

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2017-00528

Between

CENTRAL BANK OF TRINIDAD AND TOBAGO

Claimant

And

MEDISERV INTERNATIONAL LIMITED

Defendant

Before The Honorable Justice David C Harris

Appearances:

Mr. Russell Martineau S.C. leads Mr. Kerwyn Garcia instructed by Ms. Elena Araujo **for the** Claimant

Mr. Farid Scoon **for the** Defendant

JUDGMENT

INTRODUCTION¹

1. The Claimant is and was at all material times a body corporate established by section 3 of the Central Bank Act Chap. 79:02. The Defendant is a limited liability company incorporated under the Companies Act on November 10, 1999 with its registered office at 54 Rushworth Street, San Fernando.
2. Pursuant to the Insurance Act Chap. 84:01 (“the Act”) at section 4(1), the Claimant is charged with the administration of the said Act².

¹Several aspects of the facts and learning in this Judgment are substantially reproduced from the Claimant’s statement of case, erudite skeleton arguments, the Defendant’s amended defence, erudite skeletal submissions, the parties’ agreed facts and issues.

² The principal Act commenced in 1982 and has undergone several amendments including 2004 and most recently in 2021. The conclusions in this Judgment are unaffected by the said amendments.

3. Section 3 of the Act defines “insurance business” as the business of or in relation to the issue of or the undertaking of liability under policies to make good or indemnify the insured against any loss or damage including liability to pay damages or compensation contingent upon the happening of a specified event in the currency in which the premium had been paid, ***but does not include—***
- a) business in relation to the benefits provided by a friendly society or a trade union for its members or their dependents; or
 - b) business in relation to a scheme under which superannuation benefits, pensions or payments to employees or their dependents on retirement, disability or death are provided by an employer, or his employees, or by both, wholly through an organisation established solely for those purposes by the employer or his employees, or by both.
4. The Act applies to all companies which carry on in Trinidad and Tobago insurance business of all or any of the classes specified in the First Schedule to the Act³ and a company may apply to the Claimant for registration under the Act to carry on insurance business.⁴ The Defendant has never so applied to the Claimant.
5. Under the Success & Wellness Lifestyle Management Contract and the Mediserv Jewel Success & Wellness Lifestyle Management Plan, the Defendant is described as “the Company” or “the Plan Administrator”. The “Plan Administrator” is defined in the Success & Wellness Lifestyle Management Contract and the Mediserv Jewel Success & Wellness Lifestyle Management Plan as the functionary responsible for the day-to-day management of the Plan and through whose authority the member receives any benefit. The Defendant is stated in those contracts to be responsible for the day-to-day management of the Plans and for authorizing the provision of benefits to members of the Ventures and Investment Programme (“VIP”).
6. It is a term of each of the said contracts that upon acceptance by the Defendant into the Plans to which each relates, members, that is, members of Ventures and Investments Programme (“VIP”) who have applied for and have been accepted by the Defendant to participate in the Plans must make payments to a Fund which the Defendant manages. The Defendant contends that the

³ S.2 of the Act

⁴ S. 14(1) of the Act

benefits provided to members are paid out from the Fund after the member has made a claim in keeping with the procedure set out in the particular contract and if in the exclusive opinion of the Defendant, the member satisfies the requirements for eligibility for payment. Benefits are provided to members on terms determined exclusively by the Defendant. The Defendant alleges that the said VIP has contracted with several entities to manage its affairs⁵.

7. Under section 2B-2 (para. 7) of the Success & Wellness Lifestyle Management Contract for instance, the Defendant agrees to manage a Fund being a part of a plan to support members' benefits and to receive contributions and to distribute benefits, including making payments on the submission of valid claims in the prescribed manner. The Defendant and the VIP have advertised the plans and coverage provided under the said contracts.
8. By pre-action protocol letter dated January 23, 2015 the Claimant, called upon the Defendant to cease to conduct the operations for which the Claimant had received complaints. The Defendant's Attorneys responded to the pre-action letter, stating that the Defendant is a third party administering a self-insured plan for and on behalf of the Friendly Society named Ventures and Investments Programme ("VIP"). The Attorneys also stated that the Defendant is a risk management company whose job is to manage a predictable amount of risk and to calculate and arrange to set aside an amount of money originating from and managed on behalf of VIP that will cover an unpredictable future loss. The Defendant's Attorneys further stated that the Defendant was not then nor had ever been involved in writing or conducting insurance business of the type prescribed by the Insurance Act.
9. The Defendant alleged that the VIP was a Friendly Society. At the written request of the Claimant, the Office of the Registrar of Friendly Societies confirmed via their letter of 6th August 2015 that none of the following entities (which are referred to in the various plans here in question) -VIP, the Defendant, Salubrity and KREW (also known as D' 5'oclock KREW) - is registered as a Friendly Society under the Friendly Societies Act Chap. 32:50 and that none of the aforementioned entities is approved to be a trustee under that Act. The Defendant has not disputed this fact.
10. By letter dated 18th August 2015, the Claimant wrote to the Defendant's Attorneys requesting that the Defendant supply full particulars of the allegation that VIP is a Friendly Society and that

⁵ Only the Defendant is a party to this action.

the Defendant, Salubrity Ltd and KREW are trustees of VIP. By letter dated September 3, 2015, the Attorneys responded to say that they wished to advise that VIP belongs to the class of friendly societies to which the Friendly Societies Act *does not apply* and is excluded from registration and the identified entities are not required to be approved as trustees under that Act. This is pursuant to s. 3 of the Act.

11. The Defendant was never and is not listed in any of the Registers maintained by the Claimant pursuant to section 9(a) of the Act⁶ or at all to carry on any class of insurance business within the country. The Defendant is a company within the meaning of the Companies Act but is not registered by the Claimant in respect of any class of business specified in the First Schedule to the Act.⁷
12. In its Amended Defence, the Defendant contends that Mediserv International Limited ("**Mediserv**") *"is contracted by the members of the VIP to manage the Medical plan including the Medical Fund and the Wellness Funds and any other Funds that the VIP may establish from time to time under the Medical plan."*
13. Further, the Defendant states that it does not advertise itself as an insurance company providing traditional insurance, but, offers self-insurance as an alternative; that it is not carrying on prohibited insurance business; it is simply a third party risk management company administering a self-insured plan for and on behalf of the Friendly Society named Venture and Investments Programme (**VIP**) and serves as Manager and Trustee to the VIP.
14. According to the Defendant, due to it being a risk management company, in that sense alone it is similar to a regulated insurance company. However, contends the Defendant, rather than having an insurance premium, the Defendant arranges for members of the VIP to set aside an amount that is sufficient to cover potential future loss.

⁶ The Claimant shall maintain such registers as may be required or authorised to be maintained under the Act or the Regulations made thereunder and in particular shall maintain separate Registers, inter alia, of companies which are registered to carry on the various classes of insurance business in Trinidad and Tobago.

⁷ S. 11(1) and (2) of the Act

15. The Defendant maintains that its business and services is one of self-insurance which is not prohibited under the Act and that it belonged to the class of friendly societies to which the Friendly Societies Act Chap. 32:50 does not apply, pursuant to s. 5(1)(d)⁸ thereof.

16. In the Court's view, the Defendant's position in summary is: *"... that it is a Third Party Administrator for an unincorporated and unregistered body of persons, engaged in risk management and administration of a self-insured plan not advertising itself as an insurance company providing the traditional insurance, but advertising and administering or facilitating the provision of self-insurance as an alternative"*.

ISSUES TO BE DETERMINED

17. The parties have agreed that the following are the issues for determination in this matter:

- i. Whether upon a true construction of the term, "insurance business" as defined by section 3 (1) of the Insurance Act Chap 84:01 ("the Act") Defendant is carrying on "insurance business";
- ii. Further or alternatively, whether on a true construction of the terms of: **(i)** the Success & Wellness Lifestyle Management Contract; **(ii)** the Mediserv Jewel Success & Wellness Lifestyle and Management Plan; **(iii)** the GEMS Contract and **(iv)** the IntraMed Benefits Plan, the Defendant is providing benefits to members, which amount to the carrying on of insurance business within the meaning of the Act.

RELEVANT LAW

18. The interpretation of the Insurance Act at s. 3 (definition of 'insurance business'), the First Schedule, and s. 11 (prohibition of carrying out "insurance business") is relevant to determination of the issues identified above.

19. The parties have provided legal authorities to support their respective positions as put forward in the pleadings, submissions and arguments.

⁸ However, this Act shall not apply to a friendly society which contracts with any person for the assurance of an annuity exceeding two hundred and fifty dollars a year, or of a gross sum exceeding two thousand five hundred dollars; (d) societies (in this Act called workingmen's clubs) for purposes of social intercourse, mutual helpfulness, mental and moral improvement, and rational recreation

20. In addition to the relevant sections of the Insurance Act, the Claimant relies on various authorities set out in its bundle not least of which are CV2010-00758 **Central Bank v Worldwide Insurance**⁹ and **Re Barrett** (1992) 34 FCR 508 at 522.¹⁰

21. The Defendant relies on, amongst several others, **Re Law Guarantee Trust and Accident society Limited, Liverpool Mortgage Insurance Company Case** [1914] 2 Ch 617 (CA) per Buckley LJ at 631; **Prudential Insurance Co. v Inland Revenue Commissioners** [1904] 2 KB 658 at 663 where Channell J considered the question “what is a contract of insurance?” He considered that:

*“It must be a contract whereby for some consideration, usually but not necessarily for periodical payments called premiums, you secure to yourself some benefit, usually but not necessarily the payment of a sum of money, upon the happening of some event. Then the next thing that is necessary is that the event should be one which involves some amount of uncertainty. There must be either uncertainty whether the event will ever happen or not, or if the event is one which must happen at some time there must be uncertainty as to the time at which it will happen. The remaining essential is that which was referred to by the Attorney-General when he said the insurance must be against something. A contract which would otherwise be a mere wager may become an insurance by reason of the assured having an interest in the subject-matter - that is to say, the uncertain event which is necessary to make the contract amount to an insurance must be an event which is prima facie adverse to the interest of the assured. **The insurance is to provide for the payment of a sum of money to meet a loss or detriment which will or may be suffered upon the happening of the event.** [Emphasis added]*

22. The Defendant also submitted **Medical Defence Union Ltd v Department of Trade** [1979] 2 All ER 421 to support its case. Here it was held by Megarry V-C that:

“To constitute a contract of insurance under the general law, and therefore such a contract within the 1974 Act, there had to be, on the occurrence of some event, a right to

⁹ Ventour J. noted that all the documents need be looked at closely in the process of determining whether the entity was engaged in the insurance business. This is the only case cited in this suit that dealt specifically with the Trinidad and Tobago legislation.

¹⁰ “It is the nature and content of those obligations which determine whether there is a policy of life insurance or endowment assurance, not the title given by the parties to the document which records the contractual terms of that document.”

receive money or money's worth, and where the entitlement was merely to some benefit other than money or money's worth the contract was not one of insurance. Accordingly a member's right, on a claim being made against him, to have his application for help with that claim properly considered by the union did not suffice to constitute the contract between him and the union a contract of insurance. It followed that the union was not an insurance company carrying on an insurance business within the 1974 Act, and was entitled to a declaration to that effect." [Emphasis mine]

ANALYSIS; FINDINGS AND CONCLUSIONS

23. At the onset and at risk of stating the obvious, it cannot be repeated too often, that as helpful as the international authorities may be, the issues identified for resolution in this matter turn on the words and interpretation of our Statutes, the practice of the local industry and the specific contract documents governing the relationship between the members of the VIP, the subject VIP Plan contracts and the Defendant. Apart from the very narrow points referred to in the submissions, there are nuances in the authorities produced to this Court by both parties that turn on the peculiar foreign statutory regimes and the 'mischief' there sought to be resolved, that governed the arrangements adjudicated upon there.
24. The starting point in resolving the issues identified in this matter is to understand what the governing Trinidad and Tobago statutory position requires. This is in the Court's view best done by disaggregating the relevant provisions of section 3 of the Act. The Court accepts the disaggregation as set out in the submissions of the Claimant as follows: The elements or indicia of "insurance business", as per **section 3** of the Act, are: **(i)** a policy; **(ii)** liability to make good or indemnify a person, called the insured, against loss or damage; **(iii)** payment contingent upon the happening of a specified event; **(iv)** and payment in the currency in which the premium has been paid.
25. The Claimant contends that in this case; there is a policy – being the contracts referred to in paragraph 12 of the Statement of Case also set out above and in the Agreed Facts between the parties; there is liability – to consider and determine whether, and if so, subject to contract, to pay the claims made to the Defendant by members of the VIP with whom the Defendant has contracted; there is a contingency – the happening of any of the uncertain events provided for in the contracts which give rise to a right by the members of the VIP to make claims to the Defendant

(emphasis mine); payment under the VIP plans are in fact to be made in the currency in which the premium has been paid.¹¹

26. This Court has noted the Defendant's contention that the claim by a VIP member does not give him a right to payment/compensation but merely a right to have his claim considered fairly. This fact, contends the Defendant, is fatal to the case of the Claimant that the Defendant is in the business of insurance, as opposed to what the Defendant terms as self-insurance. The high water mark of the Defendant's case rests on this contention.

27. Using the section 3 breakdown there is no contention in the Court's view that there is an insurance policy/contract in place; there is also provided for, the right to make a claim and in the circumstances provided by the contract there is the liability to consider and then make good or indemnify the claimant in those certain circumstances subject as always, to contract; payment is contingent upon the happening of a specified event and is to be made in the specified currency – TT\$. The contention in this case it appears to this Court, is not whether the VIP members have the right to make a claim, for they do have such a right, but rather, whether the *liability* to pay, if that is what it is, is at the absolute discretion of the Defendant and not as a matter of right of the insured. The further sub-question if you will, in the Court's view is whether this absolute discretion described by the Defendant through Mr. Bernard makes a difference under the Insurance Act's definition of insurance business. The Defendant contends that the insured has no right to compensation, as such the arrangement/policy is not one of insurance as contemplated under the Act but at best, it is one of self-insurance. At this juncture the Court notes that it is not of the view that to be a contract of insurance one necessarily has to have an initial right to obtain the compensation. It is a notorious fact if not known through common human experience, that in any event no insured has an absolute right to compensation but only a right to a claim which may crystalize into a right to compensation if all the conditions in the contract are satisfied.

28. Why does the Defendant contend that this absolute discretion exists? They do so because of the specific wording of the various plan contracts. That such wording is found in various parts of the plans is not disputable. The defence and indeed the Defendant's submissions set out the various

¹¹ See exhibit 'M.F.P.5' – receipt numbered 49603 – which sets out, in local currency, the premium payment received by the Defendant for coverage under the 'Mediserv Jewel Hospitalization & Surgery Medical Plan'; and M.F.P.5' – document entitled 'Mediserv Jewel Hospitalization & Surgery Medical Plan' – which sets out, in local currency, the benefits payable under that Plan.

clauses and statements in the plan contracts into which the VIP members enter, that speak to this alleged right of the Defendant/administrator to adjust or indeed withhold payment-out on a bona fide claim. Mr. Bernard, the witness for the Defendant testified to this fact and sought to direct the Court's attention to the clauses in the plans. For instance he directed the Court to page 31 of the trial bundle and more specifically to para 59 (c) of the Success and Wellness contract where it refers to the exclusivity of the Company's determination of coverage provided. This type of clause appears throughout the contracts¹². The Defendant also drew the Court's attention to the clauses that they claim amount to a contractual reversal of the contra proferentem rule, as further proof of the absolute discretion of the Defendant and the confirmation that the member only has a right to have his/her claim fairly considered and nothing else. This argument is hard to follow. The rule is applicable exactly in situations such as this, where the party who has put forward the potentially onerous terms of the contract is insisting on its enforcement. This term in itself can be viewed as an excluding or a limiting clause of the contracts and the contra proferentem rule can be applied if there is doubt as to the full meaning of the term/clause. Alternatively, the rules of construction can be used by the Court to search for an interpretation which, from the whole of the contract, would appear to promote or advance the true intent of the parties (Mediserv and VIP members).¹³ Senior Counsel for the Claimant cross examined Mr Bernard extensively on terms in the contract, for instance, that tended to the member's entitlement to certain benefits as opposed to the discretion of the Defendant.

29. The Court still has jurisdiction to examine such clauses, whether by applying the contra proferentem rule or the rules of construction.

30. However, it appears that it is between the member/insured and the insurer that the application of that rule would be invoked if necessary. The Defendant's assertions that the rule is ousted is incorrect. The rights and obligations expressed in the various clauses that would attract the application of that rule, are still at large.

31. The parties have submitted their authorities in support of their respective positions. For the Court's part, it finds that most of the authorities outside of a few narrow principles cited and

¹² See also para 36 at pp29 of the Trial Bundle.

¹³ See *Bathurst v Mutual Boiler* 1980 1 SCR 888.

relied upon by Counsel in this matter, are at best of general tangential value only, in respect of the interpretation and application of the section 3 of the Act and the Act generally. This case is not about the definition attributed to 'insurance business' in other States, statutory regimes and industry practice, but rather, the definition of 'insurance business' under the Trinidad and Tobago statutory regime and industry practice¹⁴.

32. For instance, the Department of Trade and Industry v St. Christopher Motorists Association Ltd¹⁵ case is based on a 1958 UK Insurance Act. The operative sections of that Act that perhaps may have lent some assistance to the court in assessing the relevance of the conclusions on what is insurance is or is not, has not been set out in the submissions. The narrow point relied on by the Defendant here, is the caution, that a contract which in fact is not a contract of insurance governed by section 3 of the Act, might all the same resemble a contract of insurance. Similarly, the Re Law Guarantee Trust Limited, Liverpool Mortgage Insurance Co.¹⁶ a 1913 case is based on several company law statutes (set out in the case as being cited in argument) of circa 1908. The resolution in that case revolved around the common law and practice in relation to contracts of insurance and reinsurance and other aspects of commercial law (debentures etc.) relevant to the convoluted facts and issues in that case. Further still, the Hampton v Toxteth Co-operative Provident Society¹⁷ case revolves around the interpretation of aspects of the UK Assurance Company Act of 1909. Then there is the useful case of Agnew & Ors. v The Commissioner of Inland Revenue and Ors. (NZ)¹⁸ where under a difficult factual matrix the Board sought to enunciate an approach to classification of contracts by engaging in a two stage process commencing with ascertaining what rights and obligations the parties intended to grant each other, then thereafter, on a question of law, categorizing the contract pursuant to that initial finding¹⁹. The Medical Defence Union Ltd v Department of Trade²⁰ case revolves around the UK 1974 Insurance Act and in essence warns against failing to distinguish between a policy of insurance and one of self-

¹⁴ Regrettably, precious little evidence was led as to the relevant industry practice in Trinidad and Tobago.

¹⁵ [1974] All ER395

¹⁶ [1914] 2 Ch 617

¹⁷ [1915] 1 Ch 721

¹⁸ [2001] UKPC 28

¹⁹ Even using this method, on the question of the intention of the parties, it is not clear that the parties intended the agreement alleged by the defendant when one has regard to the conflicting clauses that both suggest absolute rights and those that reflect a discretion. Further still, the substance of the members complaints exhibited by the claimant suggest that they were not *ad idem* with the Defendant on several critical rights and obligations under the plans.

²⁰ [1979]2 All ER 421

insurance. The Court has applied aspects of them all where the principle is transferable and applicable.

33. The Claimant on the other hand put much reliance on the *Re Barret*²¹ case. Notwithstanding the fact that the definition in that UK case is consistent with that which can be gleaned from the TT Act, this case involved a discussion of the constituents of a contract of insurance and a policy of Life Insurance and endowment assurance in the context of the 1966 Bankruptcy Act of the UK and issues there arising. Nowhere was the statutory context sufficiently set out so as to allow this Court to derive much guidance from the case for the resolution of the agreed issues at hand. It cannot be too often repeated here, that we are primarily concerned in this case with the Trinidad and Tobago statutory regime and where provided, the local industry practice. The Claimant relies upon this UK authority to say that the Court need look at the nature and content of a party's obligations to determine if there is a policy of insurance. The Defendant in the instant case further buttressed its case by citing in its written submissions, the *Prudential Insurance Co v Inland Revenue Commissioner*²² case to make the point that it must be shown that the assured becomes entitled to something on the occasion of some event, as one of the qualifying features of an insurance contract/policy.

34. I raise this point with respect to the relevance of the authorities, not to dismiss the value of any principle, where found, which can be transferred and adapted to our circumstances, but to make the point that in our case we have sufficient statutory content to oust some of the nuances of the interpretations found and inferences drawn in those authorities. We have a Statute - the Insurance Act - and section 3 thereof provides definitive assistance in determining this matter that I dare say the UK courts in their much earlier cases (cited before this Court) did not appear to have had.

35. Mr. Bernard for the Defendant testified both in chief and in cross examination that the VIP plans were self-insurance plans. This Court accepts first, that they are insurance plans. Setting aside the issue as to whether they are self-insurance plans or not and the significance, if any, of that, the Act does not distinguish between insurance and self-insurance. It does not say expressly or otherwise, that 'self-insurance' is not covered under the Act. The Act simply defines what is

²¹ (1992) 34 FCR 508 at 522

²² [1904] 2 KB at 663

‘insurance business’ in Trinidad and Tobago. The notion that self-insurance is not covered by the Act is derived from the distinctions raised in the various foreign authorities cited and relied upon by the Defendant in this case. Further, in the industry practice in Trinidad there may well be plans that equate with that which the Defendant has defined as self-insurance, but this is not an issue fully ventilated in this case or indeed necessarily relevant to this determination. This Court noted above, that the distinction between insurance and self-insurance may well be relevant in the jurisdictions’ statutory context in which those cases were decided. Indeed it may even be generally relevant to industry practice here. The Defendant raised what it claims are instances of this as it applies to companies and trade unions. To be clear, this Court notes for instance, that in the case of *Rojas v Manufacturers Life Insurance Company*, 2014 ONSC 7240(CAN) the Ontario Superior Court noted that the name, ‘Self-Insurance’ was a misnomer, for self-insurance is not insurance at all. That Court goes on to identify the said insurance as one that is normally undertaken by an employer for its employees²³.

36. However, this Court does not find that in this case we need to slavishly resort to the extrinsic assistance to unravel the meaning of the Act (more particular the relevant parts of section 3) in our factual context. The primary source for the determination of what is insurance business for the purposes of the Act and registration thereto is the very Act and more particularly section 3 thereof.

37. The Insurance Act of Trinidad and Tobago dictates who is required to be registered under the Act. The Claimant has set out the requirements for the carrying on of the insurance business in the disaggregated form as set out above. The VIP plans to which the parties in this matter have agreed to as being the subject of this trial meet the requirements. As noted above, the Defendant has not contended that the VIP plans do not contain any of the elements of the ‘insurance business’ (as disaggregated above) under the Act. It contends narrowly, against the nature of its liability to make good or indemnify a person – the VIP members’ very ‘right to compensation’. It contends that it offers self-insurance at best. The Act makes no such distinction in substance or specific description. There is no statutory law put before this Court that *self-insurance* howsoever manifested in the VIP plans is not captured by the Act. What has been contended by the Defendant is that self-insurance is not insurance and to this end they have identified the UK and

²³ See also the evidence on this point in cross examination of the Claimant’s witness.

Canadian law in support. This Court's view is that unless the VIP/Defendant meets other exclusionary criteria set out in the Act, they then must be subject to the Insurance Act and all its requirements for registration and its strictures.

38. On the issue of the VIP plans being permissible self-insurance, the Defendant has asserted that the fundamental difference between the regular commercial insurance and self-insurance is the issue of the right to compensation. The Defendant claims that the VIP member only has an interest or a right to have his claim fairly considered and not necessarily to be compensated. Mr. Bernard took time to identify the various clauses in the plans that tend to that, by reserving the absolute right to refuse a claim or diminish the eligibility at the Defendant's absolute discretion. Again, the Insurance Act does not make such a distinction. It matters not if you purport to reserve that right of control. The question is, does the plan fit the criteria set out in the Act? And again, it does. The fact that "*...liability to pay damages or compensation...*" is subject to contract and wrapped up in potential impediments or limitations, in this Court's view is not fatal. The plans are also rife with clauses that present what appear to be entitlements. In the cross-examination of Mr. Bernard by Senior Counsel of the Claimant, his attention was drawn to these. The point has not been made in this case, as notorious as it may be, but, in regular commercial insurance policies no claim is without a requirement to meet certain thresholds.

39. The Court accepts on the evidence that the VIP plans are promoted and rates provided for prospective members; payments and receipts are made in pursuance of this; VIP members make claims using its standard form medical claim forms; accident and physical injury reports are generated and along with various reports, documents and correspondence associated with the contractual undertakings and the industry²⁴.

Friendly Societies

40. The Defendant maintains that in any event, it is excluded from registration under the Act by virtue of the exception set out in section 3 that excludes from registration: "*business in relation to the benefits provided by a friendly society or a trade union for its members or their dependents.*" The Defendant contends that it is a Friendly Society, but one that does not require registration under

²⁴ See page 487 – 505 of the trial bundle generally.

the Friendly Societies Act Chap. 32:50. Indeed, the Defendant is not registered under the said Friendly Societies Act.

41. The Friendly Societies Act provides, among other things, the parameters of what activities the registered Friendly Society can undertake. It provides also, that not all societies need be registered.

42. It is this Court's view, the Friendly Societies that are referred to under the Insurance Act at section 3 are those societies registered under the Friendly Societies Act and engaged in the appropriate activities set out in the said Friendly Societies Act. For the Defendant to make the bald statement that the VIP is a legitimate unregistered society which provides benefits provided by a society, in this case, namely the VIP and its plans, is insufficient to meet the section 3 requirement. There is no evidence before this Court that suggests that Friendly Societies that are unregistered, customarily provide the said VIP plan type benefits or benefits other than which are caught by section 3 the Act. If the Court were to accept the contention of the Defendant on this point, then any entity, corporate or otherwise, can involve itself in the business of insurance for instance, and then claim to be a Friendly Society excluded from registration as a society and consequently from registration under the Insurance Act on the grounds, simply, that they consider themselves a Friendly Society.

43. The Defendant has not satisfied this Court that it is an unregistered Friendly Society or, if it is such that its activities and benefits conferred on its members are protected under the exclusion in section 3. This Court is satisfied that in any event, neither the Defendant nor the VIP (in relation to its Plans) satisfy any aspect of the substance of section 5 of the Friendly Societies Act as an unregistered society, if that is what the VIP(or Defendant) is at all. The Defendant is not excluded from Registration under the Insurance Act as contended, by virtue of the assertion that it is a bona fide unregistered Friendly Society providing benefits protected by the Insurance Act or Friendly Societies Act.

Who is Mediserv International Ltd?

44. The Defendant has represented in this case that it is merely a 3rd party risk manager engaged by the VIP. So who then is lawfully representing the VIP in this law suit to make the representation

that they are an unregistered Friendly Society engaged in self-insurance as alleged by the Defendant?

45. This Court notes that it has not been frontally addressed by Mr. Bernard of Mediserv in his evidence in Chief or cross examination as to how, for instance, the members of the VIP would go about altering the terms of the contracts/plans if the members so desired, if they can at all. The Defendant submitted that the VIP plans arose out of a need expressed by the members. Presumably it is their right also to alter those plans if their needs dictate so. That the terms of the contractual relations between the VIP, its members and Mediserv or the disputed Plans appear to be under the control of the Defendant, is patent on the evidence including the documentary evidence tendered in this matter.
46. The Court has had sight of the Bye Laws of the VIP in addition to the other Plan documents/agreements. They point to the centre of control of the VIP and the VIP plans. The Court notes that the said Bye laws define the “Board” of the VIP and declare that it is secondary to the “Patron”. It further defines and describe the Patron to include Capital Ventures Ltd; a member, a trustee; service providers and institutions established at the behest of the VIP to conduct the business of the VIP. This in the Court’s estimation, on the evidence of Mr Bernard, includes the Defendant as a ‘Patron’ (in addition whatever other characterization of the Defendant). Clause 8 sets out the authority and the responsibilities of the Patron. Clause 9 deals with membership of the VIP; under clause 9 c. (iv) the Patron can terminate or expel any member.
47. The Bye Laws go on to define a VIP program as an expression that is the intellectual property of the Patron. Certain elements of the definition and functions of the “Patron”, the “Board”, the “Community Committee” and the “Manager” overlap and/or duplicate each other. The interrelationship between these and other entities and defined concepts in the byelaws are intertwined and convoluted²⁵.
48. The upshot of all the documents, definitions and concepts referred to and the Bye Laws generally is that the Defendant and other so called named 3rd party facilitators/managers and Patrons are

²⁵ See para 4; para 34-36 of Mr Bernard’s Witness Statement for the defendants view of the interrelationship.

the effective controllers of the VIP and certain of its plans²⁶. The members of the VIP in essence, form a group for the purposes of group insurance created and offered by the Defendant. You must be a member of the group to be eligible to be considered for coverage²⁷.

The GEMS contract²⁸ – The INTRAMED Benefits plan

49. The GEMS contract at first blush appeared to have a different hue than the others. The GEMS contract, from the documentary evidence is not a plan/policy. It appears to be simply an option offered to the members of the VIP as part of the *base plan* to offer a deposit facility by which a medical service provider can be paid their upfront deposit before admitting a patient or commencing any emergency service. It does not appear to this court to be a stand-alone service of the class identified by section 3 of the Act. To the extent it may form part of the larger VIP medical plan for any individual who chooses to add-on that facility, it would also fall away with a terminated/void insurance/VIP medical insurance plan.

50. The IntraMed plan is referred to in the policy/plan as a travel companion²⁹. It is a benefit. It appears to be for coverage when traveling. Upon scrutiny it provides the benefits of a nature similar to that of a regular commercial travel insurance plan. More importantly however, it provides coverage caught by section 3 of the Act.

DISPOSITION

51. This Court, although appreciative of the authorities cited in this case, notes that they do not act to set aside the inescapable interpretation of the Insurance Act of Trinidad and Tobago.

52. The section 3 definition of the ‘insurance business’ captures the substance and character of the VIP plans save for the GEMS benefit/plan and the Defendant’s role and function in relation to these.

53. That if existing benefits/services provided by entities in Trinidad and Tobago who were not aware of the Act requiring them to be registered are caught by this Court’s interpretation, then that is a

²⁶ The policies are identified in the agreed facts and set out in the pleadings and above.

²⁷ See byelaws; see each Plan contract

²⁸ See pp 85 of the Bundle.

²⁹ See from pp710 of the Bundle.

matter for the Claimant to do what it can lawfully do to protect those entities. It may be that it was not intended that the Act affect certain other existing entities. Requisite amendments to the Act may be required. Requisite amendments to the Act may well be required. That is a matter for the State.

54. Further, the Court notes that if the Defendant and the VIP plans were not caught by the Act, then the complaints lodged by the various disaffected VIP members suggest that the self-insurance industry, if that is what it is, would require statutory regulation for the protection of the citizens of Trinidad and Tobago.

55. For the reasons stated above **IT IS HEREBY DETERMINED THAT:**

- I. Upon a true construction of the term “insurance business” as defined in section 3 of the Insurance Act, Chap 84:01 (“the Act”), the Defendant is carrying on “insurance business”;
- II. Upon a true construction of the terms of the Success & Wellness Lifestyle Management Contract; the Mediserv Jewel Success & Wellness Lifestyle Management Plan; and the IntraMed Benefits Plan, the Defendant is providing benefits to members which amount to the carrying on of “insurance business” within the meaning of the Act.

AND IT IS HEREBY ORDERED THAT:

- III. The Claimant is granted an injunction pursuant to section 66 of the Act restraining the Defendant and/or its servants and/or agents from carrying on insurance without being registered by the Claimant in respect of such class of business;
- IV. The Defendant be compelled whether by itself and/or its members, directors, servants or agents or any of them or otherwise howsoever to prepare a list of all of the persons who have subscribed to or become members of or have paid sums to the Defendant in relation to each, any and all of the Plans offered by the Defendant and to account for the payments collected from each such person and to submit such list and such account to the Claimant by such a date as determined mutually agreed by the parties;

- V. The Defendant to pay the Claimant's costs fit for Senior and a Junior Counsel, to be assessed by a Registrar in default of agreement.

DAVID C. HARRIS
HIGH COURT JUDGE
April 13TH 2021