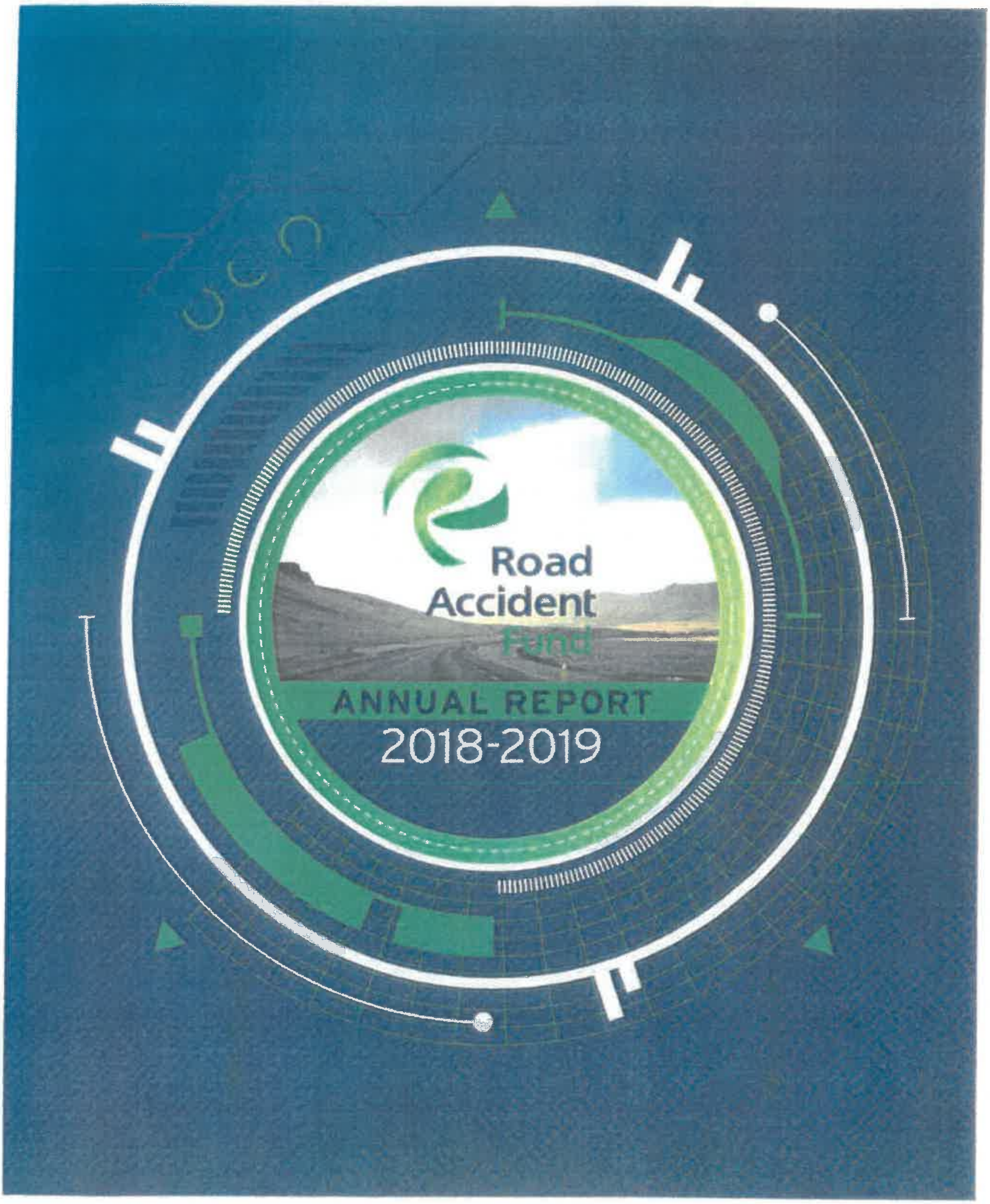
28 Appreciation is expressed to the many firms that support the RAF and strive to engage constructively with RAF under undeniably very difficult circumstances.

Yours sincerely

Boitumelo Mabusela (Jun 25, 2020 22:00 GMT+2)

Boitumelo Mabusela
Acting Chief Financial Officer

MS



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REPORT OF THE BOARD

1. INTRODUCTION

The Board presents its report, which forms part of the Annual Financial Statements of the RAF for the year ended 31 March 2019, to the Minister of Transport, who is the Executive Authority in terms of section 55(1)(d) of the PFMA.

The RAF, as established by the RAF Act, is listed as a National Public Entity in accordance with schedule 3A of the PFMA and operates in the Republic of South Africa. The Board acts as the Accounting Authority in terms of the PFMA.

2. BOARD

On 27 June 2018, the Board of the RAF was dissolved by the Minister of Transport. A new Board was appointed by Cabinet on 11 July 2018.

The Board members who held office during the year under review are as follows:

NON-EXECUTIVE BOARD MEMBERS 11 JULY 2018 TO 31 MARCH 2019

Dr MP Mathebula (Chairperson)
Ms MRV Mashigo-Mokgalong (Vice Chairperson)
Dr HF Bale
Mr LM Nyama
Dr NB Mabuya-Moloele
Mr TS Tshabalala
Ms D Mofefe
Dr MF Randera
Mr KM Mothobi (re-appointment)
Dr MC Peenze (re-appointment)
Ms MC Maleho (DG's representative) *

NON-EXECUTIVE BOARD MEMBERS 1 APRIL 2018 TO 27 JUNE 2018

Dr NM Bhengu (Chairperson)
Mr D Coovadia (Vice Chairperson)
Dr KLN Linda
Mr TP Masobe
Mr AM Pandor
Ms R Mokoena
Dr TO Kommal
Mr KM Mothobi
Dr MC Peenze
Ms LUZ Rataemane
Ms M Somaru (DG representative) *

**The Director-General of the Department of Transport or any other Senior Officer in the Department of Transport, designated by him or her for a purpose, serves as an ex officio member of the Board.*

CHIEF EXECUTIVE OFFICER

Ms L Xingwana-Jabavu (Acting from 1 July 2017)

CHIEF FINANCIAL OFFICER

Mr R Gounden (Resigned 31 January 2019)
Mr V Songelwa (Acting from 30 August 2018)

COMPANY SECRETARY

Ms JR Cornelius

3. PURPOSE AND OBJECTIVE OF THE RAF

To provide appropriate cover to all road users within the borders of South Africa; to rehabilitate persons injured, compensate for injuries or death and indemnify wrongdoers as a result of motor vehicle accidents in a timely, caring and sustainable manner; and to support the safe use of our roads.

MS

4. SOLVENCY AND GOING CONCERN

We draw attention to the fact that as at 31 March 2019, the entity had an accumulated deficit of R262,208,058,000 and that the entity's total liabilities exceeded its assets by R262,114,730,000.

The RAF has been technically insolvent for a considerable amount of time. The effect of the Turnaround Strategy implemented in the 2012/13 financial year has seen a substantial increase in the ability of the entity to finalise claims and the resultant reduction in the number of open claims previously accumulated over many years. As a result, and following the depletion of historic cash reserves, the available funding to pay claims is currently limited to the annual RAF Fuel Levy received, a levy that bears no reference to the historic or forecasted claims profile, the value of claims finalised or the operational capacity the entity has to finalise claims.

Over the course of this financial year, the RAF continued to complete and finalise more claims than it could honour from available funding. As a result, the RAF has continued to experience material cash flow constraints for the past five years to the extent that 'going concern' is deemed to be under a continued and significant threat.

It is, however, worth noting that in the past the RAF received additional financial support from the NT in the form of cash injections over and above the normal RAF Fuel Levy income, as and when it faced liquidity problems. During the 2006 financial year, it received a cash injection of R2.5 billion and in the 2009 financial year it received R2.5 billion. On 1 April 2015, an ad hoc 50 c/l increase to the RAF Fuel Levy became effective (adding approximately R11 billion to the annual Fuel Levy received). More recently, a 30 c/l increase was approved to be effective 1 April 2018, which added a further R6 billion to the annual Fuel Levy and in the current year a 5c/l increase was approved which was effective from 1 April 2019.

Though the recent increase in the Fuel Levy, to a large extent, succeeded in reducing the gap between productivity and funding on a monthly basis, it will not contribute to reducing the backlog in claims requested for payment but not yet paid that had accumulated since the cash flow constraints became a reality in the latter part of 2014. The backlog amounted to R8.6 billion on 30 June 2015 when the first tranche of the additional funding was received.

The pressure on available funding remains given the inflationary pressures on the Heads of Damages, the preference for the more expensive claims by plaintiff attorneys and the consistent higher claims registration patterns observed. We are not hopeful that the 5c/l increase will reduce our accounts payable, which is currently approximately R11.2 billion as at 31 March 2019.

The assessment and the assumptions used to conclude on the continued appropriateness of the application of 'going concern' as a basis for the preparation of the Annual Financial Statements are explored below. The assessment and assumptions inform mitigation measures being implemented.

ASSESSMENT:

Professional opinions obtained in the 2014/15 financial year still believed to be relevant:

- The legal opinion obtained on what it means for the RAF to be considered 'insolvent', whether it can be classified as a 'going concern', what process needed to be followed for the RAF to be wound up, how the RAF was to deal with creditors where it could not pay them, what exposure the RAF had were it not in a position to pay claimants, the recourse of such claimants and the personal liability of the RAF's Board and officials were a case to be made for financial mismanagement.
- The technical opinion on 'going concern' from one of its Panel of Internal Audit Firms with respect to the basis on which the Financial Statements of the RAF should be prepared and how the institution should mitigate the risk of obtaining a qualified audit opinion given the threat to the 'going concern'.

Initiatives put in place in the 2014/15 financial year that were maintained in the 2018/19 financial year:

- Updated cash flow forecasts were prepared on a daily, weekly and monthly basis.
- Extensive reporting mechanisms existed to monitor cash flows on a real-time basis and to report relevant information to the various affected parties and stakeholders, as well as to develop a pro-active response to the extent possible.

MS

- Writs instances and the processes followed in responding thereto were actively monitored and tracked by Operations and the Finance Treasury Department, whilst being supported by the Corporate Legal Department.
- Assessed the risk against the risk-bearing capacity of the entity and responding accordingly.
- Continuously, considered the fact that the RAF Act contemplates that the RAF may be 'unable' to pay and may be insolvent, but to liquidate the Fund is not possible under the said Act. To wind up the business of the RAF will require an Act of Parliament. Section 21 of the Act provides for the revival of the common law claim of the person injured in a road crash, or the dependants of the person killed because of the injuries sustained in a road crash, to sue the wrongdoer. Should section 21 of the RAF Act be 'triggered' by the RAF's inability to pay claimants, the implications for the public, and the State, would be dire.

It thus remains clear that the RAF cannot stop making payments, despite its cash flow constraints.

The RAF developed and implemented the following actions:

- A Cash Management Strategy was designed, reviewed and implemented to ensure available funding was distributed in an equitable and fair manner. This has since evolved to cash management in the ordinary course of business, and is reviewed in response to the business environment, where necessary.
- An extensive multipronged Communication Strategy remains in place to ensure that all service providers are kept abreast of developments in a transparent and frank manner.
- The entity, on a continuous basis, sought to optimise its own cost base and any funds that were not committed due to general savings or delays in procurement, were allocated to the settlement of claims.
- Extensive engagements with stakeholders – NT, DoT and other relevant parties and forums – are ongoing to ensure awareness, to present status updates and to seek solutions.
- A letter of comfort/support/indemnity will again be sought from the Shareholders (NT and DoT).
- In addition, when confronted with the increasing prevalence of bank attachments in the past financial year, the response plan to our ongoing cash flow constraints further evolved to identify, research and implement measures to minimise the interruption caused by these attachments.

ASSUMPTIONS:

In the context of the above, and consistent with the reporting in previous financial years, Management takes the following assumptions into consideration in its assessment of the threat to the 'going concern' of the RAF:

- The ability of the RAF to continue as a 'going concern' cannot be considered, primarily because it is not a commercial enterprise. The RAF is, as its name implies, a fund. It is a receptacle of all monies procured from the NT pursuant to section 5(1) of the RAF Act, from which all claims for damages arising from bodily injuries are to be paid. The Fund therefore has no realistic alternative other than to continue to operate in accordance with the above-said legislation.
- The RAF is incapable of being liquidated. To wind up the business of the RAF will require an intervention through an Act of Parliament. The winding up process will, however, not absolve the RAF from the debts that it would have incurred as at the time of the culmination of such a process. There is currently no indication of any intention to repeal the Act.
- Cash flow forecasts for the next 12 months indicate that the extent to which Net Liabilities exceed Net Assets is expected to increase because of the projected growth in the Liability for Outstanding Claims. The Accounts Payable Book (Claims Requested Not Yet Paid), however, is showing early signs of having stabilised at levels of approximately R10-billion. As a result, Management is not of the view that material uncertainties exist that will cast significant doubt upon the entity's ability to continue as a going concern for the next 12 months.
- The power to levy rates or taxes enables the RAF to be considered a 'going concern' even though it may operate with negative net assets.
- Support from its stakeholders, repeatedly expressed and visibly actioned in the past and more recently, continues.
- The continuous reporting and implementation of actions to respond to what the reporting indicates, also proactively, where possible.

MS

- Engagements with NT and the DoT will continue with status updates and to support expectations communicated, as and when required.
- Active pursuit of the promulgation of the Road Accident Benefit Scheme (RABS) will see a financially viable social security system introduced, via a mechanism like the RABS, become affordable and appropriately funded going forward.

The RAF faces material cash flow constraints. The RAF adopted a cash management strategy that seeks to manage the cash resources in an optimal way. The funds received from the fuel levy on an annual basis are not sufficient to pay all debts that arise annually. The cash resources of the RAF are not sufficient to pay the entire outstanding claims liability.

Based on the above, it is the opinion of the Management of the RAF that, though the concept of 'going concern' may not be applicable to the RAF. it is nonetheless the appropriate basis for the presentation of the Financial Statements for 31 March 2019 based on this assessment.

The following table depicts the total assets and the total liabilities of the RAF over the past five years. From the table below, it is evident that the RAF has not been solvent for many years. The accumulated deficit has increased by the deficit for the year of R55,779,880,000 in the 2018/19 financial year.

	2019	2018	2017	2016	2015
	R'000	R'000	R'000	R'000	R'000
Total Assets	11,219,768	9,806,313	9,198,494	9,795,762	7,367,289
Total Liabilities	(273,334,498)	(216,146,893)	(189,191,419)	(155,047,854)	(117,613,845)
	(262,114,730)	[illegible]	(179,992,925)	[illegible]	(110,246,556)

5. SUBSEQUENT EVENTS

No undisclosed material events have taken place between the Statement of Financial Position date and the authorisation of the Annual Financial Statements.

6. ACCOUNTING POLICIES

The Annual Financial Statements are prepared in accordance with the prescribed SA Standards of GRAP issued by the ASB as the prescribed framework by NT. During the current financial year, no new GRAP Standards were applied for the first time.

7. MATERIALITY FRAMEWORK

A Materiality Framework has been developed for reporting losses through criminal conduct and irregular, fruitless and wasteful expenditure, or for significant transactions that require approval by the Executive Authority, as envisaged in section 54(2) of the PFMA. The framework was finalised by the RAF and approved by the Board on 6 February 2014.

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8. FRUITLESS AND WASTEFUL AND IRREGULAR EXPENDITURE

FRUITLESS AND WASTEFUL EXPENDITURE

Fruitless and wasteful expenditure of R18,214,291 (2017/18: R17,732,031) relating to administrative costs, interest, sheriff costs and writ costs, has been disclosed in Note 25 of the Annual Financial Statements.

INTEREST, SHERIFF COSTS AND WRIT COSTS

Interest cost is the cost paid for late payment of the claim compensation as agreed to in a settlement agreement or order of the court, and taxed legal bills settled through taxation, as these costs are due immediately. The interest is charged under the Prescribed Rate of Interest Act of 1975 at 10.25% as per *Government Gazette No. 42179*, issued on 22 January 2019.

Sheriff cost is the cost paid to the Sheriff for its service regarding serving the warrants of execution (writs) on the Fund.

As per the definition in the PFMA, fruitless and wasteful expenditure means "expenditure which was made in vain and could have been avoided had reasonable care been exercised". The amounts listed below are costs incurred in the settlement process of claims influenced by external legal processes and time limits legally enforced on the RAF in the settlement of claims.

The total value of claims-related fruitless and wasteful expenditure included in the Annual Financial Statements for the year ended 31 March 2019 is R17,724,334 (2017/18: R16,858,529) representing a 5.14% increase. This, as a percentage of claims expenditure, is 0.02% (2017/18: 0.03%). The total value of claims-related fruitless and wasteful expenditure, had it not been reduced for the current cash position and Management Strategy, would have been R318,767,360 (2017/18: R245,591,898).

Reporting and adherence to the Writs Standard Operating Procedure (SOP) will continue.

Legal costs create operational constraints, as there are no legal obligations for plaintiff attorneys to submit the bill within any stipulated time frames. The majority of legal cost bills are disputed, because the content, or the items billed, is incorrect or invalid. The process of taxation of legal cost bills through the Office of the Taxation Master is the only option to settle these disputes.

The taxation of the legal cost bills exposes the RAF to a risk of non-compliance with court processes despite an Instruction Note from NT that all payments from legal settlements must be paid within 30 days from the date of settlement. Court rules require that taxed bills must be paid immediately after taxation and plaintiff attorneys issue writs (i.e. immediately after settlement).

As a result, payments may comply with the PFMA, but not the court rules.

The following information relates to the legal cost bills settled through taxation for 2018/19:

- Number of bills settled through taxation: 29,322 (2017/18: 26,987) - increased by 9%.
- Number of bills where a saving was made through taxation: 28,970 (2017/18: 26,225) - increased by 10%.
- Amount saved through taxation: R3,920,201,412 (2017/18: R3,090,412,945) - increased by 27%.
- The success rate in terms of savings on legal cost bills was 99% (2017/18: 97%).

The number of taxed legal cost bills has increased because of increased processing efficiency, higher volumes of claims settled compared to the previous corresponding period and attorneys submitting bills as soon as possible for payments to queue at Treasury as a result of the cash constraints.

The increased savings is therefore as a result of an increase in tariffs, as well as attorneys overreaching when drawing up their bills, which equate to higher bills, and when taxed, result in higher savings. In addition to the above, savings originate from the appointment of cost consultants by the RAF who strive to further realise higher savings as their fee is determined by the saving.

MS

RAF officials are required to diligently apply the process of the legal cost bills assessment. Writs SOPs are in place to ensure that all taxed bills are paid timeously to minimise the impact of the interest cost at a rate of 10.25%.

The number of writs received in the 2018/19 financial year was 9,964 (2017/18: 12,575). It was 20.4% lower than in 2017/18 and is a result of the continued management of stakeholders and cash available to settle claims.

The fruitless and wasteful expenditure is monitored closely by the Executive and Board. There are processes which have been undertaken to ensure that this risk is mitigated.

Fruitless and wasteful expenditure relating to administrative costs totalled R489,957 (2017/18: R23,142) and comprised of additional travel costs, a salary overpayment and a wrongful arrest claim which could have been avoided.

Disciplinary action was taken against staff members because of negligence resulting in the payment of sheriff and interest costs, as well as duplicate payments, and administrative costs. During the financial year, 25 staff members received counselling, 26 verbal warnings; and 25 written warnings were issued. No dismissals were necessary. (These figures were obtained from the Writs and Financial Misconduct Registers.)

IRREGULAR EXPENDITURE

Irregular expenditure of R6,884,209 (2017/18: R342,357,229) was reported during the financial year and is disclosed in Note 26 of the Annual Financial Statements.

Irregular expenditure arose as a result of non-compliance with Supply Chain Management legislation and also committing acts that contravene or fail to comply with a provision of the PFMA.

A total of five instances to the value of R6,631,210 were identified and reported during the 2018/19 financial year. This represents a 37.5% reduction in the number of instances of irregular expenditure from the eight instances totalling R342,357,229 reported in the 2017/18 financial year. Further details regarding the actions taken by management to prevent Irregular Expenditure are disclosed under Note 26 to the Annual Financial Statements.

Any employee who committed an act that undermined the financial management and internal control systems of the RAF, as required by relevant legislations and policies, was dealt with in terms of the Disciplinary Policy.

In 2018/19, four written warnings were issued to employees and one employee was counselled as a result of irregular expenditure where the employees were found to have contravened provisions of the Act. No dismissals took place.

9. ADDRESSES

BUSINESS ADDRESS:
Eco Glades Office Park 2
Private Bag X178
Centurion
0046

POSTAL ADDRESS:
420 Witch-hazel Avenue
Centurion
0046

WEBSITE:
www.raf.co.za

10. APPROVAL

The Annual Financial Statements, which have been prepared on the going concern basis, were approved by the Board on 27 July 2019 and were signed on its behalf by:

DR MP MATHEBULA
Chairperson of the Board
Date: 27 July 2019

MS L XINGWANA-JABAVU
Acting Chief Executive Officer
Date: 27 July 2019

MS

COMPANY SECRETARY'S CERTIFICATION

I hereby certify that the RAF has lodged all returns as required by the Public Finance Management Act, 1999 (Act No. 1 of 1999), as amended by Act No. 29 of 1999.

MS JR CORNELIUS
Company Secretary
Date: 27 July 2019

MS

STATEMENT OF FINANCIAL POSITION

AS AT 31 MARCH 2019

	Note(s)	2019 R '000	2018 R '000
ASSETS			
CURRENT ASSETS			
Cash and cash equivalents	3	908,002	1,567,189
Receivables from non-exchange transactions	4	9,851,359	7,824,329
Receivables from exchange transactions	5	6,451	6,229
Other financial assets	6	175,658	160,076
Consumable stock	7	5,867	5,345
		10,947,337	9,563,168
NON-CURRENT ASSETS			
Property, plant and equipment	8	206,092	191,859
Intangible assets	9	66,339	51,286
		272,431	243,145
TOTAL ASSETS		11,219,768	9,806,313
LIABILITIES			
CURRENT LIABILITIES			
Payables from exchange transactions	10	210,019	249,979
Other financial liabilities	11	51,988	208,013
Claims liabilities	12	40,624,352	38,268,456
Other provision	13	1,092,115	313,664
Operating lease liability	15	2,201	4,916
		41,980,675	39,045,028
NON-CURRENT LIABILITIES			
Claims liabilities	12	231,290,230	177,034,368
Employee benefit obligation	14	63,107	65,500
Operating lease liability	15	486	1,997
		231,353,823	177,101,865
TOTAL LIABILITIES		273,334,498	216,146,893
NET ASSETS		(262,114,730)	(206,340,580)
NET ASSETS			
RESERVES			
Revaluation reserve		93,328	87,598
Accumulated deficit		(262,208,058)	(206,428,178)
TOTAL NET ASSETS		(262,114,730)	(206,340,580)

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STATEMENT OF FINANCIAL PERFORMANCE

FOR THE YEAR ENDED 31 MARCH 2019

	Note(s)	2019 R '000	2018 R '000
REVENUE			
REVENUE FROM EXCHANGE TRANSACTIONS			
Other income	17	1,400	407
Investment revenue	18	99,153	90,046
TOTAL REVENUE FROM EXCHANGE TRANSACTIONS		100,553	90,453
REVENUE FROM NON-EXCHANGE TRANSACTIONS			
TRANSFER REVENUE			
Net fuel levies	16	43,138,770	37,250,841
TOTAL REVENUE		43,239,323	37,341,294
EXPENDITURE			
Claims expenditure	19	(96,404,834)	(61,345,597)
Depreciation and amortisation		(50,527)	(41,401)
Employee costs	21	(1,735,302)	(1,605,147)
Finance costs	22	(291,126)	(223,657)
Reinsurance premiums	20	(21,761)	(21,547)
Loss on disposal of assets and liabilities		(470)	(870)
General expenses	23	(515,183)	(454,265)
TOTAL EXPENDITURE		(99,019,203)	(63,692,484)
DEFICIT FOR THE YEAR		(55,779,880)	(26,351,190)

ms

STATEMENT OF CHANGES IN NET ASSETS

FOR THE YEAR ENDED 31 MARCH 2019

	Revaluation reserve R '000	Accumulated deficit R '000	Total net assets R '000
BALANCE AT 1 APRIL 2017	84,063	(180,076,988)	(179,992,925)
Changes in net assets			
Revaluation of land	200	-	200
Revaluation of building	3,335		3,335
Deficit for the year		(26,351,190)	(26,351,190)
TOTAL CHANGES	**3,535**	**(26,351,190)**	**(26,347,655)**
BALANCE AT 1 APRIL 2018	**87,598**	**(206,428,178)**	**(206,340,580)**
Changes in net assets			
Revaluation of land	2,700	-	2,700
Revaluation of building	3,030	-	3,030
Deficit for the year		(55,779,880)	(55,779,880)
Total changes	**5,730**	**(55,779,880)**	**(55,774,150)**
BALANCE AT 31 MARCH 2019	**93,328**	**(262,208,058)**	**(262,114,730)**

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CASH FLOW STATEMENT

FOR THE YEAR ENDED 31 MARCH 2019

	Note(s)	2019 R '000	2018 R '000
CASH FLOWS FROM OPERATING ACTIVITIES			
RECEIPTS			
Fuel levies		41,890,191	36,048,140
Interest income		98,931	91,015
Other income		1,400	407
		41,990,522	**36,139,562**
PAYMENTS			
Employee costs		(1,735,302)	(1,605,147)
Claims expenditure		(39,793,076)	(34,049,350)
Finance costs		(291,126)	(223,657)
Reinsurance premiums		(21,761)	(21,547)
Other expenditure		(733,891)	(258,968)
		(42,575,156)	**(36,158,669)**
NET CASH FLOWS FROM OPERATING ACTIVITIES	27	**(584,634)**	**(19,107)**
CASH FLOWS FROM INVESTING ACTIVITIES			
Purchase of property, plant and equipment	8	(37,007)	(39,417)
Purchase of other intangible assets	9	(37,546)	(26,673)
NET CASH FLOWS FROM INVESTING ACTIVITIES		**(74,553)**	**(66,090)**
Net Decrease in Cash and Cash Equivalents		(659,187)	(85,197)
Cash and cash equivalents at the beginning of the year		1,567,189	1,652,386
CASH AND CASH EQUIVALENTS AT THE END OF THE YEAR	3	908,002	1,567,189

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STATEMENT OF COMPARISON OF BUDGET AND ACTUAL AMOUNTS

FOR THE YEAR ENDED 31 MARCH 2019

	Approved budget R '000	Adjustments R '000	Final budget R '000	Actual amounts on comparable basis R '000	Difference between final budget and actual R '000	Ref
STATEMENT OF FINANCIAL PERFORMANCE						
REVENUE						
Revenue from Exchange transactions						
Other income			-	1,400	1,400	36
Investment revenue	82,033		82,033	99,153	17,120	36
TOTAL REVENUE FROM EXCHANGE TRANSACTIONS	82,033	-	82,033	100,553	18,520	
Revenue from Non-exchange Transactions						
Transfer Revenue						
Net fuel levies	42,308,149	-	42,308,149	43,138,770	830,621	
TOTAL REVENUE	42,390,182	-	42,390,182	43,239,323	849,141	
EXPENDITURE						
Employee costs	(1,810,606)		(1,810,606)	(1,735,302)	75,304	
Claims expenditure	(73,514,377)		(73,514,377)	(96,404,834)	(22,890,457)	36
Depreciation and amortisation	(44,905)	-	(44,905)	(50,527)	(5,622)	36
Finance costs	(267,351)		(267,351)	(291,126)	(23,775)	
Reinsurance premiums	(25,685)	-	(25,685)	(21,761)	3,924	
General expenses	(689,801)	-	(689,801)	(515,183)	174,618	36
TOTAL EXPENDITURE	(76,352,726)	-	(76,352,726)	(99,018,733)	(22,666,007)	
OPERATING DEFICIT	(33,962,544)	-	(33,962,544)	(55,779,410)	(21,816,866)	
Loss on disposal of assets and liabilities				(470)	(470)	36
DEFICIT FOR THE YEAR	(33,962,544)	-	(33,962,544)	(56,779,880)	(21,817,336)	

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