IN THE SUPREME COURT OF BELIZE A.D. 2018
(CIVIL)

CLAIM NO. 143 of 2018
BETWEEN:-

HOME PROTECTOR INSURANCE CO. LTD	**CLAIMANT**
AND	
THE SUPERVISOR OF INSURANCE	**1st DEFENDANT**
THE MINISTER OF FINANCE	**2nd DEFENDANT**
THE ATTORNEY-GENERAL OF BELIZE	**3rd DEFENDANT**

Before:	**The Honourable Madame Justice Griffith.**
Dates of Hearing:	**[25th September, 2018; 9th October, 2018]; Written Submissions 18/12/18 on behalf of the Claimant; 21/11/18 & 07/01/19 on behalf of the Defendant; Oral Judgment 09/01/19]**
Appearances:	**Ms. Audrey Matura for the Claimant; Mr. Nigel Hawke, Solicitor-General with Mrs. Samantha Matute-Tucker, Assistant Solicitor-General for the Defendants.**

DECISION

Introduction

1. This is a claim filed by Home Protector Insurance Company Ltd. (the Claimant, or 'the Insurance Company') for judicial review of a decision by the Supervisor of Insurance ('the Supervisor') which increased a yearly fee payable by the Insurance Company as part of its compliance under the Insurance Act, called the statutory fund ('the fund'). The claim alleges that the Supervisor's increase of the statutory fund was arbitrary, unreasonable and was put into effect without giving the Claimant an opportunity to be heard, thereby in breach of natural justice. The Claimant also asserts a legitimate expectation that the amount of the statutory fund would remain calculable according to a set formula, which is claimed to have been used for all years prior to the increase. The Claimant resisted payment of the increased amount of the fund as a result of which the Supervisor declined to renew its licence to operate for the year 2018. The Claimant also alleges therefore that the Supervisor's non-renewal of its licence was an abuse of power, arbitrary and unreasonable, as well as in breach of its legitimate expectation to be consulted or heard prior to such refusal to renew.

Accordingly, the Claimant by way of judicial review, seeks a number of declarations ultimately leading to an order of certiorari to quash the increase in its statutory fund and initially, to address the renewal of its licence.

2. In defence to the claim, the Supervisor of Insurance contended that the statutory fund was calculated in accordance with the mathematical formula prescribed in the Insurance Act and as such the increase was neither arbitrary nor unreasonable. The Supervisor further contended that the Claimant was given ample opportunity to be heard with respect to any objections it had in relation to the calculation of the increased amount of the Fund. Such opportunity was established by means of communication between the Claimant and the Supervisor's Office in the period following the Supervisor's notification of the increase in the statutory fund. With respect to the issue of the renewal of the Claimant's licence, the Supervisor contended that as a matter of law, the renewal of the licence was contingent upon payment of the statutory fund, thus having not paid the increased amount to satisfy the fund, the Claimant was not at liberty to issue the renewed licence. The hearing for judicial review was conducted by way of affidavit evidence (including expert evidence), cross examination and written submissions after the conclusion of the evidence. On the 9th January, 2019, the Court delivered brief oral reasons outlining its decision which are now fully reduced into writing.

Issues

3. The issues in this claim arise in relation to two matters. The first - the increase of the Claimant's statutory fund; and the second - the non-renewal of the Claimant's licence. With reference to these two matters, the issues for determination on the claim for judicial review are as follows:-

A. The Statutory Fund

(i) Was the Supervisor's increase of the Claimant's statutory fund arbitrary or unreasonable?

(ii) (a) Was the Supervisor obliged to give the Claimant an opportunity to be heard before increasing the statutory fund, and if so;

(b) Was the increase of the fund imposed against the Claimant in breach of such an opportunity to be heard?

(iii) Did the Claimant have a legitimate expectation in relation to the calculation of the statutory fund based on the Supervisor's calculations in prior years?

(iv) In the event that any or all of the above grounds are established, should the Court grant the declarations sought or an order of certiorari to quash the increase of the fund?

B. Renewal of Licence

(i) Was the Supervisor's refusal to renew the Claimant's licence an abuse of power, unreasonable or ultra vires the Insurance Act?

(ii) Did the Claimant have a legitimate expectation in relation to the renewal of its licence and if so, did the Supervisor breach that legitimate expectation?

(iii) If yes to any of the above, should the Court grant the declarations sought?

Factual Background and Procedural History

Background

4. The following is a broad overview of material facts leading up to the claim as found by the Court:-

(i) The Claimant is an insurance company carrying on business pursuant to the Insurance Act, Cap. 251 ('the Act') as amended by Act No. 16 of 2014. At the time of institution of the proceedings in March, 2018, the company was last licenced to operate during the financial year 1st January – 31st December, 2017;

(ii) The Act legislates the regulation of the insurance industry and as an insurance service provider, one of the regulatory requirements with which the Claimant is obliged to comply is the establishment and maintenance of a statutory fund ('the Fund') pursuant to section 26 of the Act.

(iii) On 2nd October, 2017, the Claimant was advised by the Office of the Supervisor that its statutory fund was in deficit by almost five hundred thousand dollars, and the Claimant was required to make good that deficit by 31st October, 2017;

(iv) Correspondence passed between the Claimant and the Office of the Supervisor, initially regarding the manner in which the Claimant proposed to satisfy the balance of its statutory fund;

(v) In December, 2017 the Claimant applied for the renewal of its licence for 2018. The Claimant submitted all required documentation along with its required statutory compliances, but the amount of the statutory fund had not been increased to the amount communicated by the Supervisor in October, 2017;

(vi) On the 2nd January, 2018 the Supervisor by letter, advised the Claimant that their licence renewal application could not be completed by reason of outstanding issues, including the non-payment of the balance of the statutory fund;

(vii) Thereafter, a meeting was held on the 26th January, 2018 between a representative of the Claimant and the Supervisor, at which the payment of the statutory fund was discussed. Following that meeting, the Claimant by letter dated the 30th January, 2018, advised the Supervisor of its inability to pay the increased amount of the statutory fund and requested an extension of 6 months in order to do so;

(viii) Also during that meeting, an issue of the Claimant underwriting creditor life insurance policies without being licenced to do so arose and the Supervisor requested information concerning such policies and further information regarding the Claimant's liabilities in that regard;

(ix) By that time, citing section 145 of the Act, the Claimant had by letter taken the position that it was in compliance with the statutory fund and the situation regarding the increase in the statutory fund escalated into an exchange of letters between the Claimant's attorney and the Office of the Supervisor. The Supervisor communicated her position that the Claimant was afforded until the 2nd March, 2018 to update payment of its statutory fund, failing which she signaled her intention to avail herself of remedies under the Act to protect the Claimant's policyholders;

(x) By letters sent at the end of February, 2018, the Claimant's by its attorney, dubbed the increase of the statutory fund unreasonable and arbitrary, demanded reasons justifying the increase and asserted that the Supervisor was unlawfully withholding the renewal of its licence;

(xi) The Claimants then instituted an application for an injunction and shortly thereafter an application seeking permission to file a claim for judicial review of the Supervisor's decision regarding the increase of the statutory fund and non-renewal of its licence. The Claimant was granted permission to apply for judicial review and the determination of the application for injunction was offset by an undertaking given by the Supervisor to issue a conditional licence for the estimated length of time of the proceedings. The initial period of the conditional licence was three months, from time to time extended to the conclusion of the proceedings;

(xii) After the conclusion of the hearing but prior to delivery of judgment, the Supervisor issued the Claimant with a conditional licence for the entire 2018 financial year.

Procedural History

5. (i) The matter was preceded by a before action injunction filed on 6th March, 2018, seeking to restrain the Supervisor from taking any action to suspend the Claimant's licence or to initiate a statutory intervention into the company's affairs;

(ii) The Claimant was required by the Court to ground its application for injunction by a claim and accordingly filed an application for permission to file a claim for judicial review on the 15th March, 2015;

(iii) The Supervisor objected to the grant of permission but permission was so granted and the Claimant filed its claim seeking judicial review on the 10th May, 2018;

(iv) In support of its claim for judicial review the Claimant relied on the evidence of three witnesses, namely the Claimant's senior accountant Ms. Edna Miranda; Mr. James Nisbet, a director of the company; and an independent accountant Mr. Darius Avila. The Defendants relied upon the evidence of the Supervisor of Insurance.

(v) The Defendants also applied for and were permitted to present expert evidence in the form of an actuary, Ms. Marcia Tam-Marks, of Morneau Shepell, Canada, who provided evidence to the Court in accordance with CPR Part 32.

Discussion and Analysis

Issue A – The Statutory Fund

6. In respect of this issue, the claim for judicial review is levelled against the Supervisor's increase of the statutory fund on the grounds that it was (a) arbitrary and unreasonable, (b) imposed in breach of the Claimant's right to natural justice and as such unlawful; and (c) that the Claimant had a legitimate expectation arising from how the statutory fund was calculated in prior years. Before proceeding into its examination of the issues, the Court restates the claim in more precise judicial review terms according to the Court's understanding of the issues which arise from the statutory context of the Claim. The Claimant asserts that the increase of the fund was arbitrary and unreasonable. The computation of the statutory fund is a matter of arithmetic according to a method prescribed by statute and as such is not a question of *Wednesbury* unreasonableness. The assertion really is that the calculation used to arrive at the increase of the Fund was incorrect, thereby being ultra vires the Act. In respect of the breach of natural justice alleged, the assertion is that the Claimant was denied an opportunity to make representations ahead of the increased fund being put into effect. The assertion in relation to legitimate expectation is based upon the Claimant's position that the statutory fund had been calculated according to a certain formula for many years prior, which amounted to a course of conduct which the Claimant was entitled to expect to continue.

7. As opposed to setting out the submissions of respective counsel and the evidence given during the hearing, it is intended to interpose those submissions and the evidence in the course of the Court's examination of the issues, as the determination of the matter rests almost entirely on construction of the applicable law. In this regard, the Court commences its consideration by setting out the provisions most relevant to the Claim.

The provisions are taken from the existing principal Act which was enacted in 2004 – the Insurance Act, Cap. 251; the Insurance (Amendment) Act No. 16 of 2014; and for comparison in aid of construction, the repealed Insurance Act as it stood prior to 2004. When dealing with legislation it is most often the case that provisions do not stand alone. Their meaning and purpose must be considered with reference to the surrounding provisions, the Part under which they fall, and the scheme of the legislation as a whole. For full appreciation therefore, all relevant sections of these Acts are extracted more in full in the Appendices[1], whilst particular sections are extracted below for ease of reference. With respect to the statutory fund, section 26 is the relevant section which is extracted as follows:-

(1) Every company licensed under this Act to carry on any class of insurance business in Belize shall establish and maintain a Statutory Fund in respect of all such classes of business.

(2) The statutory fund shall be established,

(a) at the date on which the company commences the carrying on of any class of insurance business referred to in subsection (1) of this section; or

(b) not later than three months after commencement of this Act, whichever is the later date.

(3) The fund referred to in subsection (1) of this section, shall be established and maintained,

(a) in the manner set out in subsections (4), (5) and (6) of this section; or

(b) under an appropriate name in respect of each class of insurance business referred to in subsection (1) of this section.

(4) Every company carrying on long-term insurance business in Belize shall place in trust in Belize assets equal to its liabilities and contingency reserves, less the amount deposited on account pursuant to section 24 of this Act, with respect to its policyholders in Belize as established by the revenue account and balance sheet of the company as at the end of its last financial year.

(5) Every company carrying on motor vehicle insurance business in Belize shall place in trust in Belize assets equal to its liabilities and reserves, less the amount deposited on account pursuant to section 24 of this Act, with respect to its policyholders in Belize as established by the revenue account and balance sheet of the company as at the end of its last financial year.

[1] The Appendices follow the conclusion of the judgment.

(6) Assets required to be placed in trust pursuant to subsections (4) and (5) of this section, shall be so placed not more than three months after the end of the financial year to which the balance sheet or the revenue account, as the case may be, of the company relates.

(7) A statutory fund of all classes,

(a) shall be as absolutely the security of the policy holders of that class as though it belonged to a company carrying on no other business than insurance business of that class;

(b) shall not be liable for any contracts of the company for which it would not have been liable had the business of the company been only that of insurance of that class; and

(c) shall not be applied, directly or indirectly for any purpose other than those of the class of insurance business to which the fund is applicable.

(8) No insurance company carrying on insurance business of any class and no company of which any such insurance company is a subsidiary, shall declare a dividend at any time when the value of the assets representing each fund established and maintained by the company as determined in such manner as may be prescribed, is less than the amount of the liabilities attributed to such business.

(9) A company carrying on more than one class of insurance business in respect of which it is required to establish and maintain a statutory fund shall keep such books of accounts and other records as are necessary for the purpose of identifying,

(a) the assets representing each statutory fund; and

(b) the liabilities attributable to each class of insurance business.

8. This section is broken down into its subsections according to their respective import and effect as follows:-

(i) Sub (1) prescribes the obligation on the insurance company to establish and maintain a statutory fund – also that such a fund is required in respect of each class of insurance business for which the company is licenced to operate. The *raison d'être* for the existence of the fund is prescribed in subs (7) and (8) which make clear that the fund is for the absolute security of the policy holders, with application of such funds restricted to the individual classes of insurance business in respect of which they have been set aside. Consistent with the intention to provide security for the policy holders within respective classes, there is a level of insulation of the funds from the general and ongoing liabilities of the company;

(ii) Sub (2) is applicable to an insurance company upon first licencing and stipulates the time by which the company is required to have in place its statutory fund;

(iii) Sub (3) introduces the 'how' the statutory fund is to be established and maintained. In the first instance, having regard to the fact that there are several different classes of insurance business in respect of which a company may be licenced to operate[2], sub (3) creates a distinction by implication, of the mode of determination of the statutory fund for two specific classes of business, versus the remainder of classes. This is seen in how sub (3)(a) clearly corals two classes for specific formulation of a statutory fund, namely long term (sub (4)) and motor insurance (sub (5)) businesses; whilst sub (3)(b) by implication would apply to any other class outside of those two;

(iv) The 'how' in relation to the formulation of the statutory fund of the respective classes, will be separately examined below;

(v) Sub (6), applies to both subs (4) and (5) in relation to the time within which a company carrying on either long term or motor insurance business is required to have its statutory fund in place;

(vi) Sub (9) is an additional aid to preserving the integrity of the statutory fund and it imposes certain accounting requirements intended to ensure ready identification of the assets of the statutory fund for each class, as well as ready identification of liabilities of each class of insurance business, no doubt based on the manner in which the statutory fund is determined.

The computation of the Funds according section 26

9. The 'how' of the formulation of the statutory fund now has to be examined, as this is at the root of the divide between the parties. It is useful to make clear at this stage, that judicial review not generally being concerned with the substantive outcome of a decision but rather its process - it is on the one hand accurate to say that the correctness of the actual dollar amount of the statutory fund is not the subject of the claim. However, insofar as the Claimant alleges that the method of calculation of the fund is incorrect and as such ultra vires the Act, the Court must by necessity come to a conclusion as to the correctness

[2] The 1st schedule of the Act lists 8 specific classes of insurance business which themselves are demarcated into broader categories of 'general' and 'long term' insurance business as defined in s.3(1).

or not of the methodology applied in computing the statutory fund. It is this methodology, to which the Court now directs its attention. The following conclusions are extracted from a collective reading of ss.26(3)(a)&(b),(4) and (5):-

(i) In relation to both long term and motor insurance businesses, the statutory fund (of each) is expressly required to be placed in trust;

(ii) In relation to long term insurance business (sub (4)), the fund is calculated with reference to the amount **equal** to its (liabilities and *contingency* reserves, less the amount held on deposit pursuant to section 24). Whatever this bracketed amount is, the statutory fund must be **equal** to that amount;

(iii) Similarly, in relation to motor insurance business (sub (5)), the fund is calculated with reference to the amount **equal** to its (liabilities and reserves, less the amount held on deposit pursuant to section 24). Again, whatever this bracketed amount is, the statutory fund must be equal to that amount;

(iv) A difference can be observed with reference to the fact that 'reserves' in the case of long term insurance business, is qualified by 'contingency';

(v) In relation to both methodologies, the liabilities and contingency reserves/reserves are to be derived from the balance sheet and revenue accounts of the company, standing as at the end of its last financial year;

(vi) Liabilities are to be separately reflected on the relevant accounting records with reference to each class of insurance;

(vii) It is to be recalled that outside of the umbrella of long term insurance business, the broad category of general insurance business covers several classes of which motor insurance is only one. Therefore, given that a statutory fund is required to be held for each class of business, the remaining classes outside long term and motor insurance must still be provided for.

(viii) By collective reading of sub (1), which imposes the requirement for establishment of a fund in respect of each class of insurance; sub (3)(b), which by implication speaks to any class falling outside of long term or motor insurance business and requires a fund to be established under an appropriate name; also that a separate

method of calculation is not prescribed for classes falling outside long term and motor insurance business…it is by implication concluded that the same method of calculation of a statutory fund for any remaining class of insurance business applies, save for the requirement that such funds be placed in trust.

10. With this mode of calculation in mind, the Court now examines the evidence adduced and submissions made on behalf of the respective parties in relation to the Claimant's fund. The Claimant's witness Ms. Miranda, attested to the manner in which the statutory fund had been calculated for some 11 years prior to the increase in 2017 (all during her tenure). With respect to the Supervisor's communication of the increased amount of the fund, Ms. Miranda stated[3] *'That upon receipt of the letter, it became apparent to me, that the Respondents/Defendants had used a different formula, based on the Actuarial reports, to calculate the Statutory Fund reserve than the one that had been used over the previous 43 years, thus the demanded increase did not reflect the standard calculation under the Insurance Act.'* Ms. Miranda further stated[4] *'…by letter dated...the Defendants, submitted to me a copy of the new formula the Defendants had used to calculate the Statutory Fund requirement, which also reflected an arbitrary change from the way we always calculated the fund and the requirement under the Insurance Act, as the calculation was based on the actuarial report and not the audited financial statements as required by law*.' The difference in the calculation based upon the use of actuarial reports was the crux of the Claimant's legal submission that the Defendants' calculation of the fund was incorrect and hence ultra vires the Act.

11. It was submitted that there was no reference in section 26(4) or (5), being the two sections which specified how the fund was to be calculated, to the use of an actuarial report. The sections referred to and therefore the requirement was restricted to, the use of the company's balance sheet and revenue accounts. By way of further evidence regarding the calculation of the fund, Ms. Miranda referred to the actual form used to illustrate the calculation of the fund and Counsel for the Claimant pointed out that the

[3] Affidavit of Edna Miranda
[4] Affidavit of Edna Miranda

actual form as provided in the applicable regulations, made no provision for use of actuarial figures. It was demonstrated that the form utilized by the Supervisor, who admitted under cross examination that there was no incorporation of actuarial figures under the actual prescribed form, was a form adapted by the Supervisor, to include actuarial figures. In relation to this issue of the use of actuarial figures, the Supervisor in her evidence explained that she had in fact utilized the actuarial figures of the Claimant's long term liabilities, which were higher than those recorded on the audited financial statements. At this point, it is necessary to explain the contentions surrounding the use of actuarial figures. As will be recalled (paragraph 9(ii)-(v) above), the amount of the statutory fund is the amount equal to the liabilities and reserves, less the s. 24 statutory deposit, with the liabilities and reserves being taken from the balance sheet and revenue accounts (as applicable).

12. From the evidence all around – i.e. from Ms. Miranda for the Claimant; the Supervisor herself; and the expert witness - the increase in the fund was shown to have resulted from the Supervisor's use of figures generated by the actuarial report submitted as part of the Claimant's accounting obligations. Given that the use of the company's actuarial report as the basis for calculation of the statutory fund has been identified as the heart of the issue, the Court now examines the legal framework applicable to the relevant financial records to be utilized in the calculation of the statutory fund. Firstly, every company carrying on insurance business is mandated to compile and submit to the Supervisor, yearly audited accounts within a certain time. The relevant section is section 40(1), extracted below. The entire section 40 consisting of 13 subsections (the 13th by amendment by Act No. 16 of 2014), is extracted in Appendix II[5].

Preparation of *of the annual accounts etc.*

"40.*(1) Subject to subsection (3) of this section, a company shall, within four months end of each financial year, or within such extended period not exceeding two months as the Supervisor may allow in writing, submit to the Supervisor two copies of,*

(a) a balance sheet and a statement of cash flow prepared in accordance with International Accounting Standards showing the financial position of all insurance business of the company at the close of that year;

(b) a profit and loss account in respect of all insurance business in that year;

[5] Appendix II appears after the conclusion of the judgment.

(c) separate revenue accounts in respect of each class of insurance business carried on by it;

(d) an analysis of long-term insurance policies in force at the end of that year;

(e) a certificate that the assets of its insurance business are in the aggregate at least of the value shown in the balance sheet;

(f) in the case of a company carrying on general insurance business a certificate signed by its independent auditor that the company is solvent in accordance with section50 of this Act; and

(g) such other documents and information as may be required by the Supervisor.

(2)….

….(13)"

13. From section 40(1) it can be seen that a number of documents comprise a company's financial records. These include the balance sheet, profit and loss account, and separate revenue accounts for each class of insurance business. The remaining subsections impose a number of obligations which are relevant to the issue before the Court, inter alia, regarding certification of the accounts to be submitted under the section. In particular, subsections (10) and (11) read as follows:-

"(9)…

(10) The documents required to be furnished under subsection (1) of this section, shall be certified by an independent auditor, the secretary or the principal representative, and a director of the company.

(11) In addition, where a company is carrying on long-term insurance business, every balance sheet which it is required to prepare under subsection (1) of this section, shall bear a certificate signed by its actuary or the consulting actuary stating whether or not, in his opinion, the aggregate amount of the liabilities of the company in relation to its long term insurance business at the end of its financial year exceeded the aggregate amount of the liabilities shown in the balance sheet of the company."

By sub (10), all of the financial records required to be submitted pursuant to sub (1), are to be certified by an independent auditor (as well as by the named officers of the company). This requirement accords with and explains the reference to the submission of 'audited financials'. By sub (11) there is additionally, the specific obligation applicable to a company carrying on long-term insurance business which requires the particular record of the balance sheet, to be certified by the company's actuary or consulting actuary, in terms of whether in the actuary's opinion, the company's liabilities arising from its long term insurance business for that year exceeded the total liabilities for the company as a whole, as reflected on its balance sheet.

14. Counsel for the Defendants rely in part on this obligation created by section 40(11) as forming the basis of their argument that the Supervisor was entitled (or rather, obliged) to utilize the actuarial figures as presented in the audited financials of the Claimant, to calculate the statutory fund for the long term business. In addition to section 40(11), Counsel for the Defendants points to section 41 and sections 100A through 100D (in the former case as amended, and in the latter case, as added) – both by Act. No 16 of 2014. As amended, s. 41(1) is set out below, followed by sections 100A and 100C (in part)[6]:-

> ***41.*** *(1) Every insurance company which carries on long-term insurance business shall, ~~not less than once in every three years~~,* **annually** *cause an investigation into its financial position including a valuation of its liabilities, to be made by an long term insurance independent actuary.*
>
> *100A (1) An insurer that is licensed to carry on long term insurance business shall appoint an actuary annually.*
>
> *100B…*
>
> *100C (1) The actuary of an insurer carrying on long term insurance business shall value the actuarial and other policy liabilities of the insurer as at the end of each financial year and shall value any other matters specified in any guideline or direction that may be made by the Supervisor, and shall report thereon to the insurer and the Supervisor.*
>
> *(2)…*
>
> *(3) The valuation of an actuary shall be in accordance with international generally accepted actuarial practice with such changes as may be determined by the Supervisor and any additional directions that may be made by the Supervisor.*
>
> *(4) The actuary shall, in making any valuation or establishing any provision required by this Act, follow the standards of practice and methodologies that would be required to be followed in respect of corresponding matters by the organisation of actuaries to which he belongs pursuant to subsection 100B(2).*

15. Based on the above sections, Counsel for the Defendants submits that a company carrying on long term insurance business is mandated to appoint an actuary annually and that the duties of the actuary include the annual valuation of the company's long term liabilities. Further, the certification of the company's balance sheet required by section 40(11) establishes that in relation to long term insurance business, the company's balance sheet is required to reflect actuarial values of is liabilities, therefore it is those actuarial values

[6] The entire section is set out in Appendix II

which are properly used to calculate the statutory fund. The Court is in agreement with the Defendants' position in relation to the requirement for the balance sheet to reflect actuarial values in relation to a company's long term liabilities. There is support to be found for this position in the case of **Kent Herrera et al v Supervisor of Insurance et al** (CCJ decision arising from Belize).[7] In this case the CCJ was considering the question of whether as alleged, the Supervisor was reckless in failing to ensure full compliance by CLICO Insurance Co. of its statutory fund and the resulting loss to its policy holders upon that company's collapse in January, 2009. As part of his consideration of this issue, Wit JCCJ[8] made reference to the composition of the statutory fund in terms that the liabilities of a company carrying on long term insurance business were to be valued by an actuary in order for the true liabilities of the company to be known, which were then to be matched by the statutory fund. Wit JCCJ made reference to this position being '*operationalised*' by section 41 of the Act.

16. Notwithstanding this acknowledgment in the CCJ judgement that the liabilities of a company carrying on long term insurance business must be valued by an actuary in order to determine the amount of the statutory fund, the basis of that position was not explained as that was not in issue before the Court. In the circumstances, this Court sets out its own specific path through which that conclusion is arrived at. It is also this Court's view that the purpose of the actuarial valuation required by section 41 of the Act, is wider than determining the value of long term liabilities for purposes of the statutory fund. This requirement concerns an actuarial investigation into the overall health of the company, of which long term liabilities is only a part. To illustrate its conclusion, the Court now revisits the relevant provisions concerning the computation of the statutory fund along with a comparative analysis of the corresponding provisions of the repealed legislation. The old Insurance Act was repealed by the enactment of the existing Act in 2004. In the repealed Cap. 251, the requirement for establishment of a statutory fund was provided in section 25 and this section was in some material respects different from its successor

[7] [2018] CCJ 6 (AJ)

[8] Ibid @ para 38

section 26. The statutory fund as required by section 25 in the old legislation was stipulated in the following terms:-

"25. (1) Every company carrying on any class of insurance business shall establish at the date of the commencement of its financial year next after the commencement of this Act and shall maintain, a statutory fund as provided for in subsections (3) and (4) under an appropriate name in respect of each of the classes of insurance business carried on by the company.
(2) For the purposes of subsection (1) a company carrying on more than one class of long-term insurance business shall be regarded as carrying on only one class of long-term insurance business.
(3) In the case of long-term insurance business, every company shall place in trust in Belize assets equal to its liability and contingency reserves with respect to its local policy-holders as established by the revenue account of the company for the last preceding financial year.
(4) In the case of motor insurance business, every company shall place assets in trust in Belize equal to its liabilities and reserves less the amount deposited on account of such business in pursuance of this Act with respect to its local policy-holders as established by the revenue account of the company for the last preceding financial year.
(5)…"

17. It can be noted that the financial records from which the liability and reserves data is to be taken for purposes of computation of the fund does not include the balance sheet, as is the case in the current section 26. In fact, section 25 required the information as to liabilities and reserves as established by the revenue account only. Additionally, with respect to the composition of accounts required to be submitted as provided in the repealed Cap. 251 section 39,[9] it can be observed that there is no equivalent to section 40(11) of the existing Act which requires the certification by an actuary in relation to the value of the long term liabilities relative to the total liabilities of the company. In fact, the only certification in relation to a company's long term business which is required by the old section 39, is to the effect that the assets of the life insurance fund exceeds the liabilities. There is no requirement for any certification by an actuary, nor any certification of the liabilities of the long term business relative to the aggregate liabilities of the company as a whole. Further, in relation to regulation of long term business as a whole, there is a marked difference between the repealed and existing Acts, particularly in relation to the role of the actuary.

[9] The repealed section 39 is set out in Appendix III

Section 41 of the current Act was preceded by section 43 in the old Act. This section required a company carrying on long term insurance business to every five years, cause an investigation into its financial position to be carried out by an actuary, such investigation to include a valuation of the company's long term liabilities. Section 43 was succeeded by section 41 in the new Act which updated the requirement for investigation by an independent actuary, and to every three years. This was further amended to every year, by the amendment in 2014. In the existing Cap. 251 this obligation for investigation by an independent actuary is repeated in section 101 under Part V which deals with long term insurance business. There was no such corresponding provision to section 101 in the old Cap. 251.

18. This requirement for investigation is not what gives rise to the Court's conclusions in relation to the interpretation of section 26. It does however provide support for the Court's approach in apprehending that there are significant differences between the old and new insurance Acts, particularly with respect to the role of the actuary. This approach is continued with reference to the specific Parts of the respective Acts dedicated to long term insurance business. In the old Cap. 251, Part V specifically applied to long term insurance business and this regime was repeated in the succeeding Cap. 251 Part V. However, unlike its successor, Part V of the old Cap. 251[10] contained no equivalent to section 100 which mandated that an insurance company carrying on long term insurance business either appoint an actuary as a member of staff or as a consultant. This requirement was separate and apart from the requirement to appoint an independent actuary as provided and for the purposes specified in sections 41 and 101. The only provision pertaining to an actuary in Part V of the old Cap. 251 was that empowering the Supervisor at discretionary intervals, to request a report by an actuary into rates of premiums being charged by the insurance company. In 2014, the actuarial obligations in relation to a company carrying on long term insurance business were further upgraded by the inclusion of sections 100A through 100D which provide specific and express obligations regarding the duties and functions to be carried out by an actuary as part of

[10] Set out in Appendix III

the company’s regular accounting protocols.

19. The requirements of these sections have already been highlighted, and along with the differences between the provisions of the repealed and current Acts, they inform the Court’s conclusion with respect to the calculation of the statutory fund. It is undisputed that in accordance with section 40(1) of the Act, an insurance company is required to submit yearly audited accounts of its business, within 3 months of the end of each financial year. It is also undisputed that one of those accounting records is a balance sheet. The Court finds as a matter of law, that in respect of a company carrying on long term insurance business, section 40(11) creates an obligation for the balance sheet submitted as part of the company’s yearly financials, to certify whether the aggregate of its long term liabilities exceeds the aggregate liabilities of the company as a whole. Further in this regard, this certification is required to be carried out by an actuary. By implication, in order to make the required certification, the actuary must carry out a valuation of the long term liabilities in the first place. This obligation created by section 40(11) did not exist prior to the repeal and replacement of the Act in 2004 and the creation of this new obligation in 2004 corresponded with the similarly new obligation imposed by section 100 of the Act, for the insurance company carrying on long term business to either maintain an actuary on staff or appoint a consulting actuary. The implication made that the actuary has to value the long term liabilities of the insurance company in order to carry out the certification of the balance sheet in accordance with section 40(11) existed since 2004, but is now strengthened by the express requirement of section 100C for submission of yearly actuarial reports.

20. In addition to the Court’s legal interpretation of the relevant legislative provisions regarding actuarial engagement, the Court is assisted by some aspects of the evidence in its conclusion as to the requirements for calculation of the statutory fund. The evidence of the expert entirely accords with the Court’s interpretation. More importantly however, the expert testified to the effect that because of its very nature, the valuation of liabilities for long term insurance business necessarily requires actuarial calculation.

From the evidence of both sides relating to the submission of the Claimant's yearly audited financials, the Claimant submitted them late (at the end of June, 2017) and the balance sheet submitted did not contain the certificate by the actuary as required by section 40(11). This fact was admitted by the Claimant's accountant in cross examination. According to the Supervisor's evidence, the actuarial values of the liabilities for the Claimant's long term business were taken from the Claimant's actuarial report required by section 100C, which was submitted (also late) in mid-July of 2017. It was at that point that the Supervisor determined the statutory fund using the then available actuarial values in respect of the Claimant's liabilities for its long term business.

21. There were two remaining arguments made by Counsel for the Claimant which the Court examines even though the Court has already accepted how and why the actuarial values came to be applied by the Supervisor. Counsel for the Claimant had also submitted that the Supervisor's demand for the statutory fund to be fully paid up was erroneous and that the Claimant had always maintained a statutory fund up to 80% as required by section 145 of the Act[11]. As pointed out by the Supervisor in her initial responses to the Claimant regarding the calculation of the fund, this contention was based on a misapprehension of the law. Section 145, as evident from its occurrence under Part VI of the Act, deals only with provisions applicable to that Part, which includes general insurance and has nothing to do with long term insurance business. Section 145 makes provision for reserves to be held to a certain percentage of the liabilities existing in relation to a company's motor insurance business. This section is applicable to the calculation of the statutory fund for motor insurance business insofar as the amount to be held is to be based on reserves in addition to liabilities in respect of the respective classes of insurance business. Section 145 applies only to determine the reserves in relation to motor insurance business, which is only part of the calculation of the statutory fund in relation to that one class of business.

22. Finally, Counsel for the Claimant also pointed to the fact that the forms prescribed for calculation of the fund contain no provision for inclusion of actuarial figures and that the Supervisor by admission had included these figures herself.

[11] Section 145 is set out in Appendix I

Having determined as a matter of law that the balance sheet required to be submitted as part of the yearly audited financials of a company carrying on long term insurance business requires an actuarial valuation of its liabilities in order to satisfy section 40(11), what is or is not on the prescribed form cannot detract from what the calculation requires. As a matter of fact, given that the section 40(11) requirement came into being in 2004, and the prescribed forms predated the 2004 Act, the absence of any indication of actuarial values in calculating the statutory fund for long term insurance business is to be expected. The Supervisor was correct to include the actuarial values of the Claimant's long term liabilities in her calculation of the statutory fund. It is specifically noted that in relation to her calculation and that of the expert, it is the actuarial figures submitted by the Claimant's actuary which were utilized in determining the statutory fund for the Claimant's long term insurance business.

The statutory fund and the Claimant's grounds for review

Ultra vires

23. The Claimant contends that the increase in their statutory fund imposed by the Supervisor was arbitrary and unreasonable, that it was effected in breach of the rules of natural justice as well as in breach of their legitimate expectation to be consulted prior to the increase being imposed in a manner contrary to the previous method of calculation. With respect to the contention that the increase was arbitrary and unreasonable, this was based on the Claimant's contention that the Supervisor's method of calculation was incorrect. The Court has concluded that the Supervisor's calculation of the fund using the actuarial values of the Claimant's long term insurance liabilities was correct and in accordance with the statutory requirements. In the circumstances, it is not open for the Claimant to contend that the increase was arbitrary, unreasonable or in any other way ultra vires the Act. The illegality contended in relation to the increase has therefore been rejected. The Claimant nonetheless contends that the increase was effected without the company having been afforded an opportunity to be heard, at least by making representations.

Natural justice – right to be heard

24. Counsel for the Claimant makes the unobjectionable argument that the exercise of any statutory power affecting the rights of a person must be exercised with due process. Whilst that position is incontrovertible, the Court must be mindful of what function the Supervisor was exercising in calculating the statutory fund, as it is not the case that the discharge of every statutory function or power attracts a requirement for due process. The calculation of the statutory fund does not entail the exercise of any discretionary power by the Supervisor with respect to the Claimant. The calculation of the statutory fund is a matter of the Supervisor enforcing compliance of a regulatory requirement which is the subject of mathematical determination. In this regard, brief mention is again made of the case of **Kent Herrera et al v Supervisor of Insurance et al**[12], which was cited by the Defendants. As stated before[13], the question before the CCJ concerned the discharge by the Supervisor of her functions under section 26.

25. The Supervisor's function in relation to the statutory fund was categorized as a statutory duty, and she was actually found (by the Court of Appeal, thereafter affirmed by the CCJ), to have been in breach of her statutory duty, having failed to ensure that CLICO Ins, the company therein was compliant with its statutory fund requirement. The computation and enforcement of compliance with the statutory fund requirement is therefore a duty to be discharged, not the exercise of a discretionary power. As such the Court finds that the Supervisor had no duty to afford the Claimant an opportunity to make representations prior to increasing the fund. Further, in light of the fact that the calculation of the fund is a matter of arithmetic within the grasp of the Claimant, the Court also finds that there was no duty to give reasons. The Court therefore rejects the second limb of the Claimant's argument that the increase of the statutory fund was effected in breach of the Claimant's right to natural justice.

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[12] [2018] CCJ 6 (AJ)

[13] Supra @ fn 6

Legitimate expectation

26. The third argument is that the Claimant had a legitimate expectation in relation to how the statutory fund was calculated. This expectation was said to arise on the basis that the fund had been calculated in a particular manner for the years prior to the 2017 increase. Firstly, the legitimate expectation asserted is that the Claimant should have been consulted prior to the Supervisor's increase of the fund; or at the very least that the Claimant should have been consulted with respect to how the increase was effected. The principle of legitimate expectation arises out of a representation (whether express or implied by a course of conduct), that a public decision maker would behave in a manner consistent with such express representation or prior conduct. The principle was formulated as a means of enabling citizens to challenge a decision which deprives them of an expectation founded on a reasonable basis that the decision maker would behave towards them in a particular way.[14] It must be acknowledged however, that the ground of legitimate expectation, albeit no longer new (arising in *Schmidt v Secretary of State for Home Affairs*)[15], is nonetheless regarded as still developing[16] and as such the appropriate application of the principle is not without difficulty. In *Schmidt*, the expectation was described in terms of procedural protection, but was later expanded to apply to a substantive benefit[17] and in *R (on the application of Bhatt Murphy (a firm) et al) v Independent Assessor* the category of procedural expectation was further reduced into categories of 'primary' and 'secondary' procedural expectations.[18]

27. The case of **Attorney General for Hong Kong v Ng Yuen Shiu[19]** is a classic example of how legitimate expectation is applied as a ground for judicial review. In this case an illegal alien in Hong Kong had been allowed to remain there based upon a certain executive policy in existence at the time.

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[14] See *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 @ 401 per Lord Fraser of Tullybelton *"…the existence of a regular practice which the claimant can reasonably expect to continue"*
[15] [1969] 2 Ch 149 at 170
[16] *R (on the application of Bhatt Murphy (a firm) et al) v Independent Assessor* [2008] EWCA Civ 755 @ para 27; citing Lord Woolf MR in *R v North and East Devon Health Authority, ex p Coughlan* [2000] 3 All ER 850 @ para 59.
[17] Per Lord Diplock in *Council of Civil Service Unions v Minister for the Civil Service*
[18] Supra fn 16.
[19] [1983] 2 All ER 346

The Government subsequently announced a change of its policy and in an effort to quell public concerns of persons affected, made a public statement to the effect that persons affected would be afforded an interview process from which their case not to be removed would be determined on its merits. The appellant therein was removed without a hearing and the removal was ultimately quashed, but not on the basis that an illegal alien had a right to be heard before being removed. It was acknowledged that there was no such right, but the removal was quashed on the basis that having made a promise to carry out a certain procedure in relation to its implementation of the new policy, the Government was required to adhere to its promise as a matter of fairness. The ground of legitimate expectation thus truly arises with reference to an expected or promised administrative process or policy as opposed to a strict legal right. With respect to the instant case, the Court agrees with the Defendants' position that no question of legitimate expectation arises in relation to the Supervisor's calculation of the statutory fund, for as stated before, the calculation of the fund entails the discharge of a compliance function in a manner prescribed by law.

28. The method of calculation is neither a discretionary power nor policy, the calculation was either correctly computed or not. It was the Claimant's evidence, unrefuted, that the statutory fund was calculated in a particular way for many years, and October, 2017 was the first occasion on which the Supervisor made the calculation utilizing actuarial values for the liabilities of long term business. As the Claimant's evidence was unrefuted in this regard, such a course of conduct is accepted as having occurred. However, such a course of conduct does not assist the Claimant in grounding a claim for legitimate expectation given that the requirement for computation of the statutory fund is prescribed by law. As a result, the calculation of the statutory fund does not lend itself to a claim for review based on legitimate expectation. In this regard, the Court refers to the authority **R v Secretary of State for Education and Employment*, Ex p Begbie***[20] in which it was stated '*…<u>a legitimate expectation can only arise on the basis of a lawful promise or practice</u>*' and '*the courts would not give effect to a legitimate expectation <u>if it would require a public</u>*

[20] [2000] 1 WLR 1115 @ 1125 per Gibson LJ

authority to act contrary to the terms of a statute…' A claim for legitimate expectation cannot therefore be grounded upon an illegality, nor can it be founded upon what may have been a misapprehension of the law.

29. In **Rainbow Insurance Co. Ltd. v Financial Services Commission et al**[21], Lord Hodge in his judgment delivered on behalf of the Privy Council categorically stated "*The courts will enforce an expectation only if it is legitimate. There is an established line of authority that nobody can have a legitimate expectation that he will be entitled to an ultra vires relaxation of a statutory requirement…*" The Court considers the authority of **Rowland v Environment Agency**[22] to provide sound illustration of the application of this position. In this case, the claimant, the last of successive owners of riparian property (land abutting the River Thames) sought judicial review of a decision of the relevant harbour authority, which sought to reverse a long standing usage of a portion of the waterway as reserved for private use. The waterway had by statute (early 19th century) been subject to a right of public navigation. However, over time, that right was thought to have been extinguished having regard to failures by the harbor authority to enforce the right of public navigation, along with actions of successive owners restricting public access. Upon the discovery by the authority that the rights of public navigation had not been extinguished, they took action to correct the private owners' restrictions to public access. The claimant sought judicial review of the action taken on the basis of having a legitimate expectation to retaining the use of the water way as private, given that successive owners had for over 80 years been so led to believe by both the actions and inactions of the Authority. This case was pleaded and considered from the standpoint of both UK domestic law, as well as European Convention law.

30. In relation to the UK domestic law, it was clearly stated that nothing short of a change in the statutory right to public navigation could have supported the claim to legitimate expectation in relation to the use of the water way. It was expressed therein as follows[23]:-

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[21] [2015] UKPC 15 @ para 52
[22] [2005] Ch. 1 per Gibson LJ @ para 81
[23] Rowland v Environment Agency supra @ para 81 per Gibson LJ.

> *"As it is accepted by Mrs Rowland there can only be a legitimate expectation founded on a lawful representation or practice, her claim to a legitimate expectation that she would continue to be entitled to enjoy Hedsor Water as private was bound to fail under English domestic law if taken alone without the Convention in the absence of any statutory basis for the extinction of PRN over Hedsor Water."*

The other aspect of this case was grounded in European Convention law which itself is not relevant to the position here in Belize. However, the Court does make reference to how that aspect of the decision turned, as there is room for consideration in one particular regard in the instant case. In ***Rowland***, the Court of Appeal found that under European Convention law, the position of the claimant borne through the actions of successive owners, aided by the actions and inactions of the harbor authority regarding the restricted use of the waterway for such a long period (80+ years), grounded a possessory claim to property and as such supported a claim for legitimate expectation. It was nonetheless held that the Authority was entitled to resile from its position (of supporting the private use of the waterway) as it was justified in doing so, in order to protect the public's rights.[24] It was also found that the phased manner in which the private rights were eliminated was proportionate given the lengthy time the land owners had been enabled in enjoying the right.

31. The application to the case at bar, is that whilst the Claimant cannot claim a legitimate expectation in relation to how the fund was calculated – it could be argued that having been calculated a particular way for many years, that prior course of conduct gave rise at the very least, to an expectation to be consulted in relation to the manner in which the increase was to be implemented. This means, some acknowledgment of the change in the first place, the reason for the change and some consultation or allowance of representations to ameliorate any hardship caused by the increase. This point was not specifically argued by the Claimant, but the Court considers it to be sufficiently discernible from the plea advanced that the Claimant ought to have been consulted before the increase was put into effect.

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[24] Ibid @ para 92-93 per Gibson LJ

The evidence in the instant case is that there was some three to four months of communication both ways which shows how the parties engaged in relation to the issue. The Court accepts as supported from the evidence from both sides, that the initial responses of the Claimant were concerned more with making satisfactory arrangements for making good the increase in the fund rather than questioning its legitimacy. It is not until in late January, 2018 when the Claimant seems to have resorted to legal advice, that any issue arose in relation to a challenge to the legal validity of the increase of the fund.

32. The fact that the parties' exchanges did not bear fruit in terms of some means of satisfying the increased amount of the fund that was acceptable or convenient to the Claimant, does not detract from the fact that efforts were explored and entertained by the Supervisor. Additionally on this issue of the implementation of the increase, the Court notes that in the Supervisor's letter of the 22nd February, 2018, there was as full an explanation as to the basis of the increase as could be given by a regulator in such circumstances. Albeit belatedly therefore, the Court considers that the Supervisor did provide an explanation as to the basis for the increase, contrary to the claim as pleaded, that no reasons for the increased amount of the fund had been advanced. Given that the accepted evidence is that the fund was in prior years calculated differently, it is perhaps not unfairly said, that the Supervisor could have been more direct by simply acknowledging that there was going to be a change in the calculation of the statutory fund to accord with what was required by the Act. The want of such directness notwithstanding, this does not affect the fact that the method of calculation of the statutory fund could be effected by no other means but in conformity with what was prescribed by the Act. This position is underscored by the expressly prescribed statutory purpose of the fund, which is for the absolute security of policy holders[25].

33. In the final analysis, on this issue of legitimate expectation and the statutory fund, the Court finds that the Claimant had and could have no legitimate expectation in respect of how the statutory fund was to be calculated, other than for it to be done in the manner prescribed by the Act.

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[25] Section 26(7) Cap. 251.

The Court has found that the method of calculation carried out by the Supervisor, using the actuarial values of the liabilities of the Claimant's long term insurance business, is the correct method of computation prescribed by the Act, having regard to sections 40(11), 100A and 100C. Additionally, even if it were to be argued that the Supervisor's course of conduct in relation to how the statutory fund was calculated from years prior gave rise to the Claimant having some legitimate expectation of being consulted in how the increase was to be effected or applied, the Court's first position is that the Supervisor was not obliged to do so having regard to the purpose of the fund. Secondly and in any event, it is found that the Claimant was engaged in a number of different ways, to a degree that was satisfactory in the circumstances. Insofar as the evidence shows, the Claimant was given an explanation by the Supervisor that the fund was calculated using actuarial values; there were the several meetings at which the resolution of the statutory fund in addition to other issues were discussed; and there were opportunities afforded in relation to how the Claimant could make good the increase. The fact that the Claimant disagreed with the Supervisor's position and declined to accept her responses makes it no less the case that the Supervisor did in the Court's view, satisfactorily treat with the Claimant on the issue of the increase of the fund. All challenges pertaining to the review of the increase of the statutory fund are therefore dismissed.

Issue B - Renewal of the Licence

34. The claim relating to the non-renewal of the Claimant's licence is that the Supervisor's action in so doing amounted to an abuse of power, it was unreasonable, arbitrary, and in breach of the Claimant's legitimate expectation for renewal. More particularly, Counsel for the Claimant advanced the claim from the standpoint that (i) the abuse of power asserted is one of bad faith on the part of the Supervisor; (ii) the unreasonableness alleged means *Wednesbury* unreasonableness, (iii) the claim of arbitrariness is advanced in terms that the Supervisor's refusal to renew the licence was ultra vires the Act, and (iv) the legitimate expectation was on the basis that in light of prior renewals, the Claimant was entitled to be consulted and allowed to make representations before any action was taken by the Supervisor which impacted the Claimant's business.

The Court will firstly examine the grounds of ultra vires and bad faith respectively, thereafter, the ground of unreasonableness and finally, that of legitimate expectation. It must be acknowledged, that by the time the delivery of the Court's oral decision on 9th January, 2019, the Supervisor had issued a conditional renewal of the Claimant's licence for the year 2018, thus rendering the issue of the renewal of the licence moot. Notwithstanding the licence was ultimately issued for 2018, the Court nonetheless sets out its decision in relation to the issue of renewal, as it is an issue that can re-occur between the parties or between the Supervisor and any other licencee under the Act.

Ultra vires

35. The Court first addresses the issue of whether or not the Supervisor's refusal to renew the licence was ultra vires the Act, which in the context raised, is purely a matter of statutory construction. The power of renewal of an insurance licence is contained in section 14(2) of the Act. Immediately preceding in section 13, are set out the conditions to be fulfilled in order for the grant of a licence to carry on insurance business on first application. Thereafter, section 14 reads as follows:-

> *14. (1) The Supervisor shall, subject to the payment of the prescribed fees and to section 13 of this Act, furnish to every company licensed under this Act a certificate in the prescribed form that the company has been so licensed, and the certificate shall state the class or classes of insurance business for which it is licensed and shall be prima facie evidence that the insurance company specified in the certificate has been so licensed.*
>
> *(2) Every certificate issued under this section shall be valid for the calendar year in which issued and may be renewed by the Supervisor for subsequent periods subject to the insurance company satisfying the requirements of sections 13, 24, 26 and 50 of this Act and upon payment of the required fees.*

Having regard to section 14(1) as set out above, it is clear that licencing in the first instance is subject to satisfaction of all conditions prescribed by section 13 and upon payment of all prescribed fees. Upon so doing, a company is entitled to be licenced and evidence of such licencing is to be issued by means of a certificate in the prescribed form which contains the information referred to in subsection (1). Section 14(2) sets out two more concerns relating to the licencing process. First, that the licence granted is valid for one calendar year and that it may be renewed for subsequent periods.

The renewal is thereafter expressly stated to be subject to satisfying the requirements of the listed sections which include section 13 and the three other sections.

36. It is a matter of plain interpretation that a renewal is subject to satisfaction anew of all of the conditions required to be satisfied to obtain the licence in the first place (section 13), as well as whatever additional requirements arise out of sections 24, 26 and 50. Section 26 is of course the requirement to establish and maintain a statutory fund, therefore if not satisfied, the Supervisor is empowered, to refuse to renew a licence. In her correspondence in response to the Claimant's enquiry as to the non-renewal of its licence, the Supervisor indicated that she was unable to renew the Claimant's licence because of its failure to bring their statutory fund up to date as per the notification in October, 2017. The Claimant argued that there was in fact a statutory fund in place, only that it was not to the amount requested, thus the Supervisor was not entitled to refuse to renew. This argument however, does not acknowledge that section 26 requires not only the establishment a fund, but also the maintenance of that fund. The establishment and maintenance is determined pursuant to the methodology prescribed therein, so if the fund is not properly maintained in the amount which has been calculated, then section 26 has not been satisfied. Accordingly, it is found with little difficulty, that the Supervisor does possess the power to refuse to renew a licence for failure to satisfy section 26, thus the non-renewal in this case was not ultra vires the Act.

Bad faith

37. The existence of the power to refuse renewal aside however, the Claimant's argument continues, that the Supervisor's power was exercised in bad faith. The Claimant did not plead bad faith on the part of the Supervisor as a ground of review. Instead, the allegation of bad faith was made on more than one occasion in affidavits filed in support of the claim for review. In ***Wednesbury*** Lord Greene MR acknowledged bad faith as a ground of review.[26] As further explained in **Cannock Chase District Council v Kelly**[27] however, bad faith is particularly regarded and must be pleaded in certain terms.

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[26] Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1947] 2 All ER 680 at 682

[27] [1978] 1 All ER 152

In this regard, Megaw LJ of the UK Court of Appeal acknowledged Lord Greene's (MR) statement in *Wednesbury*, affirming regarding bad faith as a ground of review, but thereafter expanded in the following terms with respect to the case before him:-

> *"…I would stress, for it seems to me that an unfortunate tendency has developed of looseness of language in this respect, that bad faith or, as it is sometimes put, 'lack of good faith', means dishonesty; not necessarily for a financial motive, but still dishonesty. It always involves a grave charge. It must not be treated as a synonym for an honest, though mistaken, taking into consideration of a factor which is in law irrelevant. If a charge of bad faith is made against a local authority it is entitled, just as is an individual against whom such a charge is made, to have it properly particularised. If it has not been pleaded, it may not be asserted at the hearing. If it has been pleaded but not properly particularised, the pleading may be struck out."*

Megaw LJ was in effect noting that use of the term 'bad faith' had become subject as he put it, to a certain 'looseness in language'. The Court construes that lament within its particular context that the term 'bad faith' was by practice being inaptly invoked and becoming removed from its intended meaning. He thereafter plainly iterated, that bad faith or lack of good faith means dishonesty…and it must (a) be specifically pleaded and (b) when pleaded, it must be properly particularized. The Court therefore apprehends that bad faith must be pleaded and particularized in the same way that fraud is required to be pleaded and particularized.

38. The above two cases, now of some vintage, spoke of bad faith in terms of dishonesty. The term however goes beyond dishonesty as can be seen from the authority advanced by Counsel for the Defendants – **Kent Herrera et al v Alma Gomez (Supervisor of Insurance) et al.**[28] In this case the Belize Court of Appeal had found a breach of duty to have occurred on the part of the Supervisor of Insurance, arising out of an adjudged failure to enforce compliance with requirements for the insurance company's statutory fund. Flowing from this finding, the Caribbean Court of Justice (CCJ) inter alia, had for their consideration, the question of whether the Superintendent's breach of duty was of such to strip her of the statutory protection from liability afforded by section 4(3) of the Act, in respect of actions or omissions occasioned in the execution of her functions under the Act.

[28] [2018] CCJ 6 (AJ)

On the way to determining that issue, Wit JCCJ explained the context of the good faith defence in section 4(3) of the Act, as being available to public officials who meet '*reasonable, basic standards of performance commensurate with the office they hold'*[29]. He then went on to say of the public officials and that standard[30]:-

> *"If, flippantly or recklessly, they disregard those standards then it is impossible to hold that they are acting in good faith. If, on the other hand, a public official makes genuine, honest attempts to meet such standards but fails to achieve them, then she should be able to rely on the good faith immunity. The essence of the statutory shield is to offer protection to public officials who are not fraudulent, or in wrongful collusion with the impugned company, or dishonest, or so irresponsible as to be recklessly indifferent to the occurrence of foreseen risks. Recklessness in this context is simply another way of establishing a lack of good faith."*

39. Having regard to the above, it is clear that even though now regarded beyond just dishonesty, an allegation of bad faith remains a grave charge and cannot merely be used as a synonym for unreasonableness or as Wit JCCJ earlier termed, in relation to conduct of a public official that may have been less than exemplary. In terms of the instant claim, it was submitted by Counsel for the Defendants that the issue of bad faith was for the first time treated by Counsel for the Claimant in her written closing submissions. In this regard, the Court accepts, that bad faith was not pleaded as a ground of review. The allegation was however levelled in relation to the Supervisor's non-renewal of the licence in affidavits filed in support of the Claim and witness statements subsequently provided. In those affidavits or statements however, the assertion of bad faith was not advanced with reference to any particulars of dishonesty or mal fides which bear any relation to dishonesty or the standards illustrated in ***Herrera et al v Supervisor of Insurance et al***. Further, no particulars of bad faith (even inaptly construed much less in the manner illustrated above) were put to the Supervisor on cross examination. In these circumstances it is not open for the Claimant to advance arguments in relation to bad faith and to the extent so advanced, the Court declines to consider it as a ground for review.

[29] Herrera et al v Supervisor of Insurance et al, supra per Wit JCCJ @ para. 63
[30] Ibid.

Wednesbury unreasonableness

40. In relation to the non-renewal of the Claimant's licence, the Court has found that the Supervisor clearly has the power to refuse a renewal of the Claimant's licence if the statutory fund requirement is not met. Within the circumstances of the Claim, the ground of unreasonableness was advanced on the basis that the Supervisor's calculation in respect of the statutory fund was incorrect. The Court has since found that the Supervisor's calculation of the fund was correct. There are aspects of the Claimant's arguments however which can still be advanced on the ground of unreasonableness, notwithstanding the Court's finding in relation to the correctness of the calculation of the fund. Counsel for the Claimant pointed out that it was not the case that a statutory fund was not in place, but rather, that there was a shortfall alleged in the fund. Considering however that the Claimant was compliant with its statutory requirements in all other respects, there was no reason for the Supervisor not to issue a renewal licence. It is in this respect that the Court can consider the ground of unreasonableness - viz, that the Supervisor failed to take into account the fact that the Claimant was approximately 82% compliant with the statutory fund requirement and compliant with all the other requirements for renewal as provided in section 14(2). Counsel for the Claimant further contended that the Supervisor's position in January and February, 2018 not to renew the licence for 2018 on the alleged basis of the inadequacy of the statutory fund was unreasonable, given that the liability in respect of the 2018 statutory fund would not have been known until the submission of 2017's audited financials, which were not due until April, 2018.

41. This contention was put to the Supervisor who responded to the effect that insofar as the requirement was for the statutory fund not only to be established but also to be maintained, the liability for full compliance was ongoing. In the circumstances, said the Supervisor, the failure to satisfy the 2017 fund albeit based on financials for 2016 nonetheless represented a failure to satisfy section 26. The Court agrees with the Supervisor on this point and need not go beyond her answer.

The question of unreasonableness is therefore considered with reference to the assertion that save for the 18% of the fund that was non-compliant, there was no other reason for the Supervisor to refuse to renew the Claimant's 2018 licence. It is to be noted, that during the proceedings, there was some degree of engagement regarding the resolution of the Claimant's licence due to the fact that the issue of renewal was sub-judice on the one hand, whilst the Supervisor alleged that there were other matters of regulatory concern regarding the Claimant's operations. In respect of those other concerns which the Supervisor attempted to raise, those concerns did not become part of the claim, thus the issue of renewal remains restricted to the position asserted by the Supervisor as regards the failure to satisfy the full amount of the statutory fund.

42. As mentioned above, Counsel for the Defendants referred to the decision of **Herrera et al v Supervisor of Insurance**[31] (briefly referred to in paragraphs 24 and 38 above), which was handed down on its final leg of appeal, by the CCJ in 2018. This matter concerned the region wide collapse of insurance giant CLICO in 2009. This occurrence needs no explanation, and the details of the actual collapse are in any event not relevant to the issue under consideration. What is relevant is the CCJ's dispensation in relation to the actions of the Supervisor of Insurance within the circumstances of that claim. For this purpose, a brief explanation of that claim is in order. The Belize company was a subsidiary of CLICO Bahamas and as narrated by Wit JCCJ in his judgment delivered on behalf of the Court, the company had a rocky relationship with the Supervisor from around 2004 arising from the its failure to properly comply with regulatory requirements including inter alia, on time submission of audited financials and full satisfaction of its statutory fund. There was also a history of the Supervisor exercising regulatory powers in relation to the sale by CLICO of its well-known product, the Executive Flexible Premium Annuity (EFPA), which it started doing in 1999 unbeknownst to the Supervisor until about 2001. For the years 2004 onwards, there was a documented history of penalties imposed, the exercise of the Supervisor's power of intervention, and conditional licences issued for the years 2005 through 2008 in order to ensure CLICO's compliance with its statutory requirements.

[31] Supra [2018] CCJ 6

43. One particular compliance failure by CLICO throughout the years was in relation to its statutory fund not being at 100%. This issue came to a head with the Supervisor upon consideration of the renewal of the company's licence for 2008, and continued throughout the rest of that year without resolution albeit active engagement between the Supervisor and the company. In January, 2009 CLICO made a proposal regarding how it proposed to meet its statutory fund requirement. Before this proposal could be carried out in full, CLICO Bahamas was put into liquidation in February, 2009 and the Supervisor in Belize intervened, and the Belize company was soon thereafter placed under judicial management and ultimately into liquidation. In the course of the liquidation process it was determined that the company was insolvent and that its statutory fund stood at less than 50% of the required amount. Needless to say, policy holders sustained significant losses and this particular action arose out of proceedings filed against the Supervisor and the Government, by EFPA policy holders, to recoup their losses having received a payout of only 25% of the value of their policies. On appeal before the CCJ, the issue standing in the way of a successful determination of liability against the Supervisor for the EFPA policyholders' losses, was the operation of section 4(3) of the Act. As discussed in paragraph 38 above, section 4(3) would afford the Supervisor protection from liability for any acts or omissions done or not done in the bona fides execution of her functions under the Act.

44. The argument on behalf of the policy holders was that the Supervisor was reckless in her adjudged failure to hold the company to its 100% compliance with its statutory fund, such recklessness being premised mainly on the fact of how deficient the fund actually turned out to be along with the length of time of the lack of compliance. In considering the Supervisor's actions regarding the handling of the company's failure to satisfy its statutory fund requirement, Wit JCCJ adverted to the fact that the Supervisor had a degree of flexibility in administering the Act and regulating the industry, as well as a wide range of actions available to enforce compliance.[32]

[32] Herrera et al, supra per Wit JCCJ @ para 65 et seq.

He further noted that non-compliance need not automatically result in the most drastic action being taken and that the action required could be adjusted based upon responses or remedial steps taken by the company.[33] Wit JCCJ acknowledged that it might not have been unreasonable for an observer to have objectively concluded in the circumstances of that case, that the Supervisor could have been more robust in her approach towards the company.[34] In the final analysis however, Wit JCCJ found it unnecessary as he said, to 'place a value judgment' on the Supervisor's actions, given the nature of her powers under the Act and the fact that CLICO's collapse was not foreshadowed. It was concluded that it would not be fair or accurate to characterize the Supervisor's efforts therein as being reckless.[35] The tenor of the learned judge's dictum reveals a reluctance to question the prudence or soundness of the Supervisor's actions within the context of what those facts revealed. It is appreciated that the issue in that case was the question of the absence of good faith founded on alleged recklessness, whilst in the instant case, what is alleged is a question of the reasonableness (***Wednesbury***) of refusing to renew a licence in the face of a statutory fund paid up to the value of 82% and compliance with remaining requirements.

45. Notwithstanding the difference in the respective issues between that case and the matter at bar, the Court considers that the realm of consideration is much the same. Absent any evidence for or against the prudence or soundness of the refusal to renew the Claimant's licence in this circumstance, the Court considers that there is no basis upon which it can regard the Supervisor's refusal to do so as *Wednesbury* unreasonable. This position accords with the general sentiment seemed to be held in relation to regulators and specialist tribunals as gleaned from the case of **R (on the application of London and Continental Stations and Property Ltd) v Rail Regulator,**[36] **(**also evidenced by the approach of Wit JCCJ in ***Kent Herrera*****.**)

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[33] Ibid.
[34] Ibid.
[35] Herrera et al, supra per Wit JCCJ @ paras 68-70.

[36] [2003] EWHC 2607 (Admin)

In the former case, the UK Administrative Court considered an application for judicial review against a decision taken by the Rail Regulator of the London underground, against the claimant company arising from reconstruction of an area of rail services. The court in that case cited a number of decisions in which the approaches of deciding Courts can be viewed in terms of being slow to interfere with decisions of individuals or tribunals tasked in areas outside the regular experience and expertise of the Courts.

46. It is considered that in the case at bar, the Supervisor of Insurance must be regarded as carrying out a specialist function with experience and expertise that is outside the usual remit of the Courts. Further, her primary concern is safeguarding the public interest by proper and effective regulation of an industry of critical importance to all members of society, whether directly or indirectly. As extracted from the above ***R (on the application of London and Continental Stations and Property Ltd)***[37] (with reference to the rail regulator but equally applicable to the Supervisor herein), the supervisory functions of the regulator are broader than just judicial and quasi-judicial functions. As a result, the wishes of the parties are not the regulator's primary concern and the regulator is better placed than the Court to determine what is best done in order to secure the statutory objective of effective regulation. There was also some discussion to the effect that albeit no longer appropriately the position that the court should defer to the regulator, some regard should be had to the extent to which the subject matter lends itself more readily to the expertise of the Court, as opposed to that of the regulator.[38] In the case at bar, the importance of the statutory fund has already judicially been categorically affirmed by Wit JCCJ in **Herrera et al v Supervisor of Insurance et al**[39] in the following terms:-

> *"…the first issues that must be addressed are whether there was a breach of the duty to establish and maintain the statutory fund…The fact that these policy holders have been severely prejudiced as a result of the CLICO debacle is more than regrettable. <u>It represents a failure of the relevant governance machinery. The legislature in its wisdom clearly intended that this type of misfortune should not occur</u>.*

[37] Supra per Moses J @ paras 27-29
[38] Ibid @ para. 32
[39] [2018] CCJ 6 (AJ) @ para 59

The ostensible purpose of establishing the statutory fund is to ensure that policy holders such as the Appellants, are protected from financial loss in circumstances such as occurred here. Entirely to deny such affected persons a cause of action would have rendered meaningless the intent of the statutory provision"

47. In light of the underlying purpose of the statutory fund, and the fact that its computation bears reference to liabilities determined in a prescribed manner; versus the absence of any evidence from which the Court could properly be guided as to the prudence, or reasonableness or not of the Supervisor's actions from a regulatory standpoint, the Court considers that there is no basis upon which the Court can be invited to find that the Supervisor's non-renewal of the Claimant's licence was *Wednesbury* unreasonable. That being said however, the Court is constrained to say that the refusal to renew has to be regarded with reference to the consequence of so doing. Although found to have been empowered to refuse to renew by the terms of section 14(2) and the Court taking the view that there is no basis upon which to find the refusal to renew Wednesbury unreasonable, the effect of such non-renewal would have meant that the Claimant had no licence to operate, which would be to the detriment of its policy holders and somewhat legally untenable. It so happens, that in this particular case, the progression of the issue of the non-renewal of the licence was interrupted by the Court proceedings initiated by the Claimant. Had the issue of renewal not been made the subject matter of the Court proceedings, it would not have been acceptable for the Supervisor to have retained her position in relation to non-renewal of the licence without taking some step under the Act to determine it.

48. This is so considered because the consequence of not renewing the licence, would have been the same as the consequence of its suspension or cancellation. Indeed, from the evidence on both sides, the Supervisor had signalled her intention to take further regulatory steps in relation to wider concerns she held in respect of the Claimant's compliance with the requirements of the Act, including at least according to the Claimant, issuing a notice of intervention. Having been placed within the proceedings, the issue of the non-renewal of the Claimant's licence was temporarily addressed by means of an undertaking to issue conditional licences intended to cover the duration of the

proceedings. The execution of this undertaking was not without difficulty, but in respect of those difficulties, the matter is now moot as the Claimant was ultimately issued with its licence covering the entire period of 2018. In respect of any liability on the issue of the Supervisor's failure to renew at least up until the institution of the Court proceedings, the Court in the first instance is unable to view the non-refusal as falling within the standard of *Wednesbury* unreasonableness and in relation to any further progression of the non-renewal, any issues that could have arisen were subsumed by the initiation of the proceedings in Court. The ground of unreasonableness in relation to the Supervisor's non-renewal of the licence on the basis of the Claimant's failure to fully meet its statutory fund is therefore not established.

Legitimate expectation

49. Finally, the Claimant asserts a legitimate expectation that it ought to have been entitled to continue lawfully operating its business, without any arbitrary changes being made to its detriment, or, without consulting or allowing the Claimant to make representations before any changes were made. The Court's understanding of this argument of legitimate expectation as relates to the non-renewal of the Claimant's licence, is that it is twofold. First, that the Claimant had a legitimate expectation to have its licence renewed period, on the basis that it had always been renewed in circumstances which had not changed – at least not on their account. Secondly, that at the very least, the Supervisor ought to either have consulted with the Claimant before refusing to renew their licence, or allowed the Claimant to make representations before refusing to renew. The law in relation to legitimate expectation has already been briefly reviewed in the Court's consideration of the statutory fund and the same learning and authorities are applicable on this issue of non-renewal of the Claimant's licence. There are however, a few further authorities which can usefully be highlighted in treating with this issue. In **R (on the application of Bhatt Murphy (a firm) et al) v Independent Assessor; R (on the application of Niazi et al) v Secretary of State**[40] (appeals jointly considered from a dismissal of a judicial review application), Laws LJ set out the relevant law on legitimate expectation.

[40] [2008] EWCA Civ 755

50. The facts of these appeals need not trouble the Court nor is it possible to set out all aspects of the relevant law which were comprehensively discussed by the learned Justice of Appeal. After affirming that legitimate expectation may (as opposed to must), arise in circumstances where a public decision maker changes or proposes to change an existing policy or practice, Laws LJ categorised two classes of legitimate expectation, namely, substantive and procedural[41]. The former refers to expectation of a benefit that is substantive, such as in the case at bar, the renewal of a licence. The latter, procedural – is categorised with reference to expectation of notice of, or consultation with - prior to an intended change in policy or practice. In either case, the expectation is borne out of an express or implied promise or assurance, the latter, being capable of arising out of established practice. Also extracted from Laws LJ's decision is that the promise or practice forming the basis of the legitimate expectation (whether substantive or procedural), is spoken of always in relation to the exercise of a policy or practice, as distinct from the existence or exercise of a strict legal right. In this regard, the renewal of a licence under the Act is a matter of satisfying conditions prescribed by law. Further, the licence at best is always only valid for one year, whereupon a company is required to demonstrate afresh, its compliance with all prescribed requirements. Based on the law as set out on legitimate expectation, the Court is not of the view that this principle is applicable to the renewal of a licence, at least not from the standpoint of expectation of a substantive benefit.

51. An illustration of where a legitimate expectation of a substantive benefit arose (referred to as a paradigm case), is **R v North and East Devon Health Authority, ex p Coughlan.**[42] In this case a health authority had been found to have made an express promise on a number of occasions in precise terms to a group of severely physically challenged persons, that a housing and care facility would be available to them for the rest of their lives. The representation was found to have been made in order to encourage the residents to move from an existing facility into the proposed new facility which was promised to be made

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[41] Ibid @ paras 27-28.

[42] [2000] 3 All ER 850

available for the rest of their lives. This representation was underpinned by no law or other binding agent but it was found to have conferred a legitimate expectation of the substantive benefit of receiving the nursing care as was represented by the health authority. There are a number of factors which contributed to the upholding of the promise by the health authority as a legitimate expectation from which the Government was held unable resile save for strong reasons. It is not necessary to engage in a discussion of those factors, but it suffices to quote this following excerpt[43] *'...This is not a case where the Health Authority would, in keeping the promise, be acting inconsistently with its statutory or other public duties. A decision not to honour it would be equivalent to a breach of contract in private law…'* as illustrating the point made that the nature of the expectation does not arise from a legal right. The claim of a legitimate expectation arising with respect to the substantive right of renewal of the Claimant's licence, is therefore rejected.

52. In relation to the claim for what is categorised as a procedural legitimate expectation, i.e., that the Claimant ought to have been consulted with respect to the non-renewal of its licence or given the opportunity to make representations, the Court makes reference to the previously mentioned Privy Council decision (from Mauritius) **Rainbow Insurance Co. Ltd. V Financial Services Commission et al**.[44] This case concerned the suspension of the appellant insurance company's licence, subsequent to prior investigations and regulatory action taken by the FSC. The investigation and regulatory action was followed up by a proposal to the Minister to suspend the licence. The Minister therein approved the proposal to suspend, the appellants sought judicial review of that approval and from the dismissal of that application, came the appeal. One of the appellant's grounds of review had been that the suspension was effected in breach of their legitimate expectation to be consulted and heard in relation to matters on which the suspension was based.

[43] Ibid @ para 86.
[44] [2015] UKPC 15

Albeit quite similar in terms of subject matter, the facts of this decision differ from the case at bar in that there was a formal investigation into the company's operations and the equivalent of a section 16 notice of suspension, followed up with approval of suspension by the Minister. The Supervisor in this case had intimated an intention in relation to a notice of intervention pursuant to section 53, which is a process quite different from section 16 proceedings, albeit the intervention may be a precursor to subsequent action taken under section 16.

53. In **Rainbow**, the ground of legitimate expectation was identified as procedural and was based on an assertion that the FSC had suddenly altered several accounting and industry practices without giving the company a reasonable time to adjust to its policy change - when based on past conduct, the company had been led to believe that such time would be given.[45] There were four such accounting and industry practices identified and in relation to each one, the Privy Council examined the FSC's conduct relative to each practice and concluded either that there had been sufficient time afforded to the company to adapt, or that the effect of alteration of the practice was not significant in relation to the ultimate decision to suspend. At this juncture, the Court turns its attention to the Claimant's case, as there is now a clear illustration of how a claim for legitimate expectation (procedural) is truly derived. There has been no policy or practice identified in relation to renewal, which could give rise to the basis of any legitimate expectation on the part of the Claimant. The Court considers that as renewal of a licence is based entirely on statutory requirements, the principle of legitimate expectation, whether categorised in the substantive or procedural sense, cannot be appropriately applied. There is however a final issue concerning renewal of the licence which needs to be addressed.

The non-renewal of the licence

54. To recap, when these proceedings were first instituted in March, 2018, the Claimant had not been issued with its licence for 2018 and the claim for judicial review in relation to the non-renewal of the licence, was based on the dispute in computation of the Claimant's statutory fund.

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[45] ***Rainbow*** supra @ para 51

Within these proceedings, there was a consent order as amended from time to time, for a conditional licence to be granted the Claimant pending the determination of the judicial review proceedings. Subsequent to the completion of the hearing but pending delivery of judgment in the matter, the Claimant was issued its licence for 2018 thus rendering the issue of non-renewal for all intents and purposes moot. As alluded to earlier in this judgment however, the question of the lawfulness of the Supervisor's actions in refusing to renew the Claimant's licence should nonetheless be pronounced upon by the Court, as it remains of concern to both parties in their continued relationship forward, as well as to the Supervisor in the exercise of her power to renew licences under the Act. With respect to the non-renewal of the Claimant's licence, the Court has already determined[46], that section 14(2) does provide a legal basis for the Supervisor to refuse renewal of a licence, if any of the preconditions to renewal are not met. Such preconditions are of course satisfaction with the requirements of all of the sections named therein.[47] The ground of the non-renewal being ultra vires the Act therefore failed.

55. Additionally, the Court has already determined[48] that based upon the evidence before it, along with the critical importance of the statutory fund in terms of its protection for policy holders, the regulatory remit of the Supervisor within an industry of a specialised field of expertise, and the fact that the impasse between the parties was overtaken by the institution of these proceedings, it is not possible for the Court to find that the Supervisor's refusal to renew the Claimant's licence was *Wednesbury* unreasonable. Finally, the Court has already determined[49], that based on the circumstances of this case, the principle or doctrine of legitimate expectation is inapplicable to the issue of the non-renewal of the Claimant's licence. This is because, legitimate expectation arises from representations or practice in relation to some exercise of some policy of a decision maker, as opposed to the discharge of a duty or exercise of discretion in accordance with law, meaning statute.

[46] Supra paras 35-36
[47] Ss. 13, 24, 26, 50 and payment of applicable fees.
[48] Supra paras 40-48
[49] Supra paras 49-53

There was no such policy in relation to any practice or representation identified in this case, to have formed the basis of any legitimate expectation in relation to the process of renewal of the Claimant's licence. All of the pleaded grounds of the Claimant's claim for review have therefore been determined, and so done in favour of the Supervisor.

56. The remaining issue that the Court wishes to address concerning renewal is to be considered with reference to the question of what it means for a company's licence not to be renewed. A company can only carry on business if licenced in accordance with the Act, so if its licence is not renewed, then it cannot lawfully carry on business. As provided in the Act, a company may in the first instance be prevented from carrying on business either by cancellation or suspension of its licence pursuant to section 16; or, its usual course of business may be curtailed in some way by the Supervisor's intervention under section 53. In either such case, whether cancellation, suspension or intervention, the Act goes on to stipulate the process by which any of those actions is achieved and the grounds upon which the Supervisor may take such action. As to be expected, before action is taken under any of those sections, due process in favour of the licencee is expressly built into the Supervisor's exercise of those functions. Pursuant to section 18, the Supervisor is also entitled for differently specified reasons, to cancel a company's licence without prescribed provisions of due process, but due process would have to be afforded in any event. In relation to non-renewal on the other hand, there are no provisions in the Act which speak to any process attendant in this regard, and in fact section 14(2) which specifies the grounds upon which a company's licence may be not renewed, is the only section in the Act which speaks to renewal of a licence.

57. Further, it can be seen that a company's failure to satisfy any of the preconditions for renewal as provided in section 14(2), would satisfy several of the bases upon which the Supervisor may cancel or suspend its licence pursuant to section 16(1). In particular, the failure to comply with sections 13(1), 24, 26 or 50 (the preconditions listed for renewal under section 14(2)), would entitle the Supervisor to seek cancellation or suspension pursuant to the grounds provided section 16(1)(ii), (iii), (iv), (v), or (vii).

It is further observed, that section 16(2) provides protection for policy holders against the ultimate sanction of cancellation, in that a licence cannot be cancelled under section 16, unless the Supervisor is satisfied of adequate arrangements being in place for payment of premiums or claims. It is finally observed, that there are consequences in terms of penalties and criminal liability, which may be imposed against a company carrying on business without a licence.[50] In light of the consequences which flow from a company not being licenced to carry on business, particularly considering that there are protections built in for the policy holder before cancellation can be effected, the question must arise as to whether the Supervisor is entitled by refusing renewal, to bring about such consequences without the same or some requirements for due process or ensuring protection for the policy holders. The Court considers the answer to this question to be that surely the Supervisor is not so entitled.

58. The natural question arising thereafter would then be in relation to what obligations for due process would the Supervisor be obliged to observe when declining to renew a company's licence? When considering this question, it has to be observed that in respect of cancellation or suspension pursuant to section 16, or refusal to issue a licence upon first application under section 13, the procedure for due process in favour of the licencee is specifically prescribed. The Supervisor is obliged to notify the company of her intention to refuse, cancel or suspend a licence, and upon what basis she proposes to do so; and the applicant or licencee, is then afforded the opportunity to seek a review of the Supervisor's proposed action, pursuant to section 174. Given that the effective consequence of non-renewal is the same as cancellation or suspension, the Court is of the considered view, that a refusal to renew a licence, must be effected within a similar framework for due process, as in the case of cancellation or suspension of a licence. To this end, in the case at bar, had the matter not been overtaken by the institution of legal proceedings, the Court considers that it would not have been open for the Supervisor simply have to refused to renew the Claimant's licence.

[50] Section 19 – 21 of the Act.

59. Instead, the same process of writing to the Claimant to notify of her intention, in this case, not to renew the licence, and for the Claimant to avail itself of section 174, would have been the appropriate route for the Supervisor to effect the non-renewal of the licence. Whether or not the same timelines should be applicable would be up for debate, given that the company's position in the interim, may be affected if the issue of renewal is not resolved prior to the expiration of its licence for the preceding year. In such a circumstance, it would be incumbent on the Supervisor to ensure that the process of renewal is appropriately timed for completion prior to the end of the preceding year. Alternatively, should the current licence expire prior to the completion of the renewal process, to ensure that a conditional licence is issued upon such terms as may be to her satisfaction, pending whatever action is being taken in relation to the decision to renew or not renew the licence for the new year. Short of legislation providing a prescribed procedure for refusal to renew a licence, the Supervisor would be obliged to take whichever of those actions is deemed appropriate, within a timeframe that is reasonable, having regard to the circumstances of the particular case. With respect to the case at bar, having been issued its licence for 2018 however, the Court repeats its earlier position that the claim raised in relation to the non-renewal of the Claimant's licence for 2018 has been rendered moot. The foregoing remarks are intended to inform the actions of the Supervisor in relation to renewal of licences whether in favour of the Claimant or other provider licensed under the Act.

Conclusion and Disposition

60. The Claimant's application for judicial review is dismissed on all grounds, more particularly stated in the following terms:-

    (1) With respect to the increase of the Claimant's statutory fund:-

        (a) The Supervisor of Insurance's calculation of the Claimant's statutory fund was not ultra vires section 26 of the Insurance Act, Cap. 251 of the Laws of Belize, as amended;

(b) The imposition of the increase of the statutory fund was not effected in breach of the Claimant's right to natural justice; and

(c) The Claimant held no legitimate expectation in respect of the increase of its statutory fund.

(2) With respect to the Supervisor of Insurance's refusal to renew the Claimant's licence prior to the commencement of this claim:-

(a) The refusal to renew the licence was not ultra vires section 14(2) of the Act;

(b) The refusal to renew the licence was not *Wednesbury* unreasonable; and

(c) The Claimant held no legitimate expectation with respect to the renewal of its licence;

(d) The Claimant should have been afforded due process in a manner consistent with the procedure for cancellation or suspension of its licence under section 16(1) of the Act;

(e) Notwithstanding paragraph (2)(d) herein, no relief is offered to the Claimant as the issue of non-renewal was overtaken by the institution of the Claim herein and the issue has been rendered moot by the renewal of the Claimant's licence for 2018, on the 4th January, 2019.

(3) In keeping with Rule 56.13(6) the Court makes no order as to costs against the Claimant upon the dismissal of its application for judicial review against the Defendants.

Dated this 26th day of February, 2019.

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Shona O. Griffith
Supreme Court Judge, Belize

APPENDIX I

BELIZE
INSURANCE ACT CHAPTER 251
REVISED EDITION 2011

13. Conditions for grant of licence.
14. Certificate of licence.
15. Notification of changes in particulars in application.
16. Grounds for cancellation or suspension of licence.
17. Failure of review.
18. Summary cancellation of licence.
19. Effect of cancellation.
20. Modification of effect of cancellation.
21. Display of licence certificate.
24. Amount and form of deposit by companies.
26. Establishment of statutory funds.
40. Preparation of annual accounts, etc,.
41. Periodic investigations of companies on long term business.
50. Margin of solvency.
100. Appointment of actuary for long term-insurers.
101. Frequency of actuarial reports on long term insurers.
145. Computation of reserved liability.
174. Power of Minister to review decisions of Supervisor.

13.– (1) If the Supervisor, after appropriate inquiry, or by the production of documentary evidence, or both, is satisfied in respect of the applicant insurance company that,

(a) the requirements of sections 8, 11 and 12 of this Act, in so far as they are applicable, have been complied with; and

(b) the company is solvent under the provisions of section 50 of this Act; and

(c) the company has made adequate and appropriate arrangements for the reinsurance of each class of insurance business which the company proposes to carry on in Belize; and

(d) the class of insurance business for which the application is made will be conducted by the applicant in accordance with sound insurance principles; and

(e) the company is likely to be able to comply with such of the provisions of this Act as would be applicable to it; and

(f) in the case of a company which carries on, or proposes to carry on, some other form of business in addition to insurance business, the carrying on of both insurance business and that other business is not contrary to the public interest; and

(g) the name of the company is not identical with or does not so closely resemble the name of an insurance company already licensed under this Act or under any other Act or legislation as to be likely to deceive; and Conditions for grant of licensing.

(h) the shareholders, directors, managing director or chief executive officer or principal representative of the company, as the case may be, and its executive officers are fit and proper persons to manage the affairs of the company; and

(i) the names and addresses of its directors, auditors and in the case of a company carrying on long-term insurance business, the name of the actuary or consulting actuary as the case may be, are stated in its application; and

(j) being an overseas company, it,

(i) is lawfully constituted in accordance with the laws of the country in which it is incorporated and has undertaken insurance business in that country for at least three years before the date of the application; and

(ii) has appointed some person resident in Belize to be its principal representative in Belize for the service of process and has informed the Supervisor in writing of the name and address of that person, the Supervisor shall, either unconditionally or subject to such conditions as he may specify, license the insurance company in respect of such class or classes of insurance business, and shall notify the applicant accordingly, and shall by notice publish the licensing in the *Gazette*.

(2) If the Supervisor is not satisfied, as to one or more of the conditions set out in subsection (1) of this section, he shall notify the insurance company in writing that he proposes to refuse to licence it or, as the case may be, that he proposes to refuse to licence it in respect of one or more of the classes of insurance business for which application is made, giving his reasons for so doing and shall notify it of its right under section 174 of this Act, to request the Supervisor to refer his proposal for review by the Minister.

14.– (1) The Supervisor shall, subject to the payment of the prescribed fees and to section 13 of this Act, furnish to every company licensed under this Act a certificate in the prescribed form that the company has been so licensed, and the certificate shall state the class or classes of insurance business for which it is licensed and shall be *prima facie* evidence that the insurance company specified in the certificate has been so licensed.

(2) Every certificate issued under this section shall be valid for the calendar year in which issued and may be renewed by the Supervisor for subsequent periods subject to the insurance company satisfying the requirements of sections 13, 24, 26 and 50 of this Act and upon payment of the required fees.

15. Where, after the licensing of any company under this Act any change takes place in the particulars specified in the application of the company for licensing or in the particulars of the information in or documents required to accompany the application, the company shall, within thirty days of such change, notify the Supervisor in writing of the change.

16.– (1) Subject to subsection (2) of this section, the Supervisor may notify in writing an insurance company licensed under this Act that he proposes to cancel its licence, giving his reasons for so doing (and notifying the company of its right under section 174 of this Act, to request the Supervisor to refer his proposal for review by the Minister) if at any time,

(a) the Supervisor is satisfied that,

(i) such licensing was procured as a result of any misleading or false representation or in consequence of any incorrect information (whether or not done willfully);

(ii) the company is insolvent in the terms of section 50 of this Act or having regard to its financial record and any other matter the company is likely to become so insolvent;

(iii) the company's insurance business or any class thereof is not being conducted in accordance with sound insurance principles and practice;

(iv) in the case of a company which carries on, or proposes to carry on, some other form of business in addition to insurance business, the carrying on of both the insurance business and that other business is or is likely to be contrary to policyholders' or the public's policyholders' or the public's interest;

(v) any of its reinsurance arrangements are not satisfactory;

(vi) it has been guilty, without reasonable cause, of delay in the payment or settlement of any claim payable under any policy issued by it; or

(vii) it has contravened this Act or any regulations made thereunder or any condition, direction or requirement imposed under this Act by the Minister or by the Supervisor, or has been an accessory or party to the contravention thereof by any other person;

(b) a judgment is obtained against the company in any court in Belize which remains unsatisfied for twenty-one days, and no appeal from such a judgment is brought or taken within twenty-one days of the judgment, or if it is so brought is abandoned or dismissed.

(2) Where an insurance company remains under any liability in respect of local policies belonging to any class of insurance business, the Supervisor shall not cancel the company's licence in respect of that class unless he is satisfied that adequate provision has been or will be made for that liability and that adequate arrangements will exist for payment in Belize of premiums and claims on those policies.

(3) No new business shall be written by an insurance company whose licence has been suspended or cancelled by the Supervisor and pending the hearing of any appeal to the Minister which may be made under section 174 of this Act.

17. Where an insurance company has been notified under section 13(2) or under section 16(1) of this Act, of its right to request the Supervisor to refer the proposal concerned to the Minister for review and either,

(a) fails to make any such request; or

(b) having made such request, withdraws the request or the result of the review is the confirmation, with or without variation, of the Supervisor's proposal, then, subject to any such variation, the Supervisor shall give effect to his proposal and notify the company in writing accordingly.

18. The Supervisor may at any time cancel an insurance company's licence under this Act,

(a) if proceedings for its winding-up have begun;

(b) if he is satisfied that it has not, within one year of its licensing, begun to carry on in Belize insurance business of any class;

(c) if he is satisfied that it has ceased to carry on insurance business in Belize for more than one year; or

(d) if the insurance company, or its liquidator, judicial manager or trustee so requests.

19.– (1) Notwithstanding section 18 of this Act, upon the cancellation of an insurance company's licence,

(a) it shall be lawful for it to continue to carry on business relating to policies issued before the date on which it is notified of such cancellation (hereinafter in this section referred to as "the date of notification") and it shall continue to carry on such business unless the Supervisor is satisfied that it has made suitable arrangements for its obligations under those policies to be met; and

(b) it shall not be lawful for it, after the date of notification, to issue any new policy or to enter into any new contract in relation to which licensing under this Act is required.

(2) Nothing in subsection (1)

(a) of this section, shall be taken as authorising the renewal of or an increase of the liability, after the date of notification, of any general insurance policy issued before that date, and where any such policy is renewed or increased after that date the company shall be regarded as having issued a new policy in contravention of paragraph

(b) of that subsection.

(3) Where any person is in contravention of this section the Supervisor shall, after giving14 days written notice, impose an administrative penalty of five thousand dollars in the first instance, but an appeal shall lie to the Court within thirty days of the imposition of such fine.

(4) Where after the imposition of a penalty in accordance with subsection (3) of this section the violation continues for a month, a person shall be liable on summary conviction to punishment in accordance with section 183 of this Act.

20. Section 19 of this Act, shall apply (with the necessary modifications) in relation to an insurance company that was carrying on insurance business in Belize immediately before the commencement of this Act and whose licensing is refused, as they shall apply to an insurance company whose licensing has been cancelled.

21.– (1) Every company licensed under this Part shall prominently display its licensing certificate at its principal place of business in Belize, in a part thereof to which the public have access, and a copy thereof shall be similarly displayed at each of its branches and agencies in Belize.

(2) On the notification to an insurance company that its licence has been cancelled, it shall forthwith surrender the licensing certificate and every copy thereof to the Supervisor.

(3) Every person who without lawful excuse fails to comply with this section, or who displays a licensing certificate or, any copy thereof, which is not currently valid, commits an offence.

24.– (1) A company shall not be licensed under this Act to carry on, and may not carry on, any class of insurance business unless it has deposited with the Supervisor a sum equal to fifteen per cent of the premium income net of reinsurance premiums of the company earned from all insurance business carried on in Belize during the financial year last preceding the date of deposit.

(2) Subject to subsection (4) of this section, at the end of each subsequent financial year a company, having made a deposit as required by subsection (1) of this section shall, where necessary, deposit or be refunded, as the case may be, an amount equal to the difference between the last preceding deposit and fifteen *per centum* of the net premium income during such financial year.

(3) Notwithstanding subsection (1) of this section, the *minimum amount* to be deposited with the Supervisor under this section shall be as follows,

(i) in the case of a company incorporated under the Companies Act - one hundred thousand dollars;

(ii) in the case of any other company – three hundred thousand dollars.

(4) Any deposit made under this section may be either in the form of approved securities or partly in cash and partly in approved securities. A letter of Undertaking issued by an acceptable and licensed financial institution in Belize holding such securities or deposit to the order of the Supervisor may be in the form set out in the Fourth Schedule.

(5) The amounts of the deposit payable under this section may, from time to time, be varied by the Minister by Order published in the *Gazette*.

26.– (1) Every company licensed under this Act to carry on any class of insurance business in Belize shall establish and maintain a Statutory Fund in respect of all such classes of business.

(2) The statutory fund shall be established,

(a) at the date on which the company commences the carrying on of any class of insurance business referred to in subsection (1) of this section; or

(b) not later than three months after commencement of this Act, whichever is the later date.

(3) The fund referred to in subsection (1) of this section, shall be established and maintained,

(a) in the manner set out in subsections (4), (5) and (6) of this section; or

(b) under an appropriate name in respect of each class of insurance business referred to in subsection (1) of this section.

(4) Every company carrying on long-term insurance business in Belize shall place in trust in Belize assets equal to its liabilities and contingency reserves, less the amount deposited on account pursuant to section 24 of this Act, with respect to its policyholders in Belize as established by the revenue account and balance sheet of the company as at the end of its last financial year.

(5) Every company carrying on motor vehicle insurance business in Belize shall place in trust in Belize assets equal to its liabilities and reserves, less the amount deposited on account pursuant to section 24 of this Act, with respect to its policyholders in Belize as established by the revenue account and balance sheet of the company as at the end of its last financial year.

(6) Assets required to be placed in trust pursuant to subsections (4) and (5) of this section, shall be so placed not more than three months after the end of the financial year to which the balance sheet or the revenue account, as the case may be, of the company relates.

(7) A statutory fund of all classes,

(a) shall be as absolutely the security of the policy holders of that class as though it belonged to a company carrying on no other business than insurance business of that class;

(b) shall not be liable for any contracts of the company for which it would not have been liable had the business of the company been only that of insurance of that class; and

(c) shall not be applied, directly or indirectly for any purpose other than those of the class of insurance business to which the fund is applicable.

(8) No insurance company carrying on insurance business of any class and no company of which any such insurance company is a subsidiary, shall declare a dividend at any time when the value of the assets representing each fund established and maintained by the company as determined in such manner as may be prescribed, is less than the amount of the liabilities attributed to such business.

(9) A company carrying on more than one class of insurance business in respect of which it is required to establish and maintain a statutory fund shall keep such books of accounts and other records as are necessary for the purpose of identifying,

(a) the assets representing each statutory fund; and

(b) the liabilities attributable to each class of insurance business.

40.– (1) Subject to subsection (3) of this section, a company shall, within four months of the end of each financial year, or within such extended period not exceeding two months as the Supervisor may allow in writing, submit to the Supervisor two copies of,

(a) a balance sheet and a statement of cash flow prepared in accordance with International Accounting Standards showing the financial position of all insurance business of the company at the close of that year;

(b) a profit and loss account in respect of all insurance business in that year;

(c) separate revenue accounts in respect of each class of insurance business carried on by it;

(d) an analysis of long-term insurance policies in force at the end of that year;

(e) a certificate that the assets of its insurance business are in the aggregate at least of the value shown in the balance sheet;

(f) in the case of a company carrying on general insurance business a certificate signed by its independent auditor that the company is solvent in accordance with section 50 of this Act; and

(g) such other documents and information as may be required by the Supervisor.

(2) A company shall furnish the Supervisor with a copy of any report on the affairs of the insurer submitted to the policyholders or shareholders of the insurer in respect of the financial year to which those documents relate.

(3) All documents required to be furnished under subsection (1) of this section, shall be signed by two directors and separately provide information on the worldwide business of the company as well as the business in Belize, and such documents shall be prepared in such form as may be prescribed.

(4) A company incorporated outside of Belize carrying on business in Belize shall submit to the Supervisor a copy of the statement of accounts submitted to the regulatory authority in the country of its incorporation.

(5) Where, in the opinion of the Supervisor, a document furnished by a company under subsection (1) of this section, is incorrect or incomplete or is not prepared in accordance with this Act, he may, by notice in writing call upon the company to amend the document or to furnish a correct document, as the case may be.

(6) If a document has been rejected by the Supervisor under subsection (5) o this section, the company shall be treated as having failed to comply with subsection(1) of this section, in relation to that document, unless it has furnished within the time specified another document in accordance with the directions of the Supervisor.

(7) A company which fails to submit any account, statement or other document required under this section, shall pay a penalty of one hundred dollars for every day that the account, financial statement or other document remains not submitted after the due date or the date extended by the Supervisor, and

such penalty shall be payable by the company on such date as may be fixed by the Supervisor and if not paid the company commits an offence and, in addition, is liable on summary conviction to a fine of twenty thousand dollars together with any penalty incurred for not submitting the statements or other documents on the due date or on the date extended by the Supervisor.

(8) If, after amendment to any document (8) If, after amendment to any document submitted to him, the Supervisor is not satisfied with the information submitted, the Supervisor may, at the company's expense, appoint another independent auditor to conduct an audit of that information or of that company's accounts with a view to establishing the accuracy of such information.

(9) A company shall, at the request of a policyholder make available to that policyholder a copy of the profit and loss account and balance sheet prepared by the company under subsection (1) of this section in respect of its last financial year.

(10) The documents required to be furnished under subsection (1) of this section, shall be certified by an independent auditor, the secretary or the principal representative, and a director of the company.

(11) In addition, where a company is carrying on long-term insurance business, every balance sheet which it is required to prepare under subsection (1) of this section, shall bear a certificate signed by its actuary or the consulting actuary stating whether or not, in his opinion, the aggregate amount of the liabilities of the company in relation to its long-term insurance business at the end of its financial year exceeded the aggregate amount of the liabilities shown in the balance sheet of the company.

(12) Nothing in this Act shall prevent the Supervisor in any event from conducting or authorising the carrying out periodically of on-site inspections of the insurance company's business.

41.– (1) Every insurance company which carries on long-term insurance business shall, not less than once in every three years, cause an investigation into its financial position, including a valuation of its liabilities, to be made by an independent actuary.

(2) Every such company shall, whenever its financial position is investigated with a view of distribution of surplus or in compliance with subsection (1) of this section, prepare and furnish to the Supervisor in the prescribed form, within four months of the date up to which its accounts are made for purposes of the

investigation, an abstract of the report of the actuary by whom investigations were made and a statement of its long-term business at that date.

(3) Section 40 (5) and (11) of this Act shall, with such modifications as may be necessary, apply in relation to a document required to be prepared under section 40 of this Act.

(4) In the case of a mutual insurance company which carries on life insurance business or industrial life insurance business and whose profits are allocated to members wholly or mainly by annual statements of premium, the company shall, where the abstract required by this section is not made annually, include with the copies of each such abstract furnished to the Supervisor under this section particulars as to the rates of abatement of premium applicable of insurance allowed in each year during the period which has elapsed since copies of such an abstract were previously so furnished.

50. A company shall be deemed to be insolvent,

(a) in the case of a company carrying on only long-term insurance business, if the value of its admissible assets exceeds its liabilities by less than $200,000;

(b) in the case of a company carrying on only general insurance business, if its admissible assets exceed its liabilities by less than twenty per cent of its net premium income in respect of its general insurance business in its last financial year; or

(c) in the case of an existing company carrying on both long term insurance business and general insurance business, if the excess of its total admissible assets over its total liabilities is less than the total amounts specified in paragraphs *(a)* and *(b)*.

100.– (1) Every company carrying on long-term insurance business shall appoint an actuary, as a member of its staff or as a consulting actuary.

(2) A company shall, within three months of the termination of the appointment of an actuary, appoint another actuary.

(3) Where the appointment of an actuary is terminated, the company shall within twenty-one days of appointing another actuary notify the Supervisor in writing of the appointment.

(4) No person may carry out the function of an actuary unless the Supervisor is satisfied that he possesses the necessary qualifications to carry out such functions.

101.– (1) Every company carrying on long-term insurance business shall, every three years or at such shorter intervals as the company notifies the Supervisor to be the intervals adopted by it for the purposes of this section,

(a) cause an independent actuary to make an investigation into its financial position including valuation of its liabilities in respect of every class of long-term insurance business and to furnish the Supervisor with a report of the result of the investigation; and *(b)* cause an abstract of the report of the independent actuary and statement of its long-term insurance business to be prepared.

(2) A valuation balance sheet shall be annexed to every abstract prepared under this section.

(3) The basis of valuation adopted shall be such as to place a proper value upon the liabilities, having regard to the average rate of interest from investments and to expenses of management, including commissions, and shall be such as to ensure that no policy shall be treated as an asset.

(4) Nothing in this section shall prohibit the Supervisor from requesting a long-term insurance company to submit each year a certificate signed by its actuary confirming his satisfaction that to the best of his knowledge and belief the company's liabilities do not exceed the funds earmarked for meeting those liabilities as disclosed in the company's annual financial statement, and that taking into account the company's financial position and business in general, its current reinsurance arrangements are adequate, appropriate and satisfactory.

145.– (1) Every company shall, in respect of its outstanding unexpired policies, include among the liabilities provided in its annual statement deposited with the Supervisor reserves not less than eighty percent, of the unearned premiums computed *pro rata per mensem* as at the date of the statement.

(2) For the purpose of this section, "premium" means in relation to a class of insurance business such premium as may be prescribed as being the net premium in relation to that class.

174.– (1) Any person who, pursuant to this Act or any Regulations made thereunder, is notified of any action, decision, ruling, direction, order or proposal

of the Supervisor in any case may within thirty days of such notification, request the Supervisor by memorandum in writing, setting out the grounds for his request, to refer the case for review by the Minister.

(2) Where the Supervisor is requested to refer a case for review by the Minister he shall do so with all reasonable dispatch.

(3) Where a case is referred to the Minister for review under this section, the Minister shall, after considering the memorandum, give his decision in writing and may, subject to the following provisions of this section confirm, vary, cancel or reverse the Supervisor's action, decision, ruling, direction, order, proposal or any part thereof as the case may be.

(4) Before reviewing any case referred to him under this section, the Minister shall, if either the person making the request (hereinafter referred to as "the applicant") or the Supervisor so desire, give each of them an opportunity of appearing before and being heard by a person or persons appointed by the Minister for the purpose.

(5) The decision of the Minister on review of any case referred to him under this section shall be final.

(6) On the review of any case referred to him under this section, the Minister shall forward a copy of his decision to the Supervisor and a copy to the applicant, together with a written statement of the reasons for his decision, if requested by the applicant.

APPENDIX II

INSURANCE (AMENDMENT) (NO. 2) ACT, 2014

6. Amendment of section 16.

11. Amendment of section 40.

12. Amendment of section 41.

15. Insertion of section 100A, 100B, 100C and 100D.

16. Amendment of section 101.

6. The principal Act is amended in section 16, subsection (1) by inserting immediately after the word "cancel" in the chapeau, the words "or suspend".

11. The principal Act is amended in section 40, by inserting immediately after subsection (12), the following, "(13) An insurance company is required to submit a quarterly unaudited financial statement 30 days after the end of each quarter to the Supervisor of Insurance.".

12. The principal Act is amended in section 41, subsection (1) by deleting the words "not less than once in every three years" and substituting the word "annually".

Insertion of section 100A, 100B, 100C and 100D.

15. The principal Act is amended by inserting immediately after section 100, the following,

"Appointment and qualification of actuaries."

100A.–(1) An insurer that is licensed to carry on long term insurance business shall appoint an actuary annually.

(2) Upon the appointment of an actuary in accordance with subsection (1), the insurer shall immediately give written notice to the Supervisor of such appointment, and if the Supervisor has valid reason to believe that the actuary is not qualified for appointment pursuant to the requirements of subsection (2), he may disapprove the appointment and notify the insurer in writing, whereupon the insurer shall immediately remove that actuary and appoint another actuary who is qualified to be appointed.

(3) If an insurer does not or is unable to appoint an actuary, the Supervisor shall have the power to appoint an actuary for the insurer, and the remuneration of the actuary so appointed shall be determined by the Supervisor and paid by the insurer.

(4) An insurer, immediately upon the resignation or termination of appointment of an actuary for any reason, shall,

(a) notify the Supervisor in writing giving the reasons for the resignation or termination; and

(b) appoint another actuary in conformity with the requirements of this section.

Actuary's right to information.

100B.– (1) On the request of the actuary of an insurer, a present or former an insurer, a present or former director, officer, employee or representative of the insurer shall, to the extent that the person is reasonably able to do so,

(a) permit access to any record, asset or security held by the insurer or any subsidiary of the insurer; and

(b) provide such information and explanation, as is, in the opinion of the actuary, necessary to enable the actuary to perform his duties as actuary of the insurer.

(2) On the request of the actuary of an insurer, the directors of the insurer shall, to the extent that they are reasonably able to do so,

(a) obtain from a present or former director, officer, employee and representative of any entity which the insurer controls the information and explanation that such persons are reasonably able to provide and that are, in the opinion of the actuary, necessary to enable the

actuary to perform his duties as actuary of the insurer; and

(b) provide the actuary with the information and explanation so obtained.

Duties of actuaries.

100C.–(1) The actuary of an insurer carrying on long term insurance business shall value the actuarial and other policy liabilities of the insurer as at the end of each financial year and shall value any other matters specified in any guideline or direction that may be made by the Supervisor, and shall report thereon to the insurer and the Supervisor.

(2) In the case of an insurer that is an overseas company, the valuations and report required under subsection (1) shall relate to the conduct of the insurance business in Belize.

(3) The valuation of an actuary shall be in accordance with international generally accepted actuarial practice with such changes as may be determined by the Supervisor and any additional directions that may be made by the Supervisor.

(4) The actuary shall, in making any valuation or establishing any provision required by this Act, follow the standards of practice and methodologies that would be required to be followed in respect of corresponding matters by the organisation of actuaries to which he belongs pursuant to subsection 100B (2).

(5) Prior to making the valuations required by this section, the actuary shall request from the insurer and review, any instruction, recommendation, requirement, orders or directives issued and other action taken by the Supervisor under this Act in respect of that insurer or insurance intermediary.

(6) The report of an actuary required under subsection (1) or (2) shall be sent by the insurer to the Supervisor as soon as they are available but not later than four months after the close of the insurer's financial year, or such longer period as the Supervisor may in writing approve.

(7) Every insurer who fails to comply with the requirements of subsection (6) shall be liable to pay, upon being called upon in writing by the Supervisor to do so, a penalty of five hundred dollars for each day of such failure to comply, except where an extension to the period has been granted in writing by the Supervisor.

(8) If the Supervisor, on reasonable grounds, is not satisfied with the valuations and report of an actuary appointed by an insurer, he may appoint another actuary to make an independent valuation, and in every such case, the Supervisor shall determine the reasonable remuneration to be paid by the insurer to such actuary appointed under this subsection.

(9) If, during the course of any valuation or review required under this section, any actuary learns of any fact, transaction, action or course of conduct concerning an insurer which,

(a) may pose a substantial risk to the financial condition of the insurer;

(b) may result in a significant loss to the insurer;

(c) may seriously prejudice the interests of the insurer's policyholders or customers;

(d) is a violation of any provision of this Act or any regulation, guideline or instruction made under the Act;

(e) indicates involvement in fraudulent or criminal activity; or

(f) indicates that the insurer is or may soon become insolvent, the actuary shall, as soon as possible, report such matters to the directors of the insurer or the principal representative, and to the Supervisor.

(10) Any actuary who fails to report his findings to the Supervisor as required under subsection (9) commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

Removal and resignation of actuaries.

100D.–(1) An insurer carrying on long term insurance business shall immediately give notice to the Supervisor if,

(a) the insurer proposes to give special notice to its shareholders of an ordinary resolution removing an actuary before the expiration of his engagement;

(b) the insurer gives notice to its shareholders of an ordinary resolution replacing an actuary at the expiration of his engagement with a different actuary; or

(c) an actuary ceases to be an actuary of the insurer otherwise than as a consequence of a resolution referred to in paragraph ***(a)*** or ***(b)***.

(2) An insurer that is an overseas company carrying on long term insurance business in Belize shall immediately give notice to the Supervisor if,

(a) the insurer removes an actuary before the expiration of his engagement;

(b) replaces an actuary at the expiration of his engagement with a different actuary; or

(c) an actuary otherwise ceases to be an actuary of the insurer.

(3) An actuary of an insurer appointed under section 100A(1) shall immediately give written notice to the Supervisor if he,

(a) resigns before the expiration of his engagement; or

(b) does not seek to be reappointed.

(4) An insurer or actuary who fails to comply with this section commits an offence and is liable on summary conviction to a fine

of one hundred thousand dollars.

16. The principal Act is amended in section 101, subsection (1),

(a) in the chapeau, by deleting the words “every three years or at such shorter intervals as the company notifies the Supervisor to be the interval adopted by it for the purpose of this section” and substituting the word “annually”; and

(b) in paragraph ***(a)***, by inserting immediately after the words “independent actuary” the words “, approved by the Supervisor,”.

APPENDIX III

BELIZE
INSURANCE ACT CHAPTER 251
(Repealed)
REVISED EDITION 2003

25. Establishment of statutory funds
39. Preparation of annual accounts etc.
43. Periodical investigations to be made into financial position of companies carrying on long term business.

25.- (1) Every company carrying on any class of insurance business shall establish at the date of the commencement of its financial year next after the commencement of this Act and shall maintain, a statutory fund as provided for in subsections (3) and (4) under an appropriate name in respect of each of the classes of insurance business carried on by the company.

(2) For the purposes of subsection (1) a company carrying on more than one class of long-term insurance business shall be regarded as carrying on only one class of long-term insurance business.

(3) In the case of long-term insurance business, every company shall place in trust in Belize assets equal to its liability and contingency reserves with respect to its local policy-holders as established by the revenue account of the company for the last preceding financial year.

(4) In the case of motor insurance business, every company shall place assets in trust in Belize equal to its liabilities and reserves less the amount deposited on account of such business in pursuance of this Act with respect to its local policy-holders as established by the revenue account of the company for the last preceding financial year.

(5) A statutory fund of either class-

(a) shall be as absolutely the security of the policy-holders of that class as though it belonged to a company carrying on no other business than insurance business of that class;

(b) shall not be liable for any contracts of the company for which it would not have been liable had the business of the company been only that of insurance of that class; and

(c) shall not be applied, directly or indirectly for any purpose other than those of the class of insurance business to which the fund is applicable.

39.- (1) Subject to subsections (4) and (11), every company registered under this Act shall, at the end of each financial year, prepare in the prescribed form and manner-

(a) a general balance sheet showing the financial position of all the insurance business of the company at the close of that year; and

(b) except in the case of a mutual company, a profit and loss account in respect of all its insurance business in that year, where the company carries on more than one class of insurance business; and

(c) separate revenue accounts for-

(i) life insurance business;

(ii) industrial life insurance business;

(iii) bond investment business;

(iv) such other class or classes of insurance business as may be prescribed; and

(d) an analysis of its long term policies in force at the end of that year; and

(e) a certificate that the assets of its insurance business are in the aggregate at least of the value shown in the balance sheet; and

(f) (i) in relation to any life insurance business carried on by the company, a certificate that the value of the assets of the life insurance fund exceeds the liabilities; and

(ii) where the company carries on general insurance business but not life insurance business a certificate that the value of its assets exceeds the amount of its liabilities by whichever is the greater of the amounts specified in section 53 (1) (b) (i) and (ii); and

(iii) where the company carries on both life insurance business and general insurance business, a certificate that the value of its assets, including the life insurance fund, exceeds its liabilities by the amount specified in section 53 (2) (b) (ii); and

(g) such other documents and information relating to the accounts and balance sheets referred to in this subsection as may be prescribed.

(2) A company registered under this Act shall, together with the documents referred to in subsection (1), furnish to the Supervisor a copy of any report on the affairs of the company submitted to the policy-holders or shareholders of the company in respect of the financial year to which those documents relate.

(3) Every account, balance sheet, statement or other document required by subsection (1) to be prepared shall be furnished to the Supervisor within six months after the end of the period to which the account, balance sheet, statement or other document relates.

(4) All the documents referred to in subsection (1) shall relate to the world wide business of the company but the Supervisor may require in addition a statement showing in respect of the company's business in Belize the amounts of premiums and considerations for annuities received, claims paid and outstanding, surrenders, including surrenders of bonus, annuities paid, bonuses paid, commission and expenses of management.

(5) Such of the documents required to be prepared by subsection (1) as may be prescribed shall be certified by an independent auditor, by an actuary or by officers of a body corporate.

(6) Where, in the opinion of the Supervisor, a document furnished by a company under this section is incorrect, or incomplete in any respect or is not prepared in accordance with this Act, he may, by notice in writing, call upon the company to amend the document or to furnish a correct or complete document or, as the case may be, a document prepared in accordance with this Act.

(7) Where a company fails to comply with a notice referred to in subsection (6) to the satisfaction of the Supervisor, the Supervisor may himself either amend the document in question, giving the company particulars of the amendments, or reject the document.

(8) A document amended by the Supervisor or by a company under this section shall be treated as having been submitted to the Supervisor in its amended form.

(9) Where a document furnished by a company under this section has been rejected by the Supervisor under subsection (7) the company shall be treated as having failed to comply with the provisions of this section in relation to that document unless and until it has furnished another document in accordance with the directions of the Supervisor.

(10) A company liable under a local life insurance policy shall, at the request of the policy-holder, furnish him free of charge with a copy of the relevant revenue account, profit and loss account and balance sheet prepared by the company under subsection (1) in respect of its last preceding financial year.

(11) The requirements of this section shall not apply in the case of a company which carries on only insurance business of a class or classes declared exempt for the time being under the provisions of section 158.

43.- (1) Every insurance company which carries on long-term business shall, not less than once in every five years, cause an investigation into its financial position, including a valuation of its liabilities, to be made by an actuary.

(2) Every such company shall, whenever its financial position is investigated with a view to a distribution of surplus or in compliance with subsection (1), prepare and furnish to the Supervisor in the prescribed form, within six months of the date up to which its accounts are made for the purposes of the investigation, an abstract of the report of the actuary by whom the investigation was made and a statement of its long-term business at that date.

(3) Section 39 (6) and (10) shall, with such modifications as may be necessary, apply in relation to any such abstract or statement as they apply in relation to a document required to be prepared by section 39.

(4) In the case of a mutual insurance company which carries on life insurance business or industrial life insurance business and whose profits are allocated to members wholly or mainly by annual abatements of premium, the company shall, where the abstract required by this section is not made annually, include with the copies of each such abstract furnished to the Supervisor under this section particulars as to the rates of abatement of premium applicable to different classes or series of insurance allowed in each year during the period which has elapsed since copies of such an abstract were previously so furnished.