COURT ONLINE COVER PAGE

IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Division, Pretoria

CASE NO: **2025-125411**

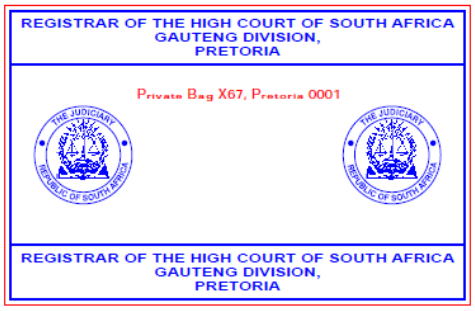
In the matter between:

THE MINISTER OF HEALTH ,THE DIRECTOR GENERAL NATIONAL DEPARTMENT OF HEALTH	Plaintiff / Applicant / Appellant
and	
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA ,THE MINISTER OF FINANCE ,NATIONAL TREASURY ,SOLIDARITY TRADE UNIOIN ,BOARD OF HEALTHCARE FUNDERS OF SOUTHERN AFRICA NPC ,SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM ,HOSPITAL ASSOCIATION OF SOUTH AFRICA ,THE SOUTH AFRICAN MEDICAL ASSOCIATION NPC ,HEALTH FUNDERS ASSOCIATION	Defendant / Respondent

---

Notice of Motion (Long Form)

NOTE: **This document was filed electronica**  **Registrar on 29/7/2025 at 12:48:40 PM South African Standa AST). The time and date the document was filed by the party i d on the header of each page of this document.**



ELECTRONICALLY SIGNED BY:

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



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No.: _____

In the matter between:

THE MINISTER OF HEALTH	First Applicant
THE DIRECTOR GENERAL, NATIONAL DEPARTMENT OF HEALTH	Second Applicant



and

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF FINANCE	Second Respondent
NATIONAL TREASURY	Third Respondent
SOLIDARITY TRADE UNION	Fourth Respondent
BOARD OF HEALTHCARE FUNDERS OF SOUTHERN AFRICA NPC	Fifth Respondent
SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM	Sixth Respondent
HOSPITAL ASSOCIATION OF SOUTH AFRICA	Seventh Respondent
THE SOUTH AFRICAN MEDICAL ASSOCIATION NPC	Eighth Respondent
HEALTH FUNDERS ASSOCIATION	Ninth Respondent

In re:

Case No: 2024-057449

SOLIDARITY TRADE UNION	Applicant
and	
THE MINISTER OF HEALTH	First Respondent
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Second Respondent
THE DIRECTOR GENERAL, NATIONAL DEPARTMENT OF HEALTH	Third Respondent
THE MINISTER OF FINANCE	Fourth Respondent
NATIONAL TREASURY	Fifth Respondent



and

Case No: 2024-058172

BOARD OF HEALTHCARE FUNDERS OF SOUTHERN AFRICA NPC	Applicant
and	
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF HEALTH	Second Respondent

and

Case No: 2024-11209

SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM	Applicant
and	
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF HEALTH	Second Respondent
THE MINISTER OF FINANCE	Third Respondent
NATIONAL TREASURY	Fourth Respondent



and

Case No: 2025-020969

HOSPITAL ASSOCIATION OF SOUTH AFRICA	Applicant
and	
THE MINISTER OF HEALTH	First Respondent
THE MINISTER OF FINANCE	Second Respondent
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Third Respondent

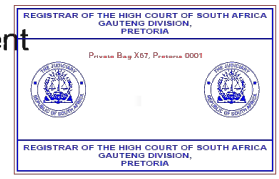
and

Case No: 2025-045340

THE SOUTH AFRICAN MEDICAL ASSOCIATION NPC	Applicant

and

THE MINISTER OF HEALTH	First Respondent
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Second Respondent
SPEAKER OF THE NATIONAL ASSEMBLY	Third Respondent
CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES	Fourth Respondent



and

Case No: 2025-083348

HEALTH FUNDERS ASSOCIATION	Applicant

and

THE MINISTER OF HEALTH	First Respondent
THE MINISTER OF FINANCE	Second Respondent
NATIONAL TREASURY	Third Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Fourth Respondent

FILLING NOTICE

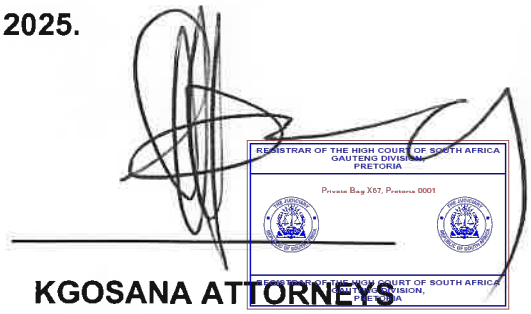
DOCUMENT FILED:

1. FIRST AND SECOND APPLICANTS: NOTICE OF MOTION.
2. THE FOUNDING AFFIDAVIT BY PROF NICHOLAS CRISP.

3. A CONFIRMATORY AFFIDAVIT BY MAKULE KGOSANA.
4. A CONFIRMATORY AFFIDAVIT BY THE MINISTER OF HEALTH.

FILED BY: **KGOSANA ATTORNEYS**

DATED AT PRETORIA ON THIS THE 28TH DAY OF JULY 2025.



KGOSANA ATTORNEYS

ATTORNEYS FOR THE APPLICANTS

CHAMBERS @ VALLEY ROAD

133 VALLEY ROAD

PRETORIA

0002

TEL: 012 326 1452

TO: **THE REGISTRAR**

OF THE ABOVE HONOURABLE COURT

AND TO: **THE STATE ATTORNEY, PRETORIA**

FIRST RESPONDENT'S ATTORNEYS

316 SALU BUILDING

CNR THABO SEHUME & FRANCIS BAARD

PRIVATE BAG X81

PRETORIA

TEL: 012 309 1623

YOUR REF: 2202/24/Z64 & 4611/2024/Z64

EMAIL: rsebelemetsa@justice.gov.za

AND TO: MINISTER OF FINANCE

SECOND RESPONDENT

OLD RESERVE BANK

40 CHURCH SQUARE

PRETORIA

c/o STATE ATTORNEY

SALU BUILDING

316 THABO SEHUME STREET & CONER FRANCIS BAARD

TEL: 012 309 1500/012 309 1684



AND TO: NATIONAL TREASURY

THIRD RESPONDENT

40 WF NKOMO STREET

PRETORIA

TEL: 012 315 5111

FAX: 012 315 5126

c/o THE STATE ATTORNEY

316 THABO SEHUME STREET

PRETORIA CENTRAL

PRETORIA

AND TO: SERFONTEIN, VILJOEN & SWART ATTORNEYS

FOURTH RESPONDENT'S ATTORNEYS

165 ALEXANDER STREET

BROOKLYN

PRETORIA

TEL: 012 363 2556

FAX: 086 687 2271/ 086 471 8090

EMAIL: jd@svslaw.co.za/ niekie@svslaw.co.za

franlie@svslaw.co.za

REF: MR SWART/MR CLAASSEN/fb/ CS0577



AND TO: **WERKSMAN'S ATTORNEYS**

FIFTH RESPONDENT'S ATTORNEYS

THE CENTRAL

96 RIVONIA ROAD

SANDTON

TEL: 011 534 8198/ 011 535 8424

FAX: 011 535 8698/ 011 535 8724

EMAIL: nkirby@werksmans.com/hmicheal@werksmans.com/

bmoti@werksmans.com/sphakathi@werksmana.com

REF: Mr N Kirby/Ms H Michael/BOAR 3329.73

c/o KLAGSBRUN BOSMAN DU PLESSIS INC

220 LANGER STREET

NEW MUCKLENUEK

PRETORIA

DOCEX 42, BROOKLYN

AND TO: WEBBER WENTZEL ATTORNEYS

SIXTH RESPONDENT'S ATTORNEYS

90 RIVONIA ROAD, SANDTON

JOHANNESBURG, 2196

TEL: 011 530 5220

FAX: 011 530 6220

EMAIL: martins.versfeld@webberwentzel.com

Prelisha.sing@webberwentzel.com

Glenn.penfold@webberwentzel.com

Alexandra.rees@webberwentzel.com

REF:M VERSFELD/P Sigh/G Penfold/A Rees 4008778

c/o HILLS INCORPORATED

DUNBROOK OFFICE PARK

BUILDING B

1ST FLOOR, 151 NICOLSON STREET

BROOKLYN, PRETORIA



AND TO: NORTONS INC. ATTORNEYS

SEVENTH RESPONDENT'S ATTORNEYS

THE RESERVE

FIRST FLOOR

54 MELVILLE ROAD

ILLOVO, JOHANNESBURG

TEL: 011 666 7560

EMAIL: anthony@nortonsinc.com

anton@nortonsinc.com

michealle@nortonsinc.com

mellisa@nortonsinc.com



AND TO: ASSENMANCHER BRANDT ATTORNEYS

EIGHTH RESPONDENT'S ATTORNEYS

FAIR OFFICE PARK

GROUND FLOOR, SABLE PLACE

52 GROSVENOR ROAD

PO BOX 130527

BRYANSTON, 2074

EMAIL: carl@assenmacher.co.za

kayleigh@assenmacher.co.za

TEL: 011 706 0303

REF: C BRANDT/KPID 1144

c/o VOSTER BRANDT ATTORNEYS

161 GARSFONTEIN ROAD, PRETORIA

ASHLEA GARDENS, PRETORIA

TEL: 012 460 0027

FAX NO: 012 460 0600

REF: MR C.E BRANDT

AND TO: **ENS AFRICA ATTORNEYS**

NINTH RESPONDENT'S ATTORNEYS

THE MARC| TOWER 1

129 RIVONIA ROAD

SANDTON

EMAIL: dband@ensafrica.com

tntsaluba@ensafrica.com

asipamla@ensafrica.com

REF:D BANDA/A RICHARDS/0528590

c/o MACINTOSH CROSS AND FARQUHARSON

EMBASSY LAW CHAMBERS

834 PRESTORIUS STREET

ARCADIA, PRETORIA

EMAIL: cde@macintoshcross.co.za

REF: C Erusmas/j keus/x642025



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No.: _____

In the matter between:

THE MINISTER OF HEALTH	First Applicant
THE DIRECTOR GENERAL, NATIONAL DEPARTMENT OF HEALTH	Second Applicant

and



THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF FINANCE	Second Respondent
NATIONAL TREASURY	Third Respondent
SOLIDARITY TRADE UNION	Fourth Respondent
BOARD OF HEALTHCARE FUNDERS OF SOUTHERN AFRICA NPC	Fifth Respondent
SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM	Sixth Respondent
HOSPITAL ASSOCIATION OF SOUTH AFRICA	Seventh Respondent
THE SOUTH AFRICAN MEDICAL ASSOCIATION NPC	Eighth Respondent
HEALTH FUNDERS ASSOCIATION	Ninth Respondent

In re:

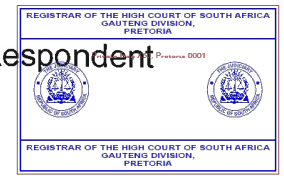
Case No: 2024-057449

SOLIDARITY TRADE UNION Applicant

and

THE MINISTER OF HEALTH First Respondent

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA Second Respondent



THE DIRECTOR GENERAL, NATIONAL DEPARTMENT OF HEALTH Third Respondent

THE MINISTER OF FINANCE Fourth Respondent

NATIONAL TREASURY Fifth Respondent

and

Case No: 2024-058172

BOARD OF HEALTHCARE FUNDERS OF SOUTHERN AFRICA NPC Applicant

and

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA First Respondent

THE MINISTER OF HEALTH Second Respondent

and

Case No: 2024-11209

SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM Applicant

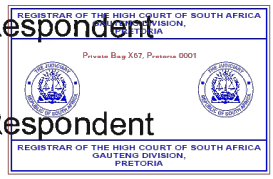
and

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA First Respondent

THE MINISTER OF HEALTH Second Respondent

THE MINISTER OF FINANCE Third Respondent

NATIONAL TREASURY Fourth Respondent



and

Case No: 2025-020969

HOSPITAL ASSOCIATION OF SOUTH AFRICA Applicant

and

THE MINISTER OF HEALTH First Respondent

THE MINISTER OF FINANCE Second Respondent

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA Third Respondent

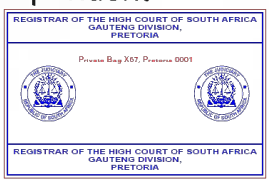
and

Case No: 2025-045340

THE SOUTH AFRICAN MEDICAL ASSOCIATION NPC Applicant

and

THE MINISTER OF HEALTH	First Respondent
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Second Respondent
SPEAKER OF THE NATIONAL ASSEMBLY	Third Respondent
CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES	Fourth Respondent



and

Case No: 2025-083348

HEALTH FUNDERS ASSOCIATION	Applicant

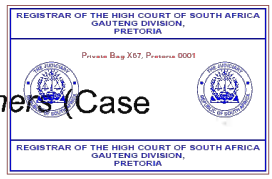
and

THE MINISTER OF HEALTH	First Respondent
THE MINISTER OF FINANCE	Second Respondent
NATIONAL TREASURY	Third Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Fourth Respondent

NOTICE OF MOTION

TAKE NOTICE THAT the applicants will apply on a date to be determined in case management by the Honourable Deputy Judge President for an order in the following terms:

1. The following applications are stayed and the time periods for the filing of further process are suspended:



1.1. *Solidarity Trade Union v the Minister of Health and Others* (Case No 2024-057449)

1.2. *Hospital Association of South Africa v the Minister of Health and Others* (Case No 2025-020969);

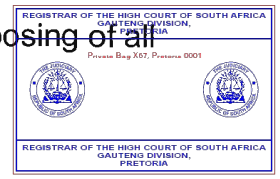
1.3. *The South African Medical Association NPC v the Minister of Health and Others* (Case No 2025-045340);

1.4. *Health Funders Association v the Minister of Health and Others* (Case No 2025-083348); and

1.5. *South African Private Practitioners Forum v the President of the Republic of South Africa and Others* (Case No 2024-11209) to the extent that the applicant therein succeeds in obtaining leave to amend and effecting the amendment in its notice of intention to amend dated 13 June 2025.

1.6. any other application commenced by the sixth respondent, the South African Private Practitioners' Forum, that seeks to secure as primary relief, the relief referred to in paragraph 3 and 4 of the notice of motion in Case No 2024-11209.

2. The orders in paragraph 1 above are effective pending a final decision by the Constitutional Court in all of, or which have the effect of disposing of all of –



2.1. the President of the Republic's and the Minister of Health's applications in terms of section 167(6)(b) of the Constitution for leave to appeal directly to the Constitutional Court against the judgment of Twala J dated 6 May in in *Board of Healthcare Funders of Southern Africa NPC v the President of the Republic of South Africa and Others* (Case No 2024-058172) ("**the BHF HC application**") and *South African Private Practitioners Forum v the President of the Republic of South Africa and Others* (Case No 2024-11209) ("**the SAPPF HC application**");

2.2. the President and the Minister's direct applications to the Constitutional Court in terms of section 167(6)(a) of the Constitution for relief pertaining to the reviewability of the President's decision to assent to and sign the NHI Act, the

applicability of Rule 53, and the question whether or not the President is obliged to make available the record of his decision;

2.3. any appeals for which leave is granted pursuant to paragraph 2.1;

2.4. the conditional application to the Constitutional Court of the Board of Healthcare Funders ("**BHF**") in terms of section 167(6)(a) of the Constitution for the review of the President's decision to assent to and sign the NHI Act in *Board of Healthcare Funders NPC v the President of the Republic of South Africa and the Minister of Health* (CCT254/24) ("**the BHF CC application**");

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

2.5. the conditional application to the Constitutional Court of the South African Private Practitioners Forum ("**SAPPF**") in terms of section 167(4)(e) of the Constitution for the review of the President's decision to assent to and sign the NHI Act and SAPPF's conditional application for leave to intervene in the BHF CC case in *Southern African Private Practitioners Forum v the President of the Republic of South Africa and Another* ("**the SAPPF CC application**");

2.6. in the event of the Constitutional Court declining to grant leave to appeal directly or to hear the direct access applications referred to in paragraphs 2.1 and 2.2 above, the applications for leave to

appeal to Twala J in the BHF HC case and SAPPF HC case, and, should he refuse leave, any applications for leave to appeal in terms of section 17(2)(b) of the Superior Courts Act No. 10 of 2013 and any appeals heard pursuant thereto; and

2.7. any applications for leave to appeal to the Constitutional Court against a decision of the Supreme Court of Appeal and any appeals heard pursuant thereto.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

3. The permanent withdrawal by an applicant of any of the applications or appeals referred to in paragraph 2 shall be considered a final disposal of the application.

4. The Minister's undertaking that unless and until the events in paragraph 2 (as read with paragraph 3) above have been fulfilled, the Minister of Health shall not promulgate regulations in the Gazette in terms of section 33 of the National Health Insurance Act, 2023 (read with section 55(1)(z)) determining that the National Health Insurance has been fully implemented, is noted.

5. Upon the conditions in paragraphs 2 and 3 above being fulfilled:

5.1. the order in paragraph 1 shall cease to apply and the stay of proceedings shall be uplifted;

5.2. the applicants herein (the Minister of Health and Director General of the Department of Health) shall inform the Deputy Judge President in writing thereof, who shall, to the extent necessary, determine the timelines for further filing of process in case management.

6. The following applications are consolidated in terms of Rule 11 of the Uniform Rules of Court:



6.1. *Solidarity Trade Union v the Minister of Health and Others* (Case No 2024-057449);

6.2. *Hospital Association of South Africa v the Minister of Health and Others* (Case No 2025-020969);

6.3. *The South African Medical Association NPC v the Minister of Health and Others* (Case No 2025-045340);

6.4. *Health Funders Association v the Minister of Health and Others* (Case No 2025-08334);

6.5. *South African Private Practitioners Forum v the President of the Republic of South Africa and Others* (Case No 2024-11209) to the extent that the applicant therein succeeds in obtaining leave to

amend and effecting the amendment in its notice of intention to amend dated 13 June 2025; and

6.6. any other application commenced by the sixth respondent, SAPPF, that seeks to secure as primary relief, the relief referred to in paragraph 3 and 4 of the notice of motion in Case No 2024-11209.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

7. The consolidation in paragraph 6 above shall apply to the following extent:

7.1. A consolidated hearing shall be held in respect of the applications in paragraphs 6.1 to 6.6 above ("**the consolidated applications**").

7.2. The Registrar shall create a consolidated Caselines Page in respect of the consolidated applications.

7.3. The respondents in the consolidated applications shall be entitled to:

7.3.1. treat the record as a single record; and

7.3.2. subject to the relief sought in paragraphs 1 and 2 above, file a consolidated answering affidavit and supporting and / or expert affidavits in terms of timelines to be determined in case management.

7.4. Each applicant in the consolidated applications shall be required to file their own replying affidavit and shall only be permitted to reply to that part of the respondents' answering affidavit (as referred to in paragraph 7.3.2) that responds directly to its answering affidavit, whether thematically or by paragraph, and to argue only for the relief sought in their own notice of motion.



7.5. The process for the determination of interlocutory disputes shall be determined through case management.

7.6. The Court may issue a consolidated judgment.

8. The costs of this application shall be costs in the cause of each of the applications in the consolidated application.

9. The applicants are granted further and/or alternative relief

TAKE NOTICE THAT the affidavit of **NICHOLAS GILMOUR CRISP** together with the annexures thereto and confirmatory affidavits filed therewith, will be used in support of this application.

TAKE NOTICE FURTHER THAT the applicants have appointed the offices of its attorneys of record, **KGOSANA ATTORNEYS**, at the address shown below as the address at which they will accept service of all process in the above matter.

TAKE NOTICE FURTHER THAT if any respondent intends to oppose the relief, you are required to file your opposing affidavit by no later than 12 August 2025.

KINDLY ENROL THE MATTER ACCORDINGLY FOR HEARING.

DATED AT PRETORIA ON THIS THE 28TH DAY OF JULY 2025.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

KGOSANA ATTORNEYS

ATTORNEYS FOR THE APLICANTS

CHAMBERS @ VALLEY ROAD

133 VALLEY ROAD

PRETORIA

0002

TEL: 012 326 1452

TO: **THE REGISTRAR**
OF THE ABOVE HONOURABLE COURT

AND TO: **THE STATE ATTORNEY, PRETORIA**
FIRST RESPONDENT'S ATTORNEYS
316 SALU BUILDING
CNR THABO SEHUME & FRANCIS BAARD
PRIVATE BAG X81

PRETORIA

TEL: 012 309 1623

YOUR REF: 2202/24/Z64 & 4611/2024/Z64

EMAIL: rsebelemetsa@justice.gov.za

AND TO: **MINISTER OF FINANCE**

SECOND RESPONDENT

OLD RESERVE BANK

40 CHURCH SQUARE

PRETORIA

c/o STATE ATTORNEY

SALU BUILDING

316 THABO SEHUME STREET & CONER FRANCIS BAARD

TEL: 012 309 1500/012 309 1684



AND TO: **NATIONAL TREASURY**

THIRD RESPONDENT

40 WF NKOMO STREET

PRETORIA

TEL: 012 315 5111

FAX: 012 315 5126

c/o THE STATE ATTORNEY

316 THABO SEHUME STREET

PRETORIA CENTRAL

PRETORIA

FAX: 086 687 2271/ 086 471 8090

EMAIL: jd@svslaw.co.za/ niekie@svslaw.co.za

franlie@svslaw.co.za

REF: MR SWART/MR CLAASSEN/fb/ CS0577



AND TO: **WERKSMANS ATTORNEYS**

FIFTH RESPONDENT'S ATTORNEYS

THE CENTRAL

96 RIVONIA ROAD

SANDTON

TEL: 011 534 8198/ 011 535 8424

FAX: 011 535 8698/ 011 535 8724

EMAIL:nkirby@werksmans.com/hmicheal@werksmans.com/

bmoti@werksmans.com/sphakathi@werksmana.com

REF: Mr N kirby/Ms H Michael/BOAR 3329.73

c/o KLAGSBRUN BOSMAN DU PLESSIS INC

220 LANGER STREET

NEW MUCKLENUEK

PRETORIA

DOCEX 42,BROOKLYN

AND TO: **WEBBER WENTZEL ATTORNEYS**

SIXTH RESPONDENT'S ATTORNEYS

90 RIVONIA ROAD, SANDTON

JOHANNESBURG, 2196

TEL: 011 530 5220

FAX: 011 530 6220

EMAIL: martins.versfeld@webberwentzel.com

Prelisha.sing@webberwentzel.com

Glenn.penfold@webberwentzel.com

Alexandra.rees@webberwentzel.com



REF:M VERSFELD/P Sigh/G Penfold/A Rees 4008778

c/o HILLS INCORPORATED

DUNBROOK OFFICE PARK

BUILDING B

1ST FLOOR, 151 NICOLSON STREET

BROOKLYN, PRETORIA

AND TO: **NORTONS INC. ATTORNEYS**

SEVENTH RESPONDENT'S ATTORNEYS

THE RESERVE

FIRST FLOOR

54 MELVILLE ROAD

ILLOVO, JOHANNESBURG

TEL: 011 666 7560

EMAIL: anthony@nortonsinc.com

anton@nortonsinc.com

michealle@nortonsinc.com

mellisa@nortonsinc.com

AND TO: **ASSENMANCHER BRANDT ATTORNEYS**

EIGHTH RESPONDENT'S ATTORNEYS

FAIR OFFICE PARK

GROUND FLOOR, SABLE PLACE

52 GROSVENOR ROAD

PO BOX 130527

BRYANSTON, 2074

EMAIL: carl@assenmacher.co.za

kayleigh@assenmacher.co.za

TEL:011 706 0303

REF: C BRANDT/KPID 1144

c/o VOSTER BRANDT ATTORNEYS

161 GARSFONTEIN ROAD, PRETORIA

ASHLEA GARDENS, PRETORIA

TEL: 012 460 0027

FAX NO: 012 460 0600

REF: MR C.E BRANDT



AND TO: **ENS AFRICA ATTORNEYS**

NINTH RESPONDENT'S ATTORNEYS

THE MARC| TOWER 1

129 RIVONIA ROAD

SANDTON

EMAIL: dband@ensafrica.com

tntsaluba@ensafrica.com

asipamla@ensafrica.com

REF:D BANDA/A RICHARDS/0528590

c/o MACINTOSH CROSS AND FARQUHARSON

EMBASSY LAW CHAMBERS

834 PRESTORIUS STREET

ARCADIA, PRETORIA

EMAIL: cde@macintoshcross.co.za

REF: C Erusmas/j keus/x642025



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No.: _____

In the matter between:

THE MINISTER OF HEALTH	First Applicant
THE DIRECTOR GENERAL, NATIONAL DEPARTMENT OF HEALTH	Second Applicant
and	
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF FINANCE	Second Respondent
NATIONAL TREASURY	Third Respondent
SOLIDARITY TRADE UNION	Fourth Respondent
BOARD OF HEALTHCARE FUNDERS OF SOUTHERN AFRICA NPC	Fifth Respondent
SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM	Sixth Respondent
HOSPITAL ASSOCIATION OF SOUTH AFRICA	Seventh Respondent
THE SOUTH AFRICAN MEDICAL ASSOCIATION NPC	Eighth Respondent
HEALTH FUNDERS ASSOCIATION	Ninth Respondent

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

In re:

Case No: 2024-057449

SOLIDARITY TRADE UNION	Applicant
and	
THE MINISTER OF HEALTH	First Respondent
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Second Respondent
THE DIRECTOR GENERAL, NATIONAL DEPARTMENT OF HEALTH	Third Respondent
THE MINISTER OF FINANCE	Fourth Respondent
NATIONAL TREASURY	Fifth Respondent



and

Case No: 2024-058172

BOARD OF HEALTHCARE FUNDERS OF SOUTHERN AFRICA NPC	Applicant
and	
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF HEALTH	Second Respondent

and

Case No: 2024-11209

SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM	Applicant

and

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF HEALTH	Second Respondent
THE MINISTER OF FINANCE	Third Respondent
NATIONAL TREASURY	Fourth Respondent

and



Case No: 2025-020969

HOSPITAL ASSOCIATION OF SOUTH AFRICA	Applicant

and

THE MINISTER OF HEALTH	First Respondent
THE MINISTER OF FINANCE	Second Respondent
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Third Respondent

and

Case No: 2025-045340

THE SOUTH AFRICAN MEDICAL ASSOCIATION NPC	Applicant

and

THE MINISTER OF HEALTH	First Respondent
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Second Respondent

SPEAKER OF THE NATIONAL ASSEMBLY Third Respondent

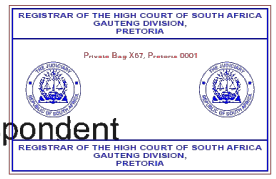
CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES Fourth Respondent

and

Case No: 2025-083348

HEALTH FUNDERS ASSOCIATION Applicant

and



THE MINISTER OF HEALTH First Respondent

THE MINISTER OF FINANCE Second Respondent

NATIONAL TREASURY Third Respondent

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA Fourth Respondent

FOUNDING AFFIDAVIT

TABLE OF CONTENTS

THE PARTIES 6

INTRODUCTION 8

PURPOSE OF THIS APPLICATION 13

OVERVIEW OF THE PENDING APPLICATIONS 14

THE CASE MANAGEMENT PROCESS AND MINISTER'S PROPOSALS 30

THE MINISTER IS *BONA FIDE* IN SEEKING A PRAGMATIC SOLUTION 44

SECTION 1: STAY APPLICATION 46

SECTION 2: CONSOLIDATION APPLICATION 74

RELIEF 88

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

I,

NICHOLAS GILMOUR CRISP

state as follows under oath:

1. I am a medical doctor and public health medicine specialist employed as the Deputy Director General: National Health Insurance at the National Department of Health ("**NDOH**"), whose offices are situated at Dr AB Xuma Building, 1112 Voortrekker Rd, Pretoria. I am duly authorised to depose to this affidavit on behalf of the applicants.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

2. The facts in this affidavit are true and correct and fall within my personal knowledge unless otherwise indicated. Where I make submissions of law, I do so on the advice of the applicants' legal advisors, which advice I accept.

THE PARTIES

3. The **MINISTER OF HEALTH** is the first applicant. He is responsible for the administration of the National Health Insurance Act 20 of 2023 ("**the NHI Act**"). His office is situated at Dr AB Xuma Building, 1112, Voortrekker Road, Pretoria.

4. The second applicant is **THE DIRECTOR GENERAL, NATIONAL DEPARTMENT OF HEALTH**, whose office is situated at Dr AB Xuma Building, 1112, Voortrekker Road, Pretoria. The second applicant is, in conjunction with the first applicant, responsible for the implementation of

certain aspects of the NHI Act and is the designated head and accounting officer for the NDOH.

5. For convenience, I refer to the first and second applicants collectively in the remainder of this affidavit as "**the Minister**".

6. The first respondent is the **PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** ("**President**"), whose office is situated at the Union Buildings, Government Avenue, Pretoria.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

7. The second respondent is the **MINISTER OF FINANCE**, whose office is situated at the Old Reserve Bank Building, 40 Church Square, Pretoria.

8. The third respondent is the **NATIONAL TREASURY**, whose office is situated at the Old Reserve Bank Building, 40 Church Square, Pretoria.

9. The fourth respondent is **SOLIDARITY TRADE UNION** ("**Solidarity**"), a trade union registered in terms of the Labour Relations Act 66 of 1995, with its office situated at corner DF Malan Drive and Eendracht Street, Kloofsig, Pretoria.

10. The fifth respondent is the **BOARD OF HEALTHCARE FUNDERS OF SOUTHERN AFRICA NPC** ("**BHF**"), a non-profit company registered and incorporated in South Africa, whose registered office is situated at Lower Ground Floor, South Tower, 160 Jan Smuts Avenue, Rosebank Johannesburg. The Minister does not seek any relief against BHF. It is cited herein due to any interest it may have in the outcome of this application.

11. The sixth respondent is the **SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM** ("**SAPPF**"), a voluntary association of private practitioners who work in the private healthcare sector in South Africa, whose office is situated at Unit 16, Northcliff Office Park, 203 Beyers Naude Drive, Northcliff Johannesburg.

12. The seventh respondent is the **HOSPITAL ASSOCIATION OF SOUTH AFRICA** ("**HASA**"), a voluntary association comprising of private hospital associations, whose office is situated at Suite 3, 6th floor, Fredman Towers, 13 Fredman Drive, Sandton, 2196.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

13. The eighth respondent is the **SOUTH AFRICAN MEDICAL ASSOCIATION NPC** ("**SAMA**"), a non-profit company registered and incorporated in South Africa, whose registered office is situated at Block F, Castle Walk Corporate Park, Nossob Street, Erasmuskloof, Extension 3, Pretoria.

14. The ninth respondent is **HEALTH FUNDERS ASSOCIATION** ("**HFA**"), a non-profit organisation, whose office is situated at 21 Woodlands Drive, Woodmead, Sandton.

INTRODUCTION

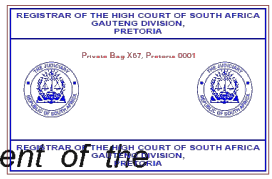
15. On 15 May 2024, the President assented to and signed into law the NHI Act.

16. On 28 May 2024 and 1 October 2024 respectively, BHF and SAPPF brought applications in this Court to review and set aside the President's decision to assent to and sign the National Health Insurance Bill [B11B-2019] ("**the NHI Bill**") on the grounds that in doing so he failed to comply with certain of his

obligations in terms of section 79(1) read with section 84(2)(a) to (c) of the Constitution of the Republic of South Africa, Act 108 of 1996 (**"the Constitution"**).

17. These applications are:

17.1. *Board of Healthcare Funders of Southern Africa NPC v the President of the Republic of South Africa and Others*, case number 2024-058172 (**"the BHF High Court HC application"**); and



17.2. *South African Private Practitioners Forum v the President of the Republic of South Africa and Others*, case number 2024-11209 (**"the SAPPF HC application"**)

18. SAPPF sought, in the alternative, an order declaring the NHI Act unconstitutional, and further alternatively, declaring certain sections of the NHI Act unconstitutional.

19. Four other applications have been filed in this Court which challenge the constitutional validity of the NHI Act and seek to set it aside in whole or in part. These are:

19.1. *Solidarity Trade Union v the Minister of Health and Others*, case number 2024-057449 (**"the Solidarity application"**);

19.2. *Hospital Association of South Africa v the Minister of Health and Others*; case number 2025-020969 (**"the HASA application"**);

19.3. *The South African Medical Association NPC v the Minister of Health and Others*, case number 2025-045340 ("**the SAMA application**"); and

19.4. *Health Funders Association v the Minister of Health and Others* case number 2025-083348 ("**the HFA application**").

20. Thus, while SAPPF and BHF have challenged the validity of the NHI Act indirectly by challenging the President's decision to sign and assent to the NHI Bill, Solidarity, HASA, SAMA, HFA, and SAPPF in its alternative relief, have frontally challenged the constitutionality of the NHI Act and/or certain of its provisions.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

21. The Minister has been cited in, and opposes, all of the abovementioned applications.

22. By agreement between the parties, all of the above NHI-related applications are being case managed by the Deputy Judge President of this Court ("**DJP**").

23. In the BHF and the SAPPF applications, the Minister and the President filed notices raising points of law in terms of Rule 6(5)(d)(iii) that the High Court does not have jurisdiction, and that the Constitutional Court has exclusive jurisdiction to adjudicate the President's impugned conduct. The Minister and the President have also argued that the President cannot be compelled to produce a record in terms of Rule 53, which does not apply to the President in the circumstances of the case. The President further challenges the reviewability of his decision to assent to and sign legislation.

24. On 6 May 2025, the Honourable Justice Twala dismissed the Minister's and the Presidents' points of law, holding that the High Court has jurisdiction to adjudicate the President's impugned conduct, the President's decision is reviewable, and he is required to produce the record in terms of Rule 53, which applies in the circumstances of the case.

25. The Minister and the President have sought leave to appeal Twala J's judgment and order by way of applications which are pending in the High Court and in the Constitutional Court. They have also applied directly to the Constitutional Court for ancillary relief, including in relation to their stance that the President is not obliged to furnish a record. Both the Minister's and President's applications for leave to appeal in the High Court are conditional in that if the Constitutional Court should grant leave to appeal directly to it, then the application for leave to appeal in the High Court will be withdrawn.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

26. BHF, in the meanwhile, launched a conditional direct access application in the Constitutional Court ("**BHF CC application**" or "**BHF CC review application**") for the same relief which it seeks in the BHF HC application. BHF justified the BHF CC application on the basis of the Minister and the President's stance that it is the Constitutional Court that has exclusive jurisdiction in respect of the BHF HC application.

27. BHF noted in the BHF CC application that it would only set the matter down for hearing in the event that the High Court found that it did not have jurisdiction regarding the President's impugned conduct or if the Minister and

the President sought leave to appeal against the finding and order that the High Court did have jurisdiction.

28. SAPPF has essentially followed suit, albeit with certain minor differences in approach. It has recently applied conditionally to the Constitutional Court ("**SAPPF CC application**" or "**SAPPF CC review application**") by way of direct access to review and set aside the decision of the President to assent to and sign the NHI Bill, declaring the NHI Act to be consequentially invalid and remitting the matter to the President for reconsideration, along with related relief. It does so conditional, essentially, upon the Constitutional Court granting leave to appeal in the President's and the Minister's appeals and holding that it enjoys exclusive jurisdiction.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

29. The constitutionality of the NHI Act thus lies at the centre of each of the review applications. If SAPPF and BHF are correct and it is ultimately found that the President in assenting to and signing into law the NHI Bill did not comply with the Constitution, the NHI Act will fall away and the Bill will be remitted to the President to decide again whether to assent to and sign it, or to send it back to Parliament for reconsideration in terms of section 79(1) of the Constitution.

30. In this event the Solidarity, HASA, SAMA, HFA and SAPPF HC (insofar as it challenges the NHI Act directly or frontally) applications (applications of unprecedented volume, factual density and constitutional complexity) will immediately be rendered moot, regardless of the stage to which each matter may have progressed and regardless of the amount of judicial and party time

and resources that might by then have been expended on them, as the NHI Act will then have no force or effect and there will be no NHI Act to challenge.

31. While the various proceedings as described above are underway in the Constitutional Court, the Minister is faced in the High Court with five separate applications dealing largely with the same issue by way of their frontal or direct challenges, i.e. the validity of the NHI Act as a whole, and, in the alternative, to the validity of various selections of provisions in the NHI Act, with significant overlaps.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

32. To defend all of these applications at the same time but separately, is not convenient. It involves expending extensive financial, time and human resources that may ultimately prove entirely unnecessary, alternatively which can be curtailed. This is not in the interest of justice.

PURPOSE OF THIS APPLICATION

33. The orders sought by the Minister fall into two categories – section 1 (stay) and section 2 (consolidation):

33.1. First, regarding the stay:

33.1.1. In prayer 1 of the notice of motion, the Minister seeks an order staying the Solidarity, HASA, SAMA, HFA, and (conditionally) the SAPPF applications, and suspending all timelines for the filing of further process in those applications.

33.1.2. In prayers 2 to 5 of the notice of motion, the stay of the five High Court applications is qualified as pending the resolution of the appeal(s) against Twala J's judgment, and the outcome of the BHF CC application and the SAPPF CC applications.

33.2. Second, regarding the consolidation, in prayers 6 to 7 of the notice of motion, the Minister asks that the Solidarity, HASA, SAMA, HFA and (conditionally) SAPPF applications be consolidated.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

34. The prayers for the stay and consolidation of the five affected applications are interlinked in certain respects. Nonetheless the Minister persists in the relief sought in relation to the stay and the consolidation independently of the other. That is to say, whether or not the stay is granted, the Minister would persist in his prayer for the consolidation; and should the consolidation not be granted, the Minister would nonetheless persist in the prayer for the stay.

OVERVIEW OF THE PENDING APPLICATIONS

35. In this section, I detail the nature of each of the relevant applications and their status at the time of deposing to this affidavit.

The BHF HC and BHF CC applications

36. The BHF HC application was instituted on 28 May 2024. BHF seeks orders that:

001-43

33.1 the decision of the President on 15 May 2024 to assent to and sign the NHI Bill is reviewed and set aside;

33.2 Proclamation No. 4826 is reviewed and set aside;

33.3 the matter is remitted to the President for reconsideration under sections 84(2)(a), (b), (c) read with sections 79(1) and 83(b) of the Constitution; and

33.4 it is declared that the NHI Act is of no legal force or effect.



37. I attach a copy of BHF's notice of motion in the BHF HC application marked "**NC1**".

38. The BHF HC application comprises of 328 pages.

39. The Minister opposes the BHF HC application.

40. As indicated above, the Minister and the President both raised points of law in the BHF HC application (and in the SAPPF HC application) in terms of Rule 6(5)(d)(iii).

41. After the Minister and President raised these points of law, on 26 August 2024 BHF filed the BHF CC application (Case CCT254/24). I attach a copy of the notice of motion in the BHF CC application which I mark as "**NC2**".

42. The Minister opposes the BHF CC application.

43. The BHF HC and BHF CC applications are substantially the same: the same relief is sought in both applications on the same grounds. In the Constitutional Court, BHF says in paragraphs 18 and 25 of its founding affidavit that:

43.1. The Constitutional Court application is brought because of the respondents' stance that it is the Constitutional Court that has exclusive jurisdiction in respect of the relief that is being sought by BHF.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

43.2. It will only set down the Constitutional Court application for hearing in the event that the respondents in the High Court application succeed in their points of law or seek leave to appeal against a finding in the High Court application that the High Court does have jurisdiction to entertain the High Court application or to grant the relief sought therein.

43.3. It will ask that the relief sought in the BHF CC application be heard together with any appeal against a finding of the High Court on the points of law.

44. The Minister and the President have not yet had the entitlement or the duty to file answering affidavits in either of BHF's HC and CC applications (or in the SAPPF HC and CC applications) pending the determination of the points of law. This is because the issue of the High Court's jurisdiction to hear the reviews and whether the President is under any obligation to provide a record are subject to ongoing adjudication. These issues are as a matter of law

required to be determined before any entitlement or duty to file an answering affidavit arises.

45. In a letter dated 11 October 2024 addressed to the attorneys for the applicants and the respondents, the Acting Registrar of the Constitutional Court conveyed his understanding of the position of the parties to be that the respondents were not expected to provide the record or answering affidavits in the BHF CC application while the points of law in the BHF HC application were under way. The parties were invited to apply for directions in terms of rule 11(1)(b) of the Constitutional Court rules in the event that these were sought in relation to any matter other than the agreement on the matter being held in abeyance.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

46. The points of law in the BHF HC application (and the SAPFF HC application) were heard together in a consolidated hearing in the High Court, Pretoria before Honourable Justice Twala, on 3 and 4 March 2025.

47. Justice Twala delivered his judgment on the points of law on 6 May 2025. As indicated, Justice Twala found against the Minister and President. He held that the High Court has jurisdiction over the applications, that the President's decision is reviewable, and that the President is obliged to deliver a record of his decision.

48. Both the Minister and the President filed in this Court conditional applications for leave to appeal Justice Twala's judgment and orders to the SCA. They both also filed applications for leave to appeal directly to the Constitutional Court on the basis that if leave is granted by the Constitutional Court, then the

application for leave to appeal in the High Court, or the appeal if applicable, will be withdrawn.

49. The Minister's approach on the appeals (by not seeking leave to appeal to the Full Court of the High Court, and in preferring the application for direct leave to appeal to the Constitutional Court) indicates his intent that the appeals should be determined finally and expeditiously.

50. In the conditional applications for leave to appeal before Justice Twala:



50.1. The parties have filed their heads of argument.

50.2. SAPPF opposes the grant of leave to appeal.

50.3. BHF does not oppose the grant of leave to appeal on the basis that the appeal raises issues of considerable public importance, notwithstanding that it persists in its stance on the merits of any appeal.

50.4. Justice Twala has indicated to the parties through his secretary that he intends to wait for the outcome of the applications for direct leave to appeal to the Constitutional Court before deciding the applications for leave to appeal filed in the High Court.

51. In the applications for direct leave to appeal to the Constitutional Court:

51.1. BHF and SAPPF have filed answering affidavits.

51.2. SAPPF opposes the grant of leave to appeal.

51.3. BHF does not oppose the grant of leave to appeal on the basis that the appeal raises issues of considerable public importance, notwithstanding that it persists in its stance on the merits of any appeal. In its answering affidavit, BHF additionally seeks directives from the Constitutional Court for the hearing of the appeals and its BHF CC review application concurrently.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

51.4. The Minister has filed an application for leave to file a replying affidavit to BHF's answering affidavit. Amongst others, the Minister notes that while he agrees with BHF's plea for the matters to be dealt with expeditiously, it is impracticable and inappropriate for the appeals and the BHF CC review application to be heard concurrently. This is because, amongst other things, the substantive BHF CC application cannot be determined until a final decision is made on the correct forum in which the matter must be heard, and whether the President is obliged to produce a record of his decision. This, the Minister submits, accords with binding Constitutional Court precedent.

51.5. The President has also filed an application for leave to file a replying affidavit to BHF's answering affidavit. In that application, the President indicates his agreement with the contents of the Minister's replying affidavit.

The SAPPF HC and SAPPF CC applications

52. On 1 October 2024, SAPPF filed an application in which it sought, in prayer 1 of its notice of motion, an order to review and set aside the President's decision to sign and assent to the NHI Bill, and as a consequence an order that the NHI Act is declared invalid and of no force and effect.

53. In the alternative, SAPPF seeks an order declaring the NHI Act unconstitutional and invalid, and further alternatively, declaring sections 5, 7, 8, 33, 35, 37, 38, 39, and 41 of the NHI Act unconstitutional and invalid.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

54. I attach a copy of the notice of motion in the SAPPF HC application which I mark as **"NC3".**

55. In total, the SAPPF application is 549 pages long. The founding affidavit is 143 pages and has 23 annexures. The annexures include two extracts from two reports from ECONEX (an economics consultancy) that were commissioned for SAPPF in 2013 and 2015. In addition, SAPPF includes no less than seven supporting affidavits from a variety of medical professionals and specialists.

56. As with BHF, the Minister and President have not, and are not obliged to, file any record and / or answering affidavits in the SAPPF application, in light of their points of law and the pending appeals on those issues before Justice Twala and the Constitutional Court.

57. Since the Minister and President filed their applications for leave to appeal against Justice Twala's judgment and orders on the points of law in the SAPPF application (and the BHF HC application):

57.1. On 13 June 2024, SAPPF filed a notice of its intention to amend its High Court application. Its amended notice of motion would have the effect of running two separate cases concurrently. Previously, SAPPF sought to review the President's assent to and signature of the NHI Bill in terms of Rule 53 and sought to invalidate the Act, or provisions of it in the alternative. The intended amendment, if permitted, would have the consequence that SAPPF no longer pursues the direct challenge against the Act in the alternative but instead as primary relief, in addition to the review of the President's decision, with separate procedures for the filing of answering papers. I attach a copy of that notice hereto marked "**NC4**".

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

57.2. The Minister and President have both filed notices objecting to the amendment. I attach a copy of the Minister's objection which I mark as "**NC5**".

57.3. On 18 July 2025, SAPPF applied conditionally to the Constitutional Court for the following relief in the SAPPF CC application:

57.3.1. To review and set aside and declare invalid the President's decision to assent to and sign the NHI Bill on 15 May 2024;

57.3.2. To set aside the NHI Act as a consequence of the setting aside sought in respect of the President's decision;

57.3.3. Directing the President to reconsider whether he has any reservations about the constitutionality of the NHI Bill and to exercise his powers under sections 84(2)(a) to (c) in accordance with his duties under sections 79, 83 and 7(2) of the Constitution;

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

57.3.4. Directing the President to deliver the record of the decision under review.

57.4. The SAPPF CC application is conditional upon the Constitutional Court granting leave to appeal to the President and the Minister and finding, on the merits of the appeals, that the Constitutional Court enjoys exclusive jurisdiction in respect of SAPPF's High Court application and, accordingly, overturns the judgment of Twala J. The condition would also be fulfilled where the appeal process went via the Supreme Court of Appeal and was finally determined in favour of the President and the Minister on the question of exclusive jurisdiction of the Constitutional Court. SAPPF has also applied conditionally to intervene in the BHF CC application. The condition is that the Constitutional Court sets the BHF CC application down for hearing together with the President and the Minister's applications for leave to appeal. The two applications are together referred to as the "**SAPPF CC application**".

57.5. In the notice of motion for the SAPPF CC application, SAPPF also seeks directions from the Constitutional Court for the further conduct of the applications.

57.6. The founding affidavit in the SAPPF CC review application essentially mirrors the founding affidavit in the relevant part of the SAPPF HC application where it deals with the review, as distinct from the direct challenge to the NHI Act in the alternative.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

58. The stance of the Minister is essentially that, assuming there is an entitlement to review the President's decision (which is not conceded and is a matter taken up, to date, by the President), the review applications ought to have been brought by BHF and SAPPF in the Constitutional Court in the first place, because that Court alone has jurisdiction to hear a review of the President's decision to sign and assent to legislation. For that reason, if the Minister's application for leave to appeal and his appeal are successful, he will accept that the BHF CC application and the SAPPF CC application have now been brought in the appropriate Court.

59. A copy of the notice of motion in the SAPPF CC application is attached marked "**NC6**".

60. I pause here to make the observation that on the notice of motion in the SAPPF HC application, the alternative relief challenging the constitutionality of the NHI Act directly or frontally can only be considered if and when the primary review relief has been refused. The primary review relief can only be considered once the President and the Minister's applications for leave to

appeal (and related relief) and any appeals have been decided. The effect of the applications for leave to appeal is therefore that, as a consequence of the formulation of the SAPPF notice of motion in its current form, the direct or frontal challenge in the alternative is stalled. In other words, as matters stand, there is already in respect of SAPPF's HC application a *de facto* stay pending (at least) the applications for leave to appeal and any appeals pursuant to them. SAPPF seeks to avoid this consequence by amending its notice of motion, but the amendment it seeks is impermissible for the reasons given in the notice of objection to the application for leave to amend the notice of motion.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

61. The relief sought in this application – insofar as it relates to SAPPF – is required only in the event of (and therefore conditional upon) its being able to uncouple its direct or frontal challenge from its review.

The Solidarity application

62. The Solidarity application is the first of the series of applications that frontally challenge the constitutionality of the NHI Act, without seeking to review the decision of the President to assent to and sign the NHI Bill. It was launched on 24 May 2024 and in addition to the Minister and the President, it also cited the Minister of Finance and the Director-General of the Department of Health.

63. Solidarity seeks orders:

63.1. declaring the NHI Act unconstitutional and invalid; and

63.2. alternatively, declaring certain (unidentified) sections of the NHI Act to be unconstitutional and invalid.

64. I attach a copy of the notice of motion in the Solidarity application which I mark as "**NC7**".

65. Solidarity's founding affidavit alone (without annexures) is 117 pages long. Together with its 43 annexures, the application as a whole is 1,860 pages.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001

66. Notably, the Solidarity application includes certain allegations which Solidarity purport to lead as opinion evidence, the admissibility of which the Minister disputes. There were no expert reports or affidavits filed which were deposed to under oath.

67. On or around 28 November 2024, the Minister filed a 216-page answering affidavit together with three expert witnesses' affidavits (from Prof Diane McIntyre, Dr Joseph Kutzin, and Dr Deborah Budlender), and a supporting affidavit by myself and Prof Laeticia Rispel. One of the expert witnesses, Dr Kutzin, is based in Geneva, Switzerland.

68. The President has also filed an answering affidavit.

69. Taken together, the Solidarity founding and answering affidavits, including annexures, are 2,581 pages long.

70. A date was agreed in case management for Solidarity to file its replying affidavit. Solidarity asked, and the Minister agreed, to a further extension for Solidarity to file its reply by 30 June 2025.

71. To date, Solidarity has not filed its replying affidavit and has deferred doing so pending the determination of the further process by case management.

72. This already gives the Court some indication of the multiplicity and the level of complexity of the factual and legal issues that are concerned.

The HASA, SAMA and HFA applications

73. The HASA, SAMA and HFA applications were filed on 17 February 2025, 2 April 2025 and 4 June 2025, respectively.



74. The HASA, SAMA and HFA applications are similar to Solidarity in that they all seek to declare the NHI Act unconstitutional and invalid in its totality, alternatively, that certain sections of the Act are declared to be unconstitutional and invalid. Unlike Solidarity, HASA, SAMA and HFA specify in their notices of motion the specific provisions of the NHI Act which they attack in their alternative relief.

75. Copies of the HASA, SAMA and HFA notices of motion are attached and marked "**NC8**", "**NC9**" and "**NC10**" respectively.

76. HASA's application is some 598 pages long, SAMA's is some 991 pages long, and HFA's is some 855 pages long.

77. HASA has filed two lengthy expert reports. SAMA has filed three lengthy expert reports (and possibly four, if the "research note" of Dr Smith is considered an expert report). HFA has also filed a substantial research report of some 215 pages.

78. A number of the expert reports in these matters are compiled by economics competition and health research firms such as FTI Consulting, Genesis and VIR. As such, those reports are co-authored by several individuals, and not a single expert. Reference is made in these reports to a wide variety of underlying data upon which calculations are performed, assumptions are made and conclusions drawn.

79. In the HASA, SAMA and HFA applications, the applicants and their experts refer extensively to the answering affidavit, expert affidavits, and supporting affidavits filed by the Minister in the Solidarity application. The deponents in these applications go as far as to respond directly to specific opinions, arguments and averments made in the Minister's defence to the Solidarity application. By way of example:

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

79.1. SAMA's founding affidavit contains a section of some 23 pages titled "The Government Respondents' Answering Affidavit in the Solidarity Trade Union Matter" in which it replies to the Minister's answering papers in Solidarity. One of SAMA's experts, Prof van den Heever (whose publications are similarly relied on by Solidarity, albeit not under oath) attaches a 19-page annexure to his report which comprises solely of his criticism of the expert reports of Dr Kutzin, Dr Budlender and Prof McIntyre in the Solidarity application. Another one of SAMA's experts, Prof Schoukens, similarly attaches a second report of some 50 pages to his main report in which he responds directly to the Minister's experts in the Solidarity application.

Prof Schoukens responds both thematically and in reference to specific paragraph references in the Minister's expert reports.

79.2. HASA claims that the "contents of the Minister's answering affidavit [in the Solidarity application] are not directly relevant to this application". Yet it makes extensive reference to the Minister's answering affidavit, supporting affidavits and expert reports in the Solidarity application. HASA and its experts quote the Minister's papers in the Solidarity application and answer directly to specific paragraphs and quoted portions of those papers. One of its expert reports, "the Harman Report" has an entire section dedicated to "the National Department of Health's Response to Solidarity" and acknowledges that the witness has been "instructed to respond to certain economic and financial issues raised in these affidavits". HASA's second expert report, from FTI Consulting, similarly includes a section of the report responding to the Minister's papers in the Solidarity application. The FTI report says that the brief included to "consider as part of [the] review the answering affidavit filed by the Minister of Health and Director-General of the National Department of Health … and the expert affidavits filed in support thereof" in the Solidarity application.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

79.3. HFA attaches to its founding affidavit, amongst others, my affidavit filed in support of the Minister's answering affidavit in the Solidarity application, and the entire affidavit/expert report of Prof McIntyre in the Solidarity application. Its expert report (the "**Genesis Report**") is

peppered with references and quotations from, and responses to, the Minister's expert reports in the Solidarity application. It further includes an entire chapter of the report which "presents responses to specific claims made by the NDoH and its experts" in the Solidarity application.

80. In the HASA application, HASA has withheld portions of the founding papers under a unilaterally imposed confidentiality regime. The Minister and the President have objected and are not willing to submit to any confidentiality undertakings imposed by HASA. The Minister's position is that HASA is obliged, under cover of an application, to motivate for and seek the Court's leave to impose any confidentiality regime in respect of the Court papers, and that pending any such determination, the HASA application is inchoate. The Minister nonetheless opposes the HASA application, reserving his rights.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

81. The Minister also opposed the SAMA and HFA applications.

82. The Minister of Health has also not yet filed an answering affidavit in either the HASA, SAMA or HFA applications, the dates for filing of which are subject to determination in the case management process.

83. On 24 July 2025, the Treatment Action Campaign ("**TAC**") (a non-profit company) wrote to the parties in the SAMA application seeking the parties' consent for TAC's admission as *amicus curiae* in terms of Uniform Rule 16A(2). At the time of deposing to this affidavit, the Minister has not yet had an opportunity to respond to that letter, in relation to which he reserves his rights.

THE CASE MANAGEMENT PROCESS AND MINISTER'S PROPOSALS

84. All of the above High Court applications (Solidarity, BHF HC, SAPPF HC, HASA, SAMA and HFA) have been referred by consent between the parties for case management by the DJP. In what follows, I address only the case management meetings which are relevant to this application.

Case management meeting of 15 May 2025

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

85. On 15 May 2025 a case management meeting was convened virtually by the DJP. The Minister of Health, the President, Solidarity, BHF, SAPPF, HASA, SAMA and HFA were all represented at the meeting (albeit that HFA had not yet filed its application at that stage). A confirmatory affidavit from Ms Makule Kgosana, the Minister's correspondent attorney, will be included with the application to confirm the events of the meeting.

86. In the meeting, the Minister's counsel advised of the Minister's intention to bring a consolidation and stay application as set out in this affidavit.

87. The DJP then directed the Minister to submit a proposal on the stay, consolidation and further management of all pending cases amongst others, to the parties by 26 May 2025. He also afforded the applicants an opportunity to respond to the proposal by 9 June 2025. The Minister and the applicants complied with the directives on the set dates.

The Minister's first proposal and the parties' responses

88. On 26 May 2025, in line with the DJP's directive, the Minister circulated his proposal on the stay and consolidation of the NHI applications. I attach a copy of the Minister's proposal hereto marked "**NC11**".

89. On 9 June 2025, the parties responded to the Minister's proposal. I summarise the parties' positions below. I do not respond to each and every allegation in the parties' responses. However, insofar as any of the parties took the opportunity to make negative allegations about the Minister's intentions in relation to the proposal, and /or in causing any unfounded delays in the prosecution of the applications, I deny these allegations.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

90. The President's response is attached and marked "**NC12**". His position was as follows:

90.1. The President agreed that all six applications be stayed pending the outcome of the Minister's and President's applications for direct leave to appeal against Justice Twala's judgment in the Constitutional Court and the BHF CC application.

90.2. The President agrees with the Minister's proposal that the various applications constituting direct challenges to the constitutionality of the NHI Act be consolidated. To the extent necessary, the President will file one answering affidavit to a consolidated application, with a view to disposal of the applications in a single hearing.

91. Solidarity's response is attached and marked "**NC13**". In summary its position is as follows:

91.1. Solidarity strongly objects to a stay of its application.

91.2. Solidarity objects to the "formal consolidation" of the applications on the basis that there is no "complete commonality" among the applications. The Minister and the President should instead be allowed to file a single answering affidavit to deal with common themes across applications, and to provide individualised responses to specific allegations in the various applications.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

91.3. Any alternative arrangement would prejudice its rights to explore the nuances of its individual case.

91.4. Solidarity's position cannot be dependent on the filing of any future applications that are anticipated by the Minister.

91.5. Despite the fact that the Minister has already filed his answering papers in response to Solidarity's application (and Solidarity has not filed its reply almost eight-months since) Solidarity proposed that the Minister should file his answering affidavits (presumably in all other matters) within 6 weeks of the next case management meeting. Confusingly, Solidarity also proposed that the Minister files his answering affidavit within six weeks of an order consolidating the applications. It says that its position aligns with HASA. In either

circumstance, Solidarity proposed that replying affidavits could be filed four weeks later.

91.6. Solidarity seeks to reserve the right to reply to the Minister's answering affidavit that has already been filed in its matter together with "any relevant allegations on common themes in an affidavit to be filed".

92. BHF's response is attached and marked "**NC14**". BHF's view on the relief sought in this application is, with respect, irrelevant as neither its HC application nor its CC application are impacted.[1]

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

93. Notwithstanding BHF's being unaffected by this application and for completeness, BHF's view in summary is as follows:

93.1. BHF accepts that the consolidation proposal has no bearing on its BHF HC application, the pending appeals on the points of law, or the BHF CC application.

93.2. Nonetheless, it said that "if the BHF brings its own [direct] constitutional challenge to the NHI Act in the Pretoria High Court, the BHF will deal with any consolidation application and/or stay

[1] BHF recognised this, saying:
"If we are correct in our understanding of the Proposal . . . then –
10.1 the Proposal has no bearing on the BHF's High Court review application, the BHF's CC challenge or the CC appeals. If that is indeed so, then at present the BHF has no real interest in the Proposal . . . ; and
10.2 in that event, it sufficies to state that, if the BHF brings its own [direct] constitutional challenge to the NHI Act in the Pretoria High Court, the BHF will deal with any consolidation application and/or stay application on its merits."

application on its merits." No such direct constitutional challenge has yet been brought by BHF, although it was reported in the Business Day on 15 May 2025 that it was preparing do so. The Minister reserves his rights to ask that any stay and consolidation granted pursuant to this application is extended to any such constitutional challenge as may be launched by BHF.

93.3. Surprisingly, BHF says in its letter that "there is no overlap between BHF's High Court CC challenge and the constitutional challenges". This is contradicted by BHF's own allegations under oath in its answering affidavit to the Minister's application for direct leave to appeal Twala J's judgment to the Constitutional Court. I attach a copy of the relevant portions of that affidavit and mark it as "**NC15**".

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

93.3.1. In paragraph 24.2 of its answering affidavit, BHF acknowledges that "The Parties and the lower courts will benefit from the [Constitutional] Court's decision on the questions raised".

93.3.2. In paragraph 45 of its answering affidavit, it says that "the outcomes of the Appeal applications and the BHF CC Application may have an impact on other pending litigation, including the Constitutional Challenges. It would also be instructive on prospective litigants who may still want to challenge the NHI".

94. SAPPF's response is attached hereto marked "**NC16**". A summary of its position is as follows:

94.1. SAPPF opposes any stay of proceedings. It cites possible delays in the disposal of the Constitutional Court litigation, differences between the different applications as to cause of action, review grounds and "potentially different disputes of fact" and its opposition to steps being taken towards implementation of the NHI Act.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

94.2. SAPPF states however that it would be "willing to agree to pend further steps under the SAPPF application on condition that the implementation of the NHI Act and all related steps are similarly pended".

94.3. SAPPF opposes consolidation which it says fails to take into account the foregoing differences in the applications, is contrary to the Minister's alleged duty to deal with the applications individually and serially and is "pre-emptive".

94.4. It expresses no view on the appropriateness of a consolidated hearing.

95. HASA's response is attached and marked as "**NC17"**. In summary:

95.1. HASA opposes a stay of its application. It expresses concerns about the unpredictability of the timing of the Constitutional Court

proceedings, which it said would cause prejudice and "material uncertainty" to the applicants.

95.2. It says, however, that "[i]f the President were to give an undertaking not to bring the NHI Act into force, HASA would be open, subject to considering the terms of the undertaking, to reconsidering whether, in those circumstances, it would be in the interests of justice to agree the stay given the rights of the public threatened by the NHI Act".

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

95.3. HASA opposes "formal consolidation" but accepts that the Solidarity, HASA, SAMA and HFA applications can be heard together and seeks a timetable for filing of further process, and that interlocutory matters should be dealt with on an expedited basis.

96. SAMA's response is attached and marked "**NC18**". In summary:

96.1. SAMA opposes any stay of its application. It said that it is "not even unlikely that the direct challenges may be heard before the CC application" and claims that the NHI Act is being implemented at a cost that will prejudice the public and fiscus if it is ultimately set aside on review.

96.2. SAMA opposes consolidation on the basis that the applications differ, and that consolidation would increase litigation costs for SAMA because it would have to consider and assess all of the applications. It says that consolidation "will mean that all direct challengers will be

tied to each others' affidavits and expert evidence" and that it is unclear on which applicant's version the matter would be decided.

96.3. SAMA nonetheless proposed that the applications challenging the NHI Act directly be heard together by the same judges.

97. HFA's response is attached and marked "**NC19**". In summary, HFA's position is as follows:

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

97.1. It emphasises an absence of any undertaking by the Minister and / or President to stay implementation of the NHI Act and says that in these circumstances, it is not in a position to consent to the stay of its application.

97.2. A stay and a consolidation would jeopardise its right to have its application determined expeditiously. It raised in particular the concern that each matter is subject to its own interlocutory disputes.

97.3. It opposes "formal consolidation" but considers, however, that a joint hearing would address the Minister's concerns regarding duplication and resource demands.

Case management meeting of 1 July 2025

98. A further case management meeting was convened on 1 July 2025 before the DJP. At the time of deposing to this affidavit, the minutes of that meeting had not yet been agreed. I am nonetheless advised by Ms Kgosana that the following was discussed and agreed.

99. Some of the parties' counterproposals for the President and / or the Minister to stay implementation of the NHI Act were raised. It was conveyed on behalf of the Minister in response that he would shortly deliver an undertaking to stay implementation to the extent that he would not issue regulations in terms of section 33 of the NHI Act "determining that National Health Insurance has been fully implemented" until completion of the pending Constitutional Court (and any Supreme Court of Appeal) litigation. The effect of the issuing of such regulations would be that the medical schemes would from that time be precluded from funding medical services provided under the NHI, and would be confined to providing "complementary cover".[2] The Minister's undertaking was to be subject to agreement being reached amongst the parties on a stay,

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001

100. It was agreed that the Minister's undertaking would be circulated to the parties in written form by 3 July 2025. The parties agreed to respond to this further proposal by 7 July 2025.

101. Timelines for the filing of process in relation to this application were also agreed.

[2] Complementary cover is defined in section 1 of the NHI Act as "third party payment for personal health care service benefits not reimbursed by the Fund, including any top up cover offered by medical schemes registered in terms of the Medical Schemes Act or any other voluntary private health insurance fund".

The Minister's further proposal and the parties' responses

102. As agreed in case management, the Minister duly delivered his undertaking, a copy of which is attached and marked as Annexure "**NC20**". The relevant portion of the undertaking states:

"2.1. Subject to all the parties assenting to, or the High Court or the Constitutional Court granting, the stay contemplated in paragraph 1, the Minister of Health undertakes that he will not promulgate regulations in the Gazette in terms of section 33 of the NHI Act (read with section 55(1)(z)) determining that the National Health Insurance has been fully implemented, prior to final decisions having been taken by the Constitutional Court in all of, or which have the effect of disposing of –

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

2.1.1. the President and the Minister's applications in terms of section 167(6)(b) of the Constitution for leave to appeal directly to the Constitutional Court against the judgment of Twala J dated 6 May 2025;

...

2.1.3. the President and the Minister's direct applications in terms of section 167(6)(a) of the Constitution for relief pertaining to the reviewability of the President's decision to assent to and sign the NHI Act, the applicability of Rule 53, and the question whether or not the President is obliged to make available the record of his decision;

2.1.4. any appeals for which leave is granted pursuant to paragraph 2.1.1;

2.1.5. the conditional application of the BHF in terms of section 167(6)(a) of the Constitution for the review of the President's decision to assent to and sign the NHI Act;

2.1.6. the application of the SAPPF to intervene in the conditional application of BHF and any further application of the SAPPF pursuant thereto;

2.1.7. in the event of the Constitutional Court declining to grant leave to appeal or to hear the direct access applications referred to above, the applications for leave to appeal to Twala J, and, should he refuse leave, any applications for leave to appeal in terms of section 17(2)(b) of the Superior Courts Act No. 10 of 2013 and any appeals heard pursuant thereto.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

3. The withdrawal by an applicant of any of the applications or appeals referred to in paragraph 2 shall be considered a disposal of the application."

103. Suffice it at this point to point out that the Minister's undertaking is a significant one, because it addresses the primary concern in the various applications, which is the implementation of the NHI Act's change in the existing system of private healthcare whereby it is primarily funded by the medical schemes.

104. As agreed, the parties responded on or about 7 July 2025.

105. The President responded supporting the Minister's undertaking. A copy of the President's response is attached and marked as Annexure "**NC21**".

106. BHF responded to the Minister's further proposal. Its response is, with respect, irrelevant to this application because the BHF HC application will be

unaffected by the stay or the consolidation application. I nonetheless attach a copy of BHF's response which I mark as Annexure "**NC22**".

107. HASA's response is attached and marked as Annexure "**NC23**". In summary–

107.1. HASA was unwilling to accept the Minister's further proposal because its constitutional challenge extended beyond section 33 of the NHI Act.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001

107.2. It considered that the Minister's undertaking failed to address provisions of the NHI Act which interact with section 33 of the Act including the following which it considered made the Minister's undertaking "unworkable":

107.2.1. Section 6(o) which specifies that users have the right to purchase healthcare services that are not covered by the Fund through complementary voluntary medical insurance.

107.2.2. The operation of sections 57(5) and 58 of the NHI Act as read with the Schedule, which amend the Medical Schemes Act to preclude Schemes from offering coverage for services paid for by the NHI Fund.

107.3. It considered that, if the stay were granted on the terms proposed by the Minister, HASA risked the prospect that the Minister would subsequently argue that HASA's case was moot if the remainder of

the Act was implemented in the period preceding the eventual hearing of its application.

107.4. It was not willing to agree to the Minister's further proposal without an undertaking by the President to delay the taking effect of the entire NHI Act.[3]

108. I attach a copy of Solidarity's response which I mark as Annexure "**NC24**". In summary, it conveys that –:

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

108.1. Solidarity refuses to accept the Minister's further proposal.

108.2. Solidarity aligns itself with HASA's response.

109. I attach a copy of SAMA's response which I mark as Annexure "**NC25**". It conveys in summary that –

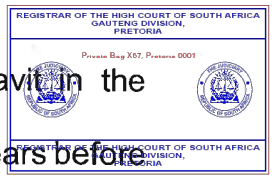
109.1. SAMA does not accept the undertaking, which it considered would have no practical effect in light of the Minister's timelines for the full implementation of the NHI Act of 10 to 15 years, which he had articulated in his answering affidavit in the Solidarity application.

[3] Section 59 of the NHI Act provides as follows:
"59 Short title and commencement
(1) This Act . . . takes effect on a date fixed by the President by proclamation in the Government Gazette.
(2) Subject to section 57, different dates may be fixed in respect of the coming into effect of different provisions of this Act."

109.2. Its concern does not lie against section 33 of the NHI Act to the same extent that it might for other litigants. It opposes any implementation of the NHI Act at all pending the outcome of its application.

110. I attach a copy of HFA's response which I mark as Annexure "**NC26**". It conveys in summary that –

110.1. HFA rejects the Minister's further proposal.



110.2. Because the Minister estimated (in his answering affidavit in the Solidarity application) that it would take between 10 to 15 years before the NHI Act is fully implemented, the undertaking not to implement section 33 is ineffective.

110.3. Its concerns extend beyond section 33 of the NHI Act, and that the tendered undertaking was therefore inadequate.

111. Finally, I attach a copy of SAPPF's response as Annexure "**NC27**". In summary it conveys that –

111.1. SAPPF rejects the Minister's further proposal.

111.2. SAPPF is only willing to agree to stay its litigation if the implementation of the entire NHI Act and all related steps is pended.

THE MINISTER IS *BONA FIDE* IN SEEKING A PRAGMATIC SOLUTION

112. As the parties in correspondence have called the Minister's intentions into question, I want to emphasise the Minister's *bona fides* in making this application.

113. It is not the Minister's intention to obstruct parties in exercising their right to a fair hearing. The Minister's concern is to conduct the litigation in a manner that is orderly, convenient and is not unnecessarily wasteful of this Court's and the State's scarce and constrained resources.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

114. The aspersions cast against the Minister, the President, and at times their counsel team, by some of the applicants are wholly unwarranted.

115. Some of the parties' allegations seek to imply that the Minister in both making this application and in defending the NHI Act against the applications, is acting recklessly and in bad faith. These allegations are reckless and untrue.

116. The Minister has a right and, I submit, a duty to defend the litigation. The NHI Act seeks to reform the inequity, inefficiencies and limits of the South African healthcare system, for the benefit of all. It seeks to expand access to quality healthcare for all South Africans regardless of their economic status and health status. In this regard it is sobering to recall that South Africa has been correctly characterised as one of the most, if not the most, unequal societies in the world. Unequal access to healthcare, and the funding for it, is one of the most glaring manifestations of that intractable inequality. A number of the

applicants, in fact, remark on the laudable and noble goals of the NHI Act in this regard.

117. The NHI Act has been drafted after over two decades of policy-development, consultation, research and investment. As stated by the Minister in his answering affidavit in the Solidarity application, it is informed by international best practice and experience.

118. The NHI Act was also passed by the democratically elected Parliament of South Africa.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

119. The Minister's firm defence of the NHI Act is not just the prerogative of his office. It is also in the exercise of his duty as an officer of the State to conduct himself responsibly in litigious matters, and in accordance with his duty to uphold the constitutional rights of the poorest members of our society whose interests are not represented by the parties bringing the NHI applications.

120. The outcome of this application has far-reaching implications. The NHI Act engages issues of social importance and this Court's decision on the manner and process of hearing these applications will have a widespread impact on public health and social welfare.

121. The Minister's intention in making this application is to advance the interests of justice, to minimise waste and unnecessary expenditure of financial and human resources, and to protect his own right to a fair hearing insofar as he is prejudiced by the manner in which the parties have linked their applications.

122. The Minister has acted reasonably in his efforts to avoid the need for this application by engaging the parties, and by being responsive to the parties' counter-proposals. As I set out below, the relief sought in this application seeks, insofar as is possible, to accommodate some of the concerns raised by the parties.

SECTION 1: STAY APPLICATION

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

123. In this section of the affidavit, I set out the basis upon which the Minister seeks orders staying and suspending the filing of further process in the Solidarity, HASA, SAMA, HFA and (conditionally) SAPPF applications pending the outcome of the BHF CC and SAPPF CC applications and the Minister and the Presidents' appeals against Justice Twala's judgment and related direct access relief.

124. From the outset, I emphasise that the facts underpinning this application are truly exceptional and warrant the relief sought.

125. As I have set out above, the Minister faces a barrage of highly complex litigation concerning the NHI Act. There are indications in the press that even more litigants intend to file similar applications. As I have indicated earlier, even BHF, who has applications concurrently pending in both this and the Constitutional Court, has indicated in the press and has implied in its correspondence on the Minister's proposal, that it intends to bring an additional, new application challenging the validity of the NHI Act directly.

126. I submit that the relief to stay the relevant High Court applications is justified on four broad grounds:

126.1. First, if the Constitutional Court decides that the President's decision should be reviewed and set aside and the NHI Act consequentially declared invalid, it will render all of the various substantive challenges pending before the High Court moot. Absent a stay, by the time that the Constitutional Court rules on the matter, considerable additional judicial and party resources will have been expended on the High Court applications, which will have been wasted to the Court's, the State's and all of the parties' prejudice.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

126.2. Second, it is undesirable for the High Court and the Constitutional Court to conduct parallel enquiries into the constitutionality of the NHI Act. This increases the risk of conflicting judgments.

126.3. Third, viewed holistically, the effect of the bifurcation of the litigation into that pending before the Constitutional Court, and that pending before the High Court is akin to a separation of issues as contemplated in rule 33(4) of the Uniform Rules. It is both provided for in the rule and well-established in practice that in the event of such a separation, the issues separated for later determination are stayed.

126.4. Fourth, there is no undue prejudice to the applicants which cannot be managed.

127. This is a clear case where an order staying the relevant applications in this Court pending the outcome of the Constitutional Court proceedings not only prevents inequity and prejudice to the Minister but could also prevent the proliferation of litigation and make the determination of the various NHI applications expeditious and less expensive.

128. The remainder of this part of the affidavit will be structured as follows:

128.1. I address the applicable legal framework.

128.2. I address each of the above four grounds on which a stay is substantiated in turn.

128.3. I explain the impact of the Minister's undertaking in terms of section 33 of the NHI Act.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001

Applicable legal framework

129. I am advised that in terms of section 173 of the Constitution, superior courts have the inherent power to protect and regulate their own process. This includes the power to determine their own procedure. The primary purpose of that power is to ensure that justice is served and that fairness prevails in court proceedings. A component of the courts' inherent powers is to grant a stay of proceedings.

130. I am further advised that when exercising this power by granting a stay, a court exercises a wide discretion and a value judgment. The only express guiding criterion laid down by the Constitution for the exercise of that power is that it

must be in the interests of justice. Whether a stay is in the interests of justice depends on the circumstances of each case. The interests of justice would indicate that a court may grant a stay on equitable grounds.

131. I am further advised that a stay of proceedings may be sought to avoid potential prejudice and to avoid duplicative litigation, pending the outcome of another concurrent related matter.

132. The Supreme Court of Appeal has also held that the courts may, pending the determination of litigation between parties, stay proceedings that concern a third party. The High Court would therefore be empowered to stay the Solidarity, HASA, SAMA and HFA applications pending the decision in the BHF HC/ BHF CC and SAPPF HC / SAPPF CC applications even though Solidarity, HASA, SAMA and HFA are not parties to the BHF/SAPPF matters.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

First ground: a stay will prevent wasted judicial and financial resources

133. If the Constitutional Court decides that the President's decision should be reviewed and set aside and the NHI Act is consequentially declared invalid in the BHF CC and SAPPF CC review applications, it will render all of the various direct challenges to the NHI Act pending before the High Court moot, regardless of how far they have progressed.

134. If the challenges are rendered moot by a Constitutional Court judgment overturning the NHI Act in the reviews, a tremendous amount of party resources and time, along with a very substantial amount of scarce High Court

judicial time and court resources, will have been expended on the applications in the High Court, which will turn out to have been entirely wasted and in vain.

135. It is important to note, in this regard, the scale of the litigation which the Minister is called upon to defend, and the resources that will be necessary to expend to answer the applications adequately and responsibly considering the importance of the issues at stake.

135.1. The total number of pages of paper in the combined applications is already 11,525 pages, excluding the 288 annexures annexed to the reports in HASA's application which is more than 10,000 pages itself and excluding the correspondence and other process exchanged between the parties.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

135.2. Excluding the BHF HC and BHF CC applications entirely, the applications include at least 11 expert reports compiled by at least 15 authors.

135.3. This is before the filing of answering and replying affidavits in all of the applications, save for Solidarity. It also does not consider the other actors who have indicated their intention in the public domain to bring their own applications challenging the NHI Act.

135.4. In litigation of this scale with complex factual disputes, there will inevitably be some parties who introduce substantial new matters in reply. That may necessitate further rounds of supplementary answering and supplementary replying affidavits.

135.5. Further supplementation may also be necessary as a result of developments while the litigation is underway, such as the presentation and adoption of new budgets. Already a new budget has been announced since the Minister filed his answering affidavit in Solidarity – experts of all parties on all sides in all matters will no doubt have much to say about it.

135.6. The Minister cannot answer this evidence in a piecemeal way.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

135.7. The range of issues covered by the expert evidence is vast. It includes highly specialised areas of public finance, social security and insurance systems, public health, medical ethics, governance, public international law, health economics, competition and market economics.

135.8. The expert evidence the Minister is called to answer does not relate solely to South Africa. The parties and their experts have made allegations relating to the suitability of NHI with reference to health financing systems in at least 23 jurisdictions, including Thailand, Indonesia, China, South Korea, Taiwan, Japan, Australia, Brazil, Chile, Mexico, Costa Rica, Germany, Switzerland, the Netherlands, France, the United Kingdom, Sweden, Turkey, Kyrgyzstan, Moldova, Ghana, the United States of America, and Canada.

135.9. The parties' experts have referred to vast swaths of data, documentary and other evidence in their calculations and opinions, not all of which is accessible to the Minister. These will all have to be

produced pursuant to notices that the Minister and, likely, the President will serve in terms of rule 35(12) of the Uniform Rules in order properly to respond to the allegations in the founding affidavits. If there is an adequate response to those notices, that will massively expand the amount of documentation and data before the Court and the volume of the papers. If any of the applicants do not respond as required by the rules, that will necessitate further interlocutory litigation.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

135.10. HASA wishes parts of its evidence to be subject to signed, written confidentiality undertakings by the President, the Minister and their legal teams. That will require interlocutory proceedings by HASA to secure the Court's sanction for such a regime and the compulsion of the President and the Minister to provide confidentiality undertakings.

135.11. There are accordingly substantial interlocutory issues that must be dealt with before the Minister's experts can properly assess the various expert reports.

135.12. Not all of the experts required to answer the parties' expert evidence are locally available. This is particularly due to the highly specialised nature of the issues covered, and the number of experts who have already been engaged by the parties.

135.13. For example, Dr Kutzin, who will be required to respond to a wide range of allegations made by SAMA, HASA, and HFA in relation to

001-81

his affidavit filed by the Minister in the Solidarity application, is based in Geneva, Switzerland.

135.14. The NDOH has also engaged experts based at the London School of Economics in the United Kingdom.

135.15. The reliance by the applicants in the main applications upon purported costed models for NHI introduces a heightened level of factual complexity, financial and economic complexity and potential for factual disputes and expansion of the range of experts whose testimony must feed into the adjudication of the direct challenges. The Minister will have to respond to the financial models put up by the applicants, by putting up evidence of similarly qualified experts who will similarly explore the full range of factual, financial, economic and other issues.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

135.16. In addition to the expert evidence, the Minister requires the input of a large number of factual witnesses to deal with allegations ranging from the operation of private medical schemes to digital information systems, to fraud and corruption in the private healthcare sector.

135.17. Including potential factual and expert witnesses, the NDOH has been in discussions with at least 16 individuals thus far who may be required to depose to affidavits or provide information, in addition to the three expert witnesses who deposed to affidavits in the Solidarity application.

135.18. The costs, time and human resources associated with procuring all of this evidence are significant.

135.19. The various applications are also already awash with very significant disputes of fact. Applicants may well be reluctant to have these disputes of fact decided on the basis of the *Plascon-Evans* rule. This means that the applications may well either be referred to trial or for the hearing of oral evidence on disputed issues. This will exponentially increase the time and other resources that will be absorbed by the litigation, along with the inevitable and exponential expansion of the factual and legal issues at play.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

136. It would be immensely prejudicial to the Minister – and to the public purse – to have to expend these resources on litigation that ultimately proves to have been fruitless on account of its becoming moot. While the opposing parties may have access to resources in the private sector to be willing to risk expending significant resources on ultimately fruitless litigation, the Minister is not in the same position in relation to public funds. This is particularly so in circumstances where all of the parties agree that there are fiscal constraints faced by government, in the face of the significant healthcare needs of the uninsured part of its population. If the litigation ultimately proves to have been fruitless on account of its having become moot, funds that would otherwise have been allocated to meeting the healthcare needs of the uninsured public will have been unnecessarily wasted.

137. The waste of scarce judicial resources would also be a very substantial problem. The recent efforts of the Judge President and Deputy Judges President to introduce compulsory mediation and trial dates extending to the year 2030 bear testimony, with respect, to the overwhelming caseload already faced by the Pretoria High Court judges, before being saddled with this litigation.

138. The Minister respectfully submits that it is not in the interests of justice to continue blindly with this litigation on an unprecedented scale, when there is a possibility that the matter may be disposed of by way of the far leaner, simpler and far less factually dense litigation pending in the Constitutional Court. The determination of that Court would also be final on the issues before it because it is the apex court.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

139. The grant of a stay would eliminate entirely the risk of a waste of judicial and party resources.

140. Therefore, serious prejudice and inconvenience might ensue to the Court and the parties (the State respondents in particular) if the stay is not granted.

141. In answer to the prospect of mootness, some of the applicants have implied that they would nonetheless wish to pursue their applications in such an event, despite that the enquiry would be academic.

142. This would be unconstitutional and, moreover, contrary to what I am advised are the principles applicable to the determination of when a court may

exceptionally rule on an abstract or moot issue. In any event, it is not competent for the High Court to determine matters that are moot or academic as a court of first instance.

143. If the Act is set aside, the legislation's status as a Bill revives. Under section 167(4)(b) of the Constitution, the Constitutional Court has exclusive jurisdiction to decide on the constitutionality of a bill, and it may only do so in the circumstances anticipated in sections 79 or 121 of the Constitution.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

144. The High Court would therefore be constitutionally precluded from deciding the cases which challenge the validity of the legislation.

Second ground: a stay will prevent parallel enquiries into the constitutionality of the NHI Act

145. The Constitutional Court is now seized with the BHF CC application for direct access to that Court, based on the fact that the Minister and the President have now each filed applications for leave to appeal against Twala J's judgment. As indicated, this is because the BHF CC application asks that the application before the Constitutional Court be set down if the High Court finds that it lacks jurisdiction; or if the respondents to the High Court application seek leave to appeal against a finding by the High Court that it has jurisdiction.

146. BHF asks that its BHF CC application is heard together with any appeal for which leave is granted against the judgment of Justice Twala. It is the Minister's position that the appeals against Justice Twala's judgment on the points of law must be determined first before the BHF CC application. How

001-85

and when these issues are dealt with is a matter for the Constitutional Court to decide.

147. Similarly, there is now before the Constitutional Court both SAPPF's application to intervene in the BHF application and SAPPF's review application in terms of section 167(4)(e). The review grounds set out in the founding affidavit serve both of these applications

148. At face value, the BHF HC and CC review applications and the SAPPF HC review and CC review applications, on the one hand, and the direct challenges against the NHI Act by Solidarity, HASA, SAMA, HFA and SAPPF (in the alternative), on the other hand, are based on ostensibly different causes of action. While the BHF HC and CC applications and the SAPPF HC review and CC review applications seek to review the President's signature and assent to the Bill, the Solidarity, HASA, SAMA, HFA and SAPPF (in their direct challenge in the alternative) applications challenge the validity of the Act directly. In substance, however, the applications all call upon the Court to make decisions about the constitutionality of the same legislation.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

149. As explained above, the BHF HC and CC applications and the SAPPF HC review application and the SAPPF CC review application challenge the President's decision to assent to and sign the NHI Bill under sections 79(1) and 84(2)(a) – (b) of the Constitution.

150. Section 79(1) of the Constitution says that "*if the President has reservations about the constitutionality of the Bill*" he must refer it back to the National Assembly for reconsideration.

151. In its BHF HC founding affidavit, BHF says that section 79(1) of the Constitution is the "*first check and balance against the implementation of unconstitutional legislative schemes*".

152. BHF and SAPPF's cases in their reviews, in essence, are that the President ought to have had reservations about the constitutionality of the NHI Bill in the face of what BHF and SAPPF consider to be patent and invalidating constitutional flaws in the Bill, flaws essentially no different from the constitutional objections in the Solidarity, HASA, SAMA, HFA and SAPPF (alternative direct challenge) applications.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

153. It may be so that the threshold of constitutional scrutiny of the legislation differs between the review of the President's decision and the direct challenges against the NHI Act: whilst in the High Court direct challenges against the NHI Act, the Court is asked to make a finding that the NHI Act is unconstitutional, in the BHF and SAPPF HC and CC review applications, the Court is asked to make a finding that the President ought to have had reservations about the constitutionality of the same legislation.

154. Nevertheless –

154.1. in both scenarios, the courts are asked to make rulings on the constitutionality of the same law (although one is a Bill and the other an Act, their wording is identical) and are called upon to do so on the basis broadly of the same alleged constitutional breaches; and

154.2. in the reviews, the courts are asked to overturn the decision of the President to give effect to the democratic will of the legislature by signature and assent of an Act – having regard to separation of powers concerns, a relatively high level of proof of unconstitutionality will have to be found before his assessment of constitutionality can be reversed by a court on the basis that he ought to have entertained reservations.

155. To illustrate the overlap between the reviews and the direct challenges, the table below provides paragraph references to the parties' founding affidavits in each of the two categories of challenge, where the alleged constitutional breaches are raised. This table is not intended to be a comprehensive reflection of every cross-cutting issue, or reference to it, in the parties' applications. Rather, it provides examples for illustrative purposes of the significant overlap of constitutional issues.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

CONSTITUTIONAL ISSUE	BHF CC	SAPPF CC	SAPPF HC	Solidarity	HASA	SAMA	HFA
Uncertainty about costs of NHI and how NHI will be funded	51.5, 58.2, 67.1	80, 82.1, 91,102.5, 137, 157.3	9.3	10.3, 11, 89 – 101, 112.2 - 116	86.1 – 86.2, 93 – 115, 116.3 – 116.9	35.1, 102 – 109	31 – 31.11, 34.2
Constitutionality of fiscal provisions	51.3, 60.4, 68.1	79,		18	80.7, 229 – 237	111.1 – 111.3	272.5

CONSTITUTIONAL ISSUE	BHF CC	SAPPF CC	SAPPF HC	Solidarity	HASA	SAMA	HFA
The role of medical schemes under section 33	51.2, 60.13, 66.2, 67.3	100.1	70.2	10.4	145 - 150, 165	38.1 – 38.2, 204- 205	19, 26 – 27, 32.10 – 32.11, 77.3, 84, 149 - 150
Statutory vagueness	51.4, 58.6, 60.8	82.3, 100.4, 102.4, 104.4, 137	9.1, 97.2 – 97.4, 158.1	10, 135 - 143	80.3, 153, 169 – 177	168, 206, 215, 219, 222, 228	Appendix E to Annexure "FA4"
The constitutional role of the provinces	51.1, 60.5	80, 157.3,		14, 144 - 152	80.5, 192 – 208	291 – 292, 302, 304	49.5
Sufficiency of accountability / public oversight in governance structures of the NHI Fund / corruption risk	58.1	82.4	97.5	17, 196 – 197		38.7, 107.7	Annexure "FA4"
Permissibility of delegation of authority to the Minister	58.6, 60.12	82.4, 86, 102.3, 137,	9.2, 158.2	13, 153 - 154	80.4, 153, 178 - 191	145 – 147, 365 - 378	35 – 35.5
Alleged infringement of the right to dignity in section 10, the right to life in section 11, the right to freedom and security of the person in section 12, the right to freedom of association in section 18	67.4, 58.9,	96.4, 100.2, 102.2, 104.2, 137	294 – 300, 335 - 344	16.1 – 16.4, 165 - 182	15.8, 159, 249,	384-385, 395, 132, 151, 253,	23

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

CONSTITUTIONAL ISSUE	BHF CC	SAPPF CC	SAPPF HC	Solidarity	HASA	SAMA	HFA
Alleged infringement of the right to health under section 27 of the Constitution and "regression in healthcare services"	58.7, 58.9, 60.1 – 60.3, 66.3, 67.4 – 67.5	85, 96.2, 96.3, 100.1, 102.1, 104.1, 137	9.4, 10, 19, 70.3, 97.1, 98	15.2, 127 – 134, 192 - 198	80.2, 81 – 86, 116.1, 150 – 151, 166	38.4, 38.9	32 – 34
Alleged infringement of the right to property under section 25 of the Constitution	66.4	96.5	19, 70.5	16.7, 207 – 208	165.4		
Alleged infringement of healthcare workers' right to freedom of trade, occupation and profession under section 22 of the Constitution	66.5	96.6,104.3, 137	19, 99	16.5, 183 – 191		35.3, 382 - 396	
Rationality, including procedural rationality	66.1, 68.2, 85.3, 86.1	96.1, 100.3, 106, 137	9.3, 9.4, 17.1, 19, 97, 121, 124, 137 – 148, 149, 158.3, 172.3, 214 - 237	11, 89, 189.2.5, 192.8.4. 189 – 200, 106 – 124, 125 - 226	81 – 125, 138 – 139.4	66, 109, 143 – 144, 155 – 167, 185, 187, 205, 208 – 213, 305, 308, 335,	28, 31, 84, 175 - 206

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

156. To be noted is that SAPPF has in its founding affidavit in the SAPPF CC review application reserved its rights "to elaborate upon these unconstitutional failures after receipt of the record".[4]

157. I am advised that there are several potential outcomes of the Constitutional Court appeals and the BHF CC and SAPPF CC review applications, which include the following:

157.1. The Constitutional Court may dismiss the President's and the Minister's appeals and find that the High Court was correct in finding that it had jurisdiction. In that event:

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

157.1.1. depending on the Court's attitude to the review, it could order that the review be remitted to the High Court for further hearing. In that event, both the review of the assent and signing of the NHI Bill and the substantive challenges to the NHI Act would be dealt with by the High Court. A final and authoritative ruling would also have been provided by the Constitutional Court on whether or not the President has the duty to provide the record; or

157.1.2. the Constitutional Court may determine that it should nonetheless grant leave in terms of section 167(6)(a) for BHF's direct access review application to be heard (the condition for the continuation of SAPPF's CC review

[4] Para 137 of the founding affidavit.

application would then not have been fulfilled, but it will likely have intervened successfully in the BHF CC review application).

157.2. The Constitutional Court may uphold the appeals, in which event, because of the finding that it alone has jurisdiction, the Constitutional Court will hear the BHF CC review application, because leave will no longer be required in terms of section 167(6)(a) of the Constitution and BHF will be entitled to have the review heard by the Constitutional Court as of right in terms of section 167(4)(e). Similarly, the condition for the continuation of the SAPPF CC review application in terms of section 167(4)(e) will have been fulfilled.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

157.3. If the Constitutional Court decides in favour of the President and the Minister in the BHF CC and SAPPF CC review applications, it may hear and dismiss the review and then the Solidarity, HASA, SAMA, HFA and SAPPF (direct challenge) applications will still proceed in the High Court.

157.4. If the Constitutional Court decides against the President and the Minister in the BHF CC and SAPPF CC reviews, then the President's decision to assent to and sign the NHI Bill will be set aside, the NHI Act will be declared invalid and the NHI Bill will be revived. The President will then reassume responsibility for the NHI Bill. The President will have to reconsider the submissions that were made to him and if he then entertains reservations about its constitutionality,

refer the Bill back to the National Assembly for reconsideration, together with a list of his reservations.

157.5. If the President's and the Minister's appeals fail, and the Constitutional Court holds that the High Court does have jurisdiction to consider the review, and declines BHF's application for direct access to the Constitutional Court on the review, there would be the opportunity to ask the High Court to decide the review separately and before the other issues are determined, which would also represent a significant saving of judicial and party resources.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

158. The effect of the Minister's and the President's applications for leave to appeal and the BHF and SAPPF CC reviews is thus that the issue of the constitutionality of the NHI Act is now pending before the apex Court. That state of affairs will continue until either it is finally held in any appeals for which leave is granted, that the High Court has jurisdiction to consider the reviews and the Constitutional Court declines to hear BHF's direct access review.

159. Absent that scenario, the issue of the constitutionality of the NHI Act will remain pending until the BHF CC and SAPPF's CC review applications are decided by the Constitutional Court.

160. Whatever the outcome of the Constitutional Court's judgment, it is not in the interests of justice for the apex Court and the High Court to be conducting parallel enquiries in this regard.

161. Refusing to stay the High Court applications would risk divergent judgments of the Constitutional Court and the High Court being handed down simultaneously on the question of the constitutionality of the same Act.

162. Moreover, the structure of the court system as provided for in Chapter 8 of the Constitution does not contemplate simultaneous, parallel enquiries by the High Court and the Constitutional Court into the constitutionality of the same Act in the same litigation. In any event, it is neither in the interests of justice, not in the interests of the optimal employment of scarce judicial resources for such parallel enquiries to take place.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

163. A stay of the pending direct challenges in the High Court would accordingly be in the interests of justice. A stay would also allow for other parties who may wish to challenge the NHI Act to file their interventions or separate applications in the interim, so that all may be managed and heard together, whether by way of consolidation of all the matters, or a consolidated hearing after the Constitutional Court has handed down its judgment.

Third ground: a stay ordinarily follows a separation of issues

164. Viewed holistically, the effect of the bifurcation of the litigation into that pending before the Constitutional Court, and that pending before the High Court is akin to a separation of issues as contemplated in rule 33(4) of the Uniform Rules.

165. It is both provided for in rule 33(4) and well-established in practice that in the event of such a separation, the issues separated for later determination are stayed. This is precisely because it is usually so that the separated issue will

dispose potentially of all or a significant part of the litigation. Here, if BHF and SAPPF are successful, it will dispose of all of the litigation. And even if they are not successful, as BHF recognises, there is every chance that helpful guidance will be provided by the Constitutional Court for the litigation pending in the High Court.

166. Ordinarily where rule 33(4) is applied, the issues separated for prior determination must still make their way through adjudication in the court of first instance and then, if a party is dissatisfied with the outcome, the appeal process through, potentially, a full court appeal, the Supreme Court of Appeal and, if it has jurisdiction, the Constitutional Court. While that process is underway, the issues separated for later determination are stayed and await the outcome of that appellate process. Here it is different. The issues that have emerged for prior determination are already before the Constitutional Court, significantly attenuating any delays in the commencement, if necessary, of the issues separated for later determination.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

167. These considerations render it in the interests of justice that the stay be granted.

Fourth ground: a stay will not prejudice the parties unduly

168. In their responses to the Minister's proposals to stay the litigation, the parties have claimed prejudice to their rights to have their applications heard in good time.

169. The staying of the relevant applications will not preclude the parties from being heard. All court proceedings are in any event heard subject to the convenience and availability of the court. I therefore deny that the parties' right to a fair hearing would be infringed by the stay.

170. To the extent that those rights are limited (which I deny), that limitation would nonetheless be reasonable and justifiable in an open and democratic society, in the light of the interests of justice and equity concerns I have raised.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

171. The parties have further claimed prejudice to the public if the Minister is allowed to proceed with implementing the NHI Act or preparing for its implementation in the interim while their applications are held in abeyance. They claim this will be the ultimate wasted cost (if the Act is eventually set aside) and that they risk the Minister claiming their challenges are academic in light of implementation having progressed.

172. I note that to date no provision of the NHI Act has been brought into effect as the President is empowered to do under section 59 of the Act.

173. Once the President does so, implementation is required to take place progressively, over many years, and in terms of available funds under section 57 of the NHI Act. There will be no "overnight switch" for NHI as some of the parties seem to imply.

174. Implementation of the NHI Act will largely start with the establishment of administrative and governance structures for the Fund, the process of which itself will take years. Insofar as constitutionally empowered bodies determine

and allocate a budget for these activities to occur, that is a decision which will be made by those constitutionally empowered bodies, considering, insofar as it is relevant, any risk that pending litigation may pose to the outcomes of that expenditure.

175. Other work that continues concurrently, which relates to readying the health system for NHI, can hardly be considered prejudicial or a threat to any party. These activities are in the public interest regardless of NHI and cover conduct like strengthening the public health system and continuing to build the health information systems that already exist, and which will be used to inform eventual NHI implementation.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

176. To the extent that the parties raise issues such as the certification of General Practitioners by the Office for Health Standards Compliance ("**OHSC**") proceeding, this is similarly in the public interest regardless of NHI. While this process will ultimately be important for the implementation of NHI, the purposes and benefits of the OHSC processes are not limited to NHI and indeed would proceed independently of the NHI Act under separate legislation.

The impact of the Minister's undertaking

177. The parties have unanimously rejected the Minister's undertaking in relation to the implementation of section 33 of the NHI Act. The notice of motion includes a prayer for an order recording the terms of the Minister's undertaking.

178. The primary reason for the rejection of the Minister's undertaking was that the relevant parties sought, expressly or impliedly, both an undertaking from the President not to bring the NHI Act into effect in terms of section 59 and an undertaking from the Minister not to implement the NHI Act, while the affected applications are stayed.

179. The Minister is not, however, in a position to make a wholesale undertaking not to implement the NHI Act for several reasons. Amongst others:

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

179.1. The Minister does not have the power to bring the NHI Act into force – this is a power of the President in section 59 of the NHI Act.

179.2. In any event, the Minister is bound by the NHI Act as is the NDOH. Once the NHI Act has been brought into effect by the President, neither the Minister nor the NDOH may obstruct compliance or elect not to implement legislation duly passed by Parliament. This is particularly so in light of section 57 of the NHI Act which mandates a process of progressive implementation.

179.3. Section 57(4)(f) requires that the objectives of Phase 1 of the implementation process include the purchasing of health care service benefits for listed vulnerable groups, amongst others to address critical backlogs. These groups include children, pregnant women, the aged, people with disabilities and rural communities.

179.4. Any agreement by the Minister (or President) to stay the implementation or enactment of the NHI Act would have direct,

adverse impacts on these vulnerable groups. These groups are not represented in these proceedings, nor has any *curator ad litem* been proposed to represent their interests by the parties who have proposed a suspension of the bringing into force and implementation of the NHI Act. The Minister cannot and will not prejudice the rights of these vulnerable groups under the NHI Act by undertaking to withhold implementation in its totality.

179.5. Most importantly, the NHI Act is critically necessary legislation which seeks to advance constitutional rights of people who currently use the public healthcare sector, and those who access care in the private sector. The NHI Act's implementation does not threaten any rights and legally protectable interests.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

180. The Minister does, however, have specific powers under the NHI Act in relation to section 33 of the Act, which is a focal concern in the parties' papers.

181. Section 33 of the NHI Act provides:

> *"Once National Health Insurance has been fully implemented as determined by the Minister through regulations in the Gazette, medical schemes may only offer complementary cover to services not reimbursable by the Fund."*

182. As it is the Minister who determines when the NHI Act is fully implemented through regulations in the Gazette, and, in light of the Minister's estimation that full implementation of the NHI Act is likely to take between 10 to 15 years

in terms of the progressive implementation envisaged under section 57, the Minister is in a position to tender that he will not publish regulations under section 33 while the affected applications are stayed.

183. This tender is significant given that all the parties challenge section 33 of the NHI Act and focus on the impact of this section on medical schemes and users. By way of example:

183.1. HFA described section 33 of the NHI Act as a "particularly important provision" and the "central focus" of its application (paragraph 77.3 of the HFA founding affidavit).

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

183.2. SAMA described section 33 as "extremely threatening to existing medical scheme users and taxpayers, to the entire health sector" (paragraph 257 of the SAMA founding affidavit).

183.3. HASA described the provision as "drastic", "extreme" and an infringement of constitutional rights (section 159 of the HASA founding affidavit).

183.4. Solidarity says that section 33 of the NHI Act is "central" to its concerns that the NHI Act is vague (paragraph 10.4 of the Solidarity founding affidavit) and centres the provision in its claims of a range of rights infringements.

184. I deny the substance of these allegations, and the Minister will in due course defend the constitutionality of section 33 as an important component of the

NHI Act's infrastructure, as he has done in his answer to the Solidarity application. For present purposes, however, I note these statements to demonstrate that the parties' negativity towards the Minister's undertaking is misplaced. The undertaking does indeed address their primary concern.

185. I do not contend that section 33 functions in isolation, or that it is the sole cause for the parties' concern. But the undertaking tendered by the Minister is made in good faith to meet the parties' counterproposals in relation to the stay, insofar as the Minister is empowered to do.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

186. I note that HASA claims that the undertaking in relation to section 33 of the NHI Act is meaningless in light of its interaction with section 6(o) of the NHI Act and the provisions of and Schedule to the NHI Act which will amend the Medical Schemes Act 131 of 1998 to limit the scope of services that medical schemes may cover.

187. Section 6(o) of the Act provides in relevant part that users of the NHI Fund have the right "to purchase health care services that are not covered by the Fund through a complementary voluntary medical insurance scheme".

188. I deny HASA's allegations, which are grounded in an irrational interpretation of the NHI Act.

188.1. Quite apparently, the relevant amendments to the Medical Schemes Act cannot be brought into force by the President in terms of section 59 of the NHI Act until and unless the regulations

001-101

contemplated in section 33 of the NHI Act have been promulgated by the Minister.

188.2. Moreover, section 6(o) of the NHI Act recognises the rights of users to purchase complementary medical scheme coverage. It does not in and of itself (absent the effective outcome of section 33 when it is implemented) stop users from purchasing from medical schemes the balance of coverage that is currently available and will remain available until section 33 is implemented.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

189. A final point to be made on the question of prejudice is that the grant of a stay is not completely final in effect. In the event that there were any developments in future that had the effect that the stay became truly prejudicial, it would be open to Solidarity, HASA, SAMA, HFA or SAPPF (if it becomes subject to the stay) to apply to this Court for its variation or uplifting. A stay is not the law of the Medes and the Persians.

190. The parties' rejection of the undertaking notwithstanding, the Minister stands by his undertaking in the event that this Court grants the stay and the notice of motion is framed accordingly.

Conclusion on section 1

191. The Minister accordingly seeks an order for the stay of the Solidarity, SAMA, HASA, HFA and (conditionally) the SAPPF applications on the conditions set out in the notice of motion.

192. This relief is sensible, convenient, and in the interests of justice.

SECTION 2: CONSOLIDATION APPLICATION

193. The Minister seeks to consolidate the Solidarity, SAMA, HASA, HFA, and (conditionally) SAPPF applications.

194. In the remainder of this Part of the affidavit:

194.1. I set out the applicable legal framework.



194.2. I explain why consolidation is convenient for the Court and the parties.

194.3. I explain why consolidation is equitable.

194.4. I explain how the order sought by the Minister insofar as consolidation is concerned seeks to accommodate the concerns raised by the parties.

Applicable legal framework

195. I am advised that a court has a wide discretion to grant or refuse an application for consolidation under Uniform Rule 11. I am further advised that the party requesting consolidation bears the burden of demonstrating that the consolidation will not cause undue prejudice to any other party.

196. The purpose of consolidation under Uniform Rule 11 is to ensure that issues which are essentially the same are heard and determined in one hearing so

as to avoid a multiplicity of applications with the concomitant disadvantages and prejudice. The paramount test in regard to consolidation is convenience.

197. Under Uniform Rule 11, the Court has the discretion to consolidate proceedings where:

197.1. there are two or more matters pending before the Court;

197.2. the actions involve substantially the same questions of law or fact and;

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

197.3. it would be convenient and just to consolidate them.

198. I am advised that the test of convenience connotes not only facility or expedience or ease, but appropriateness in the sense that procedure would be convenient if, in all circumstances of the case, it appears to be fitting and fair to the parties concerned. Convenience relates to the convenience of the parties, of the witnesses and, last but not least, of the Court.

199. Finally, I am advised that in terms of Rule 11(c) and the Court's inherent jurisdiction under section 173 of the Constitution, the Court is empowered to regulate its process and make any order which it seems meet with regard to the further procedure of a consolidated matter. This power enables the Court to address the procedural concerns raised by some of the parties in their responses to the Minister's proposal insofar as it related to consolidation.

Consolidation is convenient for the Court and for the parties

200. As I have set out above, the applications against the NHI Act are all extremely complex, raise issues of serious and general public importance, and are voluminous.

201. It is evident from the notices of motion that the relief sought by the parties are substantially similar and require the Court to determine similar issues of law and fact.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

202. Common legal issues across the applications include, inter alia, the following:

202.1. Constitutional power issues:

202.1.1. Separation of powers if relief is granted.

202.1.2. Separation of powers: Delegation of plenary powers.

202.1.3. Separation of powers: Alleged interference with provincial powers.

202.2. Constitutional rights issues:

202.2.1. Section 27(1): The right to health.

202.2.2. Section 25: The right to property.

202.2.3. Section 22: Health care workers' freedom of trade.

202.2.4. Section 10: The right to dignity.

202.2.5. Section 11: The right to life.

202.2.6. Section 12: Freedom and security of the person.

202.2.7. Access to information.

202.3. Differentiation and limitation issues

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

202.3.1. Justifiable limits of rights.

202.3.2. Asylum seekers' right to access health care.

202.4. Governance issues:

202.4.1. Whether the governance provisions of the NHI Act predisposes it to mismanagement and corruption.

202.4.2. Section 195 of the Constitution.

202.4.3. Competition law and procurement obligations under section 217 of the Constitution.

202.5. Financial issues:

202.5.1. Money Bills and the requirements of chapter 13 of the Constitution and of the Public Finance Management Act, 1999.

203. The common issues across all applications also include factual issues. A sample list of factual issues and/or issues upon which there is or will be expert evidence, include:

203.1. Financial feasibility of the NHI Act.

203.2. Budgetary processes and the procurement and allocation of public funds.

203.3. The concept in law and public health terms of Universal Health Coverage ("**UHC**").

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

203.4. International experience of UHC and healthcare funding.

203.5. Healthcare funding systems in specific other countries around the world.

203.6. Financial modelling of the NHI Act.

203.7. The role of public healthcare systems.

203.8. The role of private healthcare systems.

203.9. The role of primary health care.

203.10. Referral pathways for specialist care.

203.11. Hospital services and district health services.

203.12. The role of medical schemes.

203.13. The impact of the Fund's exclusion of the Competition Act; the competitive impacts of the NHI Act.

203.14. Principles of social solidarity.

203.15. Risk pooling in healthcare financing and insurance.

203.16. Resource pooling in healthcare financing and insurance.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

203.17. Measuring health system performance with reference to alleged proxy indicators, such as maternal mortality ratios.

203.18. Regulatory structures for monitoring healthcare systems.

203.19. The implications of the Competition Commission's 2019 Health Market Inquiry.

204. The proliferation of multiple related applications in respect to the NHI Act will obviously lead to inefficiency, duplication of functions, waste of State resources in defending separate, but overlapping applications, and the risk of contradictory judgments.

205. The consolidation application is further motivated on the following grounds:

205.1. HASA, SAMA and HFA rely extensively on, and respond at length to, the Minister's answering affidavit and expert evidence in the Solidarity application and their respective experts make extensive reference to

this evidence. HASA, SAMA and HFA have therefore at their own election aligned their cases with, and substantially incorporated their cases into and inextricably interwoven them with, the Solidarity application.

205.2. It would have been appropriate for HASA, SAMA and HFA to have sought leave to intervene in Solidarity's application. They have not done so, ostensibly in order to preserve their tactical advantages in having brought separate applications, and to maximise the burden imposed on the Minister in defending concurrent streams of litigation each of which builds off the prior application.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

205.3. Consolidation would assist the Court to determine the various applications at one time, in a single and coherent manner, and on the basis of a single answering affidavit instead of six (or more) of them. This reduces the risk of conflicting judgments and allows for an efficient use of judicial and State (in respect to the respondents) resources.

205.4. Filing separate answering papers in the HASA, SAMA, HFA, (and, conditionally, the direct challenge component of the SAPPF) applications will impose an undue and prejudicial burden on the Minister's and the President's expert witnesses, who will be compelled to duplicate work on issues and file multiple affidavits. This is particularly difficult for the Minister's experts some of whom are

based outside of South Africa, and in light of the extensive expert evidence that must be answered, as I have set out above.

205.5. Doing so also creates an unfair advantage for the applicants bringing the applications. Applicants normally have the opportunity to reply to the case of the respondent only once, that is in their replying affidavit, and there are limits on what they may canvas in a reply.

205.6. Unless consolidation is ordered, the problem will likely be compounded in subsequent applications where, in their founding affidavits, the applicants may again answer to the Minister's answering affidavit in any of the applications, as has already happened with HASA, SAMA and HFA in relation to the Minister's answering affidavit in Solidarity. They will then again respond to that answer in reply.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

205.7. Consolidation will obviate this unfair and imbalanced situation.

205.8. Consolidation will significantly reduce the cost of defending separate applications. It is a matter of public record that the cost of defending the litigation thus far has already run into millions of rands for the Minister. These costs are drawn from the NDOH's budget – a budget which all of the parties accept is at this point constrained and insufficient to address significant competing public demands.

205.9. I note in this regard that a number of the parties have repeatedly attempted to cast aspersions on the Minister by criticising the size of

his counsel team. This criticism is not only discourteous, but it is also unfounded.

205.10. The attendances at the case management meeting of 1 July 2025 demonstrate in contrast how comparably humble or in any event appropriate the Minister's legal team is.

205.10.1. Collectively, the Minister's counsel team include 12 counsel. It is supported by Kgosana Attorneys who act as correspondents for the State Attorney.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

205.10.2. Each of the applicants' legal teams are prosecuting only one matter. In contrast, the Minister's counsel team is defending ten separate, concurrent applications (six in this Court, two in the Constitutional Court, and two others before the Constitutional Court which deal with related issues falling under the National Health Act 61 of 2003), while anticipating more litigation to come.

205.10.3. This amounts to 1.2 advocates per application.

205.10.4. In total, the various applicants in the NHI matters only (i.e. excluding those in the related litigation under the National Health Act) are represented by some 16 counsel who are named in the minutes, with three additional counsel representing the President.

205.10.5. These counsel receive significant support from large teams from big attorneys' firms. In contrast with the two correspondent attorneys recorded for the Minister in the case management meeting, the applicants collectively are represented by 25 attorneys, with one attorney from the State Attorney for the President.

206. Consolidation will allow the use of a joint Caselines/Court bundle for ease of reference across all the matters and it will be convenient for the Court that is seized with managing and adjudicating the various applications with overlapping subject matter, against the same parties. It will also allow for consolidated interlocutory applications where appropriate, so that interlocutory disputes can be adjudicated and resolved across all the applications where needed.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

207. Consolidation will moreover provide an incentive for maximal procedural co-operation by the parties, such as the sharing of topics for argument and avoidance of repetition.

Consolidation is equitable

Prejudice to the Minister and administration of justice if consolidation is refused

208. If consolidation is not granted, the Minister (and other State respondents to the relevant applications) will be prejudiced:

208.1. First, the unfairness to the Minister (and the President) in the respective applications by having to respond to each successive substantive application individually and in turn with a substantive answering affidavit is palpable;

208.2. Second, the factual matrices of the challenges have become intertwined and *de facto* consolidated, particularly where HASA, SAMA and HFA have incorporated and replied to the Minister's answering affidavit and the evidence of his experts in the Solidarity application;

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

208.3. Third, the complex disputes of fact which are apparent from the founding affidavits in the respective applications should be resolved in one proceeding with one answering affidavit; and

208.4. Overarchingly, it is not in the interests of justice that the applications proceed without consolidation as the State is being prejudiced, financially and otherwise, in defending each application separately.

No prejudice to the affected litigants

209. In contrast, Solidarity, SAMA, HASA and HFA will suffer no prejudice if the matters are consolidated.

209.1. there would be one finding concerning a factual dispute involving several parties;

209.2. the applicants' various claims arising from the same cause of action would be heard in one hearing and;

209.3. possible conflicting judgments will be avoided, and the attendant costs will be significantly reduced, for all parties concerned.

210. The effect of the consolidation would be that the Minister and the President need only to file a single answering affidavit responding only once to the same issues that are repeated over and again in the various applications (even if it responds *ad seriatim* to each founding affidavit in that single affidavit) and, importantly, they will rely on one set of expert affidavits.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

211. Moreover, the respondents will each be able to argue the matter once, and the matters would all be heard together. Should new applications be filed challenging the validity of the NHI Act, these could also be consolidated or the new applicants could apply to intervene in the existing consolidated applications.

212. I note that HASA, SAMA and HFA must clearly have anticipated consolidation of their applications with that of the Solidarity application. They would not have referred so extensively to the Minister's answer in the Solidarity application, and in some instances without annexing those references to their applications, had they not anticipated consolidation.

The nature of consolidation sought in the order

213. The affected parties have all expressed opposition to "formal consolidation" but (save for SAPPF) expressed a willingness to have a combined hearing. Their motivations against "formal consolidation" would appear to relate to their wishes to make the most of the individual nuances of each of their applications, while avoiding unnecessary costs of having to prepare for and argue in relation to a record that includes all of the parties' applications. At least one of the affected parties expressed a willingness to agree to the Minister filing consolidated answering papers.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

214. The orders in prayers 7.1 to 7.6 of the notice of motion seek to specify the effect of consolidation in an effort to meet the concerns raised by the parties.

214.1. Prayer 7.1 provides for a consolidated hearing.

214.2. Prayer 7.2 instructs the Registrar to facilitate the creation of a single, consolidated Caselines page.

214.3. Prayer 7.3 accommodates the Minister's concerns for the prejudice faced by the State respondents and the Court with the prospect of having to file multiple answering affidavits and multiple expert affidavits. The intended effect of the prayer is that the Minister (and President) would be entitled to file one answering affidavit in the HASA, SAMA, HFA and (conditionally) SAPPF applications and, when arguing the matter, to file a single set of heads referring to all four consolidated applications.

214.4. Prayer 7.4 confirms that consolidation nonetheless retains the ability of each party to explore the nuances of their individual application, but prevents them from straying into other parties' pleadings and minimises the costs associated with preparation for a consolidated hearing. For example, Solidarity will not be required or entitled to refer or respond to HASA's founding and replying affidavits; HFA will seek the relief sought in its own notice of motion and cannot broaden its focus by arguing for the broader alternative relief sought in Solidarity's application; and, insofar as HASA succeeds in establishing confidentiality over certain portions of its application, the other applicants will not have access to those portions of the record.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

214.5. Prayer 7.5 preserves the ability of the case management judge to address interlocutory issues in a combined or individualised way depending on what is convenient and minimally prejudicial. For example, the confidentiality regime sought to be imposed by HASA will not impact Solidarity, SAMA and HFA and need not concern those parties. The case management judge will be able to provide for the filing of process and set down of any hearing if required to limit the cost implications imposed on unaffected parties.

214.6. Finally, prayer 7.6 seeks to minimise the burden on the Court by allowing for a single judgment to be delivered.

215. As is always the case, the Court will retain wide discretion in respect of costs and will duly consider the merits of each party's respective case, and their individual conduct in the litigation, in making any costs awards.

Conclusion on section 2

216. It will accordingly be convenient for this Court to consolidate the relevant applications. The consolidation would reduce costs and expedite proceedings; there would be one finding concerning a factual dispute involving a number of parties; and the parties' various claims arising from similar questions of fact and law would be heard together.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

217. The advantages of consolidation substantially outweigh any disadvantages which may be alleged by the applicants and render a consolidation convenient and in the interests of justice.

RELIEF

218. The Minister prays for the relief as set out in the notice of motion.

219. The Minister prays that the costs of this application be the costs in the cause of each of the applications in the consolidated application.

NICHOLAS GILMOUR CRISP

SIGNED and SWORN to before me at JOHANNESBURG on this 28th day of JULY 2025, the deponent having acknowledged that he knows and understands the contents of this affidavit, that he has no objection to taking the prescribed oath and that he considers the oath to be binding on his conscience.

COMMISSIONER OF OATH

REAGAN SEBOLA
ATTORNEY & COMMISSIONER OF OATHS
507 SPUY STREET
SUNNYSIDE PRETORIA
TEL: 012 344 0245
FAX: 012 343 4212
DATE: ____/____/____

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No.

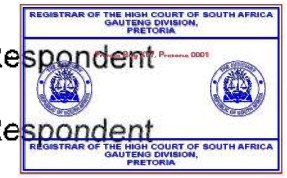
In the matter between:

BOARD OF HEALTHCARE FUNDERS OF SOUTHERN AFRICA NPC Applicant

and

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA First Respondent

MINISTER OF HEALTH Second Respondent



NOTICE OF MOTION

TAKE NOTICE that the applicant intends to make application to the above Honourable Court at a date and time to be arranged with the Registrar of the Honourable Court for an order in the following terms:

1. The decision of the first respondent to assent to and sign the National Health Insurance Bill [B11B-2019], taken on 15 May 2024, is reviewed and set aside.

2. As a consequence of paragraph one:

   2.1. Proclamation No. 4826 in *Government Gazette* 50644, dated 16 May 2024, is reviewed and set aside.

   2.2. The matter is remitted to the first respondent for reconsideration under sections 84(2)(a), (b) and/or (c) read with sections 79(1) and 83(b) of the Constitution of the Republic of South Africa, 1996.

2.3. It is declared that the National Health Insurance Act No. 20 of 2023 is of no legal force or effect.

3. The costs of this application shall be paid by the first respondent and any other respondent who opposes the application, jointly and severally, including the costs of two counsel on scale C.

4. Further and/or alternative relief.

TAKE NOTICE FURTHER that the founding affidavit of **DR JOSEPH KATLEGO MOTHUDI**, together with its annexures, will be used in support of this application.



TAKE NOTICE FURTHER that the applicant has appointed the office of **WERKSMANS ATTORNEYS,** as set out below, as the address at which it will accept service of all documents and process in these proceedings.

TAKE NOTICE FURTHER that the first respondent is called upon, in terms of Rule 53(1)(a) of the Uniform Rules of Court, to show cause why the impugned decision referred to above should not be reviewed and set aside.

TAKE NOTICE FURTHER that the first respondent is called upon, in terms of Rule 53(1)(b), to dispatch, within 15 days of receipt of this notice of motion, to the Registrar, the record of the proceedings sought to be reviewed and set aside, together with such reasons as he by law is required or desires to give or make, and to notify the applicant's attorneys that he has done so.

TAKE NOTICE FURTHER that a respondent who intends to oppose this application shall:

(a) Within 15 days after receipt of this notice of motion deliver a notice of intention to oppose the application to the applicant;

(b) In such notice, appoint an address within 15 kilometres of the office of the registrar at which the respondent will accept notice or service of all process in these proceedings; and

(c) Within 30 days of the expiry of the time referred to in Rule 53(4), deliver any affidavit the respondent may desire in answer to the allegations made by the applicant.



DATED at **JOHANNESBURG** on this the 29th day of **MAY 2024.**

WERKSMANS ATTORNEYS
Attorneys for the Applicant
The Central
96 Rivonia Road
Sandton
2196
Tel: 011 535 8198 / 011 535 8424
Fax: 011 535 8698 / 011 535 8724
Email: nkirby@werksmans.com
hmichael@werksmans.com
bmoti@werksmans.com
sphakathi@werksmans.com
Ref: Mr N Kirby/Ms H Michael/
BOAR3329.73
C/O KLAGSBRUN EDELSTEIN-BOSMAN DE VRIES INC.
220 Lange Street
New Muckleneuk
Pretoria
Docex 42 Brooklyn
Tel: (012) 452 8900
Fax: (012) 452 8901
Ref: Ms E Meyer

To: **The Registrar of the above Honourable Court**

And to: **The first respondent**
Union Buildings
Government Avenue
Pretoria
c/o State Attorney, Pretoria

And to: **The second respondent**
Dr AB Xuma Building
1112 Voortrekker Road
Townlands, 351-JR.
Pretoria.
c/o State Attorney, Pretoria



IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Case No.

In the matter between:

BOARD OF HEALTHCARE FUNDERS NPC Applicant

and

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA First Respondent

MINISTER OF HEALTH Second Respondent

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

NOTICE OF MOTION

TAKE NOTICE that the applicant intends to make application — in terms of Rule 11 of the Rules of the Constitutional Court, read with section 167(4)(e) and section 173 of the Constitution of the Republic of South Africa, 1996 (**the Constitution**) *alternatively* Rule 18 read with section 167(6) of the Constitution — to the above Honourable Court at a date and time to be arranged with the Registrar of the Honourable Court for an order in the following terms:

1. To the extent necessary:

    1.1. in the event of the first respondent refusing to provide the record of proceedings (as requested below), that the first respondent be directed to deliver the record of the decision to the decision challenged in paragraph two below;

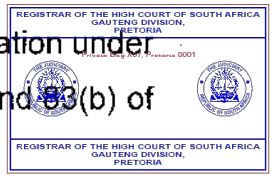
1.2. that it is directed that the applicant is entitled to file a supplementary founding affidavit after receiving the record of the decision.

2. The decision of the first respondent to assent to and sign the National Health Insurance Bill [B11B-2019], taken on 15 May 2024, is reviewed and set aside.

3. As a consequence of paragraph two:

3.1. Proclamation No. 4826 in *Government Gazette* 50644, dated 16 May 2024, is reviewed and set aside;

3.2. the matter is remitted to the first respondent for reconsideration under sections 84(2)(a), (b) and/or (c) read with sections 79(1) and 83(b) of the Constitution of the Republic of South Africa, 1996;



3.3. it is declared that the National Health Insurance Act No. 20 of 2023 is of no legal force or effect.

4. The costs of this application shall be paid by the first respondent and any other respondent who opposes the application, jointly and severally, including the costs of two counsel.

5. Further and/or alternative relief.

TAKE NOTICE FURTHER that, subject to any directions that might be given by the Chief Justice and/or the Court, the applicant will ask that the application be set down for hearing before the Court in the event that:

(a) the High Court, Gauteng Division, Pretoria, in the proceedings instituted by the applicant under case number 058172/2024 (**the High Court Application**), finds that it lacks jurisdiction to entertain the High Court Application or to grant the relief sought in the High Court Applications; and/or

(b) the Respondents in the High Court Application seeking to appeal against a finding in the High Court Application that it does have jurisdiction to entertain the High Court Application or to grant the relief sought therein,

and for this application to be heard together with any appeal against a finding of the High Court in the High Court Application.

TAKE NOTICE FURTHER that the founding affidavit of **DR JOSEPH KATLEGO MOTHUDI**, together with its annexures, will be used in support of this application.



TAKE NOTICE FURTHER that the applicant has appointed the office of **WERKSMANS ATTORNEYS**, as set out below, as the address at which it will accept service of all documents and process in these proceedings.

TAKE NOTICE FURTHER that the first respondent is called upon:

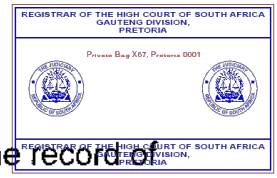
(a) to show cause why the impugned decision referred to above should not be reviewed and set aside; and

(b) within 15 days of receipt of this Notice of Motion or in accordance with any other directions that might be given by the Chief Justice and/or the Court, to despatch to the Registrar of this Court, the record of the decision sought to be reviewed and set aside, together with such reasons as he by law is required or desires to give or make, and to notify the applicant's attorneys that he has done so.

TAKE NOTICE FURTHER that a respondent who intends to oppose this application shall, subject to any other directions that might be given by the Chief Justice and/or the Court:

(a) within 15 days after receipt of this notice of motion deliver a notice of intention to oppose the application to the applicant;

(b) in such notice, appoint an address within 25 kilometres of the office of the Registrar at which the respondent will accept notice or service of all process in these proceedings; and



(c) within 30 days of the date when the applicant, after receipt of the record of the decision files a supplementary founding affidavit, deliver any affidavit the respondents may desire in answer to the allegations made by the applicant.

DATED at **JOHANNESBURG** on this the 26TH day of **AUGUST 2024.**

WERKSMANS ATTORNEYS
Attorneys for the Applicant
The Central
96 Rivonia Road
Sandton
2196
Tel: 011 535 8198 / 011 535 8424
Fax: 011 535 8698 / 011 535 8724
Email: nkirby@werksmans.com
hmichael@werksmans.com
bmoti@werksmans.com
sphakathi@werksmans.com
Ref: Mr N Kirby/Ms H Michael/
BOAR3329.73

TO: **THE REGISTRAR OF THE CONSTITUTIONAL COURT**
CONSTITUTIONAL HILL, BRAAMFONTEIN

AND TO: **THE FIRST RESPONDENT**
Union Buildings
Government Avenue
Pretoria
E-mail: malebo@presidency.gov.za

AND TO: **THE SECOND RESPONDENT**
Dr AB Xuma Building
1112 Voortrekker Road
Townlands, 351-JR.
Pretoria.
E-mail: Lufuno.Makhoshi@health.gov.za /
Tshepo.Mantlhwa@health.gov.za



AND TO: **THE STATE ATTORNEY, PRETORIA**
Attorneys for the Respondents
Dr AB Xuma Building
SALU BUILDING
316 Thabo Sehume Street
Pretoria.
Tel: (012) 309 1623/1539 /1632
Fax: (012) 309 1649/50
E-mail: rsebelemetsa@justice.gov.za / JMulaudzi@justice.gov.za

"NC3"

COURT ONLINE COVER PAGE

IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Division, Pretoria

CASE NO: **2024-111209**

In the matter between:

South African Private Practitioners Forum	Plaintiff / Applicant / Appellant
and	
President of the Republic of South Africa ,Minister of Health ,Minister of Finance ,National Treasury	Defendant / Respondent

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

Notice of Motion (Long Form)

NOTE: **This document was filed electronically by the Registrar on 1/10/2024 at 10:11:56 AM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.**

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

ELECTRONICALLY SIGNED BY:

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

STATE ATTORNEY
CENTRAL EMAIL
2024 -10- 07
10:33
PRIVATE BAG X91
PRETORIA 0001
STAATSPROKUREUR

SHERIFF
PTA CENTRAL
2024 -10- 02
RECEIVED
Time:.....

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO:

In the matter between:

SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM	Applicant
and	
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
MINISTER OF HEALTH	Second Respondent
MINISTER OF FINANCE	Third Respondent
NATIONAL TREASURY	Fourth Respondent

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

NOTICE OF MOTION

TAKE NOTICE THAT the Applicant intends to apply to the above Honourable Court on a date and time to be allocated by the Registrar for an order in the following terms:

1 Reviewing and setting aside the First Respondent's decision to assent to and sign the National Health Insurance Act 20 of 2023.

2 As a consequence of paragraph 1:

2.1 Declaring that the National Health Insurance Act 20 of 2023 is invalid and of no force and effect.

SHERIFF
PTA CENTRAL
2024 -10- 02
RECEIVED
Time:.....

2.2 Directing the First Respondent to reconsider the National Health Insurance Bill in accordance with his obligations under sections 84(2)(a) and (b), read with sections 79(1), 83 and 7(2) of the Constitution.

3 In the alternative to paragraphs 1 and 2, declaring the National Health Insurance Act 20 of 2023 unconstitutional and invalid.

4 In the further alternative to paragraph 3, declaring sections 5, 7, 8, 33, 35, 37, 38, 39 and 41 of the National Health Insurance Act 20 of 2023 unconstitutional and invalid.

5 Costs on scale C, including the costs of two counsel, in the event of opposition.

6 Granting the Applicant further and / or alternative relief.

TAKE NOTICE that the affidavit of **SIMON ANDREW STRACHAN** filed together with this Notice of Motion will be used in support of this application.

TAKE NOTICE FURTHER that the Applicant has appointed the offices of **HILLS INCORPORATED**, the details of which are set out below, as the address at which the Applicant will accept notice and service of all process in these proceedings. The Applicant will also accept electronic service at the following email addresses: martin.versfeld@webberwentzel.com; prelisha.singh@webberwentzel.com; glenn.penfold@webberwentzel.com; and alexandra.rees@webberwentzel.com.

TAKE NOTICE FURTHER that the First Respondent is called upon, in terms of Rule 53(1)(a) of the Uniform Rules of Court, to show cause why the impugned decision referred to above should not be reviewed and set aside.

TAKE NOTICE FURTHER that the First Respondent is called upon, in terms of Rule 53(1)(b) of the Uniform Rules of Court, within 15 (fifteen) days of receipt of this notice of motion, to deliver to

the Registrar the record of the decision that is sought to be set aside in paragraph 1, and to notify the Applicants' attorney that it has done so.

BE PLEASED TO TAKE FURTHER NOTICE that the Applicant may, within 10 (ten) days after the Registrar has made the record available, by delivering a notice and accompanying affidavit, amend, add or vary the terms of this notice of motion and supplement the founding affidavit annexed.



BE PLEASED TO TAKE FURTHER NOTICE that should any of the Respondents intend to oppose the relief sought by the Applicant, they are directed to:

(a) notify the Applicant's attorneys in writing within 15 (fifteen) days of receipt of this notice of motion or any amendment thereof;

(b) in such notice appoint an address within 15 kilometres of the office of the Registrar and / or an electronic mail address at which it will accept notice and service of all documents in these proceedings; and

(c) deliver their answering affidavit within 30 (thirty) days of delivery of the expiry of the time referred to in Rule 53(4) of the Uniform Rules of Court.

BE PLEASED TO TAKE FURTHER NOTICE that if no notice of intention to oppose is filed within the time period set out herein, the matter will be set down for hearing on a default basis on a date and time to be determined by the Registrar of the above Honourable Court.

SIGNED at Sandton, Johannesburg on this 23rd day of **SEPTEMBER 2024**.

WEBBER WENTZEL
Applicant's attorneys
90 Rivonia Road, Sandton
Johannesburg, 2196
PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa
Tel: 011 530 5220
Fax: 011 530 6220
Email: martin.versfeld@webberwentzel.com
prelisha.singh@webberwentzel.com
glenn.penfold@webberwentzel.com
alexandra.rees@webberwentzel.com
Ref: M Versfeld / P Singh / G Penfold / A Rees
4008778

C/O HILLS INCORPORATED
Office B313
Parkdev Building, First Floor
Brooklyn Bridge Office Park
570 Fehrsen Street
Brooklyn
Pretoria
Tel: 087 944 1800
Email: admin@hillsincorporated.co.za

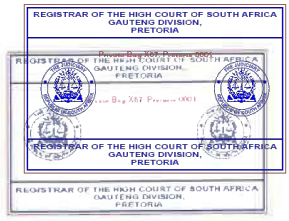
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

TO:
THE REGISTRAR OF THE ABOVE
HONOURABLE COURT

AND TO:
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA
First respondent
Union Buildings
Government Avenue
PRETORIA
Email: president@presidency.gov.za

AND TO:
MINISTER OF HEALTH
Second respondent
Dr AB Xuma Building
1112 Voortrekker Road
PRETORIA
Tel: 012 395 8000
Email: minister@health.gov.za

AND TO:
MINISTER OF FINANCE
Third respondent
Second Floor
Old Reserve Bank Building
40 Church Street
PRETORIA
Tel: 012 323 8911
Email: minreg@treasury.gov.za



AND TO:
NATIONAL TREASURY
Fourth respondent
40 WF Nkomo Street
PRETORIA
Tel: 012 315 5904
Email: dg@treasury.gov.za

AND TO:
STATE ATTORNEY: PRETORIA
SALU Building
316 Thabo Sehume Street
Cnr Thabo Sehume & Francis Baard Street
PRETORIA
Tel: 012 309 1670 / 1500
Email: stateattorneypretoria@justice.gov.za

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO: 2024-111209

In the matter between:

SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM	Applicant
and	
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
MINISTER OF HEALTH	Second Respondent
MINISTER OF FINANCE	Third Respondent
NATIONAL TREASURY	Fourth Respondent

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

NOTICE OF INTENTION TO AMEND

PLEASE TAKE NOTICE that the applicant intends to amend its notice of motion, dated 23 September 2024, in the manner set out in annexure "**A**", with amendments reflected in redline in that annexure.

TAKE NOTICE FURTHER that the purpose of the amendments is to clarify the relief sought by the applicant, in the light of the rule 6(5)(d)(iii) notices on points of law filed by the first and second respondents, the applications for leave to appeal lodged by the first and second respondents in respect of the judgment and order of this Court on the points of law, and in order to avoid delays in the progression of the challenge to the substance of the National Health Insurance Act 20 of 2023 as envisaged in prayers 3 and 4 of the notice of motion.

TAKE NOTICE FURTHER that, unless written objection to the proposed amendments is delivered within 10 (ten) days of delivery of this notice, the applicant will amend its notice of motion accordingly.

Dated at **JOHANNESBURG** on this 13th day of **JUNE 2025.**

WEBBER WENTZEL
Applicants' attorneys
90 Rivonia Road, Sandton
Johannesburg, 2196
PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa
Tel: 011 530 5220
Fax: 011 530 6220
Email: martin.versfeld@webberwentzel.com
prelisha.singh@webberwentzel.com
glenn.penfold@webberwentzel.com
alexandra.rees@webberwentzel.com
Ref: M Versfeld / P Singh / G Penfold / 4008778

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

TO:
THE REGISTRAR OF THE ABOVE
HONOURABLE COURT

AND TO:
STATE ATTORNEY: PRETORIA
Attorneys for the first respondent
SALU Building
316 Thabo Sehume Street
Cnr Thabo Sehume & Francis Baard Street
PRETORIA
Tel: +27 (12) 309 1670
Email: rsebelemetsa@justice.gov.za; pskhonde@justice.gov.za

AND TO:
KGOSANA ATTORNEYS
Attorneys for the second respondent
Chambers @ Valley Road
133 Valley Road
Sunnyside
PRETORIA
Tel: 012 326 1452 / 063 655 9347
Email: info@kgosana-attorneys.co.za; makule@kgosana-attorneys.co.za

AND TO:
MINISTER OF FINANCE
Third respondent
Second Floor
Old Reserve Bank Building
40 Church Street
PRETORIA
Tel: +27 (012) 323 8911
Email: minreg@treasury.gov.za; mary.marumo@treasury.gov.za



AND TO:
NATIONAL TREASURY
Fourth respondent
40 WF Nkomo Street
PRETORIA
Tel: 012 315 5904
Email: DG@dgtreasury.gov.za

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO: 2024-111209

In the matter between:

SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM	Applicant
and	
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
MINISTER OF HEALTH	Second Respondent
MINISTER OF FINANCE	Third Respondent
NATIONAL TREASURY	Fourth Respondent

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

AMENDED NOTICE OF MOTION

TAKE NOTICE THAT the Applicant intends to apply to the above Honourable Court on a date and time to be allocated by the Registrar for an order in the following terms:

1 Reviewing and setting aside the First Respondent's decision to assent to and sign the National Health Insurance Act 20 of 2023.

2 As a consequence of paragraph 1:

2.1 Declaring that the National Health Insurance Act 20 of 2023 is invalid and of no force and effect.

2.2 Directing the First Respondent to reconsider the National Health Insurance Bill in accordance with his obligations under sections 84(2)(a) and (b), read with sections 79(1), 83 and 7(2) of the Constitution.

3 ~~In the alternative to paragraphs 1 and 2,~~ Ddeclaring the National Health Insurance Act 20 of 2023 unconstitutional and invalid.

4 In the ~~further~~ alternative to paragraph 3, declaring sections 5, 7, 8, 33, 35, 37, 38, 39, and 41 of the National Health Insurance Act 20 of 2023 unconstitutional and invalid.



5 Costs on scale C, including the costs of two counsel, in the event of opposition.

6 Granting the Applicant further and / or alternative relief.

TAKE NOTICE THAT the affidavit of **SIMON ANDREW STRACHAN** filed together with this Notice of Motion will be used in support of this application.

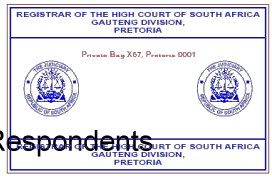
TAKE NOTICE FURTHER that the Applicant has appointed the offices of **HILLS INCORPORATED**, the details of which are set out below, as the address at which the applicant will accept notice and service of all process in these proceedings. The Applicant will also accept electronic service at the following email addresses: martin.versfeld@webberwentzel.com; prelisha.singh@webberwentzel.com; glenn.penfold@webberwentzel.com; and alexandra.rees@webberwentzel.com.

TAKE NOTICE FURTHER that, in relation to the prayers set out in paragraphs 1 and 2 above:

(a) the First Respondent is called upon, in terms of Rule 53(1)(a) of the Uniform Rules of Court, to show cause why the impugned decision referred to in paragraph 1 above should not be reviewed and set aside.

~~(a)~~(b) ~~**TAKE NOTICE FURTHER** that~~ the First Respondent is called upon, in terms of Rule ~~-~~53(1)(b) of the Uniform Rules of Court, within 15 (fifteen) days of receipt of this notice of motion, to deliver to the Registrar the record of the decision that is sought to be set aside in paragraph 1, and to notify the Applicant's attorneys that it has done so.

~~(b)~~(c) ~~**BE PLEASED TO TAKE FURTHER NOTICE** that~~ the Applicant may, within 10 (ten) days after the Registrar has made the record available, by delivering a notice and accompanying affidavit, amend, add or vary the terms of this notice of motion and supplement the founding affidavit annexed.



~~(c)~~(d) ~~**BE PLEASED TO TAKE FURTHER NOTICE** that~~ should any of the Respondents intend to oppose the relief sought by the applicant, they are directed to:

~~(a)~~i. notify the applicant's attorneys in writing within 15 (fifteen) days of receipt of this notice of motion or any amendment thereof;

~~(b)~~ii. in such notice appoint an address within 15 kilometres of the office of the Registrar and / or an electronic mail address at which ~~it~~ they will accept notice and service of all documents in these proceedings; and

~~(c)~~iii. deliver their answering affidavit within 30 (thirty) days of delivery of the expiry of the time referred to in Rule 53(4) of the Uniform Rules of Court.

(e) ~~**BE PLEASED TO TAKE NOTICE FURTHER** that~~ if no notice of intention to oppose is filed within the time period set out herein, the matter will be set down for hearing on a default basis on a date and time to be determined by the Registrar of the above Honourable Court.

TAKE NOTICE FURTHER that, in relation to the prayers set out in paragraphs 3 and 4 above:

(a) if any of the Respondents intend to oppose the relief sought by the Applicant, they are required to do so in accordance with the following time periods, alternatively such time periods as directed by the Deputy Judge President in terms of case management:

i. within 10 (ten) days after receipt of this notice of motion, to notify the ~~a~~Applicant's attorneys in writing that it intends to oppose and in such notice appoint an address within 15 kilometres of the office of the Registrar at which they will accept notice and service of all documents in these proceedings; and

ii. deliver their answering affidavit, if any, within 15 (fifteen) days of delivering the notice of opposition.



(b) the Applicant will deliver a replying affidavit within 10 days of receiving the answering affidavit(s), if any, or within such time period as directed by the Deputy Judge President in terms of case management.

DATED AT SANDTON **ON THIS** ~~23RD DAY OF SEPTEMBER 2024~~13th **DAY OF JUNE** 2025.

WEBBER WENTZEL
Applicants' attorneys
90 Rivonia Road, Sandton
Johannesburg, 2196
PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa
Tel: 011 530 5220
Fax: 011 530 6220
Email: martin.versfeld@webberwentzel.com
prelisha.singh@webberwentzel.com
glenn.penfold@webberwentzel.com
alexandra.rees@webberwentzel.com
Ref: M Versfeld / P Singh / G Penfold / 4008778

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

TO:
THE REGISTRAR OF THE ABOVE
HONOURABLE COURT

AND TO:
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA
First respondent
Union Buildings
Government Avenue
PRETORIA
Email: president@presidency.gov.za

AND TO:
MINISTER OF HEALTH
Second respondent
Dr AB Xuma Building
1112 Voortrekker Road
PRETORIA
Tel: 012 395 8000
Email: minister@health.gov.za

AND TO:
MINISTER OF FINANCE
Third respondent
Second Floor

Old Reserve Bank Building
40 Church Street
PRETORIA
Tel: +27 (012) 323 8911
Email: minreg@treasury.gov.za

AND TO:
NATIONAL TREASURY
Fourth respondent
40 WF Nkomo Street
PRETORIA
Tel: 012 315 5904
Email: dg@dgtreasury.gov.za



AND TO:
STATE ATTORNEY: PRETORIA
SALU Building
316 Thabo Sehume Street
Cnr Thabo Sehume & Francis Baard Street
PRETORIA
Tel: +27 (12) 309 1670
Email: stateattorneypretoria@justice.gov.za

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: 111209-2024

In the matter between:

SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM	Applicant
And	
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
MINISTER OF HEALTH	Second Respondent
MINISTER OF FINANCE	Third Respondent
NATIONAL TREASURY	Fourth Respondent

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

FILING NOTICE

DOCUMENT FILED:

1. **SECOND RESPONDENT'S NOTICE OF OBJECTION TO APPLICANT'S NOTICE OF APPLICATION TO AMEND ITS NOTICE OF MOTION**

FILED BY: **KGOSANA ATTORNEYS**

SIGNED AND DATED AT PRETORIA ON THE 30TH DAY OF JUNE 2025.

KGOSANA ATTORNEYS
ATTORNEYS FOR SECOND RESPONDENT
CHAMBERS @ VALLEY ROAD
133 VALLEY ROAD

SUNNYSIDE
PRETORIA
TEL: 012 326 1452
EMAIL: info@kgosana-attorneys.co.za
REF: KGOSANA/DEPT OF HEALTH 01 2025

AND TO: THE REGISTRAR OF THE HIGH COURT.

AND TO: APPLICANT'S ATTORNEY
WEBBER WENTZEL
90 RIVONIA ROAD
SANDTON
2196
TEL: 011 530 5224
EMAIL: martin.versfield@webberwentzel.com
prelisha.sigh@webberwentzel.com
glenn.penfold@webberwntzel.com
alexandra.rees@webberwntzel.com
REF: M VERSFIELD/P SIGH/ G PENDFOLD/ A REES 4008778
C/O HILLS INCORPORATED
OFFICE B313
PARKDEV BUILDING, FIRST FLOOR
BROOKLYN BRIDGE OFFICE PARK
570 FRESHEN STREET
BROOKLYN
PRETORIA
TEL: 087 944 1800
EMAIL: admin@hillsincorporated.co.za

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

AND TO: STATE ATTORNEY, PRETORIA
FIRST RESPONDENT ATTORNEY
316 SALU BUILDING
CNR FRANCIS BAARD & THABO SEHUME STREET
PRETORIA

TEL: 012 309 1623/1539

FAX: 012 309 1649/50

DIRECT FAX: 086 5071910

EMAIL: rsebelemetsa@justice.gpv.za / ramatics@gmail.com

REF: 2202/2024/Z64 AND 4611/2024Z64

ENQ: MR RJ JOSEPH) SEBELEMETSA

AND TO: MINISTER OF FINANCE

THIRD RESPONDENT

SECOND FLOOR

OLD RESERVE BANK BUILDING

40 CHURCH STREET

PRETORIA

TEL: 0123238911

EMAIL: minreg@treasury.gov.za;mary.marumo@treasury.gov.za

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Private Bag X67, Pretoria 0001

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

AND TO: NATIONAL TREASURE

FOURTH RESPONDENT

40 WF NKOMOSTREET

PRETORIA

TEL:012 315 5904

EMAIL: DG@dgtreasury.gov.za

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO.: 2024/111209

In the matter between

SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM	Applicant
and	
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
MINISTER OF HEALTH	Second Respondent
MINISTER OF FINANCE	Third Respondent
NATIONAL TREASURY	Fourth Respondent

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

SECOND RESPONDENT'S NOTICE OF OBJECTION TO APPLICANT'S NOTICE OF APPLICATION TO AMEND ITS NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE that the second respondent objects to the applicant's notice of intention to amend its notice of motion on the grounds that it is prejudicial, amounts to an abuse of process and is not in the interests of justice in that:

First ground

1. The applicant instituted one integrated application seeking three alternative forms of relief:

1.1 The main relief (prayers 1 and 2 of the notice of motion) is review relief brought in terms of Rule 53 against the first respondent's decision to assent to and sign into law the National Health Insurance Bill (the NHI Bill). The first and second respondents raised points of law in terms of Rule 6(5)(d)(iii), including one of jurisdiction, in opposition to this relief. While the High Court, per Twala J, upheld the points of law in favour of the applicant, the first and second respondents have instituted applications for leave to appeal: (1) directly to the Constitutional Court, alternatively, to the Supreme Court of Appeal, and (2) conditionally to Twala J, in respect of the judgment of Twala J.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

1.2 The first alternative relief (prayer 3 of the notice of motion) is a direct constitutional challenge to the National Health Insurance Act, 20 of 2023 (NHI Act) in its entirety, seeking a declaration of constitutional invalidity of the NHI Act as a whole.

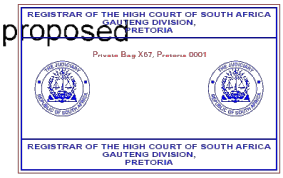
1.3 The second alternative relief (prayer 4 of the notice of motion) is a further direct constitutional challenge to specific sections of the NHI Act, seeking a declaration of constitutional invalidity to the specified sections of the NHI Act.

2. The applicant's founding affidavit, for example in paragraphs 18 to 20, makes it clear that the application is brought as one integrated application seeking the

review relief as the main relief and the direct constitutional challenges as alternative relief.

3. In the ordinary course, the review relief and the alternative relief would be responded to in one answering affidavit, be heard at the same time before the same Judge(s), and be determined as one application, albeit seeking alternative relief.

4. This would be changed fundamentally (and impermissibly) by the proposed amendment:



4.1. The object of the notice of intention to amend expressed in the second paragraph thereof is to change the first alternative relief in prayer 3 of the notice of motion into self-standing main relief, with only the second alternative relief in prayer 4 of the notice of motion being sought as alternative relief;

4.2. The proposed amendment thus seeks to permit a procedure in which the direct constitutional challenges (in prayers 3 and 4 of the notice of motion) may proceed apart from and despite the pending applications for leave to appeal the judgment on the points of law relating to the review relief; and

4.3. What the proposed amendment seeks to achieve is in effect a retrospective separation of issues namely, separating the review relief from the constitutional challenges, and enabling the direct constitutional challenges to be answered in separate answering affidavits, and heard separately from the review relief which is

subject to pending appeals and before those appeals are finalized.

5. It is impermissible for the applicant to effectively seek to achieve such a separation through a proposed amendment to the notice of motion without applying for a separation of issues in terms of the applicable Rules of Court.



Second ground

6. The second respondent repeats paragraphs 1 to 5 above.

7. If permitted, the amended notice of motion will contradict paragraphs 18 to 20 of the applicant's founding affidavit, which state under oath that the applicant seeks the review relief as the main relief and the two constitutional challenges as alternative relief to the main relief; that the grounds underpinning the constitutional challenges also form the basis for the contention that the NHI Act is patently unconstitutional, and that the first respondent could not have rationally and lawfully exercised his power to assent to and sign the NHI Bill into law.

8. Without conceding that such a step would be permissible and subject to the leave of this Court being sought and granted, it is noted that the applicant has failed to file a supplementary founding affidavit to explain this obvious contradiction between the notice of motion and founding affidavit, and to support the amended relief in the form set out in the notice of intention to amend.

Third ground

9. The uniform rules of court do not contemplate or countenance that an applicant simultaneously employ the procedures laid down in Rule 6 and Rule 53. The significantly different procedures envisaged in the two rules requires that an applicant make an election as to which of the two it wishes to employ.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

10. The applicant's proposed utilisation of both rules simultaneously is not in the interests of justice given that it will result in the undue proliferation of affidavits and obfuscation of issues in that:

10.1 The respondents would be required to file an answering affidavit on the merits of the proposed new relief while there are pending appeal proceedings in relation to the jurisdiction of the court and the production of the record in terms of Rule 53. This may result in a Court hearing argument on the merits of the review while appeal proceedings in respect of interlocutory issues are still pending;

10.2 Should the appeals fail, the first respondent will be required to produce a record. The applicants will thereafter be entitled to supplement their founding affidavit (and amend their notice of motion) after which the respondents will be entitled to file answering affidavits;

10.3 The respondents will be accordingly compelled to file two answering affidavits in the same matter on the same issues, the first before the production of the record and the second after the production of the record.

DATED AT JOHANNESBURG ON THIS THE 30TH DAY OF JUNE 2025.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

KGOSANA ATTORNEYS
Attorneys for the Minister of Health
Chambers @ Valley Road
133 Valley Road
Sunnyside
Pretoria
Tel: 012 326 1452
Email: info@kgosana-attorneys.co.za / makule@kgosana-attorneys.co.za

TO:
THE REGISTRAR OF THE ABOVE HONOURABLE COURT

AND TO:
WEBBER WENTZEL
Applicants' attorneys
90 Rivonia Road, Sandton
Johannesburg,2196
PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa
Tel: 011 530 5220
Fax: 011 530 6220
Email: martin. versfeld@webberwentzel.com
prelisha.singh@webberwentzel.com
glenn .penfold@webberwentzel.com
alexandra.rees@webberwentzel.com
Ref: M Versfeld / P Singh / G Penfold / 4008778

AND TO:
STATE ATTORNEY: PRETORIA
Attorneys for the first respondent
SALU Building
316 Thabo Sehume Street
Cnr Thabo Sehume & Francis Baard Street
PRETORIA
Tel: +27 (12) 309 1670
Email: rsebelemetsa@justice.gov .za; pskhonde@justice.gov .za

AND TO:
MINISTER OF FINANCE
Third respondent
Second Floor
Old Reserve Bank Building
40 Church Street
PRETORIA
Tel: +27 (012) 323 8911
Email: minreg@treasury.gov.za; mary.marumo@treasury.gov .za



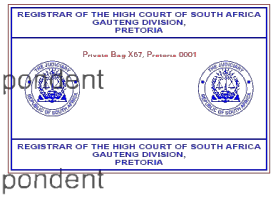
AND TO:
NATIONAL TREASURY
Fourth respondent
40 WF Nkomo Street
PRETORIA
Tel: 012 315 5904
Email: DG@dgtreasury.gov .za

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NO. CCT _____

In the matter between:

SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM	Applicant
and	
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
MINISTER OF HEALTH	Second Respondent



CASE NO. CCT 254/24

And in the application of:

SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM	Applicant

In re:

The matter between:

BOARD OF HEALTHCARE FUNDERS NPC	Applicant
and	
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
MINISTER OF HEALTH	Second Respondent

SAPPF'S NOTICE OF MOTION IN:

(A) SAPPF'S CONDITIONAL CONSTITUTIONAL COURT REVIEW APPLICATION

(B) SAPPF'S CONDITIONAL INTERVENTION IN THE BHF's CONSTITUTIONAL COURT APPLICATION

SAPPF'S CONDITIONAL REVIEW APPLICATION



BE PLEASED TO TAKE NOTICE THAT the applicant ("**SAPPF**") intends to make a conditional application in terms of section 167(4)(e) of the Constitution and Rule 11 of the Rules of this Court ("**Rules**") read with section 173 of Constitution to the above Honourable Court for an order in the following terms:

1 Directing the First Respondent to deliver the record of the decision under review in paragraph 3 below ("**Record**") to the Registrar of this Honourable Court within 15 court days.

2 Directing that SAPPF is entitled, within 20 court days after the Record has been made available to it, to file an affidavit supplementing the affidavit filed in support of the present application.

3 Declaring invalid, reviewing and setting aside the First Respondent's decision to assent to and sign the National Health Insurance Bill [B11B-2019] ("**NHI Bill**") on 15 May 2024.

4 As a consequence of paragraph 3:

4.1 Declaring that the National Health Insurance Act 20 of 2023 ("**NHI Act**") is invalid and of no force and effect; and

4.2 Directing the First Respondent to reconsider whether he has any reservations about the constitutionality of the NHI Bill and to exercise his powers under sections 84(2)(a) to (c) in accordance with his duties under sections 79, 83 and 7(2) of the Constitution.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

5 The costs of the present application shall be paid by any respondent(s) who oppose the application, jointly and severally, including the costs of three counsel.

6 Further and alternative relief.

TAKE NOTICE FURTHER that SAPPF will ask that the review application be set down for hearing before this Court only in the event that:

(i) This Court grants the applications for leave to appeal directly to this Court brought by the President of the Republic of South Africa ("**President**") under case no. CCT 129/25 and/or the Minister of Health ("**Minister**") under case no. CCT 128/205 against the order and judgment of the Gauteng Division of the High Court, Pretoria delivered on 6 May 2025 ("**High Court judgment**") in proceedings instituted by SAPPF under case no. 111209/2024 ("**SAPPF's HC**

application") and/or by the Board of Health Care Funders NPC ("**BHF**") under case no. 058172/2024 (collectively the "**applications for leave to appeal**"); and

(ii) This Court, on the merits of the appeals, finds that SAPPF's HC application falls within its exclusive jurisdiction and, accordingly, overturns the High Court's judgment and order.

OR



(iii) This Court refuses the applications for leave to appeal brought directly to it, and the President and/or the Minister instead pursue their conditional applications for leave to appeal against the High Court judgment (collectively referred to as the "**conditional applications for leave to appeal**"); and

(iv) An appeal is finally determined in favour of the President and/or the Minister on the High Court's finding on jurisdiction, and the High Court's judgment and order are overturned.

For the purposes of this notice, an appeal will be finally determined if:

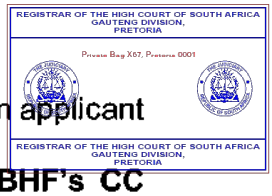
(i) The court hearing the appeal has delivered judgment, and no further appeal lies; or

(ii) A further appeal may lie, but no steps have been taken to pursue it within the applicable time periods.

TAKE NOTICE FURTHER that the Chief Justice is requested to issue directions concerning the manner in which SAPPF's review application shall be dealt with.

SAPPF'S CONDITIONAL APPLICATION FOR LEAVE TO INTERVENE

BE PLEASED TO TAKE NOTICE THAT SAPPF intends to make a conditional application in terms of Rule 8 of the Rules to the above Honourable Court for an order in the following terms:



7 SAPPF is granted leave to intervene, in terms of Rule 8 of the Rules, as an applicant in the application brought by the BHF under case no. CCT 254/24 ("**BHF's CC application**").

8 The affidavit filed by the SAPPF in support of the present application is admitted as evidence in the BHF's CC application.

9 SAPPF is granted leave to:

9.1 File any affidavits for which this Court's directions make provision for the applicants in the BHF's CC application to file;

9.2 Submit written argument in the BHF's CC application; and

9.3 Present oral argument at the hearing of the BHF's CC application.

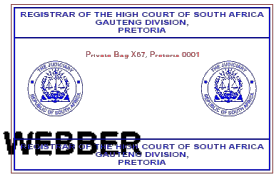
10 Costs of the intervention application to be costs in the cause.

11 Further and/or alternative relief.

TAKE NOTICE FURTHER that SAPPF will ask that the intervention application be set down for hearing before this Court only in the event that:

(i) This Court issues directions setting the BHF's CC application down for hearing together with the applications for leave to appeal.

TAKE NOTICE FURTHER that the affidavit of **SIMON ANDREW STRACHAN** filed together with this Notice of Motion will be used in support of the applications for review and for leave to intervene.



TAKE NOTICE FURTHER that the applicant has appointed the offices of **WEBBER WENTZEL**, as set out below, as the address at which the applicant will accept notice and service of all process in these proceedings. The applicant will also accept electronic service at the email addresses listed below.

TAKE NOTICE FURTHER that the Chief Justice is requested to give directions as to the further procedure in the proceedings for SAPPF's intervention in terms of Rule 8(2).

DATED at JOHANNESBURG **on this 18th day of July 2025.**

WEBBER WENTZEL
Applicant's attorneys
90 Rivonia Road, Sandton
Johannesburg, 2196
PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa
Tel: 011 530 5220
Fax: 011 530 6220
Email: martin.versfeld@webberwentzel.com
prelisha.singh@webberwentzel.com
glenn.penfold@webberwentzel.com
alexandra.rees@webberwentzel.com
junaid.nyker@webberwentzel.com
Ref: M Versfeld / P Singh / G Penfold / 4008778

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

TO:
THE REGISTRAR OF THE ABOVE HONOURABLE COURT

AND TO:
THE STATE ATTORNEY: PRETORIA
Attorneys for the first respondent
SALU Building
316 Thabo Sehume Street
Cnr Thabo Sehume & Francis Baard Streets
PRETORIA
Tel: 012 309 1670
Email: rsebelemetsa@justice.gov.za; ramatics@gmail.com; pskhonde@justice.gov.za

AND TO:
KGOSANA ATTORNEYS
Attorneys for the second respondent
Chambers @ Valley Road
133 Valley Road
Sunnyside
PRETORIA
Tel: 012 326 1452 / 063 655 9347
Email: info@kgosana-attorneys.co.za ; makule@kgosana-attorneys.co,za

AND TO:
WERKSMANS ATTORNEYS
Attorneys for the applicant in Case No. CCT 254/24
96 Rivonia Road
SANDTON
2196
Tel: 011 535 8198 / 011 535 8424
Email: nkirby@werksmans.com; hmichael@werksmans.com; bmoti@werksmans.com; sphakathi@werksmans.com
Ref: Mr N Kirby / Ms H Mcihael / BOAR3329.73



"NC7"

COURT ONLINE COVER PAGE

IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Division, Pretoria

CASE NO: **2024-057449**

In the matter between:

SOLIDARITY TRADE UNION	Plaintiff / Applicant / Appellant
and	
MINISTER OF HEALTH ,PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA ,DIRECTOR - GENERAL, NATIONAL DEPARTMENT OF HEALTH,MINISTER OF FINANCE ,NATIONAL TREASURY	Defendant / Respondent

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Private Bag X67, Pretoria 0001

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Notice of Motion (Long Form)

NOTE: **This document was filed electronically by the Registrar on 24/5/2024 at 11:15:11 AM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.**



ELECTRONICALLY SIGNED BY:



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

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case Number: _____

In the matter between:

SOLIDARITY TRADE UNION	**APPLICANT**
AND	
MINISTER OF HEALTH	**FIRST RESPONDENT**
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	**SECOND RESPONDENT**
DIRECTOR-GENERAL, NATIONAL DEPARTMENT OF HEALTH	**THIRD RESPONDENT**
MINISTER OF FINANCE	**FOURTH RESPONDENT**
TREASURY	**FIFTH RESPONDENT**

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

NOTICE OF MOTION

TAKE NOTICE THAT the applicant intends to apply to the Honourable Court on a date and at a time to be arranged with the Registrar for an order in the following terms:

1. declaring the National Health Insurance Act 20 of 2023 (NHI Act) unconstitutional and invalid.

Alternatively:

2. declaring such sections of the NHI as are found to be unconstitutional to be unconstitutional and invalid.

3. referring the declaratory order as aforesaid to the Constitutional Court for confirmation.



4. granting just and equitable relief pending Constitutional Court confirmation proceedings, including but not limited to interdicting the President from bringing any section of the NHI Act into effect by promulgation as contemplated in section 59 thereof.

5. directing any respondents opposing this application to pay the applicant's costs, jointly and severally, with such costs to include the costs of two counsel, on the Part C scale.

6. granting further and/or alternative relief.

TAKE NOTICE FURTHER THAT the accompanying affidavit of **ANTONIE JASPER VAN DER BIJL** with annexures thereto will be used in support of this application.

2

TAKE NOTICE FURTHER THAT the applicant has appointed **SERFORNTEIN, VILJOEN & SWART ATTORNEYS** with address as set out hereunder as its attorneys of record herein, at which address it will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER that if you intend opposing this application you are required:

(a) to notify the applicant's attorney in writing within 10 days of service of this application whether you intend to oppose the application;



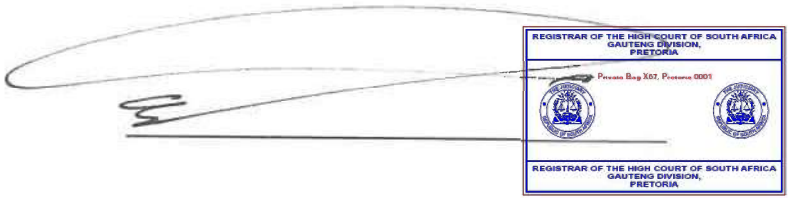
(b) to appoint in such notification an address referred to in rule 6(5)(b) of the Uniform Rules of Court at which you will accept notice and service of all documents in these proceedings; and

(c) within 15 days after you have so given notice of your intention to oppose the application, to file your answering affidavit, if any.

TAKE NOTICE FURTHER that if no such intention to oppose be given, the application will be made on a date to be arranged with the Registrar.

DATED AT **PRETORIA** ON THIS **24TH** DAY OF **MAY 2024**.





SERFONTEIN VILJOEN & SWART

ATTORNEYS FOR THE APPLICANT

165 Alexander Street

Brooklyn

Pretoria

Tel: 012 362 2556

Fax: 086 687 2271 / 086 471 8090

Email: jd@svslaw.co.za / niekie@svslaw.co.za / monique@svslaw.co.za

Ref: MR SWART / MR CLAASSEN / MR VENTER / MJ /CS0652

TO: **THE REGISTRAR OF THE ABOVE HONOURABLE COURT**

PRETORIA

AND TO: **THE FIRST RESPONDENT**

The Minister of Health

4

Dr AB Xuma Building,

1112 Voortrekker Rd,

Pretoria Townlands 351-JR

Pretoria

Tel: (012) 395 9206

Fax: (012) 395 9166

Email: Lwazimanzi@gmail.com ; manduy@health.gov.za



AND TO: **THE SECOND RESPONDENT**

The President of the Republic of South Africa

Union Buildings

Government Avenue

Pretoria

Tel: (012) 300 5200

Fax: (012) 323 8246

Email: malebo@presidency.gov.za

AND TO: **THE THIRD RESPONDENT**

The Director General: National Department of Health

Dr AB Xuma Building,

1112 Voortrekker Rd,

Pretoria Townlands 351-JR

Pretoria

5

Tel: (012) 395 9150

Fax: (012) 395 8422

Email: dg@health.gov.za

AND TO: **THE FOURTH RESPONDENT**

The Minister of Finance

40 Church Street

Old Reserve Bank Building

2nd Floor

Pretoria



Tel: (012) 315 5111

Email: mary.marumo@treasury.gov.za / percy.mthimkhulu@treasury.gov.za

AND TO: **THE FIFTH RESPONDENT**

National Treasury

40 WF Nkomo Street

Pretoria

Tel: (012) 315 5111

Email: DGRegistry@treasury.gov.za.

AND TO: **THE STATE ATTORNEY – PRETORIA**

ATTORNEYS FOR THE RESPONDENTS

SALU Building

316 Thabo Sehume Street

Pretoria

Tel: (012) 309 1686 / 9

Fax: (012) 309 1649/50 / 086 476 2894

Email: IChowe@justice.gov.za / NaMukwevho@justice.gov.za

REF: MR ISAAC CHOWE / DR N MUKWVHO



"NC8"

COURT ONLINE COVER PAGE

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

CASE NO: **2025-020969**

In the matter between:

Hospital Association of South Africa	Plaintiff / Applicant / Appellant
and	
Minister of Health,Minister of Finance,President of the Republic of South Africa	Defendant / Respondent

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Private Bag X67, Pretoria 0001

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Notice of Motion (Long Form)

NOTE: **This document was filed electronically by the Registrar on 17/2/2025 at 11:58:19 AM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.**

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Private Bag X67, Pretoria 0001

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

ELECTRONICALLY SIGNED BY:



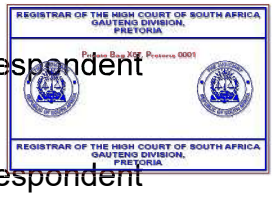
Registrar of High Court of South Africa , Gauteng Local Division,Pretoria

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: _____/25

In the matter between:

HOSPITAL ASSOCIATION OF SOUTH AFRICA	Applicant
and	
MINISTER OF HEALTH	First Respondent
MINISTER OF FINANCE	Second Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Third Respondent

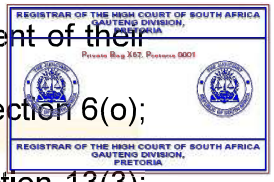


NOTICE OF MOTION

TAKE NOTICE THAT on a date and at a time to be determined by the Registrar of this Court, the applicant will apply for an order in the following terms:

1 The National Health Insurance Act 20 of 2023 is declared to be unconstitutional and invalid and is set aside.

2 **Alternatively**, the following sections of the National Health Insurance Act are declared unconstitutional and invalid and are set aside to the extent of their unconstitutionality: Section 2; Section 3(5); Section 4; Section 5; Section 6(o); Section 7; Section 10(1)(g); Section 11(1)(m); Section 11(2); Section 13(3); Section 26; Section 27; Section 33; Section 36; Section 38(8); Section 39; Section 42; Section 49(1); Section 55; Section 57; and Section 58 read with the Schedule to the Act to amend the Medical Schemes Act 131 of 1998 and the National Health Act 61 of 2003.



3 **Alternatively**, such sections of the National Health Insurance Act 20 of 2023 as are found to be unconstitutional, are declared unconstitutional and invalid and are set aside to the extent of their unconstitutionality.

4 In accordance with section 15(1)(a) of the Superior Courts Act 10 of 2013, read with section 172(2)(c) of the Constitution, this Court's aforesaid declaration of constitutional invalidity is referred to the Constitutional Court for confirmation.

5 Any respondent that opposes this application is ordered to pay the costs of the application, including the costs of two counsel.

6 Granting further and/or alternative relief.

TAKE NOTICE FURTHER THAT the accompanying affidavit of **DUMISANI SIZWE BOMELA**, together with any annexures to it, as well as the affidavits deposed to by **GREG ANDREW HARMAN** and **MARGARET E. GUERIN-CALVERT** and the expert reports annexed thereto**,** will be used in support of this application.



TAKE NOTICE FURTHER THAT the applicant has appointed the address of its attorneys of record described below as the address at which it will accept notice and service of all process and documents in these proceedings.

TAKE NOTICE FURTHER THAT the applicant consents to accept service of all pleadings, notice and process by electronic mail, transmitted via simultaneous email transmission to anthony@nortonsinc.com; anton@nortonsinc.com; michelle@nortonsinc.com; avias@nortonsinc.com and melissa@nortonsinc.com

TAKE NOTICE FURTHER THAT if any of the respondents intend opposing the relief sought, it is required to do so in accordance with the following time periods, alternatively such time periods as directed by the Deputy Judge President in case management:

(a) within 10 days after the receipt of this notice of motion and accompanying affidavit, to deliver notice to the applicant that it intends

to oppose and in such notice to appoint an address within 15 kilometres of the office of the Registrar at which they will accept notice and service of all process in these proceedings; and

(b) within 15 days of delivering the notice of opposition, to deliver an answering affidavit, if any.

TAKE NOTICE FURTHER THAT the applicant will deliver a replying affidavit within 10 days of receiving the answering affidavit(s).



TAKE NOTICE FURTHER THAT the time-periods for the filing of papers may be amended or further determined pursuant to the directions of the Deputy Judge President in a case management process.

KINDLY ENROL THE MATTER ACCORDINGLY.

Dated at **Johannesburg** on this the **14th** day of **February 2025**.

Melissa Steele

NORTONS INC.
Attorneys for the applicant
The Reserve
First Floor
54 Melville Road
Illovo, Johannesburg

011 666 7560
Ref: Anthony Norton / Anton Roets / Michelle Rawlinson / Melissa Steele
anthony@nortonsinc.com
anton@nortonsinc.com
michelle@nortonsinc.com
melissa@nortonsinc.com

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

AND TO: **MINISTER OF HEALTH**
First respondent
c/o The State Attorney
SALU Building
316 Thabo Sehume Street
Corner Francis Baard
Pretoria
0001
Tel: 012-309 1500 / 012-309 1684
Email: stateattorneypretoria@justice.gov.za



Service by Sheriff

AND TO: **MINISTER OF FINANCE**
Second respondent
Old Reserve Bank Building
40 Church Square
Pretoria
c/o The State Attorney
SALU Building
316 Thabo Sehume Street
Corner Francis Baard
Pretoria
0001
Tel: 012-309 1500 / 012-309 1684
Email: stateattorneypretoria@justice.gov.za

Service by Sheriff

AND TO: **PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**
Third respondent
Union Buildings
Government Avenue
Pretoria
c/o The State Attorney
SALU Building
316 Thabo Sehume Street
Corner Francis Baard
Pretoria
0001
Tel: 012-309 1500 / 012-309 1684
Email: stateattorneypretoria@justice.gov.za

Service by Sheriff



"NC9"

COURT ONLINE COVER PAGE

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

CASE NO: **2025-045340**

In the matter between:

The South African Medical Association NPC	Plaintiff / Applicant / Appellant
and	
The Minister of Health,President of the Republic of South Africa,Speaker of the National Assembly,Chairperson of the National Council of Provinces	Defendant / Respondent



Notice of Motion (Long Form)

NOTE: **This document was filed electronically by the Registrar on 2/4/2025 at 3:15:57 PM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.**



ELECTRONICALLY SIGNED BY:



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

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case No:

In the matter between:

THE SOUTH AFRICAN MEDICAL ASSOCIATION NPC	Applicant
and	
THE MINISTER OF HEALTH	First Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Second Respondent
SPEAKER OF THE NATIONAL ASSEMBLY	Third Respondent
CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES	Fourth Respondent

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

NOTICE OF MOTION

TAKE NOTICE THAT the Applicant intends to apply to the above Honourable Court on a date and time to be allocated by the Registrar for an order in the following terms:

1. Declaring the National Health Insurance Act 20 of 2023 to be unconstitutional and invalid.

2. In the alternative to paragraph 1, declaring one or more of the following sections of the National Health Insurance Act 20 of 2023 to be unconstitutional and invalid:

2.1. Section 3(4);

2.2. Section 3(5);

2.3. Section 4, alternatively one or more of sections 4(1)(e); 4(2); 4(3); 4(4), 4(5); 5(6); 5(8) and / or 6(a);



2.4. Section 5, alternatively one or more of sections 5(1), 7(2)(a); 5(2) and / or 5(5)(b);

2.5. One or more of sections 6(c); 6(i); 6(o); 11(1)(h); and / or 42;

2.6. One or more of sections 7(2)(b); 7(2)(c); 7(3); 7(4); 8(2) and / or 7(5);

2.7. Section 7(2)(f);

2.8. Sections 25(5)(a) and 25(5)(c);

2.9. Sections 31(2); 32(2) and (3);

2.10. Section 33;

2.11. Section 35(1) and / or section 7(1) and ;

2.12. Section 36 and section 55(1)(i);

2.13. Section 55(1)(j),

2.14. Section 38;

2.15. Section 39, alternatively one or more of sections 39(2)(b) and (c); 39(5); 39(8); 39(9); 39(10); and / or 39(11);

2.16. Section 49(3);

2.17. Section 56;

2.18. Section 58 to the extent that it amends sections 12(1) and (3) of the Correctional Services Act, 1998

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001

3. That the Respondents pay the costs of the application on scale C.

4. Granting the Applicant further and/or alternative relief.

TAKE NOTICE FURTHER that the affidavits of **DR MZULUNGILE THEO NODIKIDA, DR M.P. STANDER, MS J.C. DE BEER, PROF A. VAN DEN HEEVER** and **PROF P. SCHOUKENS** filed together with this Notice of Motion will be used in support of this application.

TAKE NOTICE FURTHER that the Applicant has appointed the offices of **ASSENMACHER BRANDT ATTORNEYS**, the details of which are set out below, as the address at which the Applicant will accept notice and service of all process in these proceedings. The Applicant will also accept electronic service at the following email addresses: carl@assenmacher.co.za.

TAKE NOTICE FURTHER that if any of the Respondents intend to oppose the relief sought by the Applicant, they should:

(a) notify the Applicant's attorneys in writing within 15 days of receipt of this Notice of Motion or any amendment thereof;

(b) in such notice appoint an address within 15 kilometres of the office of the Registrar and/or an electronic mail address at which it will accept notice and service of all documents in these proceedings; and

(c) deliver their answering affidavit within 15 days (or such longer period as may be agreed between the parties) after the Notice of Intention to Defend was filed.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Dated at **TSHWANE** this **1ST** day of **APRIL 2025**.

ASSENMACHER BRANDT ATTORNEYS
Attorneys for the Applicant
Fairway Office Park
Ground Floor, Sable Place
52 Grosvenor Road
Bryanston
PO Box 130527
Bryanston, 2074
E-mail: carl@assenmacher.co.za
kayleigh@assenmacher.co.za
Tel: (011) 706 0303
Ref: C Brandt/KP/ID1144
C/O VORSTER BRANDT ATTORNEYS
161 Garsfontein Road, Pretoria
Ashlea Gardens, Pretoria
Tel: 012 460 0027
Fax: 012 460 0600
Ref: Mr C.E Brandt

TO: **THE REGISTRAR**
High Court
Gauteng Division
PRETORIA

AND TO: **MINISTER OF HEALTH**
First Respondent
c/o **STATE ATTORNEY**
316 Thabo Sehume Street
PRETORIA

AND TO: **PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**
Second Respondent
c/o **STATE ATTORNEY**
316 Thabo Sehume Street
PRETORIA



AND TO **SPEAKER OF THE NATIONAL ASSEMBLY**
Third Respondent
c/o **STATE ATTORNEY**
316 Thabo Sehume Street
PRETORIA

AND TO: **CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES**
Fourth Respondent
c/o **STATE ATTORNEY**
316 Thabo Sehume Street
PRETORIA

"NC10"

COURT ONLINE COVER PAGE

IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Division, Pretoria

CASE NO: **2025-083348**

In the matter between:

HEALTH FUNDERS ASSOCIATION	Plaintiff / Applicant / Appellant
and	
MINISTER OF HEALTH,MINISTER OF FINANCE,NATIONAL TREASURY,PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Defendant / Respondent

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Private Bag X67, Pretoria 0001

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Notice of Motion (Long Form)

NOTE: **This document was filed electronically by the Registrar on 4/6/2025 at 9:55:14 AM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.**



ELECTRONICALLY SIGNED BY:



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

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE: _____

In the matter between:

HEALTH FUNDERS ASSOCIATION	Applicant
and	
MINISTER OF HEALTH	First Respondent
MINISTER OF FINANCE	Second Respondent
NATIONAL TREASURY	Third Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Fourth Respondent



NOTICE OF MOTION

PLEASE TAKE NOTICE that the applicant intends making an application to the above Honourable Court on a date and time to be arranged with the Registrar for an order in the following terms:

1. The National Health Insurance Act 20 of 2023 (*"NHI Act"*) is declared to be unconstitutional and invalid and is set aside.

2. In the alternative to prayer 1, one or more of the following sections of the NHI Act are declared to be unconstitutional and invalid and are set aside:

   2.1. section 7(2)(f)(i);

   2.2. section 31(2);

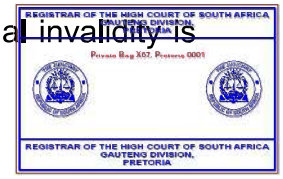
2.3. section 33;

2.4. section 39(2)(c)(i);

2.5. section 49(2)(a)(ii); and

2.6. section 55.

3. In terms of section 15(1)(a) of the Superior Courts Act 10 0f 2013, read with section 172(2)(c) of the Constitution, the aforesaid declaration of constitutional invalidity is referred to the Constitutional Court for confirmation.



4. Any respondent that opposes this application is ordered to pay the costs of the application on scale C, including the costs of four counsel.

5. Granting the applicant further and/or alternative relief.

TAKE NOTICE FURTHER that the accompanying founding affidavit of **THONESHAN NAIDOO** and the confirmatory affidavits of **STEPHAN MALHERBE, THEMBALETHU BUTHELEZI** and **ROBERT LIPSCHITZ**, together with any annexures to them, will be used in support of this application.

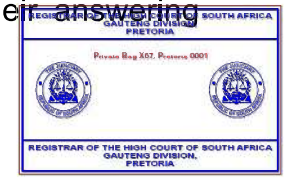
TAKE NOTICE FURTHER that the applicant has appointed the address of its attorneys of record, as set out below, as the address at which it will accept service of all further notices, process and documents in these proceedings.

TAKE NOTICE FURTHER that the applicant hereby consents to electronic service at the following email addresses: dband@ensafrica.com | arichards@ensafrica.com | tntsaluba@ensafrica.com | asipamla@ensafrica.com.

TAKE NOTICE FURTHER that if any of the respondents intends to oppose this application, they are required:

1. Within 10 days after receipt of this notice of motion and accompanying affidavit, to deliver a notice of intention to oppose the application by email to the applicant to the following email addresses: dband@ensafrica.com | arichards@ensafrica.com | tntsaluba@ensafrica.com | asipamla@ensafrica.com.

2. Within 15 days of delivering the notice of opposition, to deliver their answering affidavit.



TAKE NOTICE FURTHER THAT the applicants will deliver a replying affidavit within 10 days of receiving the answering affidavit(s), if any.

Kindly enrol the matter accordingly.

DATED AT SANDTON ON THIS THE **4th** DAY OF **JUNE 2025.**

EDWARD NATHAN SONNENBERGS INC. (ENS)
Attorneys for Applicant
The MARC | Tower 1
129 Rivonia Road
Sandton
Email: dband@ensafrica.com
arichards@ensafrica.com
tntsaluba@ensafrica.com
asipamla@ensafrica.com
Ref: D Band/A Richards/0528590
C/O MACINTOSH CROSS AND FARQUHARSON
Embassy Law Chambers
834 Pretorius Street
Arcadia, Pretoria
Email: cfe@macintoshcross.co.za
jk@macintoshcross.co.za
Ref: C Erasmus/J Keus/X64/2025

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

AND TO: **MINISTER OF HEALTH**
First respondent
Dr AB Xuma Building
1112 Voortrekker Road
Pretoria Townlands 351-JR
Pretoria
Tel: 012 395 8086 | 021 466 7260
Fax: 012 395 9165
C/O THE STATE ATTORNEY
316 Thabo Sehume Street
Pretoria Central
Pretoria



SERVICE PER SHERIFF

AND TO: **MINISTER OF FINANCE**
Second respondent
2nd Floor
Old Reserve Bank Building
40 Church Square
Pretoria
Tel: 012 315 5371 | 021 464 6100 | 021 464 6102
Fax: 012 323 3262 | 021 461 2934
C/O THE STATE ATTORNEY
316 Thabo Sehume Street
Pretoria Central
Pretoria

SERVICE PER SHERIFF

AND TO: **NATIONAL TREASURY**
Third respondent
40 WF Nkomo Street
Pretoria
Tel: 012 315 5111
Fax: 012 315 5126
C/O THE STATE ATTORNEY
316 Thabo Sehume Street
Pretoria Central
Pretoria

SERVICE PER SHERIFF

AND TO: **PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**
Fourth respondent
Union Buildings
Government Avenue
Pretoria
Tel: 012 300 5200
Fax: 012 323 8246
C/O THE STATE ATTORNEY
316 Thabo Sehume Street
Pretoria Central
Pretoria

SERVICE PER SHERIFF



"NC11"

KGOSANA ATTORNEYS

Kgosana Attorneys
Chambers @ Valley Road, 133 Valley Road, Sunnyside, Pretoria
Tell: 012 326 1452/063 655 9347 | Email: info@kgosana-attorneys.co.za

26 May 2025

PER EMAIL

TO: **DEPUTY JUDGE PRESIDENT LEDWABA**

c/o: ssidesha@judiciary.org.za

annieuwoudt@judiciary.org.za

ambelani@judiciary.org.za

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

AND TO: **THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**

c/o: rsebelemetsa@justice.gov.za

AND TO: **SOLIDARITY TRADE UNION**

c/o: jd@svslaw.co.za

niekie@svslaw.co.za

monique@svslaw.co.za

AND TO: **BOARD OF HEALTHCARE FUNDERS OF SOUTHERN AFRICA NPC**

c/o: nkirby@werksmans.com

hmichael@werksmans.com

bmoti@werksmans.com

sphakathi@werksmans.com

AND TO: **SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM**

c/o: martin.versfeld@webberwentzel.com

KGOSANA ATTORNEYS

Kgosana Attorneys
Chambers @ Valley Road, 133 Valley Road, Sunnyside, Pretoria
Tell: 012 326 1452/063 655 9347 | Email: info@kgosana-attorneys.co.za

prelisha.singh@webberwentzel.com

glenn.penfold@webberwentzel.com

Alexandra.rees@webberwentzel.com

admin@hillsincorporated.co.za



AND TO: **THE HOSPITAL ASSOCIATION OF SOUTH AFRICA**

c/o: anthony@nortonsinc.com

anton@nortonsinc.com

michelle@nortonsinc.com

melissa@nortonsinc.com

AND TO: **SOUTH AFRICAN MEDICAL ASSOCIATION OF SOUTH AFRICA**

c/o: carl@assenmacher.co.za

kayleigh@assenmacher.co.za

AND TO: **HEALTH FUNDERS ASSOCIATION**

KGOSANA ATTORNEYS

Kgosana Attorneys
Chambers @ Valley Road, 133 Valley Road, Sunnyside, Pretoria
Tell: 012 326 1452/063 655 9347 | Email: info@kgosana-attorneys.co.za

Dear Honourable Deputy Judge President Ledwaba

MINISTER OF HEALTH'S PROPOSAL ON STAY AND CONSOLIDATION OF NHI MATTERS

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

1. We refer to the case management meeting convened between your Office and the abovementioned parties on 15 May 2025, wherein it was agreed that the Minister of Health would furnish all of the parties in the various applications with a written proposal on the proposed stay and consolidation of the various NHI Act applications and the proposed next steps in the various applications.

2. We annex hereto the written proposal as annexure "**X**" for DJP Ledwaba and the parties consideration.

3. As agreed at the case management meeting, the applicants in the pending cases have the opportunity to respond to the proposal on or before Friday 9 June 2025, whereafter a further case management meeting will be convened on Tuesday 1 July 2025.

Yours faithfully

KGOSANA ATTORNEYS

Kgosana Attorneys
Chambers @ Valley Road, 133 Valley Road, Sunnyside, Pretoria
Tell: 012 326 1452/063 655 9347 | Email: info@kgosana-attorneys.co.za

[unsigned due to electronic transmission]

Makule Kgosana

Managing Director



PROPOSAL ON THE STAY OF NHI LITIGATION PENDING THE OUTCOME OF THE CONSTITUTIONAL COURT PROCEEDINGS AND CONSOLIDATION OF ALL NHI RELATED APPLICATIONS

INTRODUCTION AND OVERVIEW OF LITIGATION

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

1. We act on behalf of the National Department of Health ("**NDoH**") and the Minister of Health ("**the Minister**").

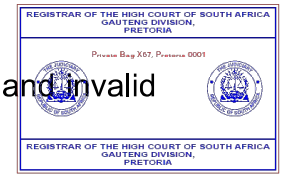
2. The Minister has been cited in various applications, all concerning the National Health Insurance Act, where relief is sought against the Minister, the President of the Republic of South Africa ("**the President**") – being the common respondents in all the applicants – and other key state actors. ("**the respondents**").

3. The relief sought against the Minster and the other respondents in the various applications mainly includes the following:

   3.1. Seeking the review and setting aside of the President's decision to assent to and sign the National Health Insurance Bill [B11B-2029]("**the NHI Bill**") on 15 May 2024;

3.2. Directing the President to reconsider the NHI Bill in accordance with section 79(1), read with section 84(2)(a), (b) and/or (c) of the Constitution of the Republic of South Africa, 1996;

3.3. That it is declared that the National Health Insurance Act No. 20 of 2023 ("**NHI Act**") is of no legal force or effect;



3.4. That it is declared that the NHI Act is unconstitutional and invalid and is set aside;

3.5. *Alternatively* that certain sections of the NHI Act are declared unconstitutional and invalid and are set aside; and

3.6. To the extent that the NHI Act or sections are declared invalid and set aside, that the matters are referred to the Constitutional Court for confirmation of the Constitutional invalidity.

4. A schedule of the live NHI applications in the High Court and Constitutional Court is as follows:

No.	Date of application:	Description of matter:	Relief sought:
In the High Court of South Africa, Gauteng Division, Pretoria			
1.	24 May 2024	Solidarity Trade Union v the Minister of Health, the President of the Republic of South Africa, the Director-General National of the National Department of Health, the Minister of Finance and Treasury (Case no: 2023-057449). ("**Solidarity**")	A declaration that the NHI Act is unconstitutional and invalid. *Alternatively*, a declaration that sections of the NHI Act are unconstitutional and invalid and referral of such declaratory order to the Constitutional Court for confirmation.
2.	27 May 2024	Board of Healthcare Funders of Southern Africa NPC v the President of the Republic of South Africa and the Minister of Health (Case no: 2024-058172). ("**BHF HC**")	The decision of the President to assent to and sign the NHI Bill taken on 15 May 2024 is reviewed and set aside. Proclamation No. 4826 in Government Gazette 50644 dated 16 May 2024 is reviewed and set aside; The matter is remitted to the President for reconsideration under sections 84(2)(a),(b),(c) read with sections 79(1) and 83(b) of the Constitution; It is declared that the NHI Act is of no legal force or effect.
3.	1 October 2024	South African Private Practitioners Forum v the President of the Republic of South Africa, the Minister of Health, the Minister of Finance	Reviewing and setting aside President's decision to assent to and sign the NHI Act.

		and National Treasury (Case no: 2024-111209) ("**SAPPF**")	As a consequence of the latter, declaring that the NHI Act is invalid and of no force and effect. Directing the President to reconsider the NHI Bill in accordance with his obligations under sections 84(2)(a) and (b), read with sections 79(1), 83 and 7(2) of the Constitution. *Alternatively,* a declaration that the NHI Act is unconstitutional and invalid; In the further *alternative,* a declaration that sections 5, 7, 8, 33, 35, 37, 38, 39 and 41 of the NHI Act are unconstitutional and invalid.
4.	17 February 2025	Hospital Association of South Africa v the Minister of Health, the Minister of Finance and the President of the Republic of South Africa. (Case no: 2025-020969) ("**HASA**")	A declaration that the NHI Act is unconstitutional and invalid. *Alternatively* the following sections of the NHI Act are declared unconstitutional and invalid and are set aside to the extent of their unconstitutionality: sections 2, 3(5), 4, 5, 6(o), 7, 10(1)(g), 11(1)(m), 11(2), 13(3), 26, 27, 33, 36, 38(8), 39, 42, 49(1), 44, 57, 58 read with the schedule to the NHI Act to and the Medical Schemes Act 131 of 1998 and the National Health Act 61 of 2003. In the further *alternative,* such sections of the NHI Act which are found to be unconstitutional, are declared unconstitutional and

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

			invalid and are set aside to the extent of their unconstitutionality. Referral of such declaratory order to the Constitutional Court for confirmation.
5.	2 April 2025	The South African Medical Association NPC v the Minister of Health, the President of the Republic of South Africa, the Speaker of the National Assembly and the Chairperson of the National Council of Provinces. (Case no: 2025-045340) ("**SAMA**")	A declaration that the NHI Act is unconstitutional and invalid. *Alternatively* the following sections of the NHI Act are declared unconstitutional and invalid and are set aside to the extent of their unconstitutionality: sections 3(4), 3(5), 4, 4(1)(e), 4(2), 4(3), 4(4), 4(5), 5(1), 5(2), 5(5)(b), 5(6), 5(8), 6(a), 6(c), 6(i), 6(o), 7(1), 7(2)(b), 7(2)(c), 7(2)(f), 7(3), 7(4), 7(5), 8(2), 11(1)(h), 25(5)(a), 25(5)(c), 31(2), 32(2), 32(3), 33, 35(1), 36, 38, 39, 42, 49(3), 55(1)(i), 55(1)(j), 56 and 58 to the extent that it amends sections 12(1) and (3) of the Correctional Services Act 1998.
6.	16 May 2025	President of the Republic of South Africa v BHF and SAPPF	Conditional application for leave to appeal to the Supreme Court of Appeal against the judgment of Twala J handed down on 6 May 2025
7.	23 May 2025	Minister of Health of the Republic of South Africa v BHF and SAPPF	Conditional application for leave to appeal to the Supreme Court of Appeal against the judgment of Twala J handed down on 6 May 2025

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

In the Constitutional Court			
8. .	20 August 2024	Board of Healthcare Funders of Southern Africa NPC v the President of the Republic of South Africa and the Minister of Health (Case no: CCT254/2024) ("**BHF CC**")	In terms of section 167(4)(e) of the Constitution read with section 173, alternatively Constitutional Court rule 18 read with section 167 (6) of the Constitution: If the President refuses to provide the record of proceedings, the President be directed to deliver the record of the decision to the decision challenges below; and The decision of the President to assent to and sign the NHI Bill taken on 15 May 2024 is reviewed and set aside. That Proclamation No. 4826 in Government Gazette 50644 dated 16 May 2024 ("**Proclamation 4826**") is reviewed and set aside; The matter is remitted to the President for reconsideration under sections 84(2)(a),(b),(c) read with sections 79(1) and 83(b) of the Constitution; It is declared that the NHI Act is of no legal force or effect.

5. In addition there are the following potential applicants who have indicated either in the case management meeting of 15 May 2025, in one instance,

or in the press that they intend to bring applications challenging the constitutionality of the NHI Act:

5.1. The Health Funders Association;

5.2. The Democratic Alliance;

5.3. Discovery Health;



5.4. The Board of Healthcare Funders (a press report in the Business Day of 14 May 2025 suggests that they will bring two additional challenges to the constitutionality of the NHI Act in addition to the review of the President's decision); and

5.5. Business Unity South Africa.

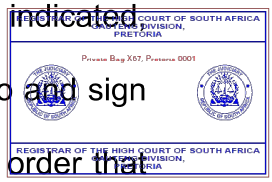
6. The precise nature of and basis for the challenges to be brought by these latter five entities is not yet clear. Nevertheless –

6.1. it is evident from the schedule above that the parties and the issues and the relief sought in the various applications overlap to a substantial degree;

6.2. it is fair to say that the nature of the challenges yet to be brought will, in all likelihood, apart from seeking similar relief, base their constitutional challenges on similar grounds.

Nature and status of the BHF, HC and CC applications

7. BHF filed its application in the High Court. In this application, as indicated, BHF attacks the legality of the President's decision to assent to and sign the NHI Bill and seeks the review thereof. BHF also seeks an order that that Proclamation No. 4826 is reviewed and set aside; that the matter is remitted to the President for reconsideration under sections 84(2)(a),(b),(c) read with sections 79(1) and 83(b) of the Constitution, and that it is declared that the NHI Act is of no legal force or effect.



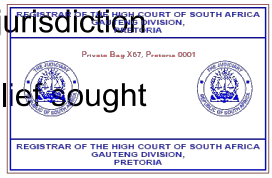
8. Following the filing of notices in terms of Uniform Rule 6(5)(d)(iii) and section 173 of the Constitution by the Minister and the President, BHF filed its direct access review application, BHF CC, in the Constitutional Court.

9. The BHF HC and BHF CC applications are substantially the same. In the Constitutional Court, BHF avers in paragraphs 18 and 25 of its founding affidavit that:

9.1. The Constitutional Court application is brought because of the respondents' stance that it is the Constitutional Court that has

exclusive jurisdiction in respect of the relief that is being sought by BHF;

9.2. It will only set down the Constitutional Court application for hearing in the event that the respondents in the High Court application succeed in their points of law, or seek leave to appeal against a finding in the High Court application that it does have jurisdiction to entertain the High Court application or to grant the relief sought therein;



9.3. That the relief sought in the Constitutional Court application will be heard together with any appeal against a finding of the High Court on the points of law.

10. Neither the Minister nor the President have yet had the entitlement or the duty to file answering affidavits in either of BHF's applications, or in SAPPF's application, pending the determination of the points of law, because the issue of the High Court's jurisdiction to hear the reviews and whether the President is under any obligation to provide a record are subject to ongoing adjudication.

11. The points of law in the BHF application and the SAPFF application were heard together in a consolidated hearing in the High Court, Pretoria before Honourable Justice Twala , on 3 and 4 March 2025.

12. Justice Twala delivered his judgment on the points of law on 6 May 2025. Justice Twala found against the Minister and President. He held that the High Court has jurisdiction over the applications, that the President's decision is reviewable, and that the President is obliged to deliver a record of his decision.

13. The Minister and President are entitled to seek leave to appeal the judgment and order of justice Twala and have both respectively filed conditional leave to appeal applications to the High Court and are in the process of filing applications for leave to appeal directly to the Constitutional Court.



14. The implication of Justice Twala's judgment and the pending applications for leave to appeal is that the condition to which the BHF CC application is subject, has been fulfilled. In its notice of motion in the BHF CC application it asks that its review "be heard together with any appeal against a finding of the High Court in the High Court application".

15. In a letter dated 11 October 2024 addressed to the attorneys for the applicants and the respondents, the Acting Registrar of the Constitutional Court conveyed his understanding of the position of the parties to be that the respondents were not expected to provide the record or answering affidavits while the High Court review application was under way. Parties were invited to apply for directions in terms of rule 11(1)(b) of the

Constitutional Court rules in the event that these were sought in relation to any matter other than the agreement on the matter being held in abeyance.

16. The Minister will in due course apply for directions once the applications for leave to appeal directly to the Constitutional Court have been filed to determine how the review application and the applications for leave to appeal will be managed.



17. The upshot is that there is now pending in the Constitutional Court litigation which potentially has the outcome, if BHF is successful in its review application, of setting aside the NHI Act in its entirety.

Case management meeting of 15 May 2025

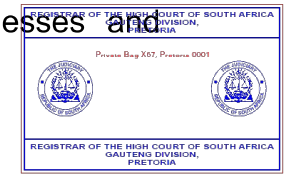
18. On 15 May 2025 a case management meeting was convened virtually by the Honourable Deputy Judge President Ledwaba. The Minister, the President, Solidarity, BHF, SAPPF, HASA and SAMA were all represented at the meeting.

19. In addition, legal representatives for the Health Funders Association ("**HFA**") attended on the basis that they intend to file an application by the HFA, also challenging the NHI Act, by 6 June 2025.

20. The purpose of the case management meeting was to seek the case management of the HASA and SAMA applications together with the other

pending applications in respect of the NHI Act in which case management has already been directed.

21. The counsel team representing the Minister explained the significant prejudice faced by the Minister as a result of having to respond to successive applications issued and anticipated in the High Court, often assuming trial-like proportions with numerous expert witnesses and serious disputes of fact already apparent on the papers.



22. The team conveyed that, in the circumstances, it was premature to set dates for the filing of rule 35(12) notices and answering affidavits in the HASA and SAMA applications, as the agenda before the Deputy Judge President foreshadowed.

23. The team indicated that it wished to place before the parties a proposal for the further conduct of the matter. The proposal would include both a proposed stay of all proceedings in the High Court, pending the outcome of the proceedings presently pending in the Constitutional Court and the consolidation of all of the applications in terms of Uniform Rule 11, read with Rule 6(14).

24. The following was directed by the Deputy Judge President at the case management meeting:

24.1. The Minister would circulate a proposal on the stay, consolidation and further management of all pending cases amongst the parties by 26 May 2025;

24.2. The applicants in the pending cases would have an opportunity to respond to the proposal by 9 June 2025; and

24.3. A further case management meeting will be held on 1 July 2025 for the Deputy Judge President to determine the next steps to be taken.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

25. The applications against the NHI Act are all extremely complex, raise issues of serious and general public importance, and are extremely voluminous.

26. The proliferation of multiple related applications in respect to the NHI Act will obviously lead to inefficiency, duplication of functions, waste of State resources in defending separate, but overlapping applications, and the risk of contradictory judgments.

27. In *Take and Save*,[1] the Supreme Court of Appeal referred to the importance of judicial management of a case so as, *inter alia*, "to ensure that public and private resources are not wasted".[2]

28. This proposal responds to DJP Ledwaba's directives at the case management meeting. It sets out a legal basis and procedural framework for the stay of proceedings and the consolidation of the multiple related applications and the reasons why it would be in the best interest of all the parties that the NHI applications, pending the BHF CC review application and the appeals of the BHF judgement, should be consolidated and proceedings stayed.



29. Below we demonstrate that the multiple NHI applications are suitable cases for consolidation, and that the stay of proceedings pending the appeals against the BHF jurisdiction judgement and the BHF CC review, would enhance judicial and litigation economy and fairness, ensure that related matters are dealt with in a coordinated and logical manner and sequence, in turn substantially reducing legal costs for litigants,

---

[1] *Take and Save Trading CC v Standard Bank of SA Ltd* [2004] ZASCA 1; 2004 (4) SA 1 (SCA) at para 3.
[2] Quoted with approval in *Commissioner for the South African Revenue Service and Another v Richards Bay Coal Terminal (Pty) Ltd* [2025] ZACC 3 at para 98.

preventing a very substantial usurpation of scarce court time and resources. This would manifestly be in the interests of justice.[3]

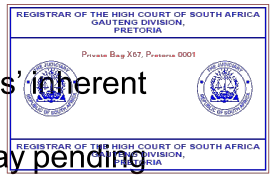


3

APPLICABLE LEGAL FRAMEWORK

Stay of proceedings

30. The Constitutional Court has confirmed that courts may stay proceedings in the interests of justice and in the exercise of the courts' inherent jurisdiction to determine their own process.[4]



31. The Constitutional Court considered whether the Superior Courts' inherent powers under section 173 of the Constitution empowered it to stay pending court proceedings on equitable grounds. It held:

> *"[67] Put simply, this says the mentioned Courts may regulate their own process taking into account the interests of justice. I will say nothing about equity but, based on this, I do not see why proceedings may not be stayed on grounds dictated by the interests of justice. Whatever the import of what was said by courts previously may be, the Constitution lays down its own test; and it has everything to do with the interests of justice.*
>
> *[68] In this context, the idea of interests of justice is quite wide. I will not attempt to delineate what it encompasses. Suffice it to say, what justice requires will depend on the circumstances of each case."*[5]

32. The Constitutional Court determined in that case that the interests of justice dictated that certain eviction proceedings be held in abeyance pending the finalisation of an action that sought to enforce certain

---

[4] *Mokone v Tassos Properties CC and Another* 2017 (5) SA 456 (CC).

[5] Id at paras 67-68.

contractual rights relating to the property. In his separate judgment, Froneman J concurred on this point and held:

"[79] The pre-constitutional case law in relation to whether courts have an equitable discretion to stay proceedings in one matter until determination of a material legal point in another was at pains to separate law from equity in denying this wide equitable competence to our courts. If there is a broad theme of the Constitution, it is to unshackle our law from this painful historical dichotomy and tension between law and fairness. The Constitution demands that they run together, hand in hand. Ordinary folk assume that is the purpose of law – that it should be infused with fairness and justice. Lawyers should no longer be embarrassed to admit that there is nothing wrong with that view."[6]



33. In light of these authorities, it is now trite that a stay of proceedings may be sought when it is in the interest of justice to do so.

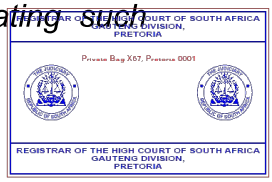
34. A stay of proceedings may further be sought to avoid potential prejudice, to avoid duplicative litigation, pending the outcome of another concurrent related matter.

[6] Id at para 79.

Consolidation in terms of Uniform Rule 11

35. Uniform Rule 11 regulates the consolidation of proceedings. It provides as follows:

"Where separate actions have been instituted and it appears to the Court convenient to do so, it may upon the application of any party thereto and after notice to all interest parties, make an order consolidating such actions, whereupon-



(a) the said actions shall proceed as one action;

(b) the provisions of rule 10 shall mutatis mutandis *apply with regard to the action so consolidated and;*

(c) the Court may make any order which to it seems meet with regard to the further procedure, and may give one judgment disposing of all matters in dispute in the said actions."

36. Uniform Rule 11 is applicable to applications by virtue of the provisions of Uniform Rule 6(14).

37. The purpose of consolidation under Uniform Rule 11 is to have issues which are substantially similar tried at a single hearing so as to avoid the disadvantages attendant upon a multiplicity of trials.[7]

[7] *Nel v Silicon Smelters (Edms) Bpk* 1981 (4) SA 792 (A) at 802B. See *Jacobs v Deetlefs Transport BK* 1994 (2) SA 313 (O) at 320A–B.

38. Under Uniform Rule 11, the Court has the discretion to consolidate actions where:

38.1. There are two or more matters pending before the court;

38.2. The actions involve substantially the same questions of law or fact and;

38.3. It would be convenient and just to consolidate them.



39. The paramount test in regard to consolidation is convenience. It was held in *Rail Commuters' Action Group,*[8] that the overriding consideration for purposes of consolidation was *"convenience of the parties, of witnesses and last but not least, of the Court."*

40. In *Nel*,[9] convenience was found, *inter alia,* in the fact that (i) the consolidated prosecution of the case would reduce costs and expedite proceedings; (ii) there would be one finding concerning a factual dispute involving a number of parties; and (iii) the plaintiff's various claims arising from the same cause of action would be heard in one action.

---

[8] *Rail Commuters' Action Group v Transnet Ltd* 2006 (6) SA 68 (C) at 88A.
[9] Nel id at 801D.

STAY OF PROCEEDINGS PENDING OUTCOME OF CONSTITUTIONAL COURT PROCEEDINGS

41. As set out above, the Constitutional Court is now seized with the BHF CC application for direct access to that Court, based on the fact that the Minister and the President have now each filed respective applications for leave to appeal against Twala J's judgment. As indicated, this is because the BHF CC application asks that the application before the Constitutional Court be set down in the event that the High Court finds that it lacks jurisdiction; or the respondents to the High Court application seek leave to appeal against a finding by the High Court that it enjoys jurisdiction.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

42. In the BHF CC application, BHF asks that its substantive challenge against the President's assent to and signing of the NHI Bill be heard together with any appeal against a finding of the High Court in the High Court application.[10]

43. The potential outcomes of Constitutional Court appeals and the BHF CC direct access application include the following:

[10] BHF CC Notice of Motion.

43.1. The Constitutional Court may dismiss the President's and the Minister's appeals and find that the High Court was correct in finding that it had jurisdiction. In that event –

43.1.1. depending on the Court's attitude to the review, it could order that the review be remitted to the High Court for hearing. In that event, both the challenge to the assent and signing of the NHI Bill and the substantive challenges to the NHI Act could proceed in the High Court. A final and authoritative ruling would also have been provided by the Constitutional Court on whether or not the President has the duty to provide the record; or

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

43.1.2. the Constitutional Court may determine that it should nonetheless grant leave in terms of section 167(6)(a) for the direct access review application to be heard.

43.2. The Constitutional Court may uphold the appeals, in which event, because of the finding that it alone has jurisdiction, the Constitutional Court will hear the BHF CC review application, because leave will no longer be required in terms of section 167(6)(a) of the Constitution and BHF will be entitled to have the review heard by the Constitutional Court as of right.

43.3. If the Constitutional Court decides in favour of the President and the Minister in the appeals, it may hear and dismiss the review and then the substantive challenges will still proceed in the High Court.

43.4. If the Constitutional Court decides against the President and the Minister in the BHF CC review, then the President's decision to assent to and sign the NHI Bill will be set aside, the NHI Act will be declared invalid and the NHI Bill will revive. The President will then reassume responsibility for the NHI Bill. The President will have to reconsider the submissions that were made to him and if he then entertains reservations about its constitutionality, refer the Bill back to the National Assembly for reconsideration, together with a list of his reservations.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

44. As appears from the analysis in paragraph 43, in every scenario other than that referred to in paragraph 43.1.1, the issue of the constitutionality of the NHI Act will be pending before the apex Court.

45. It will not be in the interests of convenience, comity or justice for the High Court and the Constitutional Court to conduct simultaneous, parallel enquiries into the constitutionality of the Act, even if on the basis of different causes of action. Indeed, notwithstanding the different causes of action as between the reviews and the substantive challenges, BHF asks in the reviews that the Constitutional Court make findings, at least at a prima facie

level, on the constitutionality of the NHI Bill on the basis of wording that is identical to what is now found in the NHI Act. There is accordingly the very real risk of divergent judgments of the Constitutional Court and the High Court being handed down simultaneously on the question of constitutionality of the same provisions.

46. Even if we leave this important consideration aside, if the Constitutional Court decides that the President's decision should be reviewed and set aside and the NHI Act is consequentially declared invalid, it would immediately render all of the various substantive challenges pending before the High Court moot.

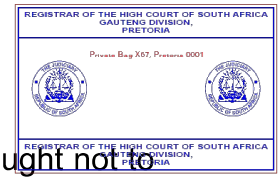


47. If the challenges are rendered moot by a Constitutional Court judgment overturning the NHI Act, a tremendous amount of judicial and party resources and time, along with a very substantial amount of scarce High Court judicial time and court resources, will have been expended on the applications in the High Court, which will turn out to have been entirely wasted and in vain.

48. In the premises it is sensible, convenient and in the interests of justice, to stay the pending applications relating to the NHI Act, pending the determination of the cases that challenge the President's decision to assent to and sign the NHI Bill in the Constitutional Court.

49. From the foregoing analysis, it is clear that the pending BHF CC proceedings undoubtedly impact on the other pending High Court challenges to the NHI Act.

50. In sum, it is in the interest of justice to stay the other pending High Court NHI applications, pending the determination of the Constitutional Court proceedings for reason that:



50.1. If the Constitutional Court decides that the President ought not to have assented to and signed the NHI Bill, the NHI Act will in any event be invalidated and sent back to Parliament.

50.2. It would be a waste of judicial time and resources, and of the respective parties' resources, to proceed with the substantive challenges of Solidarity, HASA, SAMA, SAPPF (in respect of the substantive part, if it can proceed at all) and all the applicants who have yet to launch their cases, against the Act in these circumstances.

50.3. It would be undesirable to have parallel enquiries into the constitutionality of the NHI Act in the Constitutional Court and the High Court.

50.4. If the President's and the Minister's appeals fail, and the Constitutional Court holds that the High Court does have jurisdiction to consider the review, and declines BHF's application for direct access to the Constitutional Court on the review, there would be the opportunity to ask the High Court to decide the review separately and before the other issues are determined, which would also represent a significant saving of judicial and party resources and time.



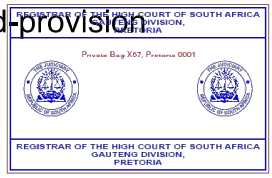
50.5. A stay would allow for all parties who wish to challenge the NHI Act to file their interventions or separate applications, so that all may be managed and heard together, whether by way of consolidation of all the matters, or a consolidated hearing.

50.6. If BHF's and/or SAPPF's review is successful and the President is compelled to return the Bill to Parliament, there is a further opportunity for the parties to resolve their concerns through the legislative process, which would insulate the Court from having to encroach on the separation of powers on these issues.

50.7. If the applications in the High Court proceed in parallel, there is a significant conundrum created by the SAPPF application.

50.7.1. It brings its substantive challenge only in the alternative to its review of the President's assent to and signature of the Bill.

50.7.2. The review component of its application is now effectively before the Constitutional Court in respect of the jurisdiction, reviewability and record-provision components.



50.7.3. It insists on the record being provided before its application can proceed. The respondents are neither entitled nor obliged to file their answering affidavits in SAPPF until the jurisdiction and record issues have been resolved and, if it turns out that they are entitled to do so, their supplementary founding affidavit has been filed.

50.7.4. The fact of the lodging of the applicants for leave to appeal means that there is in effect already a stay in place in respect of the SAPPF application.

50.7.5. It is patently contrary to the interests of justice that the Minister and the President should have to litigate to defend the substantive challenges several times. Even if a mechanism could be found to proceed to hear and rule on

the other High Court substantive challenges, the SAPPF application must perforce await the outcome of all the pending applications in the Constitutional Court. If those are decided in favour of the President and the Minister, then the Courts would be forced to hold a subsequent, separate hearing on SAPPF's substantive challenge.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

51. The case for staying the Solidarity, HASA and SAMA applications, along with the other substantive applications that are enroute to the High Court, pending the decisions of the Constitutional Court in the applications for leave to appeal against the judgment of Twala J and the BHF CC direct access application, is a compelling one. All the more so if regard is had to the prejudice that will be faced by the respondents if the stay is refused.

PREJUDICE AND INCONVENIENCE IF STAY IS REFUSED

52. Perhaps the greatest victims of continued NHI Act litigation in the High Court that later proves to have been entirely futile, are the Court itself, its judges and staff and the other members of the public clamouring for their matters to be heard. The recent efforts of the Judge President and Deputy Judges President to introduce compulsory mediation and trial dates extending to the year 2030 bear testimony, with respect, to the overwhelming case load already faced by the Pretoria High Court judges, before being saddled with this litigation.

53. The litigation already before the High Court in Pretoria by way of challenges to the NHI Act is already of unprecedented proportions. The total number of pages of paper in the combined applications are already 11 525 pages, excluding the 288 annexures annexed to the report's in HASA's application which is in excess of 10 000 pages itself and exclusing the correspondence and other process exchanged between the parties.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

54. The latter is before the filing of answering affidavits and replying affidavits in all of the applications, save for Solidarity. Experience also tells one that in litigation on this scale with complex factual disputes, there will be some parties who introduce substantial new matter in reply. That will necessitate further rounds of supplementary answering and supplementary replying. That may also be necessary as a result of developments while the litigation is underway, such as the presentation of new budgets. Already a new budget was announced yesterday, and experts of all parties on all sides in all matters with no doubt have much to say about it.

55. More pages will be added to the pile as each new applicant arrives with a fresh application.

56. The applicants have not been conservative in their employment of expert witnesses, both locally and abroad, individuals and organisations, each applicant to date with their own set. Already it is abundantly clear that the disputes of fact will be legion. If any of the applicants are reluctant to have

their cases decided on the version of the respondents' expert witnesses, the disputes will have to be resolved by referral to oral evidence. There will be little common ground between the experts, so months of oral evidence can reasonably be anticipated.

57. An alarming trend for both the Court and the respondents, which only adds to the volume to be dealt with, is the phenomenon in the most recently filed applications of, in the founding affidavits, incorporating and attacking the answering affidavit and expert evidence already filed by the Minister in the Solidarity application. In this way, the applicants have in effect built in for themselves an additional round of opportunities to reply. If matters continue to be launched in this way, there will be replies in the founding affidavits, potentially, to multiple answering affidavits.



58. These are but some of the problems with the litigation on its current trajectory.

59. It is not in the interests of justice to litigate in a manner which may evidently result in legal uncertainty, overburdening of the Court and a waste of state resources. Therefore, prejudice and inconvenience will undoubtedly ensue to the Court and respondents if the litigation in the High Court continues concurrently while the BHF CC proceedings are being determined. The Minister accordingly calls upon the other parties in all of the applications to

consent to a stay pending the final adjudication of the appeals and the BHF CC review application in the Constitutional Court.

60. In considering this option, the parties are asked to bear in mind that, being an interlocutory order, the stay could be revisited at subsequent junctures in the event that any party could make out a case for it being in the interests of justice to do so. It is not the law of the Medes and the Persians.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

CONSOLIDATION OF ALL NHI LITIGATION IN TERMS OF UNIFORM RULE 11

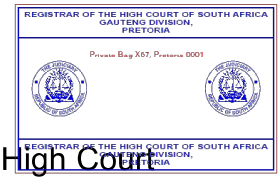
61. In addition to the stay, and whether or not it is ultimately agreed upon or granted through an interlocutory application, the Minister proposes the consolidation of all of the applications challenging the NHI Act and any ancillary applications on *inter alia* the following basis:

61.1. The unfairness to the Minister and the President in the respective applications by the expectation that they must respond to each successive substantive application individually and in turn with a substantive answering affidavit;

61.2. The factual matrices of the challenges have become intertwined and *de facto* consolidated, particularly where HASA and SAMA have incorporated and replied to the Minister's answering affidavit and the evidence of his experts in the Solidarity application;

61.3. The duplication of work for the Judges who will be expected to adjudicate the respective concurrent applications, with overlapping issues; and

61.4. The complex disputes of fact which are apparent from the founding affidavits in the respective applications which may have to be referred to oral evidence.



62. It is accordingly proposed that, in addition to the stay, that the High Court consolidates the Solidarity, HASA, SAMA and SAPPF (the latter insofar as it challenges the substance of the NHI Act) applications.

63. The effect would be that the respondents need only to file a single answering affidavit responding only once to the same issues that are repeated over and again in the various applications (even if it responds ad seriatim to each founding affidavit in that single affidavit) and, importantly, one set of expert affidavits.

64. Moreover, the respondents would each only need to file one set of heads of argument, and the matters would all be heard together. Should new applications be filed challenging the validity of the NHI Act, these would have to be consolidated as well or the new applicants could apply to intervene in the existing consolidated applications. The grant of a stay

would allow this process to unfold insofar as the new applications are concerned.

65. From a reading of the schedule above, the applications all seek to declare the NHI Act invalid in its entirety, or select provisions of the Act in the alternative. The reasons advanced by the parties are substantially similar and require the Court to determine similar issues of law and fact. It is already apparent that there are a significant number of common issues across the applications. These include by way of legal issues inter alia the following:

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

65.1. Points *in limine*

65.1.1. Exclusive jurisdiction of the Constitutional Court

65.1.2. Abstract /facial challenge of legislation

65.1.3. Prematurity/ripeness

65.1.4. Specificity

65.2. Litigation procedure and evidence

65.2.1. Consolidation / joinder

65.2.2. Application of rules of evidence

65.3. Principles of legislative review

65.3.1. International law

65.3.2. Vagueness

65.3.3. Rationality review



65.3.4. Reasonableness review generally

65.4. Constitutional issues

65.4.1. Separation of powers if relief is granted

65.4.2. Separation of powers: Delegation of plenary powers

65.4.3. Separation of powers: Interference in provincial powers

65.4.4. Section 27(1): The right to health

65.4.5. Section 25: The right to property

65.4.6. Section 22: Health care workers' freedom of trade

65.4.7. Section 10: The right to dignity

65.4.8. Section 11: The right to life

65.4.9. Section 12: Freedom and security of the person

65.4.10. Access to information

65.4.11. Justifiable limits to rights



65.4.12. Asylum seekers' right to access health care

65.4.13. Corruption

65.4.14. Section 195 of the Constitution

65.4.15. Competition and procurement issues

65.4.16. Procedural fairness

65.4.17. Money Bills and the requirements of chapter 13 of the Constitution and of the PFMA

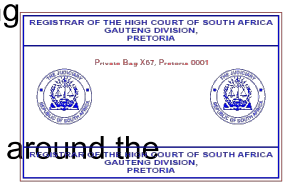
66. These include by way of an incomplete, sample list of factual issues and/or issues upon which there is or will be expert evidence:

66.1. Financial feasibility

66.2. Budgetary processes

66.3. Universal Health Coverage and healthcare funding

66.4. International experience of UHC and healthcare funding



66.5. Healthcare funding systems in specific other countries around the world

66.6. Financial modelling and preparatory steps

66.7. Objectives of reform

66.8. The role of public healthcare systems

66.9. The role of private healthcare systems

66.10. The role of primary health care

66.11. Referral pathways

66.12. Hospital services

66.13. District health services

66.14. The role of medical schemes

66.15. Competition issues

66.16. Principles of social solidarity



66.17. Risk pooling

66.18. Resource pooling

66.19. Measuring health system performance with reference to alleged proxy indicators, such as maternal mortality ratios

66.20. Regulatory structures for monitoring healthcare systems

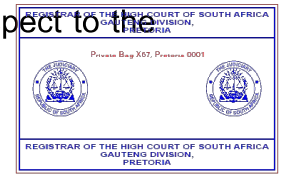
66.21. The implications of the Health Markets Inquiry.

67. The consolidation application is further motivated on the following grounds:

67.1. As pointed out above, both HASA and SAMA rely extensively on the Minister's answering affidavit and expert evidence in the Solidarity application, and their experts make extensive reference to this evidence. HASA and SAMA have therefore at their own

election aligned their cases with the process in the Solidarity application.

67.2. Consolidation would assist the Court to determine the various applications in a single, coherent manner, on the basis of a single set of papers. This reduces the risk of conflicting judgments and allows for an efficient use of judicial and state (in respect to the respondents) resources.



67.3. Filing answering papers separately in the HASA, SAMA, SAPPF and whichever applications are yet to be filed, will impose an undue and prejudicial burden on the Minister's and the President's expert witnesses, who will be compelled to duplicate work on issues and file multiple affidavits.

67.4. Doing so also creates an unfair advantage for the applicants. Applicants normally have the opportunity to reply to the case of the respondent only once, that is in their replying affidavit, and there are limits on what they may canvas in a reply.

67.5. As foreshadowed above, the latter problem will likely be compounded in subsequent applications where, in their founding affidavits, the applicants again answer to the Minister's answering affidavit in each of Solidarity, SAMA, HASA and SAPPF. They will

then again respond to that answer in reply. Consolidation would obviate this problem and does not impact adversely on the applicants' choice of litigation strategy.

67.6. Consolidation will allow the use of a joint Caselines/Court bundle for ease of reference across all the matters; and

67.7. It will be convenient for the Court that is seized with managing and adjudicating the various applications with overlapping subject matter, against the same parties. It will also allow for consolidated interlocutory applications, so that interlocutory disputes can be adjudicated and resolved across all the applications.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

67.8. Consolidation will provide an incentive for maximal procedural co-operation by the parties, such as the sharing of topics for argument and avoidance of repetition.

68. In the premises and in light of the purpose of consolidation canvassed above, and the circumstances in which it is ordinarily ordered, it is proposed that the parties agree that the Court order the consolidation of all of the NHI related applications pending before it.

69. The applications in the main involve the same respondents and call upon this Court to adjudicate similar facts and issues.

70. It will accordingly be convenient for this Court to determine a consolidated matter. The consolidation would reduce costs and expedite proceedings; there would be one finding concerning a factual dispute involving a number of parties; and the parties' various claims arising from similar questions of fact and law would be heard together.

71. We respectfully suggest that the advantages of consolidation substantially outweigh any disadvantages which may be alleged by the applicants and render a consolidation convenient and in the interests of justice.



CONCLUSION

72. Consolidating the related applications and staying proceedings are powerful tools to achieve procedural fairness, judicial and litigation economy in the NHI related applications. This proposal recommends the strategic use of consolidation and a stay of proceedings to streamline litigation, reduce cost and delay, and minimize the risk of conflicting judgments by the courts.

73. Therefore, the Minister proposes that the parties consent to an order providing for the following:

73.1. The stay of all litigation related to the NHI Act in the High Court, pending the outcome of the Constitutional Court proceedings in the

applications for leave to appeal against Twala J and the BHF Constitutional Court challenge; and

73.2. The consolidation of all the substantive challenges to the NHI Act on the basis motivated above in terms of Uniform Rule 11, read with rule 6(14).



74. We thank the parties in anticipation of their fair consideration of the Minister's proposal.

Office of the State Attorney

Pretoria

Private Bag X 91
PRETORIA
Sehume Str
0001

Docex: 298

316 Salu Building
Cnr Francis Baard & Thabo

Ground Floor
Entrance Thabo Sehume Street
Pretoria

Tel: (Switchboard): 012 309 1500
(Direct Line): 012 309 1623
(Cellphone): 071 870 2442
(Secretary): 012 309 1539
Fax (General) 012 309 1649/50
(Personal) 086 507 1910

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

9 JUNE 2025

Enquiries: Mr R.J. SEBELEMETSA
Email: rsebelemetsa@justice.gov.za

My Ref:0476 /2025/Z64

TO: The Deputy Judge President of the Gauteng Division of the High Court, Pretoria
The Hon. Mr Justice Ledwaba, DJP
By email: HuMulaudzi@judiciary.org.za / ambelani@iudiciary.org.za / and ssidesha@iudiciarv.org.za

CC: Werksmans Attorneys: Attorneys for Board of Healthcare Funders.
Attention: Ms S Phakathi/Ms H Michael/ Ms B Moti/ Ms S Phakathi/ Mr S Van Rooyen/Ms F Yassin.
Per email: sphakathi@werksmans.com / hmichael@werksmans.com/ bmoti@werksmans.com/ sphakathi@werksmans.com / svanrooyen@werksmans.com/ fyassin@werksmans.com

Assenmancher Brandt Attorneys: Attorneys for the South African Medical Association. Attention: Mr C Brandt
Per e-mail: carl@assenmacher.co.za / kayleigh@assenmacher.co.za

ENS Africa Attorneys for the Health Funders Association Attention: Ms A Richards / Mr D Band
Per e-mail: dband@ensafrica.com / arichards@ensafrica.com

Kgosana Attorneys Attorneys for the Minister of Health Attention: Ms M Kgosana
Per email: info@kgosana-attorneys.co.za / mapule@kgosana-attorneys.co.za

Nortons Inc. Attorneys for the Hospital Association of South Africa
Attention: Mr A Norton / Ms M Steele
Per e-mail: anthony@nortonsinc.com / anton@nortonsinc.com / michelle@nortonsinc.com melissa@nortonsinc.com

Serfontein, Viljoen & Swart Attorneys. Attorneys for the Solidarity Trade Union Attention: Mr J D Claassen / Ms N Venter / Ms M Venter
Per e-mail: jd@svslaw.zo.za / niekie@svslaw.co.za / monique@svslaw.co.za

Webber Wentzel Attorneys: Attorneys for the South African Private Practitioners Forum Attention: Mr M Versfeld / Mr G Penfold / Ms P Singh / Ms A Rees
Per e-mail: martin.versfeld@webberwentzel.com / prelisha.singh@webberwentzel.com / glenn.penfold@webberwentzel.com / Alexandra.rees@webberwentzel.com



Dear Deputy Judge President,

RE: PROPOSAL OF THE MINISTER OF HEALTH ARISING FROM THE CASE MANAGEMENT MEETING IN HOSPITAL ASSOCIATION OF SOUTH AFRICA // MINISTER OF HEALTH AND OTHERS (CASE NUMBER: 2025-020969) & VARIOUS OTHER MATTERS

1. We act for the President of the Republic of South Africa ("**the President**").

2. We have taken note of the proposal of the Minister of Health ("**the Minister**") dated 26 May 2025.

3. We also take note of the letter sent to you by the Board of Healthcare Funders NPC ("**BHF**") dated 6 June 2025.

4. We record the President's position as follows:

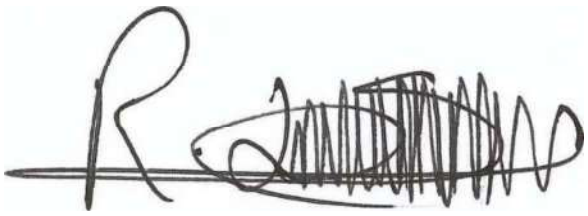
   4.1. First, we are in agreement with the Minister's proposal, and for the reasons articulated, that the constitutional challenges, extant and envisaged, be consolidated such that the Minister, and to the extent necessary the President, files one answering affidavit in respect of these applications, and which can then be heard and disposed of in one hearing.

   4.2. Secondly, we are in further agreement with the Minister's proposal that **all** litigation in respect of the NHI Act (that being the BHF and related SAPPF applications, which are currently the subject of applications for leave to appeal before the High

Court and the Constitutional Court, as well as the constitutional challenges referred to in paragraph 4.1. above), be stayed pending the outcome of the Constitutional Court's decision in the President's and the Minister's applications for direct leave to appeal to that Court and/or the BHF conditional application on the merits of its High Court application which is also pending before that Court.

5. We thank the Deputy Judge President for his ongoing management of these matters.

Kind regards,



REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Private Bag X67, Pretoria 0001

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

FOR MR R J SEBELEMETSA
FOR: STATE ATTORNEY (PRETORIA)

Serfontein Viljoen & Swart

Attorneys, Conveyancers & Notaries

165 Alexander Street, Brooklyn, Pretoria
P.O. Box 35015, Menlo Park, 0028 Docex 9 Brooklyn
E-mail : niekie@svslaw.co.za / jd@svslaw.co.za
Tel: (012) 362 2556
Also, at: Bronkhorstspruit (013) 932 3034

Our ref : Mr. Swart/Claassen/Venter / MJ / CS0562
Your ref : CASE NO: 058172/2024
Date : 9 June 2025

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

BY EMAIL

TO:` THE OFFICE OF THE DEPUTY JUDGE PRESIDENT
THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

EMAIL: HuMulaudzi@judiciary.org.za/ ambelani@iudiciary.org.za / ssidesha@iudiciarv.org.za

Dear Honourable Deputy Judge President Ledwaba,

RE: SOLIDARITY'S RESPONSE TO THE MINISTER OF HEALTH'S PROPOSAL ON THE FURTHER CONDUCT OF PROCEEDINGS CHALLENGING THE CONSTITUTIONALITY OF THE NATIONAL HEALTH INSURANCE ACT 20 OF 2023 (NHI ACT)

1. We refer to the proposal of the Minister of Health (Minister) that:

1.1. the various pending applications (and applications to be brought) challenging the constitutionality of the NHI Act be consolidated, to allow the Minister and the remaining respondents in the applications to file a single answer; and

1.2. all High Court litigation related to the NHI be stayed pending the outcome of Constitutional Court proceedings in the review of the President's decision to sign the NHI Act into law.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

2. We act for Solidarity in case number 2024-057449 (Solidarity application). We are instructed to respond as follows:

2.1. Solidarity objects to the formal consolidation of the applications, but agrees in principle to practical means to address the Minister's concerns arising from management of a multiplicity of applications challenging the constitutionality of the NHI Act, as follows:

2.1.1. Although the applications all challenge the constitutionality of the NHI Act, the various applications are not all based on the same grounds, and there is no complete commonality among the respondents in all applications.

2.1.2. Allowing the respondents to file an answering affidavit to address common themes, coupled with an individualised response to

the specific allegations in the various applications will address any concern that the respondents are required to file a multiplicity of affidavits, repetitively dealing with the same allegations.

2.1.3. This practical solution will ensure that no applicant is deprived of the opportunity to reply to the answer given in response to its application, and will avoid potential debates in due course, arising from the different nuances in the applicants' challenges or the effect of any asserted inconsistencies in the different applicants' cases. Solidarity cannot agree to any arrangement that would potentially restrict its ability to advance the case that it has sought to make out.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001

2.1.4. Whilst Solidarity fully accepts that the applicants will be required to manage the presentation of the cases in a manner that avoids undue duplication of argument, any arrangement (including the mooted consolidation) will adversely affect its entitlement to present its case in full, and explore the nuances of its case as it deems fit, cannot be accepted.

2.2. We expressly record that any practical arrangement to assist the respondents (consolidation of the hearing and arrangement concerning the filing of an affidavit addressing common themes) can only apply to

applications that have already been launched. The Court enjoys no power to regulate matters that have not yet been launched. Moreover, no reliance can be placed on rumors and reports that more challenges are to come. Such applications as may be launched in the future must be addressed as they are introduced. Solidarity launched its application in May 2024. It, and other applicants that have launched their applications since, cannot be held to ransom and prevented from pursuing their challenges based on the uncertain event of applications yet to be launched. Since the Court is in no position to dictate to parties that are not before it that applications are to be launched by a particular date, any suggestion that timelines are only to run once "*all*" applications have been launched would leave matters open-ended. This is a consequence that cannot be tolerated.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

2.2.1. Timelines for the filing of the answering and replying affidavits must be set in respect of applications that are pending. In this regard, Solidarity is of the view that it would be reasonable for the respondents to file their answering affidavits within six weeks of the proposed case management meeting of 1 July 2025, by 13 August 2025, and for all applicants to file their replies within four weeks thereafter, by makes common cause with the proposal of Nortons Inc on behalf of the Hospital Association of South Africa (HASA) that the respondents in the pending applications are to file their answers within six weeks

of an order consolidating the applications, and that the applicants must file their replies four weeks thereafter, i.e by 10 September 2025.

2.2.2. In circumstances where the Minister and the President have already filed replies to Solidarity's application, Solidarity confirms that its reply will be directed at the answer already filed, together with any relevant allegations on common themes in an affidavit to be filed.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

2.3. Solidarity strongly objects to the indefinite stay of its application while the Board of Health Care Funders (BHF) and South African Private Practitioners Forum (SAPPF) challenges to the President's assent to the National Health Insurance Bill make their way through the Court system. Solidarity disagrees that the stay of its challenge (and those of the other applicants) while awaiting resolution of the issues raised in the BHF and SAPPF matters would be appropriate. If those challenges were to ultimately succeed, the President's fresh consideration of assent that would necessarily follow should be informed by the outcome of substantive challenges to the constitutionality of the statute. Solidarity contends that it would serve the interests of justice for the substantive constitutional challenges to proceed alongside the narrower BHF and SAPPF challenges, so that:

2.3.1. If those challenges succeed, the President may be appropriately guided by the Court's assessment of the substantive constitutional challenges to the NHI Act in the pending applications.

2.3.2. If those challenges are unsuccessful, legal certainty regarding the substantive constitutionality of the NHI will have been achieved, and appropriate consequences can then follow without undue delay

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001

3. In the absence of agreement on the Minister's proposal, we ask that the proposed case management meeting of 1 July 2025 proceed.

Yours faithfully

SERFONTEIN, VILJOEN & SWART

Email: jd@svslaw.co.za / niekie@svslaw.co.za

WERKSMANS
ATTORNEYS

DELIVERED BY EMAIL

The Office of the Honourable Deputy Judge President of the High Court of South Africa, Gauteng Division, Pretoria
Attention: Deputy Judge President
The Honourable Ledwaba, DJP

Per email: HuMulaudzi@judiciary.org.za/ ambelani@iudiciary.org.za / and ssidesha@iudiciarv.org.za

Johannesburg Office
The Central
96 Rivonia Road
Sandton 2196 South Africa
Private Bag 10015
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
www.werksmans.com

YOUR REFERENCE: **CASE NO: 058172/2024**
OUR REFERENCE: Ms S Phakathi/Ms H Michael/ Ms B Moti/ Ms S Phakathi/ Mr S Van Rooyen/Ms F Yassin/ BOAR3329.73/#10941837v1
DIRECT PHONE: +27 11 535 8161 / +27 11 535 8424 / +27 11 535 8352 / +27 11 535 8212
EMAIL ADDRESS: sphakathi@werksmans.com / hmichael@werksmans.com / bmoti@werksmans.com / sphakathi@werksmans.com / svanrooyen@werksmans.com / fyassin@werksmans.com

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

6 June 2025

Dear Honourable Deputy Judge President Ledwaba

LITIGATION AGAINST THE NATIONAL HEALTH INSURANCE ACT NO.20 OF 2023: MINISTER OF HEALTH'S PROPOSAL ON STAY AND CONSOLIDATION OF MATTERS

1 We refer to the above matter, the case management meeting held on 15 May 2025 and the Minister of Health's ("the Minister") proposal, entitled "Proposal on the Stay of NHI Litigation pending the outcome of the Constitutional Court Proceedings and Consolidation of all NHI related Applications", dated 26 May 2025 ("the Proposal").

2 We act for and on the instructions of the Board of Healthcare Funders NPC ("BHF" or "our client"). The purpose of this letter is to respond to the Proposal insofar as it concerns the BHF.

3 We do not intend, at this stage, to address each and every allegation made in the Proposal. Our failure to address any particular allegation or statement made in the Proposal should not be construed as our acceptance of the accuracy of that allegation or statement and our client's rights to address any such allegation or statement, in due course, remain reserved.

4 The BHF is the applicant in an application brought in terms of Rule 53 of the Uniform Rules of Court ("the Uniform Rules"), under case number 058172/2024 in the Gauteng Division of the High Court, Pretoria to review and set aside the President's assent to the National Health Insurance Bill [B11B-2019] ("the High Court review application"). The President and the Minister are the respondents in the High Court review application.

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa
Directors D Hertz (Chairman) OL Abraham LK Alexander C Andropoulos JKOF Antunes L Appelgryn RL Armstrong DA Arteiro K Badal T Bata JD Behr AR Berman P Bhagattjee NMN Bhengu AL Bilatyi RE Bonnet TJ Boswell W Brown HLE Chang PG Cleland JG Cloete PPJ Coetser C Cole-Morgan J Darling R Driman KJ Fyfe S Gast D Gewer JA Gobetz R Gootkin A Govuza GF Griessel NA Hlatshwayo J Hollesen MGH Honiball BB Hotz AE Human T Inno HC Jacobs TL Janse van Rensburg G Johannes S July J Kallmeyer A Kenny NK Kgame R Killoran N Kirby HA Kotze S Krige CJ Laltha H Laskov P le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso DD Magidson MPC Manaka JE Mardon PD Mashalane JE Meiring H Michael SM Moerane R Moitse C Moraitis PM Mosebo B Moti NPA Motsiri CK Mthembu L Naidoo K Neluheni NZP Nkosi BW Ntuli BPF Olivier Z Oosthuizen S Padayachy M Pansegrouw S Passmoor D Pisanti T Potter AA Pyzikowski RJ Raath K Rajah A Ramdhin B Rammala V Ramson BR Roothman W Rosenberg NL Scott TA Sibidla FT Sikhavhakhavha LK Silberman S Sinden S Singh DE Singo JA Smit BM Sono KP South CI Stevens PO Steyn J Stockwell DH Swart PW Tindle JJ Truter KJ Trudgeon DN van den Berg AA van der Merwe A van Heerden JJ van Niekerk FJ van Tonder JP van Wyk A Vatalidis T Volschenk RN Wakefield L Watson D Wegierski G Wickins DC Willans E Wood BW Workman-Davies **Consultants** DH Rabin DG Williams

5 In the High Court review application and as is recorded in the Proposal -

5.1 the President and the Minister took a preliminary point in opposition to the High Court review application, in which they challenged the jurisdiction of the High Court to hear that review and the procedure sought to be followed;

5.2 these preliminary objections were argued before the Honourable Justice Twala ("Twala J"), who found against the President and the Minister and in favour of the BHF, in his Judgment and Order, dated 6 May 2025 ("Judgment and Order");

5.3 the President and the Minister have both applied to Twala J for leave to appeal to the Supreme Court of Appeal ("SCA") against his Judgment and Order, on 16 May 2025 and 23 May 2025, respectively. The President and the Minister's applications for leave to appeal are conditional on the outcome of applications for leave to appeal made directly to the Constitutional Court ("the SCA appeals"); and



5.4 the President and the Minister have applied to the Constitutional Court for leave to appeal directly to that Court against the Judgment and Order of Twala J. The applications for leave to appeal before the Constitutional Court were issued on 27 May 2025 and are pending before the Constitutional Court ("the CC appeals").

6 On 29 August 2024, the BHF also applied separately to the Constitutional Court, under case number CCT254/2024, for substantially the same relief as it seeks in the High Court review application ("the BHF's CC challenge"). The BHF's CC challenge was brought on the basis, *inter alia* that it will be pursued directly before the Constitutional Court alongside the President and the Minister's CC appeals.

7 There are a number of other applications presently before the Pretoria High Court (or that have been threatened to be brought in that Court), some of which are identified in the Proposal. In this regard, we record that -

7.1 these applications seek, on one basis or another, to challenge the constitutionality of the National Health Insurance No. 20 of 2023 ("NHI Act"). The challenges lie principally against the provisions of the NHI Act, which either individually (or collectively) offend against provisions in the Constitution of the Republic of South Africa, 1996 ("Constitution") so that the individual provisions (or the Act as a whole) fall to be declared invalid and set aside and consequently be struck out of the NHI Act ("the constitutional challenges");

7.2 in the Proposal, the constitutional challenges are identified with reference to the identity of the principal applicant. For convenience, we use the same abbreviations as used in the Proposal for the naming of the applicants. There are, to the best of our knowledge, now five constitutional challenges already filed in the Pretoria High Court, being the Solidarity, SAPPF, HASA, SAMA and HFA's constitutional challenges;

7.3 there is no overlap between the BHF's High Court review application and the constitutional challenges. The BHF has not yet sought to challenge the constitutionality of the NHI Act; and

7.4 equally, there is no overlap between the BHF's CC challenge and the constitutional challenges.

8 The SAPPF's application also challenges the President's assent to National Health Insurance Bill -

8.1 to that extent there is an overlap between the SAPPF's constitutional challenge and the BHF's High Court review application;

8.2 the President and the Minister had similarly objected to the SAPPF's challenge to the President's assent to the NHI Bill on the grounds *inter alia* that the High Court lacked jurisdiction to entertain High Court review application ;

8.3 the SAPPF participated in argument before Twala J and is thus directly affected by and is a beneficiary of the Judgment and Order of Twala J; and

8.4 the President and the Minister's SCA and CC appeals are also directed at the SAPPF.

9 As we understand the Proposal, it is directed principally at obtaining two outcomes from you -

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

9.1 first, the Minister contends that it would be in the interests of justice that all of the constitutional challenges — and any future challenges to the constitutionality of the NHI Act still to be brought — should be consolidated into a single application under Rule 11 of the Uniform Rules; and

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

9.2 secondly, the Minister proposes that this consolidated application should be stayed pending the outcome of, at very least, the CC appeals and the BHF's CC challenge.

10 If we are correct in our understanding of the Proposal in the above two respects, then -

10.1 the Proposal has no bearing on the BHF's High Court review application, the BHF's CC challenge, or the CC appeals. If that is indeed so, then at present the BHF has no real interest in the Proposal on the bases that the Proposalhas no bearing on its CC challenge, the CC appeals, or the outcome of the High Court review application, including the SCA appeals; and

10.2 in that event, it suffices to state that, if the BHF brings its own constitutional challenge to the NHI Act in the Pretoria High Court, the BHF will deal with any consolidation application and/or stay application on its merits.

11 If, however, we are incorrect in our understanding of the Proposal — and, more importantly, in the event that it is the Minister's intention now or in the future to consolidate the BHF's High Court review application into a single application to be heard with the constitutional challenges — then we are instructed to oppose that Proposal and we set out below our client's position in relation to such a consolidation.

12 Before dealing with the Proposal on that basis, it is necessary to first distinguish the nature and import of the BHF's High Court review application from the other constitutional challenges. In this regard -

12.1 our client's review application, which is unique amongst all the applications, has been brought in terms of Rule 53 of the Uniform Rules and is distinct from the extant constitutional challenges filed against the substantive provisions of the NHI Act;

12.2 the High Court review application is concerned exclusively with the President's decision to assent to the NHI Bill and does not seek to declare unconstitutional and invalid any section of the NHI Act or the Act itself on grounds that such provisions violate the Constitution;

12.3 the purpose of joinder under Rule 11 of the Uniform Rules is to allow for issues of fact or law that are essentially the same to be heard and determined in one trial so as to avoid a multiplicity of actions with the concomitant disadvantages and prejudice, including to the courts themselves;

12.4 our client's High Court review application is distinct from the constitutional challenges, raises different questions of law and fact with which the constitutional challenges do not engage, and is accordingly not suitable for consolidation with the constitutional challenges; and

12.5 an application brought under Rule 53 of the Uniform Rules follows court procedures only set out in that Rule 53. To the extent that our client is granted access to a Rule 53 record, our client would need time to consider the record and amend its founding papers, which would not fit within the process envisaged by and may lead to delays in the progression of the constitutional challenges that do not require the production of a record or otherwise compromise our client's case.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION

13 The BHF is therefore not willing, on the strength of the Proposal, to consent to the consolidation. If the Minister wishes to consolidate the BHF's High Court review application with the constitutional challenges, he will have to bring an application for those purposes. Equally so, if a consolidation is granted, the Minister will have to apply as required and on good grounds shown for a stay of the BHF's High Court review application.

14 Our client will assess any such application on its merits.

15 Lest it be suggested that our client is being unreasonable in refusing to accede to the Proposal, we note that -

15.1 rule 11 of the Uniform Rules, in any event, necessitates an application to and an order of the High Court;

15.2 our client is not a party to the constitutional challenges, is not able to determine what relief is sought or how that relief is pursued, and has no control over how the other applicants wish to pursue their challenges;

15.3 it is not clear when and if all the potential constitutional challenges to the NHI Act have been or will be instituted and, if the BHF's High Court review application is to be delayed while all of the applications are collated then –

15.3.1 our client has no way of knowing when the High Court review application will be heard, despite the fact that it might be ripe for hearing;

15.3.2 the Minister has refused to give an undertaking that, whilst these delays are being experienced, his Department will not begin implementing NHI;

15.3.3 the Proposal fails to address how the practical consequences of all these applications being consolidated into one will be addressed; and

15.3.4 there may be myriad interlocutory applications invariably stemming from such litigation that would need to be dealt with, which would increase costs and delays, all the while during which the NHI Act would be rolled out at great cost and disadvantage to South Africa;

15.4 in the BHF's High Court review application, the President and the Minister, by electing to file a notice under Rule 6(5)(d)(iii), have in any event elected not to engage on the merits of the review; and

15.5 our client's High Court review application is distinct and has no interest in the debates that are to be engaged in through the constitutional challenges. To couple our client's discrete application to the constitutional challenges, when our client's application cuts a swathe across them, is not convenient, would prejudice the BHF, and would require the BHF to incur unnecessary legal costs.

16 There is no doubt a similar argument will be made in favour of other applicants in the constitutional challenges. To this extent, the consolidation and stay benefits only the Minister and none of the other parties, and especially not our client.

17 In light of the above, we, therefore, submit that -



17.1 the BHF's High Court review application is, accordingly, not to be treated the same as and/or consolidated with the constitutional challenges and our client accordingly declines to accept the Proposal;

17.2 it follows that any stay of the BHF's High Court review application, to allow for an application for consolidation or to bring the High Court review application into alignment with constitutional challenges, is similarly inappropriate and will be opposed; and

17.3 in so far as the Proposal concerns the SCA appeals and how these should be dealt with, these aspects of the Proposal will be addressed in submissions before Twala J, who is in any event seized with the SCA appeals and the discretion to deal with them.

18 In addition, the CC appeals and the BHF's CC challenge fall exclusively within the purview of the Constitutional Court and not within the embrace of case management in the High Court. The CC appeals will be dealt with in accordance with the Directions of the Chief Justice of the Constitutional Court, which are delivered from time to time. In this regard, we further record that -

18.1 since receipt of the Proposal, we addressed a letter to the Minister and the President's legal representatives, dated 3 June 2025, in which our client has set out a reasonable and practical timetable that seeks to ensure that our client's CC challenge and the CC appeals are adjudicated as soon as practically possible;

18.2 should your office require a copy of our letter and/or in the event that you wish to be kept appraised of the progress of the CC appeals and the CC challenge, then we undertake to attend to both;

18.3 for now, we note that our client has no interest in or intention to delay either its CC challenge or the CC appeals and is concerned about the delays occasioned thus far at the instance of the President and the Minister. This is especially as they are subject to a higher duty in respect of ensuring that court proceedings are progressed within a reasonable time; and

18.4 in this last respect, we note that in *Buffalo City Metropolitan Municipality v Asla Construction (Pty) Ltd* 2019 (4) SA 331 (CC) at paragraph 60, the Constitutional Court held that "there is a higher duty on the State to respect the law, to fulfil procedural requirements and to tread respectfully when dealing with rights. Government is not an indigent or bewildered litigant, a drift on sea of litigious uncertainty, to whom the courts must extend a procedure-circumventing lifeline. It is the Constitution's primary agent. It must do right and must do it properly". The

Minister and the President have large well-resourced and dedicated legal teams who can deal with these applications, without consolidating every single application that deals with the NHI into one, and still allowing them all to proceed expeditiously and without delay.

19 We trust that the above is in order.

Yours faithfully

Werksmans Inc.
THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE

cc:



Assenmancher Brandt Attorneys
Attorneys for the South African Medical Association
Attention: Mr C Brandt
Per e-mail: carl@assenmacher.co.za / kayleigh@assenmacher.co.za

ENS Africa
Attorneys for the Health Funders Association
Attention: Ms A Richards / Mr D Band
Per e-mail: dband@ensafrica.com / arichards@ensafrica.com

Kgosana Attorneys
Attorneys for the Minister of Health
Attention: Ms M Kgosana
Per email: info@kgosana-attorneys.co.za / mapule@kgosana-attorneys.co.za

Nortons Inc.
Attorneys for the Hospital Association of South Africa
Attention: Mr A Norton / Ms M Steele
Per e-mail: anthony@nortonsinc.com / anton@nortonsinc.com / michelle@nortonsinc.com
melissa@nortonsinc.com

Serfontein, Viljoen & Swart Attorneys
Attorneys for the Solidarity Trade Union
Attention: Mr J D Claassen / Ms N Venter / Ms M Venter
Per e-mail: jd@svslaw.zo.za / niekie@svslaw.co.za / monique@svslaw.co.za

The State Attorney, Pretoria
Attorneys for President of the Republic of South Africa
Attention: Mr R Sebelemetsa
Per email: rsebelemetsa@justice.gov.za / pskhonde@justice.gov.za

Webber Wentzel Attorneys
Attorneys for the South African Private Practitioners Forum
Attention: Mr M Versfeld / Mr G Penfold / Ms P Singh / Ms A Rees
Per e-mail: martin.versfeld@webberwentzel.com / prelisha.singh@webberwentzel.com
glenn.penfold@webberwentzel.com / Alexandra.rees@webberwentzel.com

"NC15"

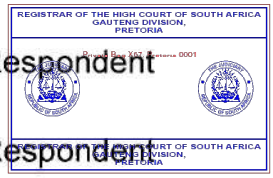
IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CCT Case No.: 129/25

HC Case No.: 058172/2024

In the matter between:

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Applicant
and	
BOARD OF HEALTHCARE FUNDERS NPC	First Respondent
SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM	Second Respondent
MINISTER OF HEALTH	Third Respondent
MINISTER OF FINANCE	Fourth Respondent
NATIONAL TREASURY	Fifth Respondent



****

CCT Case No.: 128/25

And in the matter between

MINISTER OF HEALTH	Applicant
and	
BOARD OF HEALTHCARE FUNDERS NPC	First Respondent
SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM	Second Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Third Respondent
MINISTER OF FINANCE	Fourth Respondent
NATIONAL TREASURY	Fifth Respondent

FIRST RESPONDENT'S ANSWERING AFFIDAVIT IN THE TWO APPLICATIONS FOR LEAVE TO APPEAL AND DIRECT ACCESS

PURPOSE OF THIS AFFIDAVIT 3

APPLICATIONS FOR LEAVE TO APPEAL 7

THE PROSPECTS OF SUCCESS 12

THE BHF'S CONDITIONAL APPLICATION 13

MISCELLANEOUS 16

COSTS 17

CONCLUSION 19

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria, 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

23 The BHF adopts this position on the basis that it would be in the interests of justice for this Court to consider and pronounce upon the legal issues raised in the matter at this stage of the proceedings.

24 This is so for the following principal reasons:

24.1 First, there have already been significant delays in the prosecution of the BHF's challenge to the President's assent to the NHI Bill. I deal with these delays again below, but for now note that they are not attributable to the BHF and have already caused it and the persons and interests it represents prejudice and continue to do so.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

24.2 Secondly, the matter raises important constitutional questions. These issues are novel and fall within the constitutional mandate and institutional competence of this Court. The Parties and the lower courts will benefit from the Court's decision on the questions raised.

24.3 Third, there are no disputes of fact in the application. The Applicants elected not to file answering affidavits and instead delivered their Notices. As set out above, the factual averments set out in the BHF's founding affidavit must be accepted. In these circumstances, it would be especially convenient and appropriate for this Court to determine the legal issues raised, without any concern that its judgment may be affected by unresolved factual disputes.

24.4 Fourth, the judgment pertains to an interlocutory matter. Should this Court uphold the High Court's decision, the main application will proceed in the ordinary course before the High Court. In the circumstances, and given the nature of the issues at stake, it would be

41 On 3 June 2025 and in accordance with the directions, Werksmans wrote to the attorneys for the President and the Minister in which they proposed that the BHF CC application be heard together with the Applicants' Appeals and their applications for direct access. A copy of the letter constituting the BHF's proposal is attached and marked "**AA4**".

42 The Applicants have not replied to the BHF's proposal in time for that response to be dealt with in this affidavit. When they do, the BHF will approach the Constitutional Court either with a jointly agreed proposal or an application.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

43 That said, I have been advised that it is necessary for me to bring to the Court's attention that unless agreement can be reached with the Applicants on the BHF's proposal for setting down the BHF CC Application with the Applicants' Appeals, the BHF will file an application for directions in terms of Rule 11(1)(b) of the Constitutional Court Rules seeking that outcome.

44 In that application under Rule 11(1)(b), it will be respectfully argued that having these matters heard together would be the most effective use of judicial resources and costs. The exact same issues are presented in both matters. Furthermore, the Applicants accept that delaying the determination of these issues must be avoided.

45 In addition, the outcomes of the Appeal Applications and the BHF CC Application may have an impact on other pending litigation, including the Constitutional Challenges. It would also be instructive on prospective litigants who may still want to challenge the NHI.

CONCLUSION

61 In light of the above, the BHF does not, at this stage, address the merits of the grounds on which leave to appeal has been sought. If leave to appeal is granted, the BHF will oppose the appeal and seek its dismissal.

62 If the appeal is upheld, then the BHF will press its CC Application, including on its merits.

63 Should this Court be inclined to grant leave to appeal, the BHF respectfully proposes that the following order be issued:

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,

63.1 Leave to appeal is granted, such leave being determined on the papers filed;

63.2 Subject to the availability of this Court, a hearing date for the appeal is scheduled at the earliest convenience of the Court;

63.3 The appeal is heard together with the BHF CC Application under case number 254/2025—the nature and circumstances of the process governing which will be dealt with in directions to be issued by the Court after hearing the Parties on it; and

63.4 Costs of the Appeal Applications are reserved to be dealt with in the appeal.

NEIL KIRBY

Thus signed and sworn to before me at Sandton on this the 10th

WEBBER WENTZEL
in alliance with > Linklaters

The Honourable Deputy Judge President Ledwaba
High Court of South Africa, Gauteng Division
Cnr Madiba and Paul Kruger Streets
Pretoria

By email: xvilakazi@judiciary.org.za
ssidesha@judiciary.org.za
humulaudzi@judiciary.org.za
ambelani@judiciary.org.za

90 Rivonia Road, Sandton
Johannesburg, 2196

PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa

Docex 26 Johannesburg

T +27 (0) 11 530 5000
F +27 (0) 11 530 5111

www.webberwentzel.com

Your reference	Our reference	Date
	MG Versfeld / P Singh / G Penfold 4008778	9 June 2025

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Dear Honourable Deputy Judge President Ledwaba

RE: MINISTER OF HEALTH'S PROPOSAL ON STAY AND CONSOLIDATION OF NHI MATTERS

1. Introduction

1.1 We act for and on behalf of the South African Private Practitioners Forum ("**SAPPF**").

1.2 We refer to:

1.2.1 the case management meeting of 15 May 2025, at which the legal representatives of the Minister of Health ("**the Minister**") requested to circulate a proposal to parties regarding the future conduct of various applications launched in relation to the National Health Insurance Act, 2023 ("**the NHI Act**"); and

1.2.2 the letter dated 26 May 2025 from the legal representatives for the Minister, attaching a proposal by the Minister of Health regarding the stay and consolidation of litigation relating to the NHI Act ("**the Minister's Proposal**").

Senior Partner: G Driver **Managing Partner:** S Patel **Partners:** BW Abraham RB Africa C Alexander AK Allie NG Alp TB Ball DC Bayman AP Blair K Blom N Blom AJR Booysen AR Bowley M Bux V Campos RI Carrim T Cassim SJ Chong ME Claassens KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davies KM Davis PM Daya HM de Villiers ST Dias L de Bruyn A de Meyer PU Dela M Denenga C Dennehy DW de Villiers BEC Dickinson DA Dingley E Durman W Drue GP Duncan CP du Toit TC Dye SK Edmundson LF Egypt KH Eiser JC Els S Farren K Fazel G Fitzmaurice JB Forman L França M Garden MM Gibson H Goolam C Gopal CI Gouws PD Grealy L Green JM Harvey JS Henning KR Hillis CM Holfeld PM Holloway SJ Hutton KT Inglis ME Jarvis JC Jones CM Jonker S Jooste LA Kahn L Kamukwamba M Kennedy A Keyser GR Kgaile MT Kgoadi A Khumalo KE Kilner MD Kota JC Kraamwinkel AC Kruger S Kruger J Lamb LC Lambrechts LM Lamola B Lötter E Louw CF Mackenzie M Mahlangu V Mannar CCT Marupen G Masina T Masingi N Mbere MC McIntosh SJ McKenzie CS Meyer A Mhlongo AJ Mills D Milo M Mkhabela DR Mogapi P Mohanlall L Moolman LE Mostert VM Movshovich M Mpungose A Muir C Murphy D Naidoo P Naidoo DC Nchabeleng DP Ndiweni ST Ngcamu LM Nkanza C Nöthling PD Novotny M Nxumalo AN Nyatsumba MB Nzimande A October L Odendaal N Paige AS Parry GR Penfold SE Phajane MN Phala M Philippides BA Phillips MA Phillips CH Pienaar MP Pool DJ Rafferty D Ramjettan GI Rapson K Rew G Richards-Smith SA Ritchie J Roberts BJ Rule S Rule G Sader H Samsodien DA Serumula KE Shepherd ZK Sibeko N Singh N Singh-Nogueira CF Sieberhagen P Singh S Sithole J Smit C Smith P Soni MP Spalding MW Straeuli LJ Swaine Z Swanepoel WV Tembedza A Thakor T Theessen TK Thekiso C Theodosiou T Theunissen R Tlhavani G Truter PZ Vanda SE van der Meulen JP van der Poel MS van der Walt CS Vanmali N van Vuuren JE Veeran HM Venter B Versfeld MG Versfeld TA Versfeld C Vertue T Viljoen DM Visagie EME Warmington [illegible] JS Westwood RH Wilson JS Whitehead KD Wolmarans

WEBBER WENTZEL
in alliance with > Linklaters

1.3 As paragraph 24.2 of the Minister's Proposal records, applicants in pending cases relating to the NHI Act ("**the NHI applications**") are required to respond to the Minister's Proposal by 9 June 2025. A further case management meeting will be convened on 1 July 2025.

1.4 The Minister's Proposal advances two contentions.

1.4.1 *First*, the Minister argues that it would be in the best interests of all the parties and "*manifestly in the interests of justice*"[1] if the proceedings in all of the NHI applications be stayed pending the outcomes of:

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

1.4.1.1 the applications for leave to appeal directly to the Constitutional Court the order made by the Honourable Mr Justice Twala on 6 May 2025 in respect of the points of law raised by the Minister and the President in terms of rule 6(5)(d)(iii) of the Uniform Rules, in response to the applications brought by SAPPF and the Board of Healthcare Funders ("**BHF**"); and

1.4.1.2 the application by the BHF for direct access to the Constitutional Court, which application was held in abeyance pending the outcome of the rule 6(5)(d)(iii) challenge at the High Court level.

1.4.2 *Secondly*, the Minister argues that the NHI applications by Solidarity Trade Union ("**Solidarity**"), the Hospitals Association of South Africa ("**HASA**"), the South African Medical Association of South Africa ("**SAMA**") and SAPPF ("*insofar as it challenges the substance of the NHI Act*") are suitable for consolidation and that it would be in the interests of all parties that they be consolidated.

1.5 SAPPF responds to each of these proposals, in turn, below.

2. SAPPF's response to the Minister's Proposal

2.1 *Any stay of proceedings pending the outcomes of the appeal applications and the BHF application must be conditional on the suspension of implementation of the NHI Act*

[1] Minister's Proposal at paras 28-29.

WEBBER WENTZEL
in alliance with > Linklaters

2.1.1 As item 3 of the table at paragraph 4 of the Minister's Proposal records, SAPPF's application, launched in the High Court in October 2024, is directed at both: *(i)* the constitutionality of the President's decision to sign the NHI Act into law; and *(ii)* the constitutionality of the substantive content of the NHI Act.

2.1.2 SAPPF is one of only two applicants currently seeking to review the decision by the President in terms of section 79(1), read with the relevant provisions of section 84(2) of the Constitution. The 6 May 2025 judgment and order of Twala J found both that the High Court has jurisdiction over SAPPF's and BHF's reviews and that the decision is reviewable in terms of rule 53 of the Uniform Rules, and ordered the President to furnish the record of the decision.



2.1.3 SAPPF will, in accordance with its correspondence to the BHF's legal representatives dated 9 June 2025, seek to intervene in the BHF's application for direct access to the Constitutional Court in the coming weeks. SAPPF reiterates that this will entitle it to the record of decision in that direct access application (which should, particularly in the light of Twala J's order and regardless of the President's and Minister's views on whether its production is required, have been compiled at this stage – even if it has been kept from the courts and SAPPF by the respondents).

2.1.4 Various potential outcomes may eventuate from the applications currently before the Constitutional Court. The Constitutional Court may take a significant amount of time – as much as over a year – to decide whether to set the applications by the President and Minister for leave to appeal down and, to the extent that it does decide to set them down, whether to dismiss or uphold the appeals. In addition, it is not yet known what approach the Constitutional Court will adopt to the direct access application and the time periods that will apply to that application.

2.1.5 The Minister's Proposal effectively puts on ice, for the full duration of that time, all of the current NHI applications relating to the substance of the NHI Act (by Solidarity, SAMA, HASA and SAPPF), and any future applications. While the Minister's stance in relation to new applications relating to the NHI is not entirely clear, it is assumed, based on paragraph 50.5 of the Minister's Proposal, that these could be launched, but then similarly forced to halt, pending the outcome of the matters referred to in paragraph 1.4.1 above.

WEBBER WENTZEL
in alliance with > Linklaters

2.1.6 SAPPF submits that this is highly prejudicial in circumstances where the Minister's Proposal is made on the basis of outcomes and timings that are inherently uncertain, and potentially very time consuming. It is impossible, for example, to predict whether the Constitutional Court will set aside the President's decision on review and that, therefore, the substantive applications would be "*a waste of judicial time and resources*".[2]

2.1.7 Furthermore, the different applications target the same law, but there are different causes of action in issue, different review grounds, different expert reports, and potentially different disputes of fact – precisely because different applicants (representing different constituencies and interest groups) have different focuses given the manner in which the NHI differently impacts their professions, their livelihoods, their patients, their businesses, and the public they serve. That is not the applicants' fault; it is a feature of the Act's multiple unconstitutionalities and the government's failure to consider properly multiple different submissions by stakeholders in their efforts to highlight the deficiencies during the course of the NHI Bill's passage. That, undoubtedly, and as has been reported in the press, is why the Minister and the Presidency have employed such an unprecedented number of counsel to assist them. They have all the means and capacity to deal with each of these different cases, which must be allowed to progress to the stage of hearing so that the parties' rights of access to court are respected. Government should not be permitted to hand-brake challenges to its unconstitutional law because it has taken a jurisdictional point, lost it in a fully reasoned judgment after two days of hearing, but now insists on appealing while continuing to freeze its opponents out of court.

2.1.8 That is all the more so given the remarkable feature of the Minister's Proposal – he gives nothing in return. Obvious and related prejudice arises from the notable absence from the Minister's Proposal of any suggestion that the implementation of the NHI Act, and all steps and associated spending relating thereto (including stakeholder engagements, public roadshows and information drives and media promotions) will be suspended if the NHI applications are stayed. Since the signing of the NHI Act, government has planned and / or

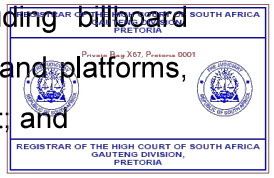
[2] Minister's Proposal at paras 50.1-50.2.

engaged in numerous activities that assume its implementation, including, but not limited to, the following.

2.1.8.1 a nationwide roadshow, launched in August 2024, including workshops and town-hall style meetings in various provinces;

2.1.8.2 community information sessions run by health officials to explain the functioning of the regime envisaged in the NHI Act;

2.1.8.3 a nationwide mass media advertising campaign, including billboard advertising on major highways, social media advertising and platforms, and radio and television segments, to promote the NHI Act; and



2.1.8.4 the preparation and publication of draft regulations relating to the governance of the NHI Fund for public comment.

2.1.9 While it is difficult accurately to estimate the public expenditure on these activities, publicly available figures suggest that spending between April 2024 and January 2025 was well in excess of R30 million. The state has doggedly persisted in incurring expenditure for these activities, notwithstanding that the legislation they seek to promote is the subject of multiple constitutional challenges by the very parties that are affected by the NHI Act. They have also publicly criticised opponents for going to court. For example, on 14 May 2024, the President stated that threatened legal opposition to NHI was coming from "*well-to-do and rich people… [who] don't want the have-nots to benefit from what they have been having*".

2.1.10 The Minister's Proposal simply assumes the lawfulness of the NHI Act, presumes that vast sums of public money can be expended in its continued implementation, and that parties' efforts to challenge this deeply impactful law must be placed on ice while the President and the Minister mount a public campaign not only to implement the NHI Act, but also to castigate those who oppose the Act. While they do, the hands of any party challenging the constitutionality of the NHI Act will be tied, until an outcome is reached – at some future uncertain date – by the Constitutional Court. And of course, depending on that outcome, the matter may then still revert back to the High Court. This does not, with respect, enhance "*judicial and litigation economy and fairness*" in the manner suggested in the Minister's Proposal.

WEBBER WENTZEL
in alliance with > Linklaters

2.1.11 SAPPF is, accordingly, opposed to the Minister's Proposal in relation to a stay of proceedings. SAPPF would, however, be willing to agree to pend further steps under Case No. 2024/111209 in the High Court, on the condition that the implementation of the NHI Act and all related steps are similarly pended.

2.2 *SAPPF does not support the consolidation of matters*

2.2.1 The Minister's Proposal is that the NHI applications directed, in whole or in part, at the substance of the NHI Act should be consolidated.



2.2.2 SAPPF submits that the contentions in the Minister's Proposal regarding the difficulties of responding to "*each successive application individually*" appear, with respect, somewhat overstated. There are, thus far, only three applications to which the Minister is required to respond, one of which is already at the stage of reply. On the Minister's own version, in respect of those three there is a degree of overlap between the content of these applications. The Minister's and President's substantial counsel team can deal with these applications, as they already have. And to the extent that different applications raise different and original points, the extensively capacitated respondent teams will have to reply to them (regardless of whether the matters are consolidated or not). It is precisely because the NHI attempts such a comprehensive and radical overhaul of the medical system in South Africa, that its impacts will be felt by different stakeholders. Where different applicants rely on different evidence or advance different expert reports or advance different causes of action, it will be incumbent on the government respondents to deal with them separately. They cannot escape that legal duty by efforts to file an omnibus consolidated affidavit, and they cannot seek to diminish the right of each of the applicants to have their challenges specifically dealt with through precipitate consolidation.

2.2.3 The Minister's Proposal raises a further concern regarding the "*unfair advantage*" created for applicants in circumstances where they have sight of answering affidavits filed by the respondents in other proceedings prior to the delivery of their founding affidavit.[3] However, this would not, as the Minister's Proposal suggests, be obviated by consolidation. The respondents have, as

[3] Minister's Proposal at para 67.4.

they point out, already filed an answering affidavit in response to the application by Solidarity and this is already a public document.

2.2.4 Each applicant is entitled to an opportunity fully to vindicate its own case and to argue and distinguish its nuanced position and concerns. This principle is particularly important in relation to one of the most seminal pieces of legislation promulgated in the past decade.

2.2.5 Finally, the applications challenging the constitutionality of the substance of the NHI Act are at different stages. It is submitted that any ostensible "duplication" prejudice would be outweighed by the prejudice to an applicant whose case would necessarily be stalled in the event of consolidation. And for the Court to come to a proper view on convenience, and the interests of justice, it would be appropriate for all the pleadings to be finalised rather than for any decision to be taken now, when multiple pleadings are still outstanding in some cases, the respondents have steadfastly refused to produce the record, and some parties have not yet even launched their applications.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

2.2.6 SAPPF is of the view that the proposed consolidation is pre-emptive at this stage. It is submitted that each applicant should, at this stage, continue to enjoy the opportunity independently fully to ventilate its own case.

3. Conclusion

3.1 For the reasons set out above, SAPPF does not consent to the order proposed at paragraph 73 of the Minister's Proposal.

3.2 We stress that this litigation may well have been already far progressed had the record been filed, and had the jurisdictional and reviewability points not been taken by the state respondents. Indeed, the litigation could have been readily progressed by their acceptance of Twala J's comprehensive judgment. The state respondents have instead chosen to appeal it, refuse to produce the record by having noted the appeal, and now seek to stay all challenges against them while continuing to implement the NHI.

3.3 SAPPF remains open to the prospect of a stay of proceedings in the manner proposed, provided that the Minister and the President undertake to suspend the

WEBBER WENTZEL
in alliance with > Linklaters

implementation of the NHI Act and all related steps and associated expenditure until the present litigation is finalised.

Yours faithfully

WEBBER WENTZEL
Martin Versfeld
Partner
+27 11 530 5322
+27 11 530 6322
Email: martin.versfeld@webberwentzel.com



CC: Kgosana Attorneys
Attorneys for the Minister of Health
By email: info@kgosana-attorneys.co.za; makule@kgosana-attorneys.co.za

CC: The State Attorney
Attorneys for the President
By email: rsebelemetsa@justice.gov.za

CC: Werksmans Attorneys
Attorneys for the Board of Healthcare Funders NPC
By email: nkirby@werksmans.com; hmichael@werksmans.com; sphakathi@werksmans.com; bmoti@werksmans.com

CC: Serfontein, Viljoen & Swart
Attorneys for Solidarity Trade Union
By email: jd@svslaw.co.za

CC: Nortons Inc.
Attorneys for The Hospital Association of South Africa
By email: anthony@nortonsinc.com; michelle@nortonsinc.com

CC: Assenmacher Brandt
Attorneys for The South African Medical Association of South Africa
By email: carl@assenmacher.co.za; kayleigh@assenmacher.co.za

CC: ENSafrica
Attorneys for The Hospital Funders Association
By email: dband@ensafrica.com; arichards@ensafrica.com

NORTONS INC
ATTORNEYS AT LAW

Switchboard: +27 (0) 11 666 7560
Fax: +27 (0) 86 600 5529
info@nortonsinc.com
1st Floor, The Reserve, 54 Melville Road,
Illovo, Johannesburg
PO Box 41162, Craighall, 2024, South Africa

Kgosana Attorneys (on behalf of the Minister of Health)
Attention: Mr M Kgosana
By email: info@kgosana-attorneys.co.za

Cc: **The Honourable Deputy Judge President Ledwaba**
Email: AnNieuwoudt@judiciary.org.za; AMbelani@judiciary.org.za

Cc: The State Attorney (on behalf of the **President of the Republic of South Africa**)
Email: rsebelemetsa@justice.gov.za

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Cc: Assenmacher Brandt (on behalf of **SAMA**)
Email: carl@assenmacher.co.za

Cc: Werksmans (on behalf of **BHF**)
Email: nkirby@werksmans.com

Cc: Webber Wentzel (on behalf of the **SAPPF**)
Email: martin.versfeld@webberwentzel.com

Cc: Serfontein Viljoen & Swart (on behalf of **Solidarity**)
Email: jd@svslaw.co.za

Cc: ENS (on behalf of **HFA**)
Email: dband@ensafrica.com

9 June 2025

Dear Mr Kgosana,

Re: Response to the Minister of Health's proposal on the further conduct of the various applications pending before the High Court concerning the constitutionality of the NHI Act, 20 of 2023

1 As you are aware, we are instructed by the Hospital Association of South Africa (**HASA** or **our client**).

2 We refer to the case management meeting held on 15 May 2025 and the proposal of 26 May 2025 made by your client, the Minister of Health (**the Minister**), concerning the various applications[1] challenging the constitutionality of the National Health Insurance Act[2] (**NHI Act**) pending before the High Court.

3 During the case management meeting it was agreed between the parties that:

3.1 the Minister, who is cited as a respondent in all of the applications, would submit a written proposal to the applicants' representatives by 26 May 2025, outlining a proposal in relation to the conduct of the various applications going forward;

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

3.2 the applicants would submit a written response to the Minister by 9 June 2025; and

3.3 in the event that the parties were unable to reach an agreement on the further conduct of the various applications, a further case management meeting with all parties would be convened on 1 July 2025 at 14h00 before Deputy Judge President Ledwaba.

4 We set out below our understanding of the essence of the Minister's proposal.

The Minister's proposal

5 The essence of the Minister's proposal is contained in paragraph 73, which states that:

> *"73. ....the Minister proposes that the parties consent to an order providing for the following:*
>
> *73.1. the stay of all litigation related to the NHI Act in the High Court, pending the outcome of the Constitutional Court proceedings in the applications for leave to appeal against Twala J and the BHF Constitutional Court challenge; and*

---

[1] Under the following case numbers: 2025-020969 where HASA is the applicant; 2025-045340 where the South African Medical Association (**SAMA**) is the applicant; 2024-058172 where the Board of Healthcare Funders (**BHF**) is the applicant; 2024-111209 where the South African Private Practitioners Forum (**SAPPF**) is the applicant; 2024-057449 where Solidarity Trade Union (**Solidarity**) is the applicant. Given that the Health Funders Association (**HFA**) has not filed its application yet, there is no case number. These High Court applications are collectively referred to as the "**applications**".
[2] Act 20 of 2023.

73.2 the consolidation of all the substantive challenges to the NHI Act on the basis motivated above in terms of Uniform Rule 11, read with Rule 6(14).”

6 In other words, the Minister’s proposal is twofold: firstly, it seeks the applicants’ consent that the various High Court applications be stayed pending the outcome of Constitutional Court proceedings; and secondly, it seeks the applicants’ consent that the various High Court proceedings be consolidated in terms of Uniform Rule 11.

7 **First**, in motivating the proposal, the Minister claims, *inter alia*, that the opposing respondents in the proceedings (being the Minister and the President of the Republic of South Africa (**the President**)) will be prejudiced and inconvenienced if the stay and consolidation are refused by the applicants. The Minister’s proposal does not address the duration and unpredictability of the timing of the Constitutional Court proceedings, and the prejudice and uncertainty that will be caused to the applicants if they consent to the stay of the High Court proceedings. More importantly, however, the Minister’s proposal does not contain an undertaking that the President will not bring the Act into effect in terms of section 59 during the period of any potential stay in order to await constitutional certainty from the courts. The effect of the Minister’s proposal is that the applicants would be left in the invidious position where their applications and their entitlement to final relief would be delayed for an inordinate period of time, while the State could, in the meantime, proceed to implement the NHI Act. This is a serious matter for the applicants and the entire South African public. The applicants aver and put up expert evidence to show that the NHI Act if implemented would violate the constitutional rights of all in the country. It is constitutionally necessary that their application be expeditiously determined, unless there is a firm commitment not to implement the NHI Act, and none has been tendered to date. On this basis alone, HASA cannot agree to the Minister’s proposal of a stay in the proceedings.

8 **Second**, we note that the Minister’s proposal for a consolidation of the various High Court applications contains no timetable for the filing of papers. Our client accepts in principle that the applications instituted by Solidarity, HASA, SAMA and HFA (**the Direct Challenge Applicants**) should be heard together, given that they are all self-standing direct challenges to the

constitutionality of the NHI Act and its provisions (all brought in the public interest). However, beyond being heard together, HASA sees no need for the matters to be formally consolidated. Rather, timetables should be set to ensure the papers in each of these matters are finalised as expeditiously as possible, so as not to delay the joint hearing of these matters. We invite the Minister to agree to an appropriate timetable with HASA and each of the other Direction Challenge Applicants to avoid any further delays in this matter.

9 We respond substantively to the Minister's proposals in turn below.

The Minister's proposal of a stay of the High Court applications

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001

10 The Minister's proposal for a stay of the various proceedings in the High Court pending the final adjudication of the appeals against the judgment and order handed down by Twala J on 6 May 2025,[3] and the BHF's Constitutional Court review application[4] is motivated by the Minister primarily on the following five grounds:

10.1 it is undesirable to have parallel enquiries into the constitutionality of the NHI Act in the Constitutional Court and the High Court;[5]

10.2 if the Constitutional Court decides that the President's decision should be reviewed and set aside and the NHI Act is consequently declared invalid, it will render all the various substantive challenges pending before the High Court moot;[6]

10.3 a stay in the proceedings would be sensible, convenient and in the interests of justice and would avoid overburdening both the respondents and the High Court;

[3] *Board of Healthcare Funders of Southern Africa NPC v President of the Republic of South Africa and Another* (2024/058172; 24/111209) [2025] ZAGPPHC 473 (6 May 2025) ("**Twala J order**").
[4] Paragraph 59 of the Minister's proposal.
[5] Para 50.3 of the Proposal.
[6] Para 46 of the Proposal.

10.4 it is not in the interests of justice to litigate in a manner which may evidently result in legal uncertainty[7]; and

10.5 the respondents in the various applications (the Minister and President) will be prejudiced if the stay is refused.

11 We respectfully submit that the Minister's proposal and motivations for the stay of the High Court proceedings are flawed, are not in the interests of justice, and would cause significant prejudice to the Direct Challenge Applicants for the following reasons:

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001

11.1 **First**, any appeals against Twala J's order and BHF's conditional Constitutional Court application are fundamentally different to the applications before the High Court. The BHF's application concerns issues of exclusive jurisdiction, rule 53 of the Uniform Rules of Court, and a review of the President's decision to assent to the NHI Bill. In the matters before the High Court, the Direct Challenge Applicants have brought self-standing applications challenging the constitutionality of the NHI Act and its provisions. These applicants are entitled in terms of section 34 of the Constitution to pursue these applications and to obtain a final order.[8]

11.2 **Second**, only two applicants (the BHF and SAPPF) are parties to any appeals against the Twala J order or the conditional Constitutional Court application. The Direct Challenge Applicants (HASA, Solidarity, SAMA, and HFA) are not involved in those proceedings. They are unable to influence or control the course, duration and outcome of those proceedings. Litigation, generally, is unpredictable and involves delays, but more so when the Direct Challenge Applicants have no hand in that litigation. The Minister's proposal renders the Direct Challenge Applicants beholden to proceedings over which they have no control.

11.3 **Third**, even on a conservative estimate, the relevant proceedings could take years to finalise. The President and the Minister have now filed applications for leave to appeal in the

[7] Para 59 of the Proposal.
[8] *Mamadi v Premier of Limpopo Province* 2024 (1) SA 1 (CC) para 20.

Constitutional Court. However, the Constitutional Court could reject these applications, requiring the Minister and President to pursue an appeal through the Supreme Court of Appeal. Any order of the Supreme Court of Appeal could then be appealed to the Constitutional Court. The Constitutional Court will need to rule on the findings of Twala J (since they concern preliminary issues of jurisdiction and the record) before the Constitutional Court could consider BHF's conditional application based on exclusive jurisdiction. Only if the Constitutional Court hears and gives a judgment on BHF's conditional application *could* the matters before this Court become moot (but only if BHF is successful and the Court, as just and equitable relief, strikes the Act down and does not suspend that order). But by then, *years* are likely to have passed.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

11.4 **Fourth**, the NHI Act creates material uncertainty for individuals in South Africa who will be required to access health care through the NHI scheme and for private hospital groups (such as those represented by HASA), private health care providers (such as those represented by SAMA), and medical schemes (such as those represented by HFA).[9] Given the uncertainty that is created by the NHI Act, all these groups and the public continue to suffer prejudice and ongoing harm until such time as the Court has made a finding on the constitutionality of the NHI Act.

11.5 **Fifth**, despite the fact that the President has not yet gazetted the commencement of the NHI Act, it is clear from the Minister's publication of Draft Governance Regulations to the NHI Act ("**Draft Regulations**") for public comment (which were required by 5 June 2025) that the Minister has a clear intention for the NHI Act to be implemented imminently. Given that the President has, thus far, not given any undertaking not to commence the NHI Act, which HASA and the other Direct Challenge Applicants aver violates the constitutional rights of all those in the country, at least pending the outcome of the appeals against the Twala J order and the BHF Constitutional Court application, the Minister's proposal for a stay in the proceedings could

[9] Amongst others, paras 15.3, 124.8, 152-5, 169-173, and 189 of HASA's founding affidavit, read together with the expert reports filed in support of HASA's application.

never be a constitutionally permissible approach. This is so given that it fails to protect the constitutional rights of the entire population, and violates the section 34 rights of access to courts. Moreover, it perpetuates legal uncertainty, which is anathema to the rule of law, a founding constitutional value. If the President were to give an undertaking not to bring the NHI Act into force, HASA would be open, subject to considering the terms of the undertaking, to reconsidering whether, in those circumstances, it would be in the interests of justice to agree the stay given the rights of the public threatened by the NHI Act.

12 In light of these considerations, HASA is of the view that the uncertainty and significant prejudice that would be caused to the applicants if they were to agree to a stay in the High Court proceedings outweigh any potential benefit that could potentially be achieved by awaiting the outcome of the Constitutional Court proceedings.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

13 Given that to date there has been no unequivocal written undertaking by the President that the NHI Act will not commence pending the finalisation of the appeals against the Twala J order and the BHF Constitutional Court application, and for the reasons outlined above, HASA rejects the Minister's proposal that the High Court proceedings be stayed.

14 To the extent relevant, we underscore that precisely because the NHI Act gives the President, by way of section 59, a discretion as to when to bring the NHI Act and its various provisions into force, it would be constitutional and rational for the President to exercise that discretion not to bring the NHI Act into force at least until the appeals against the Twala J order and the BHF Constitutional Court application in relation to the constitutionality of his assent to the Act are determined, and, if necessary, to extend that undertaking until the direct challenges to the constitutionality of the NHI Act are determined. That he has not done so despite the various challenges to the constitutionality of the NHI Act makes clear that the constitutional rights of the entire population of the country remain under threat and are imminently at risk of being violated. It would be unconscionable and unconstitutional to stay proceedings aimed at protecting and vindicating those constitutional rights.

The Minister's proposal of consolidation

15 In paragraph 61 of the Minister's proposal, he states that *"in addition to the stay, and whether or not it is ultimately agreed upon or granted through an interlocutory application, the Minister proposes the consolidation of all of the applications challenging the NHI Act and any ancillary applications…"*

16 In motivating the proposal for consolidation, the Minister states in paragraphs 63 and 64 that the effect of the consolidation would be that:



"*the respondents would only need to file a single answering affidavit responding only once to the same issues that are repeated over and over again in the various applications (even if it responds ad seriatim to each founding affidavit in that single affidavit) and, importantly, one set of expert affidavits"*; and

"Moreover, the respondents would each only need to file one set of heads of argument, and the matters would all be heard together. Should new applications be filed challenging the validity of the NHI Act, these would have to be consolidated as well or the new applicants could apply to intervene in the existing consolidated applications"

17 Given the delays that have already arisen as a result of the respondents' refusal to respond timeously to the various applications, HASA is concerned that consolidation will be used by the respondents to further delay proceedings, in circumstances where the NHI Act violates the fundamental constitutional rights of the entire population. Considering these concerns, HASA will agree that the Solidarity, HASA, SAMA, and HFA applications be heard together, subject to the Minister agreeing to an appropriate timetable for the filing of papers in each of these applications to ensure that the joint hearing is not delayed. There is no need for a formal consolidation and this may lead to further delays in finalising the papers in each of the Direct Challenge applications. Rather, the appropriate timetable for the finalisation of the papers should be agreed or set by the Deputy Judge President to ensure that all the papers are finalised without delay, so that a joint hearing of these matters can be held. It is not yet clear whether any further direct challenges to the NHI Act will be brought, and no

formal notice or unequivocal undertaking has been given to bring any such applications. It is, therefore, inappropriate, unnecessary, and ultimately unhelpful to speculate on how any future application ought to be dealt with, when it is not known when, if at all, they might be instituted, and what relief will be sought even if they are.

18 Accordingly, we request that an appropriate timetable should be agreed to by the parties and subsequently be included in directions issued by the Deputy Judge President or a judge allocated to case manage the matters. In line with this, HASA outlines its proposal.

HASA's proposal



19 HASA makes the following proposal concerning the conduct of the High Court applications:

19.1 The Solidarity, HASA, SAMA, and HFA applications should be heard together.

19.2 The Minister must agree on appropriate timetables with each of these parties to finalise the papers in each of these matters, failing which the Deputy Judge President or case management judge should direct the dates for filing of further papers.

19.3 Any interlocutory issues that arise should be dealt with on an expedited basis so as not to delay the finalisation of the papers. To avoid any delays, a case management judge should be appointed to manage the matters and expeditiously hear any interlocutory applications that may arise.

19.4 In relation to HASA's application, given the time that the Minister and the President have had its founding papers (since 19 February 2025), and the time that has elapsed since they filed their notices of intention to oppose (28 February and 10 March 2025 respectively), they must file their answering affidavit within a period of 6 weeks.

19.5 HASA will deliver its replying affidavit within 4 weeks of receipt of the answering affidavit.

19.6 Once all pleadings have been filed by the parties and the matters are considered ripe for hearing, the applicants will approach the judge or judges that have been allocated to hear the Direct

Challenge Applications jointly for a directive for the filing of heads of argument and a date for the hearing.

20 We request the Minister to consider the proposal outlined in paragraph 19 above and provide his response thereto by no later than **17 June 2025.**

21 The President is also copied on this proposal, so that he may indicate whether he has any intention to give an undertaking not to bring the NHI Act into force pending the determination of the appeals against Twala J's order and BHF's conditional Constitutional Court application and/or the direct challenges to the constitutionality of the NHI Act. Should the President intend to give such an undertaking, we would request that he either provide that undertaking or indicate by no later than **17 June 2025**, when he will be in a position to have reached a decision on whether to provide such undertaking.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,

22 In the absence of any agreement from the Minister's attorneys to the proposals set out in paragraph 19 above, we request that the case management meeting scheduled for 1 July 2025 proceed.

Kind regards

[Unsigned due to electronic transmission]

Anthony Norton / Anton Roets / Michelle Rawlinson / Avias Ngwenya / Melissa Steele
Nortons Incorporated

ASSENMACHER BRANDT ATTORNEYS

Fairway Office Park, Ground Floor, 2 and 4 Lawrence
52 Grosvenor Road, Bryanston, South Africa
P O Box 130527, Bryanston, 2074
Tel: +27 (0)11 706 0303
Fax: +27 (0)86 478 1312
law@assenmacher.co.za
www.assenmacherlaw.co.za

`

Our Ref:

C Brandt/va

Your Ref:

Date

9 June 2025

TO: DEPUTY JUDGE PRESIDENT LEDWABA

c/o ssidesha@judiciary.org.za
annieuwoudt@judiciary.org.za
ambelani@judiciary.org.za

AND TO: THE MINISTER OF HEALTH

c/o info@kgosana-attorneys.co.za

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

AND TO: THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA
rsebelemetsa@justice.gov.za

AND TO: SOLIDARITY TRADE UNION
jd@svslaw.co.za
niekie@svslaw.co.za
monique@svslaw.co.za

AND TO: BOARD OF HEALTHCARE FUNDERS OF SOUTHERN AFRICA NPC
nkirby@werksmans.com
hmichael@werksmans.com
bmoti@werksmans.com
sphakathi@werksmans.com

AND TO: SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM
martin.versfeld@webberwentzel.com
Prelisha.Singh@webberwentzel.com
glenn.penfold@webberwenzel.com
Alexandra.Rees@webberwentzel.com
admin@hillsincorporate.co.za

AND TO: THE HOSPITAL ASSOCIATION OF SOUTH AFRICA
anthony@nortonsinc.com
anton@nortonsinc.com
michelle@nortonsinc.com
melissa@nortonsinc.com

AND TO: HEALTH FUNDERS ASSOCIATION
dband@ENSafrica.com
arichard@ENSafrica.com

Dear Honourable Deputy Judge President Ledwaba,

RE: MINISTER OF HEALTH'S PROPOSAL ON STAY AND CONSOLIDATION OF NHI MATTERS

1. We act on behalf of the South African Medical Association NPC ("SAMA") in the matter under Case No: 2025-045340 against the Minister of Health ("the Minister"), the President, the Speaker of Parliament and the Chairperson of the National Council of Provinces as the First to Fourth Respondents respectively.

2. Having considered the Minister's proposal on the stay of all the direct constitutional challenges to the National Health Insurance Act 20 of 2023 pending the outcome of the Constitutional Court proceedings and the consolidation of all the direct challenges, SAMA responds as contained hereinbelow.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

STAY OF NHI LITIGATION PENDING THE OUTCOME OF THE CONSTITUTIONAL COURT PROCEEDINGS

3. The relief sought by SAMA as per its Notice of Motion is as follows:

"*1. Declaring the National Health Insurance Act 20 of 2023 to be unconstitutional and invalid.*

2. In the alternative to paragraph 1, declaring one or more of the following sections of the National Health Insurance Act 20 of 2023 to be unconstitutional and invalid:

2.1. Section 3(4);

2.2. Section 3(5);

2.3. Section 4, alternatively one or more of sections 4(1)(e); 4(2); 4(3); 4(4), 4(5); 5(6); 5(8) and / or 6(a);

2.4. Section 5, alternatively one or more of sections 5(1), 7(2)(a); 5(2) and / or 5(5)(b);

2.5. One or more of sections 6(c); 6(i); 6(o); 11(1)(h); and / or 42;

2.6. One or more of sections 7(2)(b); 7(2)(c); 7(3); 7(4); 8(2) and / or 7(5);

2.7. Section 7(2)(f);

2.8. Sections 25(5)(a) and 25(5)(c);

2.9. Sections 31(2); 32(2) and (3);

2.10. Section 33;

2.11. Section 35(1) and / or section 7(1) and ;

2.12. Section 36 and section 55(1)(i);

2.13. Section 55(1)(j),

2.14. Section 38;

2.15. Section 39, alternatively one or more of sections 39(2)(b) and (c); 39(5); 39(8); 39(9); 39(10); and / or 39(11);

2.16. Section 49(3);

2.17. Section 56;

2.18. Section 58 to the extent that it amends sections 12(1) and (3) of the Correctional Services Act, 1998

3. That the Respondents pay the costs of the application on scale C.

4. Granting the Applicant further and/or alternative relief."

4. SAMA does not support the proposal by the Minister that the direct challenges by the various applicants be stayed pending the outcome of the Constitutional Court proceedings relating to the President's decision in terms of section 79 of the Constitution.

5. The Minister's main basis for seeking a stay is that the Constitutional Court may decide against the State Respondents and set the President's section 79 decision aside. This will render the direct challenges moot.

6. However, in deciding the Minister's appeal against the judgment of Justice Twala, the Constitutional Court will not necessarily deal with the substance of the challenge to the President's section 79 decision. The appeal is primarily concerned with the issues of whether the High Court has jurisdiction to hear the matter and whether the President is under any obligation to provide a record of his decision.

7. The only circumstances under which the substance of the section 79 review applications can be decided as part of the present appeal are if:

   7.1 the Constitutional Court overrules the judgment of Justice Twala in the High Court and claims exclusive jurisdiction; and

   7.2 in addition to the above, the Constitutional Court upholds the President's point that no record needs to be filed; and

   7.3 in addition to the above, the Constitutional Court proceeds to decide the section 79 challenges on the merits against the Minister and the President and the President's decision and the NHI Act are set aside.



8. There are however various permutations of what may happen if the above three findings are not made by the Constitutional Court. It cannot be said that a judgment on the section 79 reviews is imminent. Indeed it is not even unlikely that the direct challenges may be heard **before** the section 79 reviews.

9. Also of relevance is that the Minister is clearly proceeding with the implementation of the NHI, specifically by the publishing of the Draft Governance Regulations, which include two substantive powers on purchasing and pricing. The implementation of the NHI is furthermore evident in numerous aspects contained in the National Budget. In addition, the OHSC will commence with the accreditation of GP practices, being a key aspect of section 49 of the NHI Act. This is all done at an enormous cost to the fiscus and the longer the delays in dealing with the direct challenges the more onerous and costly it will be to undo that impact and the greater the overall prejudice to the public at large and the fiscus. This makes it essential for the direct challenges to proceed without delay and parallel to the reviews.

CONSOLIDATION IN TERMS OF UNIFORM RULE 11

10. SAMA does not wish, nor acquiesce to the various litigation matters being consolidated but proposes that the litigation matters on the merits be heard together by the same judges.

11. The proposal of the Minister and the President of a consolidation will be inconvenient and not suitable to SAMA for, *inter alia*, the following reasons:

11.1. While there is an overlap, the parties in the direct challenges are not all raising the same attacks, especially when it comes to the challenges to individual sections of the NHI. Some of the applicants may be successful and others not.

11.2. Consolidation will mean that all the direct challengers will be tied to each others' affidavits and expert evidence. In the time available it is not possible to determine whether SAMA has objections or does not agree with the contents of the affidavits and expert evidence of other direct challengers.

11.3. Given the range of issues covered by the applicants it is conceivable that some of the challengers' factual allegations or expert evidence may differ. It is not clear what is to happen in such an instance. On which applicant's version would the matter be decided?



11.4. The costs of litigation for SAMA will increase immensely if there is a consolidation as SAMA will then have to consider and assess literally thousands of pages of affidavits, annexures and expert evidence that SAMA has not considered before.

CONCLUSION

12. SAMA does not believe it is in the interest of justice or in the public interest for:

12.1. The merits matters to be stayed pending the outcome of the appeal to the Justice Twala judgment; and

12.2. That all the direct challenges be consolidated.

13. SAMA proposes that the direct challengers be heard together by the same judges and that timelines for the filing of answering and replying papers be agreed upon/directed at the next case management meeting scheduled for 1 July 2025.

Yours faithfully

CARL BRANDT
ASSENMACHER BRANDT ATTORNEYS

"NC19"
29/7/2025-12:48:40 PM

The MARC Tower 1
129 Rivonia Road Sandton
Johannesburg South Africa 2196
P O Box 783347 Sandton South Africa 2146
Docex 152 Randburg
tel +2711 269 7600
info@ENSafrica.com
ENSafrica.com

Office of the Deputy Judge President
High Court of South Africa, Gauteng Division, Pretoria
The Honourable Justice Ledwaba

Email: humulaudzi@judiciary.org.za
ssidesha@judiciary.org.za
ambelani@judiciary.org.za

D Band/A Richards/0528590 our ref
NHI matters your ref
9 June 2025



Dear Deputy Judge President Ledwaba

Re: Response to Minister of Health's Proposal on Stay and Consolidation of NHI matters

1. We act on behalf of the Health Funders Association NPC ("**the HFA**").

2. We refer to the proposal on behalf of the Minister of Health concerning the stay of NHI litigation and the consolidation of all NHI-related applications. Our failure herein to respond to any allegation contained in the aforementioned proposal should not be construed as an admission thereof.

3. As matters stand, neither the President nor the Minister of Health has given any undertaking to refrain from bringing the NHI Act into effect or from taking steps to implement it. In the circumstances, our client cannot be expected to consent to a stay of its pending application under case number 2025-083348 or to a formal consolidation with other matters which are, or may become, subject to their own interlocutory disputes. While all pending applications generally seek to challenge the NHI Act, each is grounded on distinct legal arguments and separate evidence. It would also be prejudicial to subject every applicant to the slowest progression among them.

4. A stay and/or formal consolidation would jeopardise our client's right to have its constitutional challenge adjudicated expeditiously. That is an untenable situation in circumstances where, while the HFA's proceedings would be stalled, the NHI Act could be brought into effect and implemented.

law | tax | forensics | IP
Edward Nathan Sonnenbergs Incorporated registration number 2006/018200/21
M.M. Katz (chairman) M. Mgudlwa (chief executive) M.W. Matlou (chief operating officer) Y.A. Mendelsohn (chief operating officer)
a list of directors is available on our website ENSafrica.com/letterheadSA
level 1 BBBEE rating

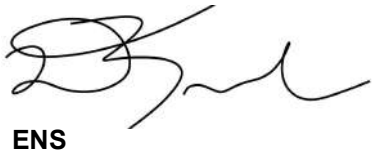
ORIGINAL THINKING

5. We submit that a joint hearing (rather than formal consolidation) of the various challenges to the NHI Act is appropriate. Such an approach would adequately address the Minister's concerns regarding duplication and resource demands.

6. For present purposes, however, it is imperative that, without delay, the parties reach agreement, or approach your Lordship, regarding timelines for the filing of all papers in the various applications. We propose that these timelines are dealt with during the further case management meeting scheduled for 1 July 2025.

7. We reserve our client's right to raise further grounds of objection in any stay and/or consolidation application brought by the Minister of Health.

Yours faithfully





ENS

Per: Darren Band and Altair Richards

Cc: Kgosana Attorneys (on behalf of the Minister of Health)
Email: info@kgosana-attorneys.co.za

Cc: The State Attorney (on behalf of the President of the Republic of South Africa)
Email: rsebelemetsa@justice.gov.za

Cc: Nortons Incorporated (on behalf of HASA)
Email: anthony@nortonsinc.com

Cc: Assenmacher Brandt (on behalf of SAMA)
Email: carl@assenmacher.co.za

Cc: Werksmans (on behalf of BHF)
Email: nkirby@werksmans.com

Cc: Webber Wentzel (on behalf of the SAPPF)
Email: martin.versfeld@webberwentzel.com

Cc: Serfontein Viljoen & Swart (on behalf of Solidarity)
Email: jd@svslaw.co.za

"NC20"

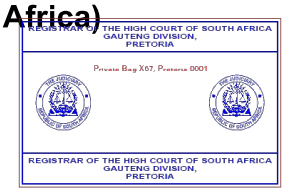
Kgosana Attorneys
Chambers @ Valley Road, 133 Valley Road, Sunnyside, Pretoria
Tell: 012 326 1452/063 655 9347 | Email: info@kgosana-attorneys.co.za

3 July 2025

PER EMAIL

TO:

The State Attorney (on behalf of the President of the Republic of South Africa)
By email: rsebelemetsa@justice.gov.za



Assenmacher Brandt (on behalf of SAMA)
By email: carl@assenmacher.co.za

Werksmans (on behalf of BHF)
By email: nkirby@werksmans.com

Webber Wentzel (on behalf of the SAPPF)
By email: martin.versfeld@webberwentzel.com

Serfontein Viljoen & Swart (on behalf of Solidarity)
By email: jd@svslaw.co.za

ENS (on behalf of HFA)
By email: dband@ensafrica.com

Nortons (on behalf of HASA)
By email: anthony@nortonsinc.com,
anton@nortonsinc.com

KGOSANA ATTORNEYS

Kgosana Attorneys
Chambers @ Valley Road, 133 Valley Road, Sunnyside, Pretoria
Tell: 012 326 1452/063 655 9347 | Email: info@kgosana-attorneys.co.za

UNDERTAKING

1. The Minister has considered HASA, HFA and SAPPF's alternative suggestions / counter-proposals to his proposal for the stay of those applications that mount a direct challenge to the constitutionality of the National Health Insurance Act 20 of 2023 ("NHI Act") as distinct from those that seek to review the decision of the President to assent to and sign the NHI Bill.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

2. The Minister makes the following with prejudice proposal in response:

2.1. Subject to all the parties assenting to, or the High Court or the Constitutional Court granting, the stay contemplated in paragraph 1, the Minister of Health undertakes that he will not promulgate regulations in the Gazette in terms of section 33 of the NHI Act (read with section 55(1)(z)) determining that the National Health Insurance has been fully implemented, prior to final decisions having been taken by the Constitutional Court in all of, or which have the effect of disposing of –

2.1.1. the President and the Minister's applications in terms of section 167(6)(b) of the Constitution for leave to appeal directly to the Constitutional Court against the judgment of Twala J dated 6 May 2025;

KGOSANA ATTORNEYS

Kgosana Attorneys
Chambers @ Valley Road, 133 Valley Road, Sunnyside, Pretoria
Tell: 012 326 1452/063 655 9347 | Email: info@kgosana-attorneys.co.za

2.1.2. the President and the Minister's applications in terms of section 167(6)(b) of the Constitution for leave to appeal directly to the Constitutional Court against the judgment of Twala J dated 6 May 2025;



2.1.3. the President and the Minister's direct applications in terms of section 167(6)(a) of the Constitution for relief pertaining to the reviewability of the President's decision to assent to and sign the NHI Act, the applicability of Rule 53, and the question whether or not the President is obliged to make available the record of his decision;

2.1.4. any appeals for which leave is granted pursuant to paragraph 2.1.1

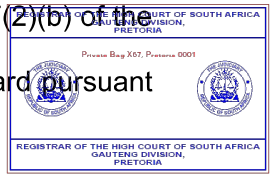
2.1.5. the conditional application of the BHF in terms of section 167(6)(a) of the Constitution for the review of the President's decision to assent to and sign the NHI Act;

2.1.6. the application of the SAPPF to intervene in the conditional application of BHF and any further application of the SAPPF pursuant thereto;

KGOSANA ATTORNEYS

Kgosana Attorneys
Chambers @ Valley Road, 133 Valley Road, Sunnyside, Pretoria
Tell: 012 326 1452/063 655 9347 | Email: info@kgosana-attorneys.co.za

2.1.7. in the event of the Constitutional Court declining to grant leave to appeal or to hear the direct access applications referred to above, the applications for leave to appeal to Twala J, and, should he refuse leave, any applications for leave to appeal in terms of section 17(2)(b) of the Superior Courts Act No. 10 of 2013 and any appeals heard pursuant thereto.



3. The withdrawal by an applicant of any of the applications or appeals referred to in paragraph 2 shall be considered a disposal of the application.

4. We look forward to your urgent response.

Yours faithfully

[unsigned due to electronic transmission]

Makule Kgosana

Managing Director

Office of the State Attorney
Pretoria

Private Bag X 91
PRETORIA
Sehume Str
0001

Docex: 298

316 Salu Building
Cnr Francis Baard & Thabo

Ground Floor
Entrance Thabo Sehume Street
Pretoria

Tel: (Switchboard): 012 309 1500
(Direct Line): 012 309 1623
(Cellphone): 071 870 2442
(Secretary): 012 309 1539

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

07 JULY 2025

Enquiries: Mr R.J. SEBELEMETSA
Email: rsebelemetsa@justice.gov.za

My Ref: 0266/2025/Z64

To: Werksmans (on behalf of BHF)
Email: nkirby@werksmans.com; hmicheal@werksmans.com; bmoti@werksmans.com; sphakathi@werksmans.com

To: Nortons (on behalf of HASA)
Email: anthony@nortonsinc.com; anton@nortonsinc.com; michelle@nortonsinc.com and melissa@nortonsinc.com

To: ENS (on behalf of HFA)
Email: dband@ensafrica.com

To: Assenmacher Brandt (on behalf SAMA)
Email: carl@assenmacher.co.za

To: Webber Wentzel (on behalf of SAPPF)
Email: martin.versfeld@webberwentzel.com

To: Serfontein Viljoen and Swart (on behalf of Solidarity)
Email: jd@svslaw.co.za; niekie@svslaw.co.za; monique@svslaw.co.za

To: Kgosana Attorneys (on behalf of the Minister of Health and Director-General for the National Department of Health)
Email: info@kgosana-attorneys.co.za

Dear Sir,

RE: MINISTER OF HEALTH'S PROPOSAL ON THE FURTHER CONDUCT OF THE VARIOUS APPLICATIONS BEFORE THE HIGH COURT CONCERNING THE CONSTITUTIONALITY OF THE NATIONAL HEALTH INSURANCE ACT, 20 OF 2023

1. We refer to case management meeting convened on 1 July 2025 and the subsequent letter sent on behalf of the Minister of Health on 3 July 2025 containing a with-prejudice undertaking ("**the letter**").

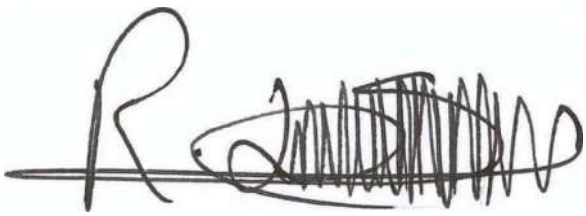
2. We undertook, at the case management meeting, to revert concerning the President of the Republic of South Africa's position as soon as possible.

3. We are instructed, and hereby advise, that the President supports the terms of the Minister's undertaking contained in the letter.

4. Our client's rights are reserved.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Kind regards,



MR RJ(JOSEPH) SEBELEMETSA
FOR: STATE ATTORNEY (PRETORIA)

WERKSMANS
ATTORNEYS

DELIVERED BY EMAIL

Kgosana Attorneys
Attorneys for the Minister of Health
Attention: Ms Makule Kgosana
Per email: info@kgosana-attorneys.co.za /
makule@kgosana-attorneys.co.za

Johannesburg Office
The Central
96 Rivonia Road
Sandton 2196 South Africa
Private Bag 10015
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
www.werksmans.com

YOUR REFERENCE: **UNDERTAKING**
OUR REFERENCE: Mr N Kirby/Ms H Michael/Ms B Moti/Ms S Phakathi/Mr S van Rooyen/ Ms F Yassin/ BOAR3329.73/#11004201v1
DIRECT PHONE: +27 11 535 8198 / +27 11 535 8424 / +27 11 535 8352 / +27 11 535 8212
EMAIL ADDRESS: nkirby@werksmans.com / hmichael@werksmans.com / bmoti@werksmans.com / sphakathi@werksmans.com / svanrooyen@werksmans.com / fyassin@werksmans.com

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

07 July 2025

Dear Sirs/Mesdames

NATIONAL HEALTH INSURANCE ACT NO.20 OF 2023: MINISTER OF HEALTH'S UNDERTAKING

1 We refer to your letter dated 3 July 2025 addressed to us and containing a proposal by the Minister of Health.

2 We have considered the proposal and advise that -

2.1 what is left unaddressed in the proposal is whether or not your client's intention is indeed to facilitate bringing into force various sections of the National Insurance Act No. 20 of 2023 ("the Act");

2.2 the proposal therefore rests on the acceptance by the parties challenging the Act that various provisions of the Act, including those where their constitutionality is directly challenged in existing proceedings, will be proclaimed in the ordinary course;

2.3 such a position is clearly untenable: reserving to himself an unfettered discretion to facilitate the bringing into force various sections of the Act in circumstances where those sections are the subject matter of constitutional challenges is a reckless expenditure of government resources and a deliberate waste of judicial resources where the latter have to be expended to decide on the constitutionality of the Act and the various impugned sections of that Act - it is simply irrational to bring a section of the Act into force for it merely to be struck down later as a result of a legal challenge;

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa
Directors D Hertz (Chairman) OL Abraham LK Alexander C Andropoulos JKOF Antunes L Appelgryn RL Armstrong DA Arteiro K Badal T Bata JD Behr AR Berman P Bhagattjee NMN Bhengu AL Bilatyi RE Bonnet TJ Boswell W Brown HLE Chang PG Cleland JG Cloete PPJ Coetser C Cole-Morgan J Darling R Driman KJ Fyfe S Gast D Gewer JA Gobetz R Gootkin A Govuza GF Griessel NA Hlatshwayo J Hollesen MGH Honiball BB Hotz AE Human T Inno HC Jacobs TL Janse van Rensburg G Johannes S July J Kallmeyer A Kenny NK Kgame R Killoran N Kirby HA Kotze S Krige CJ Laltha H Laskov P le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso DD Magidson MPC Manaka JE Mardon PD Mashalane JE Meiring H Michael SM Moerane R Moitse C Moraitis PM Mosebo B Moti NPA Motsiri CK Mthembu L Naidoo K Neluheni NZP Nkosi BW Ntuli BPF Olivier Z Oosthuizen S Padayachy M Pansegrouw S Passmoor D Pisanti T Potter AA Pyzikowski RJ Raath K Rajah A Ramdhin B Rammala V Ramson BR Roothman W Rosenberg NL Scott TA Sibidla FT Sikhavhakhavha LK Silberman S Sinden S Singh DE Singo JA Smit BM Sono KP South CI Stevens PO Steyn J Stockwell DH Swart PW Tindle JJ Truter KJ Trudgeon DN van den Berg AA van der Merwe A van Heerden JJ van Niekerk FJ van Tonder JP van Wyk A Vatalidis T Volschenk RN Wakefield L Watson D Wegierski G Wickins DC Willans E Wood BW Workman-Davies **Consultants** DH Rabin DG Williams

2.4 all of this when considered in the light of the letter our client received from the Presidency on 8 May 2025 in which it is stated that "[t]here is, at present, no intention to proclaim any amendments to any other laws, including the Medical Schemes Act, regardless of what the NHI Act provides for" and "[t]his is not least because other key elements of the NHI Act still have to be promulgated and implemented in material part, including the full and proper establishment of the administrative and organizational structure(s) needed to operationalize the NHI, which will be attended to in due course", our client is expected to tolerate the incremental or otherwise introduction of the Act in face of a multitude of legal challenges; and

2.5 accordingly, we disagree that the current proposal practically advances the matters currently under consideration and does little, if anything, to assuage the applicants' concerns or provide for a reasonable basis on which to agree to any stay of any proceedings currently in progress.

3 Our client's rights remain strictly reserved.



Yours faithfully

Werksmans Attorneys
THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE

cc:

Assenmancher Brandt Attorneys
Attorneys for the South African Medical Association
Attention: Mr C Brandt
Per e-mail: carl@assenmacher.co.za / kayleigh@assenmacher.co.za

ENS Africa
Attorneys for the Health Funders Association
Attention: Ms A Richards / Mr D Band
Per e-mail: dband@ensafrica.com / arichards@ensafrica.com

Nortons Inc.
Attorneys for the Hospital Association of South Africa
Attention: Mr A Norton / Ms M Steele
Per e-mail: anthony@nortonsinc.com / anton@nortonsinc.com / michelle@nortonsinc.com
mailto:melissa@nortonsinc.com

State Attorney, Pretoria
Attorneys for the President of the Republic of South Africa
Attention: Mr Ramathiti Joseph Sebelemetsa
Per email: rsebelemetsa@justice.gov.za /
pskhonde@justice.gov.za

Serfontein, Viljoen & Swart Attorneys
Attorneys for the Solidarity Trade Union
Attention: Mr J D Claassen / Ms N Venter / Ms M Venter
Per e-mail: jd@svslaw.zo.za / niekie@svslaw.co.za / monique@svslaw.co.za

BOAR3329.73/#11004201v1
07072025

Webber Wentzel Attorneys
Attorneys for the South African Private Practitioners Forum
Attention: Mr M Versfeld / Mr G Penfold / Ms P Singh / Ms A Rees
Per e-mail: martin.versfeld@webberwentzel.com / prelisha.singh@webberwentzel.com
glenn.penfold@webberwentzel.com / Alexandra.rees@webberwentzel.com



NORTONS INC
ATTORNEYS AT LAW

Switchboard: +27 (0) 11 666 7560
Fax: +27 (0) 86 600 5529
info@nortonsinc.com
1st Floor, The Reserve, 54 Melville Road,
Illovo, Johannesburg
PO Box 41162, Craighall, 2024, South Africa

Kgosana Attorneys (on behalf of the Minister of Health)
Attention: Mr M Kgosana
By email: info@kgosana-attorneys.co.za

Cc: **The Honourable Deputy Judge President Ledwaba**
Email: AnNieuwoudt@judiciary.org.za; AMbelani@judiciary.org.za

Cc: The State Attorney (on behalf of **the President of the Republic of South Africa**)
Email: rsebelemetsa@justice.gov.za

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Cc: Assenmacher Brandt (on behalf of **SAMA**)
Email: carl@assenmacher.co.za

Cc: Werksmans (on behalf of **BHF**)
Email: nkirby@werksmans.com

Cc: Webber Wentzel (on behalf of the **SAPPF**)
Email: martin.versfeld@webberwentzel.com

Cc: Serfontein Viljoen & Swart (on behalf of **Solidarity**)
Email: jd@svslaw.co.za

Cc: ENS (on behalf of **HFA**)
Email: dband@ensafrica.com

7 July 2025

Dear Mr Kgosana,

Re: HASA's response to the Minister of Health's with prejudice proposal

1 We refer to the Minister of Health's ("**Minister**") *with prejudice* proposal contained in your letter of 3 July 2025.

2 In terms of the Minister's *with prejudice* proposal, subject to all the parties agreeing to the stay of the High Court applications brought by the Direct Challenge Applicants[1] (Solidarity, HASA, SAMA and HFA), the Minister has proposed not promulgating regulations in terms of section 33 of the National Health Insurance Act[2] ("**NHI Act**") (read with section 55(1)(z)), pending the final outcome of the High Court and Constitutional Court review proceedings involving BHF and SAPPF. ("**Minister's proposal**")

3 For the reasons outlined below, the Minister's proposal is unacceptable to our client.

4 It should be noted that our client's reasons for its rejection of the Minister's proposal are provided on a preliminary basis and our client reserves its right to supplement these reasons at the appropriate time and in the appropriate forum.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

HASA's response to the Minister's proposal

5 As indicated above, the Minister's proposal is unacceptable for *inter alia* the following preliminary reasons.

6 *First,* the Minister's proposal is limited to only undertaking not to implement the regulations related to section 33 of the NHI Act, which pertains solely to the role of medical schemes. In terms of the Minister's proposal, for the entire duration of the stay application (which could take several years), the Minister would be at liberty to implement the entire NHI Act, save for the regulations relating to section 33. This would mean that the Minister would be in a position to implement all of the various provisions of the NHI legislation, which HASA has sought to declare as unconstitutional, including sections 2, 3(5), 4, 5, 6(o), 7, 10(1)(g), 11(1)(m), 11(2), 13(3), 26, 27, 36, 38(8), 39, 42, 49(1), 55, 57 and 58.

7 The effect of the Minister's proposal is that HASA would be placed in an untenable position where its entire application is placed on hold and its entitlement to expeditious and final relief would be

[1] As defined in our letter of 9 June 2025, the Direct Challenge Applicants comprise Solidarity, HASA, SAMA and HFA.
[2] National Health Insurance Act 20 of 2023.

delayed for an inordinate period of time, while the legislation that our client seeks to be declared as unconstitutional is implemented in its entirety, save for the regulations pertaining to section 33. On this basis alone HASA rejects the Minister's proposal.

8 Our client is also concerned that by the time its application eventually reaches a court (which could take several years), there is a significant risk that the Minister and the President will then seek to contend that HASA's application is moot, or at least moot in significant part, because the NHI Act has already been implemented and that HASA agreed to such implementation.

9 *Second*, the Minister's proposal fails to address the fundamental concerns raised in HASA's application. The Minister will be aware that HASA's application extends well beyond the scope of section 33 and provides evidence, including expert reports, that the NHI Act will cause irreparable harm to the existing health care system in South Africa and will undermine the right to access to health care in terms of section 27 of the Constitution.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION

10 In particular, one of the central issues that HASA has raised in its application is that the NHI legislation is unaffordable and cannot be implemented in any manner which would not severely undermine the HASA members' financial viability and would, as a result, severely prejudice the HASA members' ability to provide health care services to patients. Accordingly, an undertaking by the Minister not to promulgate the regulations in terms of section 33 would not address the central issues raised in HASA's application that the NHI Act breaches the government's obligation under section 27 of the Constitution to ensure the progressive realisation of access to health care.

11 The undertaking fails to address other fundamental issues with the NHI Act, including:

11.1 the operation upon commencement of section 6(o) of the NHI Act, which specifies that users are entitled *"to purchase health care services that are <u>not covered</u> by the Fund through a complementary voluntary medical insurance scheme registered in terms of the Medical Schemes Act"*;

11.2 the operation upon commencement of sections 57(5) and 58 read with the Schedule to the Act, which amend the Medical Schemes Act to preclude the covering of services covered by the NHI;

11.3 government's failure to ensure that it has the necessary human resources, in particular health care professionals, to implement the NHI scheme;

11.4 the impermissible vagueness of key aspects of the NHI Act, like the nature and scope of health care services that will generally be available under the NHI scheme, how registered users may access health care services within or outside of the NHI scheme, the *procurement* and *usage* relationship between the NHI Fund and private hospitals and professionals, and how "quality" and "value" of services will be factored into the prices paid for the acquisition of health care services by the Fund;[3]

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,

11.5 the impermissible delegation of plenary power to the Minister under the NHI Act, and the absence of proper guidance in respect of the Minister's discretionary powers;

11.6 the operation upon commencement of section 11(2)(e), which requires negotiation of the "*lowest possible price for goods and health care services*", contrary to section 217 of the Constitution, which requires a consideration of cost effectiveness, in addition to other considerations;

11.7 the infringement of provincial competence by the NHI Act;

11.8 the unconstitutional fettering of the Minister of Finance's power to introduce a Money Bill; and

11.9 the unconstitutional exclusion of asylum seekers.

[3] In this regard, we refer to paragraph 166 of HASA's founding affidavit, which spells out the fundamental vagueness of the NHI Act.

12 The failure to deal with the first two issues (flagged in paragraphs 11.1 and 11.2) renders the Minister's undertaking entirely unworkable. Those two provisions imply that upon commencement, private medical schemes cannot provide services covered by the NHI.

13 By no means is the above list exhaustive. We refer the Minister and President to Parts V.A to H of HASA's founding affidavit. Section 33 is but *one* of the many unconstitutional aspects of the NHI Act.

The President's failure to provide the necessary undertaking

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

14 Both the Minister and the President will recall that in our letter dated 9 June 2025, we specifically raised HASA's concern that the Minister's proposal concerning the stay of the proceedings lacked an undertaking from the President not to commence the NHI Act. In this regard, our client stated expressly in the letter that:

> *"More importantly, however, the Minister's proposal* ***does not contain an undertaking that the President will not bring the Act into effect in terms of section 59 during the period of any potential stay*** *in order to away constitutional certainty from the courts"*
>
> ...
>
> ***"If the President were to give an undertaking not to bring the NHI Act into force, HASA would be open, subject to considering the terms of the undertaking, to reconsider whether, in those circumstances, it would be in the interests of justice to agree the stay given the right of the public threatened by the NHI Act."***[4]

14.1 It appears that the President does not intend to provide the relevant undertaking. Initially, we were advised by the President's attorneys that *"we are considering the request for an undertaking…[but] we cannot provide the undertaking sought by the deadline indicated."*[5] Subsequently, the President's attorneys advised us that they were in the *"process of taking*

[4] Emphasis added.
[5] See the President's letter dated 17 June 2025.

instructions" and would *"revert to us by or before the case management meeting…when we will make our client's position known at such meeting"*. Surprisingly, at the case management meeting the President's counsel sought to suggest that the President had not indicated in his prior correspondence that he would provide his position on the undertaking prior to or before the case management meeting, but would *"endeavour to do so"*. To date, the President has not articulated his position in relation to the undertaking sought by our client.

14.2 Accordingly, HASA persists in its previous stance that absent an undertaking from the President not to bring the NHI Act into force in terms of section 59, HASA is not prepared to agree to the Minister's proposal.



15 In the event that the Minister intends to bring an application to stay the High Court proceedings, he is required to do so in accordance with the timetable that was agreed to between the parties during the case management meeting.

16 Our client's rights remain expressly reserved.

Yours faithfully,

[Unsigned due to electronic transmission]

Anthony Norton / Anton Roets / Michelle Rawlinson / Avias Ngwenya / Melissa Steele
Nortons Incorporated

Serfontein Viljoen & Swart

Attorneys, Conveyancers & Notaries

165 Alexander Street, Brooklyn, Pretoria
P.O. Box 35015, Menlop Park, 0028 Docex 9 Brooklyn
E-mail : niekie@svslaw.co.za / jd@svslaw.co.za
Tel: (012) 362 2556
Also, at: Bronkhorstspruit (013) 932 3034

Our ref : Mr. Swart / Mr. Claassen /Mr. Venter / MJ / CS0562
Date : 8 July 2025

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

BY EMAIL

TO: WERKSMANS (ON BEHALF OF BHF)

TO: NORTONS (ON BEHALF OF HASA)

TO: ENS (ON BEHALF OF HFA)

TO: ASSENMACHER BRANDT (ON BEHALF SAMA)

TO: WEBBER WENTZEL (ON BEHALF OF SAPPF)

TO: THE STATE ATTORNEY, PRETORIA

TO: KGOSANA ATTORNEYS

(ON BEHALF OF THE MINISTER OF HEALTH AND DIRECTOR-GENERAL FOR THE NATIONAL DEPARTMENT OF HEALTH)

Dear all,

RE ***MINISTER OF HEALTH'S PROPOSAL ON THE FURTHER CONDUCT OF THE VARIOUS APPLICATIONS BEFORE THE HIGH COURT CONCERNING THE CONSTITUTIONALITY OF THE NATIONAL HEALTH INSURANCE ACT, 20 OF 2023***

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

1. We refer to the letter dated 3 July 2025 containing the Minister's with-prejudice proposal, as well as the subsequent correspondence from the office of the State Attorney dated 7 July 2025 confirming the President's support for the said proposal.

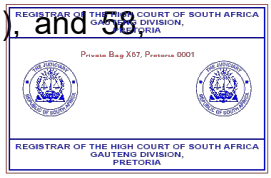
2. Having considered the terms of the proposal, we are instructed to advise that our client cannot support the suggested course.

3. The proposal, with respect, lacks coherence and fails to address the fundamental constitutional concerns that form the basis of Solidarity's application. Its practical effect would be to unduly delay the determination of our client's challenge while allowing the impugned legislative framework to be implemented virtually in full.

4. We align ourselves with the submissions articulated by HASA in its correspondence of 7 July 2025 and reiterate – as they have done – that

section 33 represents but a narrow and isolated aspect of the broader constitutional matrix under challenge.

5. An undertaking not to promulgate regulations under that section offers no meaningful safeguard to the public interest or to our client's rights. On the contrary, the proposal would enable the implementation of the NHI Act in its entirety, while depriving parties such as Solidarity of the opportunity to obtain timely judicial pronouncement on the constitutionality of core provisions of the Act – including but not limited to sections 2, 3(5), 4, 5, 6(o), 11(2), and 58, among others.



6. More fundamentally, and as HASA correctly highlights, the proposal opens the door to a future argument that the pending applications have been rendered moot by effluxion of time or by *de facto* implementation – a result which would prejudice Solidarity's position and the very right of access to court that the Constitution guarantees.

7. Should the Minister or President be of the view that the proceedings ought to be stayed, the appropriate procedural course would be to bring a formal application to that effect.

8. Until such time, and absent any binding undertaking not to bring the NHI Act into force, Solidarity remains steadfast in its intention to prosecute its application to finality and cannot accede to the proposed arrangement.

9. Our client's rights remain strictly reserved.

Yours faithfully

SERFONTEIN, VILJOEN & SWART

MR CN VENTER

Email: niekie@svslaw.co.za

MR JD CLAASSEN

Email: jd@svslaw.co.za



ASSENMACHER BRANDT ATTORNEYS

Fairway Office Park, Ground Floor, 2 Bute Lane
52 Grosvenor Road, Bryanston, South Africa
P O Box 130527, Bryanston, 2074
Tel: +27 (0)11 706 0303
Fax: +27 (0)86 478 1312
law@assenmacher.co.za
www.assenmacherlaw.co.za

Our Ref:
C Brandt/va/IS1156
Your Ref:

Date
7 July 2025

KGOSANA ATTORNEYS

ATTENTION: C.M. GWANGWA / D. NKOANE

BY EMAIL: info@kgosana-attorneys.co.za

AND TO:

The State Attorney (on behalf of the President of the Republic of South Africa)

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

By email: rsebelemetsa@justice.gov.za

Werksmans (on behalf of BHF)

By email: nkirby@werksmans.com

Webber Wentzel (on behalf of the SAPPF)

By email: martin.versfeld@webberwentzel.com

Serfontein Viljoen & Swart (on behalf of Solidarity)

By email: jd@svslaw.co.za

ENS (on behalf of HFA)

By email: dband@ensafrica.com

Nortons (on behalf of HASA)

By email: anthony@nortonsinc.com, anton@nortonsinc.com

Dear Sirs/Madams,

RE: THE SOUTH AFRICAN MEDICAL ASSOCIATION NPC // THE MINISTER OF HEALTH / THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA / THE SPEAKER OF THE NATIONAL ASSEMBLY / THE CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES (CASE NO: 2025-045340)

1. The above matter and your client's undertaking in your letter dated 3 July 2025 refer.

2. Our instructions are that SAMA does not accept the undertaking contained in your letter under reply (the *undertaking*), and does so for, *inter alia*, the following reasons:



   2.1. Your client indicated in the matter where Solidarity is the applicant (the *Solidarity matter*) that section 33 will only come into effect in ten to fifteen years when the NHI has been fully implemented;

   2.2. An undertaking not to implement section 33 of the NHI Act (read with section 55(1)(z) is, in our client's view, academic of nature as it will have no practical interim effect;

   2.3. SAMA's application for declaring the various sections of the NHI Act indicated in its notice of motion unconstitutional, focuses on the impact that the implementation of the NHI Act will have on the public at large and also on medical professionals, whereas section 33 of the NHI Act will have a lesser impact on the public and our client's members as may be the case for certain of the other direct challengers;

   2.4. The concern, at this stage, is the various steps taken in implementing aspects of the NHI Act, as attested to by, amongst others, the National Department of Health's Annual Performance Plan and the accreditation of general practitioners, rather than the expeditious finalisation of the direct challenges to the constitutionality of the NHI Act.

3. Our client's response to Deputy Judge President Ledwaba on 9 June 2025 and whereof a copy is annexed hereto for your ease of reference, is repeated herein. In summary SAMA does not believe it is in the interests of justice or in the public interest for:

   3.1. The merits matters to be stayed pending the outcome of the appeal to the Justice Twala judgment; and

   3.2. That all the direct challenges be consolidated.

4. SAMA again proposes that the direct challenges be heard together by the same judges and that timelines for the filing of answering and replying papers be agreed upon at a future case management meeting.

5. All SAMA's rights remain reserved.

Yours faithfully,

CARL BRANDT
ASSENMACHER BRANDT ATTORNEYS



The MARC Tower 1
129 Rivonia Road Sandton
Johannesburg South Africa 2196
P O Box 783347 Sandton South Africa 2146
Docex 152 Randburg
tel +2711 269 7600
info@ENSafrica.com
ENSafrica.com

Kgosana Attorneys
Attorneys for the Minister of Health
Email: info@kgosana-attorneys.co.za
Attention: Makule Asnath Kgosana

D Band/A Richards/0528590 our ref
NHI-related litigation your ref
7 July 2025 date

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA

Dear Ms Kgosana

HEALTH FUNDERS ASSOCIATION NPC / MINISTER OF HEALTH, MINISTER OF FINANCE, NATIONAL TREASURY AND THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA - GAUTENG DIVISION, PRETORIA | CASE NO.: 2025-083348

1. We acknowledge receipt of your letter of 3 July 2025 containing the Minister's limited offer not to promulgate regulations under section 33 of the National Health Insurance Act 20 of 2023 ("**NHI Act**") pending the final adjudication of the litigation set out in paragraph 2.1 of the letter.

2. After careful consideration, we respectfully convey the HFA's position below regarding the Minister's offer, which is conditional on all parties agreeing to stay their applications. As appears from, among others, the reasons below, the HFA rejects the Minister's offer. To the extent necessary, our client will supplement and expand these reasons in the appropriate forum to oppose the Minister's envisaged stay and consolidation applications in line with the process and timetable agreed at the case management meeting.

3. The Minister himself has previously indicated that it would take 10 to 15 years before section 33 of the NHI Act is fully implemented. This alone renders his undertaking ineffective, as it merely repeats what the Minister has already said.

4. The Minister's offer also does not provide any immediate or practical assurance to our client regarding any of the harms outlined in its founding papers that will be imposed immediately by the commencement of the NHI Act before it is fully implemented.

law | tax | forensics | IP
Edward Nathan Sonnenbergs Incorporated registration number 2006/018200/21
M.M. Katz (chairman) M. Mgudlwa (chief executive) M.W. Matlou (chief operating officer) Y.A. Mendelsohn (chief operating officer)
a list of directors is available on our website ENSafrica.com/letterheadSA
level 1 BBBEE rating

ORIGINAL THINKING

5. As the Minister is further aware, the HFA's case extends beyond challenging the constitutionality of the Minister's power to issue regulations under section 33 of the NHI Act. It includes, for example, challenges based on:

5.1. the irrationality of the NHI Act;

5.2. the NHI Act's unreasonable and unjustifiable infringement of the constitutional right of access to healthcare of existing medical scheme beneficiaries;

5.3. the NHI Act's contravention of the state's obligation in section 27(2) of the Constitution to adopt reasonable measures to achieve the progressive realisation of the constitutional right of everyone to access healthcare services within available resources and not to adopt retrogressive measures; and

5.4. the unconstitutional sweeping and unchecked power that the NHI Act confers on the Minister.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,

6. The Minister's undertaking, however, only concerns section 33 and is therefore wholly inadequate.

7. In light of the above, the HFA respectfully rejects the Minister's offer.

8. All our client's rights are reserved.

Yours faithfully

ENS

Per: Darren Band and Altair Richards

Cc: The State Attorney (on behalf of the President of the Republic of South Africa)
Email: rsebelemetsa@justice.gov.za

Cc: Nortons Incorporated (on behalf of HASA)
Email: anthony@nortonsinc.com

Cc: Assenmacher Brandt (on behalf of SAMA)
Email: carl@assenmacher.co.za

Cc: Werksmans (on behalf of BHF)
Email: nkirby@werksmans.com

Cc: Webber Wentzel (on behalf of the SAPPF)
Email: martin.versfeld@webberwentzel.com

Cc: Serfontein Viljoen & Swart (on behalf of Solidarity)
Email: jd@svslaw.co.za

WEBBER WENTZEL
in alliance with > Linklaters

To: Makule Kgosana
Kgosana Attorneys
Chambers @ Valley Road
133 Valley Road
Sunnyside
Pretoria

By email: info@kgosana-attorneys.co.za; makule@kgosana-attorneys.co.za

90 Rivonia Road, Sandton
Johannesburg, 2196

PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa

Docex 26 Johannesburg

T +27 (0) 11 530 5000
F +27 (0) 11 530 5111

www.webberwentzel.com

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Your reference	Our reference	Date
	MG Versfeld / P Singh / G Penfold 4008778	7 July 2025

Dear Sir

RE: PROPOSED UNDERTAKING BY THE MINISTER OF HEALTH

1. We refer to:

1.1 our letter, dated 9 June 2025, in response to the proposal advanced by your client regarding the stay and consolidation of NHI matters, dated 26 May 2025 ("**our 9 June 2025 letter**");

1.2 the case management meeting convened on 1 July 2025 before the Honourable Deputy Judge President Ledwaba; and

1.3 your letter dated 3 July 2025 ("**your letter**"), paragraph 2 of which records the proposed undertaking by your client not to promulgate regulations in the Gazette in terms of section 33 of the NHI Act ("**the Minister's proposed undertaking**").

Senior Partner: JC Els **Managing Partner:** SJ Hutton **Partners:** BW Abraham RB Africa C Alexander AK Allie NG Alp TB Ball DC Bayman AE Bennett AP Blair K Blom AR Bowley M Bux V Campos RI Carrim T Cassim SJ Chong ME Claassens KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davies KM Davis PM Daya HM de Villiers ST Dias L de Bruyn A de Meyer PU Dela M Denenga C Dennehy DW de Villiers BEC Dickinson DA Dingley G Driver W Drue GP Duncan HJ du Preez CP du Toit TC Dye SK Edmundson LF Egypt KH Eiser AE Esterhuizen K Fazel G Fitzmaurice JB Forman L França M Garden OH Geldenhuys MM Gibson H Goolam C Gopal CI Gouws PD Grealy L Green JM Harvey JS Henning KR Hillis CM Holfeld PM Holloway KT Inglis ME Jarvis JC Jones CM Jonker S Jooste LA Kahn L Kamukwamba M Kennedy A Keyser MT Kgoadi A Khumalo KE Kilner MD Kota JC Kraamwinkel AC Kruger J Lamb LC Lambrechts LM Lamola B Lötter E Louw M Mahlangu S Manley V Mannar L Marais G Masina T Masingi N Mbere MC McIntosh SJ McKenzie CS Meyer A Mhlongo AJ Mills D Milo M Mkhabela DR Mogapi P Mohanlall N Moodley L Moolman LE Mostert VM Movshovich M Mpungose A Muir C Murphy D Naidoo P Naidoo DC Nchabeleng DP Ndiweni C Nöthling PD Novotny M Nxumalo AN Nyatsumba MB Nzimande A October L Odendaal N Paige AS Parry S Patel N Pather GR Penfold SE Phajane MN Phala M Philippides BA Phillips MA Phillips CH Pienaar MP Pool DJ Rafferty D Ramjettan GI Rapson K Rew G Richards-Smith SA Ritchie J Roberts Y Robbertse S Rule G Sader H Samsodien DA Serumula KE Shepherd ZK Sibeko N Singh N Singh-Nogueira P Singh S Sithole J Smit MP Spalding MW Straeuli LJ Swaine Z Swanepoel WV Tembedza A Thakor T Theessen TK Thekiso C Theodosiou T Theunissen R Tlhavani G Truter PZ Vanda SE van der Meulen JP van der Poel MS van der Walt CS Vanmali L van Tonder N van Vuuren JE Veeran HM Venter B Versfeld MG Versfeld TA Versfeld C Vertue T Viljoen DM Visagie EME Warmington J Watson AWR Westwood RH Wilson KD Williams

WEBBER WENTZEL
in alliance with > Linklaters

2. Section 33 of the NHI Act provides that:

> "*once National Health Insurance has been fully implemented as determined by the Minister through regulations in the Gazette, medical schemes may only offer complementary cover to services not reimbursable by the Fund.*" (our emphasis)

3. The Minister's proposed undertaking is not acceptable to our client.

3.1 Paragraphs 2.1.11 and 3.3 of our 9 June 2025 letter made it clear that our client would be prepared to consider a stay of proceedings only in circumstances where "*the implementation of the NHI Act and all related steps are similarly pended*".



3.2 As is clear from the underlined portion of section 33, the Minister's proposed undertaking is to refrain from proclaiming that NHI has been fully implemented, not to refrain from implementing the NHI Act. That implementation process may take decades.

3.3 The Minister's proposed undertaking is therefore, with respect, a hollow one. It does not engage with or address the concerns raised in our 9 June 2025 letter. It suggests an intention by your client to continue to implement the NHI Act and to expend vast sums of public money in doing so, notwithstanding that the legislation is the subject of multiple constitutional challenges.

4. Our client therefore does not accept the Minister's proposal.

Yours faithfully



WEBBER WENTZEL
Martin Versfeld
Partner
+27 11 530 5322
+27 11 530 6322
Email: martin.versfeld@webberwentzel.com

CC: The State Attorney
Attorneys for the President
By email: rsebelemetsa@justice.gov.za

WEBBER WENTZEL
in alliance with > Linklaters

CC: Werksmans Attorneys
Attorneys for the Board of Healthcare Funders NPC
By email: nkirby@werksmans.com; hmichael@werksmans.com; sphakathi@werksmans.com; bmoti@werksmans.com

CC: Serfontein, Viljoen & Swart
Attorneys for Solidarity Trade Union

By email: jd@svslaw.co.za



CC: Nortons Inc.
Attorneys for The Hospital Association of South Africa

By email: anthony@nortonsinc.com; michelle@nortonsinc.com

CC: Assenmacher Brandt
Attorneys for The South African Medical Association of South Africa

By email: carl@assenmacher.co.za; kayleigh@assenmacher.co.za

CC: ENSafrica
Attorneys for The Hospital Funders Association

By email: dband@ensafrica.com; arichards@ensafrica.com

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No.: _____

In the matter between:

THE MINISTER OF HEALTH	First Applicant
THE DIRECTOR GENERAL, NATIONAL DEPARTMENT OF HEALTH	Second Applicant



and

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF FINANCE	Second Respondent
NATIONAL TREASURY	Third Respondent
SOLIDARITY TRADE UNION	Fourth Respondent
BOARD OF HEALTHCARE FUNDERS OF SOUTHERN AFRICA NPC	Fifth Respondent
SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM	Sixth Respondent
HOSPITAL ASSOCIATION OF SOUTH AFRICA	Seventh Respondent
THE SOUTH AFRICAN MEDICAL ASSOCIATION NPC	Eighth Respondent
HEALTH FUNDERS ASSOCIATION	Ninth Respondent

In re:

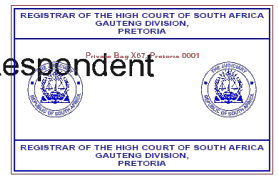
Case No: 2024-057449

SOLIDARITY TRADE UNION Applicant

and

THE MINISTER OF HEALTH First Respondent

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA Second Respondent



THE DIRECTOR GENERAL, NATIONAL DEPARTMENT OF HEALTH Third Respondent

THE MINISTER OF FINANCE Fourth Respondent

NATIONAL TREASURY Fifth Respondent

and

Case No: 2024-058172

BOARD OF HEALTHCARE FUNDERS OF SOUTHERN AFRICA NPC Applicant

and

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA First Respondent

THE MINISTER OF HEALTH Second Respondent

and

Case No: 2024-11209

SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM Applicant

and

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA First Respondent

THE MINISTER OF HEALTH Second Respondent

THE MINISTER OF FINANCE Third Respondent

NATIONAL TREASURY Fourth Respondent

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

and

Case No: 2025-020969

HOSPITAL ASSOCIATION OF SOUTH AFRICA Applicant

and

THE MINISTER OF HEALTH First Respondent

THE MINISTER OF FINANCE Second Respondent

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA Third Respondent

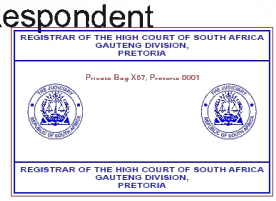
and

Case No: 2025-045340

THE SOUTH AFRICAN MEDICAL ASSOCIATION NPC Applicant

and

THE MINISTER OF HEALTH	First Respondent
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Second Respondent
SPEAKER OF THE NATIONAL ASSEMBLY	Third Respondent
CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES	Fourth Respondent



and

Case No: 2025-083348

HEALTH FUNDERS ASSOCIATION	Applicant

and

THE MINISTER OF HEALTH	First Respondent
THE MINISTER OF FINANCE	Second Respondent
NATIONAL TREASURY	Third Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Fourth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

MAKULE KGOSANA

do hereby make oath and say that:

1. I am an adult female attorney, practising as such at Kgosana Attorneys, holding the position of Director.

2. Kgosana Attorneys are the appointed attorneys on record for the Minister of Health in this litigation as of 22 January 2025.



3. I confirm that except where expressly indicated otherwise, the facts contained in this affidavit are within my personal knowledge and are true and correct.

4. I confirm that I have read the founding affidavit of Nicholas Gilmour Crisp deposed to in support of the stay and consolidation application and confirm the content thereof in so far as it relates to me and Kgosana Attorneys.

5. I confirm that I was in attendance of the case management meetings convened before the Honourable Deputy Judge President Ledwaba on 15 May 2025 and 1 July 2025 respectively and confirm the contents of Prof Crisp's affidavit insofar as it relates to the events of the respective case management meetings.

M.A

DEPONENT
MAKULE KGOSANA

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at PRETORIA on this the 28th day of JULY 2025, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, have been complied with.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

COMMISSIONER OF OATHS

REAGAN SEBOLA
ATTORNEY & COMMISSIONER OF OATHS
507 SPUY STREET
SUNNYSIDE PRETORIA
TEL: 012 344 0245
FAX: 012 343 4212
DATE: ____/____/____