

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No. CV 2010/00758

BETWEEN

**CENTRAL BANK OF Trinidad & Tobago
(a body corporate established by Section 3
of the Central Bank Act Chapter 79:02)**

Claimant

AND

**WORLDWIDE INSURANCE LIMITED
WORLDWIDE BANKERS RE COMPANY LIMITED**

Defendants

Before the Honourable Mr. Justice Ventour

Appearances:

Mr. Stephen Singh instructed by Ms. S. Rampersad
for the Claimant

Mr. Stanley Marcus, S.C. instructed by
Turkessa Blaides for the Defendants.

DECISION

Introduction

(1) Patrick Taylor is a very shrewd insurance business man. It appears to me that he has a very good working knowledge of the insurance industry. In July/August of 1998 he was appointed by the Supervisor of Insurance, to sit on a National Committee to explore the means of providing reinsurance for Third Party Liability Insurance for uninsured losses. His contribution was well acknowledged.

(2) Mr. Taylor is the Managing Director of three (3) companies which he incorporated for the purpose of conducting his insurance business. The first of those three (3) companies was Worldwide Insurance Limited incorporated in Grenada on the 15th day of July, 1994. The second company, Bankers Re Limited was incorporated in February 1998. However, by Articles of Amendment dated March 2003 that company changed its name to "The Worldwide Bankers Re Company Limited." The third company, Worldwide Insurance Limited (a separate and distinct entity from the company incorporated in Grenada) was incorporated in Trinidad and Tobago in August 2006.

(3) As far back as 2003, Mr. Taylor acting as Managing Director of Worldwide Bankers Re Company Limited (Worldwide Bankers Re) made various applications to the Central Bank of Trinidad and Tobago (the Claimant) to be registered under the Insurance Act, Chap. 84:01 (the Act) for the purpose of carrying on insurance business.

In fact by letter dated the 12th May, 2005 the Inspector of Financial Institutions (an office holder of the Central Bank) wrote to Worldwide Bankers Re indicating that the company should desist from carrying on insurance business as the company was not registered to do so under the Act.

(4) Subsequent to that letter, Mr. Taylor, acting on behalf of the said company, made several applications to be registered, first as an “insurance broker”; then there was discussion for registration as a “reinsurance broker”; then, as a “reinsurance agent”; thereafter as an “insurance agent” and finally on or about the 26th August, 2009 as a “reinsurance broker”. On each occasion, officials at the Central Bank requested of Mr. Taylor further documentation and information to process the application, but, according to the Claimant, the request was never fully satisfied. As a consequence, the company was never registered for the purpose of carrying on insurance business in Trinidad and Tobago.

(5) The Central Bank had cause to conduct certain investigations into the business affairs of two (2) of Mr. Taylor’s companies i.e. Worldwide Insurance Limited (Trinidad) and Worldwide Bankers Re. In the process of the investigation, officials of the Bank have obtained various policies, endorsements, invoices and receipts issued by the two (2) companies. Those documents have been listed as follows:-

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| (1)Public Liability Insurance Policy TT PL-0286-05
endorsement in the name of Cudjoe
Construction & Industrial Services Limited | April 2006-31 st March, 2007 |
| (2)Public Liability Insurance Policy TT PL-0286-05
endorsement in the name of Cudjoe
Construction & Industrial Services Limited | April 2007-31 st March, 2008 |
| (3)Invoice #2028 dated 10 th May, 2007 to
Cudjoe Construction & Industrial Services Limited | 10 th May, 2007 |
| (4)Workmens’ Compensation Policy TT-WC-0016/06 | |

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| endorsement in the name of Sookdeo Ganase | 15 th May, 2006-14 th May, 2007 |
| (5)Public Liability Policy TT PL-0017/06
endorsement in the name of Sookdeo Ganese | 15 th May, 2006-14 th May, 2007 |
| (6)Endorsement No.2 to Policy TT-PL-0017/06 | 17 th May, 2006 |
| (7)Endorsement No.2 to Policy TT-WC-0016/06 | 17 th May, 2006 |
| (8)Invoice No.1105 to Sookdeo Ganase | 12 th May, 2006 |
| (9)Invoice No.1106 to Sookdeo Ganase | 18 th May,2006 |
| (10)Automobile Liability Policy TTMC 0658/06 endorsement
in the name of South M Construction Services Limited | 21 st July, 2006 |
| (11)Workmen's Compensation/Automobile Liability Policy
in the name of South M Construction Services Limited
TT-WC-0656/06 TTMC 0658/06 endorsement | 24 th October 2006-31 st January 2007 |
| (12)Extension endorsement No.1 to Policy No:TT-MC-0658/06
in the name of South M Construction Limited | 7 th November, 2006 |
| (13)Extension endorsement No.2 to Policy No:TT-MC-0658/07
in the name of South M Construction Limited | 26 th February, 2007 |

WORLDWIDE INSURANCE LIMITED

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| (14)Cover Note for Policy No:TT-PC1285/08 in the name of
Curtis Mc Sween | 25 th July, 2008 |
| (15) Schedule to Policy No:TT-PC-1285/08 in the name of
Curtis Mc Sween | 25 th July, 2008 |
| (16)Private Motor Hull Policy | 25 th July, 2008 |
| (17)Cover Note for Policy No:TT-PC-1228/08 in the name of
Marlene Stewart | 1 st July, 2008 |

- (18) Schedule to Policy No:TT-PC-1228/08 in the name of
Marlene Stewart 15th July, 2008
- (19) Private Motor Hull Policy 15th July, 2008
- (20) Accident Loss Report for Marlene Stewart 30th July, 2008
- (21) Cover Note for Policy No:TT-PC1249/08 in the name of
Nkechi Kai Williams 10th July, 2008
- (22) Schedule to Policy No:TT-PC1249/08 in the name of
Nkechi Kai Williams 10th July, 2008
- (23) Private Motor Hull Policy 15th July, 2008
- (24) Workmen's Compensation Policy Cover Note
TT-WC-1895/08 for John Roberts Tours & Travel Services 28th November, 2008
- (25) Workmen's Compensation Schedule
TT-WC-1595/08 for John Roberts Tours & Travel Services 3rd December, 2008
- (26) Worldwide Insurance Limited Workmen's
Compensation Policy 3rd December, 2008
- (27) Public Liability Policy Cover Note
TT-PL-1594/08 for John Roberts Tours & Travel Services 28th November, 2008
- (28) Public Liability Schedule
TT-PL-1594/08 for John Roberts Tours & Travel Services 31st December, 2008
- (29) Public Liability Insurance Policy
TT-PL-1594/08 for John Roberts Tours & Travel Services 28th November, 2008
- (30) Bundle of receipts for premium payments issued in
favour of John Roberts

(6) As a consequence of this discovery, the Central Bank had reason to believe that the two (2) companies were carrying on insurance business without being registered to do so and therefore acting in violation of the provisions of the Act.

The Claim is filed

(7) The Central Bank proceeded to file a Claim against the two (2) companies on the 2nd March, 2000 claiming from the Court the following relief:-

- (1) A declaration that the Defendants are carrying on insurance business in contravention of section 11(2) of the Insurance Act, Chapter 84:01.
- (2) An injunction restraining the Defendants whether by themselves and/or their members, directors, servants or agents or any of them or otherwise howsoever from carrying on insurance business and/or acting as an insurer without being registered by the Central Bank in respect of that class of business as such action contravenes Section 11(2) of the Act.
- (3) An injunction restraining the Defendants whether by themselves and/or by their members, directors, servants or agents or any of them or otherwise howsoever from accepting premiums from existing policy holders and the general public.
- (4) A mandatory injunction compelling the Defendants whether by themselves and/or their members, directors, servants or agents or any of them or otherwise howsoever to prepare a list of all of their respective policy holders and to account for the premiums collected from each policy holder on record.
- (5) Costs.
- (6) Such further and/or other relief as the Court shall seem just.

The Defence

(8) The Defendants have contended in their Defence filed on the 13th day of April, 2010 that they are operating in the insurance industry as re-insurance intermediaries. They have denied that they are carrying on insurance business as alleged by the Claimant. In fact, the case as pleaded in paragraph 7 of the Defendants' Defence is critical and need to be restated at this point. Paragraph 7 states:

“The business transacted by the second Defendant within the insurance industry is that Defendant operates as an intermediary simpliciter. In the business of insurance the term “intermediary” relates to a person who holds an agency on behalf of a principal but not who is an insurance agent within the Insurance Act, whereas a re-insurance intermediary seeks out re-insurers willing to accept secondary liability. As such the role of the second Defendant is to identify suitable re-insurance companies for the acceptance, of risk for local agents, brokers and insurers.”

(9) In view of the plea as stated in paragraph 7 of the Defence the Defendants contend in paragraph 6 of their Defence that no power lay or lies in the Claimant to prohibit the Defendant from engaging in business not provided for in or prohibited by the provisions of that said Insurance Act, in particular, re-insurance business in the manner conducted by the second Defendant.

There is a Counterclaim

(10) The Defendants also filed a Counterclaim against the Claimant seeking inter alia, a declaration that that the Claimant, as regulator did not have and has failed to provide good and valid reasons for the refusal to approve the registration of the second Defendant as a reinsurer provider or intermediary since 2004.

Defence to the Counterclaim

(11) The Defence to the Counterclaim was filed on the 10th May, 2010. In this Defence the Claimant contend that the Defendants Counterclaim discloses no ground for bringing a claim on the basis that it does not set out any cause of action against the Claimant and should be struck out.

(12) Objection to the maintenance of the Counterclaim was taken by Counsel for the Claimant during one of the Case Management Conference and following arguments from both sides the Court took the view (with the approval of Counsel on both sides) that directions will be given at the end of the trial for the hearing of the Counterclaim.

(13) On a careful examination of the pleaded case of the Defendants (see for example paragraph 6 of the Defence) one gets the distinct impression that the re-insurance business allegedly being conducted by the Defendants is, in some material way, different or materially different from re-insurance business being conducted by other intermediaries in the insurance industry. The Court is therefore duty bound to carefully examine the evidence before it to determine in what way is the 2nd Defendant's operation as a reinsurance intermediary different from other intermediaries operating in the industry.

Evidence of the Claimant

(14) Two witnesses gave evidence on behalf of the Claimant. The first witness was Mr. Michael Hafeman an Actuary and an Independent Consultant. He was offered to the Court as an expert witness. The second was Mr. Carl Hiralal, a Chartered Accountant and the Inspector of Financial Institutions with the Central Bank of Trinidad and Tobago..

(15) Mr. Michael Hafeman is a Canadian citizen. He filed his witness statement on the 17th day of June, 2010. Mr. Hafeman graduated from the University of Minnesota in 1974 with a BA in Mathematics and Economics. He is the holder of many fellowships including the Fellow of the Society of Actuaries (1977). He has had extensive training in life and non-life insurance. In his position as an independent consultant he has provided subject matter expertise for the development of a core curriculum for insurance supervisors and has authored modules licensing, on-site inspection, reporting to supervisors and capital adequacy and solvency. He has been a named reviewer of other modules, including an advanced-level reinsurance case

study and a primer on non-life insurance ratios. Mr. Hafeman's expertise was never challenged by Counsel for the Defendants.

(16) On the morning of the trial, leave was granted to Counsel for the Claimant to have Mr. Hafeman amplify his witness statement in accordance with Part 29(1) of the Civil Proceedings Rules 1998 as amended. There was no objection by Counsel for the Defendants.

(17) This witness testified in paragraphs 7 and 8 respectively as follows:

“7. Re-insurance is described simply as “insuring insurers.” The insurer lays off part or all of the risks he has underwritten to a re-insurer. The insurer agrees, within the limits either as set out in a re-insurance agreement or a re-insurance treaty to indemnify the insurer in respect of liabilities that he incurs or accepts in providing insurance to his policy holders. As a general rule re-insurance may either be “facultative” or “treaty.” Facultative Reinsurance is a re-insurance effected item by item and accepted or declined by one or more re-insurers after scrutiny. A reinsurance treaty is a single contractual arrangement under which many risks are reinsured by one or more reinsurers.

8. An “intermediary” in the context of re-insurance is a person who performs the function of “broker” in re-insurance transactions. The broker often has a larger function than merely effecting a contract between a re-insured and a reinsurer, because not infrequently he is the instigator of the transaction. The custom and practice of the re-insurance market is that the Broker received his remuneration not from his principal the reinsured but from the reinsurer.”

(18) In his evidence in chief Mr. Hafeman described reinsurance simply as “insuring insurance.” He explains that the insurer lays off part or all of the risks he has underwritten to a reinsurer. The reinsurer agrees, within the limits, either as set out in a reinsurance agreement or a reinsurance treaty to indemnify the insurer in respect of liabilities that he incurs or accepts in providing insurance to his policy holders. As a general rule, reinsurance may either be “facultative” or “treaty.” Facultative insurance he describes as insurance effected item by item and accepted or declined by one or

more reinsurers after scrutiny. A reinsurance treaty is a single contractual arrangement under which many risks are reinsured by one or more reinsurers.

(19) The witness further states that in the context of reinsurance an “intermediary” is a person who performs the function of broker in reinsurance transactions. The broker often has a larger function than merely affecting a contract between a reinsured and a reinsurer because not infrequently, he is the instigator of the transaction. The custom and practice of the reinsurance maker, he says, is that the broker receives his remuneration not from his principal the reinsured but from the reinsurer.

(20) This witness further states that he has had cause to examine a number of documents described as “Policies” and inscribed on those “Policies” are the words “Worldwide Insurance Limited” in the top left hand corner. These documents form a bundle marked “MJH2” and is attached to the witness’s witness statement filed on the 17th day of June, 2010. He listed some of these documents as follows:-

- (1) A Private Motor Hull Policy – indorsed with the name “Marlene Stewart” together with a cover note relating to the insured Marlene Stewart;
- (2) A Worldwide Insurance Limited Public Liability Policy - together with a cover note relating to John Roberts Tours and Travel Service;
- (3) A Worldwide Insurance Limited Workman Compensation Policy – together with a cover note for John Roberts Tours and Travel Services.

(21) Mr. Hafeman testified that based on his analysis of those documents and given his knowledge of similar types of policies and cover notes he was able to form the opinion that those documents are consistent with Worldwide Insurance Limited conducting insurance business by undertaking to indemnify various insureds for various losses.

(22) The witness expressed the view that the documents he examined are not consistent with the assertion made by Worldwide Insurance Limited that it is conducting “reinsurance business” rather than “insurance business”. He offered the Court the following two (2) reasons for his conclusion:-

- (a) The documents clearly identify Worldwide Insurance Limited as the Company that is obligated to indemnify the various insures in respect of various losses which is consistent with the provision of insurance rather than reinsurance; and
- (b) The documents make no reference to any other Insurance company having assumed an obligation to indemnify the various insureds in respect of various losses, and the absence of another insurance company having a direct obligation to the insureds means there is no insurer for Worldwide Insurance Limited to reinsure.

(23) During his evidence in chief the witness also said that he examined a bundle of documents comprising the following:-

- (1) A cover note Number 09-235-09 from NDI Insurance Brokers whereby it is stated that Worldwide Bankers Re Company Limited has professional indemnity insurance to carry on business as an insurance Broker;
- (2) A cover note Number 07-0004-09 from NDI Insurance Brokers whereby it is stated Worldwide Insurance Limited Grenada is the re-insured for 85% of its risk undertaken for fire and allied perils for small to medium property exposures and consequential loss and Contractors All Risks and Contractors Equipment Policies;
- (3) A cover note Number 05-0296-09 from NDI Insurance Brokers whereby it is stated that World-Wide Insurance Limited Grenada is the reinsured for 70% of the risk undertaken for workmen compensation and employers liability, motor vehicle and personal accident and travel insurance; and
- (4) A cover note Number 09-0062-09 from NDI Insurance

Brokers whereby it is stated that Worldwide Insurance Limited Grenada is the re-insured for 80% of the risk undertaken for Marine Hull policies.

(24) Based on the witness's analysis of these documents and his knowledge of similar types of documents he is of the opinion that the documents are consistent with Worldwide Insurance Limited Grenada conducting insurance business and have sought through their brokers NDI, reinsurance for various risks undertaken. The witness expressed the view that the documents are not consistent with the assertion that the Worldwide Insurance Limited Grenada or Worldwide Bankers Re Company Limited are conducting either reinsurance or reinsurance Intermediary business. Mr. Hafeman has stated the reason why he has arrived at the opinion he expressed with respect to Cover Note No. 09-0235-09 from NDI Insurance Brokers. The witness says that the Cover Note refers to coverage in respect of the activities of Worldwide Bankers Re Company Limited as an insurance broker but makes no reference to activities as a reinsurance intermediary.

(25) I must make it clear that the opinions expressed by the witness with respect to Worldwide Insurance Limited Grenada are not relevant to this decision because no relief is sought by the Claimant against that company. In short, that company has not been sued by the Claimant.

(26) This witness admitted during cross-examination that he was at times uncertain as to whether references made to Worldwide Insurance Limited in the documents he examined were referable to the company incorporated in Trinidad and Tobago or the company incorporated in Grenada. I propose to deal in more detail with that issue later on in this judgment. I believe that the integrity of Mr. Hafeman's testimony was maintained notwithstanding Counsel's cross-examination.

(27) The second witness for the Claimant was Mr. Carl Hiralal, the Inspector of Financial Institutions with the Central Bank of Trinidad and Tobago (the Claimant). Prior to his appointment with the Claimant he was from 1981 to 2006 employed by the Office of the Superintendent of Financial Institutions in Canada. At the time of his retirement in 2006 he held the position of Senior Director, Financial Institutions Group where he had overall regulatory and supervisory responsibilities for over four hundred financial institutions operating in Canada included insurance companies both life and non-life.

(28) In his examination in chief Mr. Hiralal sought to highlight the dealings between the Claimant and the Defendants from as far back as 2003. He confirmed that the first Defendant was incorporated in August 2006 in accordance with the provisions of the Companies Act 1995 while the second Defendant was incorporated in February 1998.

(29) He testified that both the Supervisor of Insurance and the Inspector of Financial Institutions have had dealings with various applications made by the second Defendant to be registered under the Insurance Act.

(30) On or about the 12th May, 2005 the Claimant had indicated to the second Defendant that it should desist from carrying on insurance business as it was not duly registered to do so. See exhibit "CH1Tab 1" attached to Mr. Hiralal witness statement filed on the 28th May, 2010.

(31) On the 24th May, 2005 the second Defendant applied to the Claimant for registration as an **insurance broker** but by letter dated 7th December, 2005 addressed to the second Defendant's attorney at law, the Claimant requested further clarification and/or information on the said application but none was provided by the Applicant. See exhibit "CH1 Tab2".

(32) Discussions were held with the second Defendant and its attorney at law and several personnel of the Claimant on the 24th January, 2006 at the Central Bank regarding the second Defendant's application for registration as a "**reinsurance broker.**" By letter dated 31st January, 2006 the Claimant informed the second Defendant's attorney at law what further information is required in order to process the application. However, by letter dated 8th February, 2006 attorney at law for the second Defendant wrote to the Claimant indicating that the second Defendant "now wish to amend its application for registration to that of a **Reinsurance Agent.**" See exhibit "CH1 Tab 5".

(33) Accordingly, the second Defendant then submitted its application on the 24th May, 2006 for registration as a **Reinsurance Agent.** The Claimant responded by letter dated 27th June, 2006 requesting further documentation and information in order to deal with the application. The second Defendant responded by requesting that all documents submitted be returned. The Claimant obliged.

(34) On 26th August, 2009 the second Defendant submitted another application for registration as a **reinsurance broker** under the provisions of the Insurance Act. The Claimant responded by letter dated 11th December, 2009 requesting from the second Defendant, further information. The Applicant was given until the 29th December, 2009

to provide the said information. All the information requested was not provided and by letter dated the 2nd February, 2010 the Claimant denied the application. See exhibit "CH1 Tab 8".

(35) Mr. Hiralal further testified that the first Defendant through its director Turkessa Blaides submitted an application to the Claimant to be registered to carry on **excess surplus insurance property, marine, liability insurance business**. The Claimant by letter dated 23rd October, 2008 requested clarification on the first Defendant's registration in Grenada. Again by letter dated 21st January, 2009 the Claimant requested of the first Defendant written confirmation from the Grenada Authority on the first Defendant's registration status for 2009 and audited financial statements for the period 2006 to 2008. The first Defendant did not provide the requested information.

(36) This witness also testified that the Claimant has conducted investigation into the affairs of the first and second Defendants and has conducted on site visits to two insurance brokers, viz. Trinity Insurance Brokers Limited and 3 K's Services Limited. During these on site visits, the Claimant obtained various policies, endorsements, invoices and receipts issued by the first and second Defendants. These documents have already been enumerated earlier in this judgment. Mr. Hiralal's testimony has not been impugned by the cross-examination of Counsel for the Defendants.

The Evidence of the Defendants

(37) Mr. Taylor was the only witness to testify on behalf of the Defendants. He sought to give his own interpretation of the documentary evidence relied on by the Claimant in support of the case the Claimant seeks to make out against the Defendants.

(38) Mr. Taylor has spent some considerable time trying to explain to the Court the nature of the business conducted by each of his three companies. The three companies of which he is Managing Director are as follows:-

- (1) Worldwide Insurance Limited incorporated under the laws of Trinidad and Tobago on the 7th August, 2006. (Worldwide Trinidad);
- (2) Worldwide Insurance Limited incorporated under the laws of Grenada on the 15th July, 1994 and continued on the 7th April, 1997 (Worldwide Grenada);

- (3) Bankers Re Limited incorporated under the laws of Trinidad and Tobago on the 19th February, 1998 and subsequently underwent a change of name to “The Worldwide Bankers Re Company Limited” (Bankers Re) on the 17th March, 2003.

(39) This witness testified that at no time did Worldwide Trinidad conduct any insurance business, re-insurance business or even re-insurance intermediary business in Trinidad and Tobago, since the company was not and still is not in possession of either an insurance or reinsurance treaty thereby providing the capability to conduct insurance business, reinsurance business or reinsurance intermediary business.

(40) Further, he says that the nature of the business conducted by Bankers Re is that of reinsurance intermediary and not that of an insurer or a reinsurer. He explains to the Court that a reinsurance intermediary is an operation where the intermediary acts as an agent on behalf of a principal, an external reinsurer such as Insurance Brokers of England. The witness identifies two of the company’s principals who are international reinsurance brokers operating out of the United Kingdom. They are NDI Insurance Brokers and PWS International Limited. He said that Bankers Re does not interface with members of the general public.

(41) Based on the evidence adduced before the Court Mr. Marcus, S.C. has identified three (3) issues for the Court’s determination. Those issues are:

- (a) whether the Defendants are conducting business of a nature which is required to be registered in accordance with the Insurance Act, Chapter 84:01 of the Laws of Trinidad and Tobago;
- (b) whether the Defendants are conducting re-insurance business or business as a reinsurance intermediary.
- (c) whether the Claimant had the authority to register the Defendants under the Act.

(42) Mr. Marcus, S.C. has submitted that in light of the pleas made by the Defendants in the Defence and in the witness statement of Patrick Taylor there is another issue for the Court’s determination, that is, which of the Companies,

Worldwide Insurance Limited (Grenada) or Worldwide Insurance Limited (Trinidad & Tobago) was involved in any of the activities testified to by the Claimant's witnesses.

(43) On the other hand Mr. Singh, Counsel for the Claimant has contended that the principal issue for determination by this Court is whether Worldwide Trinidad and Bankers Re are carrying on insurance business in contravention of section 11 of the Act.

(44) Before one begins a careful analysis of the evidence, and in particular, the documents referred to by the Claimant and upon which the Claimant relies in support of its contention that the Defendants are carrying on insurance business in contravention of the provisions of the Insurance Act, I think it will be helpful and necessary to provide the answers to two important questions, viz:

(1) What exactly is the nature of the business of Reinsurance?

(2) Who or what is a reinsurance intermediary?

Reinsurance

(45) I consider it as good a time as any to promulgate the fact that the Insurance Act does govern the business of reinsurance. Section 2(2) of the Act is pellucidly clear. It states:

“For the purposes of this Act the re-insurance of liabilities under insurance policies shall be treated as insurance business of the class to which the policies would have belonged had they been issued by the re-insurer, and all the provisions of the Act shall apply to such re-insurance save that a Company or an association of underwriters carrying on such re-insurance shall not be required to make in respect thereof the deposit required to be made by section 29 or section 189.”

(46) It is clear that under the Insurance Act the business of re-insurance is treated as insurance business. See for example the case of **In re N.R.G. Victory Re-insurance**

Ltd. [1995] 1WLR 239. Further the section stipulates that all the provisions of the Act shall apply to such reinsurance business as equally as they apply to insurance business except that the statutory deposits required to be made by section 29 or section 189 will not apply.

(47) The Managing Director of the Defendants, Mr. Patrick Taylor has given the Court his understanding of the business of reinsurance. At paragraph 7 of his witness statement, Mr. Taylor says that the practice of reinsurance can be best defined as the assumption by another insurance entity of the whole or part of risk assessment by the primary insurer.

(48) Mr. Hafeman was a little more succinct in his definition of the business of reinsurance. At paragraph 7 of his witness statement he describes reinsurance simply as “insuring insurers.” The reinsurer, he says, agrees within the limits, either as set out in a reinsurance agreement or a reinsurance treaty, to identify the insurer in respect of liabilities, that he incurs or accepts in providing insurance to his policy holders.

(49) The authors of the well known text, **Mac Gillivray on Insurance Law**, (eleventh edition) paragraph 33-002 at page 1035 describes reinsurance as “an independent contract of insurance whereby the reinsurer engaged to indemnify the reinsured wholly or partially against losses for which the latter is liable to the insured under the primary contract of insurance.”

(50) Yet again elements of reinsurance were comprehensively dealt with by Hobhouse, L. J. in the case of **Toomey –v- Eagle Star Insurance Co. Ltd. [1994] 1 Lloyd’s Rep. 516 @ pg. 522** where the learned Law Lord said:

“A contract of insurance and a contract of re-insurance are independent of each other. But a contract of reinsurance is a contract which insures the thing originally insured, namely, the ship. The reinsurer (sic) has an insurable interest in the ship by virtue of his original contract of insurance. The thing insured, however, is the ship, and not the interest of the reinsurer (sic) in the ship by reason of his contract of insurance upon the ship.”

The learned Law Lord continues:

“Now it is old law that by a contract of reinsurance the reinsuring party insures the original insuring party against the original loss, the insurable interest of the original insuring being constituted by its policy given to the original assured.”

(51) There are therefore two (2) parties involve in a contract of reinsurance i.e. the reinsurer who assumes the whole or part of the risk undertaken by the insurer **and** the reinsured who is the insurer in the primary contract of insurance.

The Reinsurance Intermediary

(52) I now would like to turn my attention to the re-insurance intermediary. Mr. Taylor sees the re-insurance intermediary as an operation where the intermediary acts as an agent on behalf of a principal. In his evidence in chief he identifies two (2) of the second Defendant’s principals i.e. NDI Insurance Brokers and PWS International Limited.

(53) Mr. Hafeman on the other hand says that an “intermediary” in the context of reinsurance is a person who performs the function of a “broker” in reinsurance transactions. He says further that the broker often has a larger function than merely affecting a contract between a reinsured and a reinsurer, because not infrequently, he is the instigator of the transaction. In his experience the custom and practice of the reinsurance market is that the broker receives his remuneration not from his principal the reinsured, but from the reinsurer.

(54) I think Mr. Hafeman is saying that even though the “reinsurance intermediary” performs the function of a broker, he (the intermediary) is seen as an agent acting on behalf of the “reinsured” but based on customs and practices he looks to the reinsurer for remuneration of his services.

(55) It is important to note that in the eight edition of Black’s Law Dictionary, the term “insurance broker” is defined as follows:-

“A person who, for compensation, brings about or negotiates contracts of insurance as an agent for someone else, but not as an officer, salaried employee, or licensed agent of an insurance company.

The broker acts as an intermediary between the insured and the insurer.”

(56) I take it from what is expressed above that a broker can also act as an intermediary between the reinsurer and the reinsured in a reinsurance contract. In such circumstance the broker will be described as a reinsurance intermediary.

(57) It seems therefore that the opinion expressed by Mr. Hafeman that in the context of reinsurance, the intermediary performs the function of a broker is reinforced by the authoratative statement made in Black’s Law Dictionary.

(58) Again in Chapter 12 of the well known text entitled **Insurance Disputes** (2nd Edition) edited by Lord Mance, Goldsein and Merkin, the authors in dealing with “Intermediary Responsibility” refer to a number of authorities in which the insurance intermediaries all perform the functions of insurance brokers. The cases have shown therefore, that insurance intermediaries do perform the functions of brokers at the level of the contract made between the insured and the insurer and also at the level of the contract of reinsurance made between the reinsured and the reinsurer.

(59) Some assistance is also derived from the case of **Calvert Fire Insurance Company –vs- Unigard Mutual Insurance Company (1980) 623 Civ. No. 77-0-272**. The case was heard in the United States District Court of Nebraska and in one of several footnotes (footnote No. 2) listed in the judgment the Court appears to have accepted the function of a reinsurance intermediary to be as follows:-

“A reinsurance intermediary acts between the two principals to the reinsurance transaction, negotiating and drafting the reinsurance treaty and handling all communications relating thereto. The intermediary may also transmit accounts, collect balances due, settle cash losses and handle other matters of detail in the working of the reinsurance transaction.”

(emphasis added).

(60) It is clear therefore that the intermediary may be called upon to do more than the traditional broker, but that does not affect in any material way his relationship with or his responsibility to the Insured in the original insurance contract or the reinsured in a reinsurance transaction. Mr. Taylor himself sees the intermediary as a “middleman” and that description, in my respectful view, is also fitting to the function of a broker.

(61) Mr. Marcus, S.C. has contended on behalf of the Defendants, that reinsurance intermediary business is not regulated (or prohibited) by the Act. Given the analysis above, I beg to disagree. In my view, notwithstanding the nomenclature, the reinsurance intermediary for all intents and purposes, performs the functions of a reinsurance broker. He is a “middle man” as Mr. Taylor himself has described the intermediary.

(62) If the evidence before this Court establishes that the 2nd Defendant is carrying on activities as a Reinsurance intermediary then I am prepared to hold that the company is performing the functions of a broker and therefore ought to be registered to carry on its business under the provisions of the Act.

The term “broker” is defined by section 3(1) of the Act as follows:-

“Any individual who or any firm or company which for compensation as an independent contractor in any manner solicits, negotiates or procures insurance or the renewal or continuance thereof on behalf of existing or prospective policy holders.”

(63) If therefore, the intermediary, acting as an independent contractor seeks to negotiate or procure insurance for compensation then the intermediary, whether in the context of insurance or reinsurance is performing the function of a broker.

(64) I see nothing “unique” or “complex” about the function of the intermediary in the context of insurance or reinsurance business. There is, therefore, no doubt that the Act seeks to regulate not only the business of insurance but also that of reinsurance. The Act also governs the activities of an insurance broker. Section 88(1) of the Act makes it mandatory for anyone carrying on the business of a broker to be registered under PART III of the Act.

Section 88(1) states:

“No person may, in respect of any class of insurance business, carry on business as broker, a salesman, an adjuster or an agent of an insurance company unless he is registered under this Part.”

(65) Having said that I now wish to closely examine the documentary evidence relied on by the Defendants in support of their contention that the first Defendant has not conducted any insurance business whatsoever in Trinidad and Tobago and that all the insurance business conducted by the second Defendant is in the nature of reinsurance intermediary as defined above. I shall first examine the activities of the 2nd named Defendant.

Bankers Re- the 2nd Defendant

(66) Mr. Taylor first relied on exhibit “PT 4” referred to in paragraph 8 of his witness statement. This document, he says, highlights the terms of business between PWS International Ltd (PWS) and the second Defendant, Bankers Re. The contents of the covering letter dated 16th September, 2004 leave us with no doubt, that the 2nd Defendant is a client of P.W. S.

(67) It is to be noted from the exhibit that one of PWS’s core principles to its clients is to:

“take reasonable steps to give our clients sufficient information in a comprehensive and timely way to enable them to make balanced and informed decisions about their insurance or reinsurance as the case may be.”

(68) I think it is reasonable to conclude from that core principle that P.W.S. sees the 2nd Defendant as being involved in the business of insurance and/or reinsurance. In

fact P.W.S. makes it clear that the placing of reinsurance business is a major part of their business.

Exhibit "PT 5" refers to four (4) cover notes as follows:-

- (1) Cover Note Number 07-0004-09 dated 11th June, 2009;
- (2) Cover Note Number 07-0004-08 dated 28th March, 2008;
- (3) Cover Note Number 09-0062-09 dated 11th June, 2009;
- (4) Cover Note Number 06-0296-08 dated 19th May, 2009.

(69) These Cover Notes have been placed by ND1 Insurance Brokers on behalf of Worldwide Insurance Limited, Grenada as the reinsured. This exhibit confirms that Worldwide Grenada is the main beneficiary of the reinsurance contracts referred to therein. Mr. Taylor in his testimony says that in exhibit "PT 5" Worldwide Grenada is acting as reinsurer of risks presented to Bankers Re, the second Defendant herein. The documentary evidence belies such a statement. The document confirms that Worldwide Grenada is the reinsured in what is described as a reinsurance contract.

(70) Exhibits "PT 6" and "PT 7" are in fact two Brokers Slips issued by Risk Management Services Limited (RMS) as brokers on behalf of their client Caribbean Communications Network Limited (CCN). In both cases the broker is the same, that is, RMS and the client is the same, that is, CCN. However, in the first Broker Slip the insurers are LJ Williams Limited and United Insurance Company Limited, while in the second Broker Slip the **insurer** is Worldwide Bankers Re, the second Defendant herein. I think it is important to emphasise the point that the document describes the 2nd Defendant as the **insurer** and not as a reinsurance intermediary as pleaded in its Defence.

(71) Exhibit "PT 8" is a letter dated 22nd December, 2006 from the Broker R.M.S. addressed to Bankers Re, the Insurer named in the Broker Slip referred to in exhibit "PT 7". In that letter the Broker is advising the **insurer** to proceed to place the insurance at the rate quoted in the Broker Slip endorsed by Bankers Re.

(72) Exhibit “PT 9” represents an Invoice dated 10th January, 2007 issued by Bankers Re (the **Insurer**) for the premium payable on Policy No. TT-PAR-0790/07 issued to CCN (the Insured) who are the clients of R.M.S. the Brokers.

(73) Mr. Taylor would have this Court believe that there is a direct connection between the two (2) documents comprising exhibit “PT 9”. He testified (see paragraph 16(d) of his witness statement) that the Invoice submitted by the second Defendant to R.M.S. is for the risk placement with Worldwide Grenada and other reinsurers as named in the policy document. He says further that the invoice is submitted along with the Cover Note illustrating the security and the terms and conditions of placing the risk.

(74) A careful analysis of exhibit “PT 9” reveals that the Invoice relates to the contract of insurance made between Bankers Re as the **Insurer** and CCN as the insured. The Invoice was forwarded to R.M.S. who acted as the Brokers on behalf of the Insured CCN.

(75) The Cover Note on the other hand sets out the terms of the contract of reinsurance entered into between Bankers Re as the **reinsured** and other entities, including Worldwide Insurance Ltd. as reinsurers. PWS International acting as Brokers effected the reinsurance on behalf of the **reinsured**, who, at the time was Bankers Re.

(76) Moreover, the Cover Note does not indicate whether the Worldwide Insurance Limited who endorsed the Cover Note in their capacity as **reinsurers** is the Grenada Company or the Trinidad Company. In the absence of such evidence it is not unreasonable for the Claimant to initiate proceedings against the first named Defendant Worldwide Insurance Limited.

(77) In his evidence in chief Mr. Taylor said:

“By letter dated the 7th March, 2007, PWS International (“the reinsurer”) submitted its Invoice and cover note for the placement of

the risk of Bankers Re (“the reinsurance intermediary”).

See paragraph 16(e) of his witness statement.

One of the conditions of the contract of reinsurance is that the cedent company, (the 2nd Defendant as the reinsured) retained 5% of the risks ceded to the several reinsurers named in the Cover Note. That 5% was assumed by Worldwide Insurance Limited as one of the many **reinsurers**.

(78) In the debit note (the invoice) PWS International referred to Bankers Re Ltd. as the **reinsured** and in the Cover Note of the same date PWS International emphasized in the very first paragraph of the Cover Note that the said Cover Note is a “Broker Insurance Document that has been prepared by PWS International Limited acting as your Agent.” It is clear that by the Cover Note PWS International was informing its principal (Bankers Re as the **reinsured**) that the reinsurance with the several underwriters had been placed.

(79) As indicated earlier in this judgment PWS International is a reinsurance intermediary and the documentary evidence confirms that PWS at all times perform the function of brokers in placing the reinsurance of the original policy which the 2nd Defendant had affected with CCN as the insured. Nowhere in his testimony has Mr. Taylor shown the courage to admit that the 2nd Defendant was the **insurer** in the original contract of insurance with CCN and inevitably the **reinsured** in the reinsurance contract negotiated by PWS International as the agent of the 2nd Defendant. The documents comprising “PT 10” speak for themselves and exhibit “PT 11” simply reinforces the view expressed above.

(80) Exhibit “PT 13” is another Broker Slip prepared by SDS Insurance Brokers Ltd. The Slip describes a Property All Risks insurance coverage for which the insured is Sugar Manufacturing Company Ltd. A number of Insurance Companies have signed on the second page of the Brokers Slip presumably indicating what percentages of the risks they have agreed to insure. Bankers Re Ltd. the second Defendant herein, is one such company. The stamp endorsed thereon indicates that Bankers Re has assumed a 46% share of the risks. There is nothing on the face of this exhibit to suggest that the 2nd Defendant acted as a re-insurance intermediary as claimed by Mr. Taylor in his evidence.

(81) Exhibit "PT 14" is a Placement Slip for reinsurance issued by Bankers Re. The reinsured for whom the placement is made is Sagicor General Insurance Company Limited. There are two distinct documents comprising Exhibit "PT 14". There is nothing on the face of the Placement Slip to suggest that Tysers International made any request of Bankers Re to place the account as Mr. Taylor has suggested in his testimony.

(82) The second document of "PT 14" appears to have been issued by Tysers International where the insured is different and the sum insured is also different from what is referred to in the Placement Slip. The document appears to have come to an abrupt end on page 4 leaving the Court with no information as to who exactly are the Insurers in that transaction. Mr. Taylor's evidence does not assist the Court either.

(83) Exhibit "PT 15" represents an Invoice dated 17th January, 2005 issued by Bankers Re and sent to SDS Insurance Brokers Ltd. for the Placement of Policy No. TT-FSP – 0240/05 made in favour of the Insured, Sugar Manufacturing Company Limited. The Cover Note issued by the second Defendant describes the insurance coverage being provided by the second Defendant to the Insured. The Cover Note also explains that reinsurance for part of the risk has been affected with three (3) different underwriters, i.e. Ecclesiatical, Axa Re and The New India Assurance Company.

(84) "PT 20" is a Public Liability Policy. The first recital of that Policy is a clear acknowledgement that Bankers Re acted as the **Insurer** for the Policy of Insurance issued to therein and therefore as the **reinsured** for the purpose of the Re insurance contract.

(85) I have taken the time to carefully examine the several documents referred to above in order to determine whether the Defendants or either of them has been carrying on insurance business in contravention of section 11 of the Insurance Act. In addition to those documents I have also perused the other exhibits referred to by the Claimant to determine whether the 2nd Defendant acted as a re-insurance intermediary as alleged in its Defence filed herein. Regrettably, I have found no such evidence. I shall now analyse some of the activities of the 1st named Defendant in order to determine in what way, if any, this Defendant has been involved in the insurance business.

Worldwide Insurance Limited

(86) Mr. Taylor has categorically denied that the first Defendant has engaged in any insurance business whatsoever. The first Defendant, Worldwide Insurance Limited is the Company incorporated in Trinidad and Tobago – see paragraph 5 of the Statement of Case filed on the 2nd March, 2010. One would readily recall that the other company incorporated by Mr. Taylor in Grenada carries the identical name, Worldwide Insurance Limited. It would therefore be difficult, if not impossible, to identify which of the two companies is the contracting party in any written agreement, unless the documents expressly so provide.

(87) For example Exhibit “PT 9” includes a Cover Note issued by the second Defendant in respect of the Policy of Insurance for the insured, Caribbean Communications Network Limited. The Cover Note confirms that 5% of the risk has been assumed by Worldwide Insurance Limited as reinsurers. There is absolutely no indication on the face of the document indicating whether the reinsurer is the Company incorporated in Grenada or the company incorporated in Trinidad and Tobago. The Court is faced with the same difficulty with the “Insuring Agreement” dated and signed by Worldwide Insurance Ltd. on the 5th March, 2007.

(88) It is very interesting to note that there is nothing on the face of the Cover Note in exhibit “PT 9” to link Worldwide Insurance Limited to the company incorporated in Grenada but Mr. Taylor, in his evidence (see paragraph 16(d) of his witness statement) seemed to have found that link. There is a valid reason for that. Mr. Taylor’s testimony is that the first named Defendant has not conducted “any insurance business, re-insurance business or reinsurance intermediary business in Trinidad and Tobago.” Therefore, according to Mr. Taylor, the company signing the cover note must be the company incorporated in Grenada.

(89) What is particularly interesting is that in instances where contracts of insurance were entered into with the company incorporated in Grenada, the documentation was quite specific and left no doubt in the minds of the readers which of the two (2) companies was the contracting party. For example, in exhibit “PT 5” the four (4) Cover Notes clearly identified the reinsured as “Worldwide Insurance Limited, Grenada.” The address used by NDI Insurance Brokers was the address at St. Georges Grenada. And the currency used in those policy documents was either US or Eastern Caribbean (EC).

(90) Exhibit “PT 9” is duly signed by Worldwide Insurance Limited as the **reinsurer** without any indication that it is the company incorporated in Grenada but Mr. Taylor would tell this Court that the company referred to is the company incorporated in Grenada without any supporting evidence to link the company with the Sister Isle of Grenada.

(91) Moreover, I do not believe that the description given by Mr. Taylor to the parties involved in the transaction are accurate and I hope that the evidence given by Mr. Taylor was not intended to mislead the Court. Mr. Taylor must have been aware that at no time did PWS International act as reinsurers with respect to the transaction referred to in their letter of 7th March, 2007 (exhibit “PT10”). Neither did Bankers Re act as a **reinsurance intermediary** in that transaction. The document speaks for itself.

(92) Exhibit “PT 12” is an insurance policy issued by Worldwide Insurance Limited on the 5th March, 2007. The Policy No. is TT-PAR-0790/06 and the name of the Assured is Caribbean Communication Network (CCN). Mr. Taylor testified that the Insurer is the company incorporated in Grenada and not the first Defendant. However, there is nothing on the face of the policy to indicate whether the Insured is Worldwide Grenada or Worldwide Trinidad. It is therefore not unreasonable for the Claimant to have taken the action it did against the first Defendant, particularly since the Insured is ordinarily resident in Trinidad and Tobago.

(93) Mr. Taylor’s enterprising spirit has led him to incorporate two (2) companies carrying identical names in two (2) different jurisdictions i.e. Trinidad and Tobago and Grenada. If either of these two (2) companies enter into a contract of insurance or reinsurance as the case might be, one would expect the contracting party to be easily identifiable that is, whether it is the Trinidad corporation or the Grenada corporation, since both companies carry the identical name i.e. Worldwide Insurance Limited. The four (4) Cover Notes referred to earlier in this judgment did specifically identify the company incorporated in Grenada as the contracting party. To fail to identify which of the two (2) companies is in fact the contracting party could give rise to serious legal consequences.

(94) The principle of utmost good faith – **uberrima fides** – underlies all contracts of insurance and reinsurance.

That principle was enumerated as far back as the eighteenth century in the case of **Carter –vs- Boehm [1766] 3 Burr 1905**. At page 1909 Lord Mansfield said:

“Insurance is a contract upon speculation. The special facts upon which the contingent chance is to be computed lie most commonly in the knowledge of the insured only. The underwriter trust to his representation, and proceeds upon confidence that he does not keep back any circumstance in his knowledge, to mislead the underwriter into a belief that the circumstance does not exist, and to induce him to estimate the risque as if it did not exist..... Although the expression should happen through mistake, without any fraudulent intention, yet still the underwriter is deceived, and the policy is void, because the risqué run is really different from the risque understook and intended to run at the time of the agreement..... Good faith forbids either party, by concealing what he privately knows, to draw the other into a bargain from his ignorance of that fact and his believing the contrary.....”. emphasis added.

(95) I wish to make it abundantly clear that I am not suggesting for one moment that Mr. Taylor has any fraudulent intention. I am simply saying that it is unacceptable for one to enter into a contractual relationship with either of those two companies and not be made aware specifically which of the two companies is the contracting party. In the circumstances, I do not think it was unreasonable for the Claimant to assume that the company that issued policy No. TT-PAR-0790/06 to CCN, the insured, was in fact the

company incorporated in Trinidad and Tobago and not the company incorporated in Grenada as Mr. Taylor would have this Court believe.

(96) Mr. Taylor has testified that Exhibit “PT 21” comprises copies of monthly declarations submitted by Bankers Re outlining all policies issued on behalf of Worldwide Grenada. Mr. Taylor’s testimony is an acknowledgement that Worldwide Insurance Limited acted as the **Insurer** in the numerous insurance policies referred to in Exhibit “PT 21”.

(97) What Mr. Taylor would have this Court believe is that the Worldwide Insurance Limited referred to in those policies of Insurance is the entity incorporated in Grenada and not the entity incorporated in Trinidad and Tobago. Absolutely no evidence has been adduced by Mr. Taylor to satisfy this Court that the Insurer in those transactions is in fact the Grenada Company and not the Trinidad entity. “PT 21” is headed “Worldwide Insurance Limited” and provides details of the Insureds, the Policy Numbers, the type of business, the period of the coverage, the location of the Insured and the total sum insured. It is important to note that all the insureds are located in the Republic of Trinidad and Tobago. On the evidence before this Court I am of the view that Worldwide Insurance Limited referred to in Exhibit “PT 21” is the Company incorporated in Trinidad and Tobago.

(98) Exhibit “PT 22” comprises a Motor Quote, a Cover Note, an Invoice, a Schedule and a Private Motor Hull Policy, all issued by Worldwide Insurance Limited. Again there is nothing to indicate whether the **Insurer** (Worldwide Insurance Ltd.) in that contract of insurance with Mr. Curtis Mc Sween as the insured, is the Company incorporated in Grenada or the Trinidad and Tobago corporation.

(99) The evidence before the Court establishes that Worldwide Insurance Limited (Trinidad) and Bankers Re were incorporated in Trinidad and Tobago and they both have the same registered office at #22-24 St. Vincent Street, Port of Spain.

(100) There are other transactions involving Worldwide Insurance Limited in which it was impossible to determine which of the two companies was the contracting party. In such circumstances this Court is duty bound to examine the evidence in order to make a determination. Those transactions involving Worldwide Insurance Limited all carry the following similar features:

- (i) the transactions are governed by the laws of

Trinidad and Tobago;

- (i) the property insured is located in Trinidad and Tobago;
- (ii) the currency used is the currency of Trinidad and Tobago;
- (iii) the persons insured resides in Trinidad and Tobago;
- (iv) correspondence emanated from or addressed to #22-24 St. Vincent Street, Port of Spain the registered office of both Defendants.

(101) In those circumstances is it not reasonable to assume that the contracting party is the company incorporated in Trinidad and Tobago and not the company incorporated in Grenada? Mr. Taylor has testified that the Worldwide Insurance Company referred to in the several exhibits is in fact the Grenada Company and not the Trinidad Company but Mr. Taylor must be aware that the company incorporated in Grenada has no authority to carry on insurance business in Trinidad and Tobago without having an established place of business in Trinidad and Tobago. See Section 11(1)(b) of the Act. In any event he has failed to adduce any evidence to support his contention. As a consequence this Court has no alternative but to conclude from the evidence that both Defendants have conducted business of a nature which is required to be registered in accordance with the Insurance Act.

(102) I now wish to turn to the several issues for determination formulated by Counsel for the respective parties. I shall deal with each issue separately.

Issue No. 1 – Are the Defendants conducting business of a nature which is to be registered in accordance with the Act?

(103) If the evidence adduced before the Court establishes that the business of the Defendants is in the nature of insurance business then the Defendants are required to be registered in accordance with the provisions of the Act. The phrase **carrying on insurance business** is defined in section 3(1) of the Act to include:-

“The receipt of proposals for the issuing of policies of insurance in Trinidad and Tobago or the collection or receipt in Trinidad and Tobago of renewal premiums on policies issued in Trinidad and Tobago by an insurer or through an agent or as an agent but does not include - ”

The definition, which is by no means exhaustive, goes on to mention matters which are not to be included in the definition and are therefore irrelevant for our purposes.

(104) The term **insurance business** is also relevant and is defined under section 3(1) of the Act to mean:-

“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—”

Again I don't believe it is necessary for our purposes to specify what the meaning of the term does not include.

(105) Finally section 11 of the Act prohibits any company whether incorporated in Trinidad and Tobago or not from carrying on any insurance business specified in the First Schedule of the Act (Long term insurance) unless the company is registered by the Central Bank in respect of that class of business. For ease of reference Section 11 (1) and 11(2) state:

(1) Subject to this Act, no person may carry on insurance business in Trinidad and Tobago unless that person is –

(a) A company within the meaning of the Companies Act or any other written Law; or

(b) A company incorporated outside of Trinidad and Tobago which has an established place of business in Trinidad and Tobago.

(2) A company referred to in subsection (1) shall not carry on insurance business of any of the classes specified in the First Schedule as insurer unless it is registered by the Central Bank in respect of that class of business.

(106) I do not think it is necessary at this stage to undertake further evaluation of the evidence before the Court to make a finding of fact on issue No. 1. Indeed, I am satisfied that the Claimant has proved on a balance of probability that the second Defendant has been carrying on insurance business by receiving proposals for and/or by issuing policies of insurance in Trinidad and Tobago of the classes specified in the First Schedule of the Act.

Issue No. 2 – Are the Defendants conducting reinsurance business or business as reinsurance intermediaries?

(107) I have carefully examine the evidence presented before this Court and have found no evidence to suggest that either of the two (2) Defendants has performed reinsurance intermediary business. But even if the evidence establishes that they have, I wish to make it abundantly clear that even as reinsurance intermediaries I am satisfied that the Defendants are required by law to be registered with the Claimant to carry on reinsurance business. The evidence before the Court has disclosed that the Defendants have carried on insurance and reinsurance business.

Issue No. 3 – Did the Claimant have the authority to register the Defendants under the Act?

(108) The Claimant has the authority to register any company to carry on insurance business once that company fulfills the requirements for registration under the provisions of the Act. See in particular sections 14, 15, 16 & 17 of the Act.

(109) Finally, I believe I have adequately dealt with the 4th issue raised by Senior Counsel for the Defendants which is, which of the Companies Worldwide Insurance Limited (Trinidad and Tobago), or Worldwide Insurance Limited, Grenada was involved in any of the activities testified to by the Claimant's witness.

(110) It is clear from the evidence given by Mr. Hiralal in paragraph 17 of his witness statement that the incorporation of these two (2) legal entities with identical names did give rise to some confusion. First of all let me say that it is not possible in law for the first Defendant to have made an application to be registered as a branch of its sister company in Grenada. The two (2) companies are distinct and independent legal persons in law. As such the Company incorporated in Trinidad and Tobago cannot be registered as a branch of an external company. Under the provisions of the Companies Act, Chapter 81:01 the company incorporated in Grenada could have applied to establish a place of business in Trinidad and Tobago, and thereafter make the necessary application for registration to carry on insurance business in Trinidad and Tobago.

(111) It is unfortunate that Mr. Hiralal in his evidence misread the correspondence (CH 1 Tab.13) from the Grenadian Regulator (GARFIN) to be referring to the first Defendant when in fact reference was being made by the official from Grenada to the Company incorporated in Grenada. Clearly there is no evidence before this Court that the first Defendant, the company incorporated in Trinidad and Tobago, had ever made any application to carry on insurance business in Grenada.

Conclusion

(112) Having therefore, carefully considered the totality of the evidence before the Court and the written submissions by Senior Counsel for the Defendants and Counsel for the Claimant I am satisfied that the Claimant has properly discharged the burden of proving its case on a balance of probability. Accordingly, this Court has found on a

preponderance of the evidence that the Defendants have been carrying on insurance business in Trinidad and Tobago in contravention of Section 11(2) of the Act.

(113) The Court therefore grants the following declarations and orders:-

- (1) A declaration that the Defendants are carrying on Insurance business in contravention of section 11(2) of the Insurance Act, Chapter 84:01.
- (2) An injunction restraining the Defendants whether by themselves and/or whether by their members, directors, servants or agents or any of them or otherwise howsoever from carrying on insurance without being registered by the Claimant in respect of that class of business as such action contravenes Section 11(2) of the Act.
- (3) An injunction restraining the Defendants whether by themselves and/or or whether by their members, directors, servants or agents or any of them or otherwise howsoever from accepting premiums from existing policy holders and the general public.
- (4) A mandatory injunction compelling the Defendants whether by themselves and/or whether by their members, directors, servants or agents or any of them or otherwise howsoever to prepare a list of all of their respective policy holders and the premiums collected from each policy holder on record and submit same to the Claimant on or before the 2nd May, 2011.

- (5) The Defendants to pay to the Claimant its assessed cost fit for advocate Attorney at Law. Such costs to be assessed by the Judge if not agreed.

Dated this 1st day of February, 2011

**Sebastian Ventour,
Judge.**