

*Rolalabir*  
*3/4/12*  
*2009.*

Nature of Case: (Question in Execution of a Trust: Part 71.1 of the CPR)

**Filing Attorney:** **Kerri-Ann Oliverie**  
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**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV 2011-01234**

**IN THE MATTER OF  
COLONIAL LIFE INSURANCE COMPANY (TRINIDAD) LIMITED**

**AND**

**IN THE MATTER OF THE INSURANCE ACT CHAPTER 84:01**

**Between**

**PERCY FARRELL  
MARINA INALSINGH  
GORDON ROHLEHR  
DAVID DAYAL  
MICHAEL ALEXANDER**

Claimants

**AND**

**COLONIAL LIFE INSURANCE COMPANY (TRINIDAD) LIMITED**

First-Named Defendant

**CENTRAL BANK OF TRINIDAD AND TOBAGO**

Second-Named Defendant

**REPUBLIC BANK LIMITED**

Third-Named Defendant

**WINSTON DOOKERAN, MINISTER OF FINANCE**

Fourth-Named Defendant

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

Fifth-Named Defendant

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**TAKE NOTICE** that the paper writing hereto attached is a true copy of the Affidavit of **WINSTON DOOKERAN** sworn to and filed herein.

**AND FURTHER TAKE NOTICE** that the same will be read and used at the hearing of the above matter.

Dated this 3<sup>rd</sup> day of April 2012.



**Kerri-Ann Oliverie**  
Chief State Solicitor  
Instructing Attorney-at-Law  
For the 5<sup>th</sup> Defendant

**To:**           **The Registrar**  
                  **High Court of Justice**  
                  **Hall of Justice**  
                  **Knox Street**  
                  **Port of Spain**

**And To:**       **Mrs. Donna Denbow**  
                  **The Law Offices of Dr. Claude Denbow S.C.**  
                  **Chancery Courtyard (Suites 6 & 7)**  
                  **13-15 St. Vincent Street,**  
                  **Port-of-Spain**

**Attorney-at-Law for the Claimant**

**And To:**       **Ms. Lydia Mendonca**  
                  **Messrs. Lydia Mendonca & Co.**  
                  **No. 86 Abercromby Street**  
                  **Port-of-Spain**

**Attorney-at-Law for the First Defendant**

**And To:** Ms. Tamilee Budhu  
5 Longden Street  
Mahatma Gandhi Square  
Port-of-Spain

**Attorney-at-Law for the Second Defendant**

**And To:** Marcelle Ferdinand  
J.D. Sellier & Co  
129-131 Abercromby Street  
Port-of-Spain

**Attorney-at-Law for the Third Defendant**





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**COLONIAL LIFE INSURANCE COMPANY (TRINIDAD) LIMITED**  
First-Named Defendant  
**CENTRAL BANK OF TRINIDAD AND TOBAGO**  
Second-Named Defendant  
**REPUBLIC BANK LIMITED**  
Third-Named Defendant  
**WINSTON DOOKERAN, MINISTER OF FINANCE**  
Fourth-Named Defendant  
**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**  
Fifth-Named Defendant

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**AFFIDAVIT OF  
WINSTON DOOKERAN**

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**Background**

I, **WINSTON DOOKERAN**, of Level 8, Ministry of Finance, Financial Towers, Independence Square, Port of Spain in the island of Trinidad in the Republic of Trinidad and Tobago, Minister of Finance in the Government of the Republic of Trinidad and Tobago make oath and say as follows:

1. The facts and matters hereinafter deposed to are true and correct and are within my personal knowledge except where otherwise stated to be based on information and belief in which case I believe the same to be true and correct.
2. I am the Fourth-Named Defendant herein and I am also duly authorised to depose to this affidavit on behalf of the Fifth-Named Defendant, the Honourable Attorney General of the Republic of Trinidad and Tobago.
3. I have read a copy of the further supplemental affidavit of Percy Farrell sworn to and filed herein on 9 March 2012 in support of the Claimants' application for

constitutional relief (*Farrell 3*). I make this affidavit in response thereto, and references to “PF []” are references to the exhibits thereto.

4. I was appointed as Minister of Finance in the Government of the Republic of Trinidad and Tobago (*GORTT*) in May 2010, after the change in political administration consequent upon the general elections held in this country on 24 May 2010. I am the successor to Mrs. Karen Nunez-Teshiera, who held the post of Minister of Finance during the period of the former administration of the People’s National Movement. Between 1997 and 2002 I held the position of Governor of the Central Bank of Trinidad and Tobago (*the Central Bank*).

5. As the Minister with responsibility for finance, my duties include all the statutory functions which devolve onto me under the laws of the Republic of Trinidad and Tobago. In respect of fiscal matters, I am responsible for general oversight over the Central Bank and commercial banks, for borrowing (local and foreign), budgeting and capital repayments. I also hold responsibility over the Consolidated Fund. I am also responsible for establishing fiscal and monetary policy, economic management, public sector finance management, overseeing the Public Sector Investment Programme, the Infrastructure Development Fund and the Heritage Stabilization Fund.



6. In addition to the foregoing general functions and duties, a number of statutory boards and other bodies fall under my portfolio. These include the Central Tenders Board, the National Insurance Appeals Tribunal, the National Insurance Board, the National Insurance Property Development Company Limited and the National Lotteries Control Board.

7. Copies of the documents referred to herein are set out in the exhibit to this affidavit and are sequentially marked “WD1” – “WD5”.

8. In this Affidavit I refer to advice that I have received from my lawyers, including Freshfields Bruckhaus Deringer LLP and lawyers within the Ministry of Finance. Nothing I say in this Affidavit is intended to or does waive privilege over any document or advice I have received.

9. This affidavit is comprised of the following sections:

- (a) GORTT’s intervention in Colonial Life Insurance Company (Trinidad) Limited (*CLICO*);
- (b) the CLICO restructuring proposal;
- (c) the Central Bank Amendment Act 2011 (the *CBAA*);
- (d) comparative statutory regimes;
- (e) safeguards in the CBAA;
- (f) alternatives; and
- (g) conclusion.

**A. GORTT’S INTERVENTION IN CLICO**

10. In this affidavit, I make reference to certain matters and events leading up to the intervention by the Central Bank into the affairs of Clico Investment Bank Ltd (*CIB*), CLICO, and British American Insurance Company Trinidad Limited (*BA*), both subsidiaries of CL Financial Limited (*CLF*). This intervention occurred in January 2009.



11. The following paragraphs of Farrell 3 are not in dispute:

- (a) 1 – 16;
- (b) 18(a) – (f);
- (c) 22 – 25; and
- (d) 28.

12. As to paragraph 17 of Farrell 3, I say that the CBAA was indeed passed with a three fifths majority of the House of Representatives and of the Senate. The CBAA was passed in circumstances as detailed in paragraphs [43] to [56] hereunder.

13. The background to the intervention by GORTT is set out below.

14. On 13 January 2009, Mr Lawrence Duprey, the Chairman of CLF, the parent company of CLICO informed the Central Bank that:

- (a) the global financial crisis was affecting the availability of liquidity in Trinidad and Tobago;
- (b) CLF Group companies had been seriously affected by this and as a result many customers were withdrawing their funds;
- (c) CLF Group companies had met their obligations to customers to date, but a contingency plan was being developed in case the trend of withdrawals continued; and
- (d) CLF Group assets could not be readily liquidated without incurring significant loss, and liquidity support may be required.



15. Meetings between CLF, GORTT and the Central Bank commenced on 15 January 2009. On 30 January 2009, the then Minister of Finance, acting on behalf of GORTT, and CLF acting for itself and its affiliates (including CLICO, CIB, and BA), entered into a Memorandum of Understanding (the *MOU*) which set out steps to be taken to correct the financial condition of CIB, CLICO and BA. The financial condition of CIB, CLICO and BA threatened the interests of depositors, policy holders and creditors of these institutions and posed a danger of disruption or damage to the financial system of Trinidad and Tobago.

16. Overall, the Group owned or controlled over 30 companies and several additional subsidiaries under many of these companies. These included those in the financial services, alcohol manufacturing, land and property development, retail, energy and media sectors. CLICO itself accounted for approximately 53.6% of insurance industry's total liabilities in Trinidad and Tobago. The CLF Group therefore constituted a significant part of the economy.

17. Given the magnitude and extent of CLF's involvement in the economy of Trinidad and Tobago, GORTT was deeply concerned that the failure of the flagship insurance company and its financial services entities would result in the collapse of the entire CLF Group. Its collapse could have had devastating effects on the economy, other financial institutions and business in general throughout Trinidad and Tobago and the Caribbean, particularly at a time when the international economy was already in deep recession. The intervention sought, first and foremost, to mitigate this risk and it was with this primary objective in mind that the intervention was made.

18. The second key objective of the intervention was the protection of unconnected policyholders and depositors (and a definition of a “connected party” for this purpose was eventually developed).

19. On 13 February 2009, the Central Bank exercised its emergency powers pursuant to the Central Bank Act, Chap. 79:02 in respect of CLICO and by Notification published in the *Gazette* (Legal Notice No 32 of 2009) assumed control of CLICO.

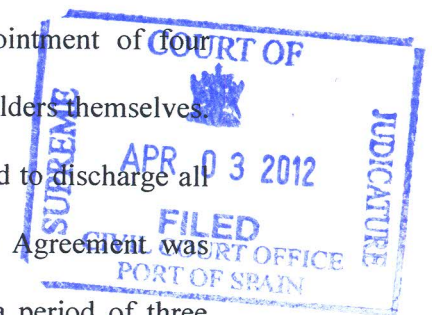
20. Pursuant to the MOU and following further discussions between CLF and GORTT, on 12 June 2009 CLF and GORTT (amongst others) signed a Shareholder Agreement (*the Shareholder Agreement*) for the purpose of regulating and formalising certain aspects of the affairs of, and GORTT’s dealing with, CLF harmonious with the implementation of the MOU. By this agreement, CLF acknowledged its obligation to repay GORTT, and agreed to a reconstitution of the

CLF Board. The reconstitution was achieved through the appointment of four directors nominated by GORTT and three nominated by the shareholders themselves.

The CLF Board was mandated to manage the operations of CLF and to discharge all of its obligations, including those to GORTT. The Shareholders Agreement was

signed by a special majority of shareholders and is effective for a period of three years.

21. Since the problems with CLICO came to light in 2009, GORTT has provided various funds. I draw to the Court’s attention that in general terms, the position in relation to the funding GORTT has provided as at the date of this affidavit is as follows:



(a) initially some TTD 5 billion was provided to CLICO. This was comprised as follows:

(i) an initial advance of TTD 1.9 billion in cash to meet initial liquidity demands after the first stage of the intervention; and

(ii) a further sum of approximately TTD 3.1 billion in the form of long term GORTT bonds with varying maturities and coupon rates; and

(b) since that initial tranche of funding, GORTT has paid further very significant sums, including some TTD 7 billion to EFPA policyholders (see further below).

22. Assuming that the restructuring of CLICO proceeds as planned (again, see further below), GORTT will advance funds totalling a further TTD 12 billion.

23. The above numbers are approximate and represent a summary of the funds GORTT has paid out to date and is likely to advance going forward, depending on (for example) the number of policyholders who accept the offer referred to below.

24. Having provided financial support to CIB, CLICO and BA for the reasons outlined above, GORTT was required to make various policy decisions affecting stakeholders.

25. As to paragraph 20 of Farrell 3, I admit making the statement which is referred to. However, it is denied that there was any intention to prejudice the rights of the EFPA policyholders, whether by excluding or limiting their rights to claim against the Statutory Fund or otherwise. In this regard, I rely on the matters stated at paragraphs



[39-40] herein. As to paragraph 21 of Farrell 3, I am not aware of the statements made by Mr. Gerald Yetming which are therein attributed to him.

## **B. THE CLICO RESTRUCTURING PROPOSAL**

26. As to paragraph 26 of Farrell 3, I do not dispute that an entity known as Colonial Life Insurance Company (2009) Limited was incorporated.

27. The Central Bank and GORTT's initial priority was to stabilise the financial system. Following the achievement of stability, GORTT and the Central Bank have sought to develop an action plan to restructure CLICO and address the threats and problems which gave rise to the initial intervention by GORTT and the exercise of Central Bank's emergency powers, in order to protect the interests of policyholders and to prevent disruption, substantial damage, injury or impairment to the financial system of Trinidad and Tobago.

28. In deciding upon the most appropriate restructuring and resolution plan, GORTT was required to balance a range of competing policy interests. For instance, on the one hand, there are over 400,000 taxpayers who have no direct involvement in CLICO, BA and CLF whose interests have to be considered. On the other hand, GORTT has to take account of the need to take action to avoid systemic financial instability. Furthermore, GORTT has to consider the interests of the 225,000 policyholders of CLICO and BA's 'traditional' insurance products and the approximately 25,000 holders of CLICO's and BA's EFPAs and mutual funds, collectively referred to as Short Term Investment Products (*STIPs*).

29. Eventually, GORTT settled on an approach and a plan which represents a proper balancing of the competing public policy interests.



30. I explained the core elements of the restructuring in the House of Representatives on 14 September 2011, when I introduced the Purchase of Certain Rights and Validation Act 2011 (*PCRVA*). There is now shown to me and hereto annexed and marked “WD1” the relevant extracts of my presentation to the House of Representatives in respect of the PCRVA.

31. The restructuring will have two core elements:

(a) first, GORTT has made an offer to unconnected parties holding STIPs issued by CLICO or BA as follows:

(i) to pay holders of STIPs with capital sums due of up to TTD75,000 in full;

(ii) to make to holders of STIPs with capital sums due of more than TTD75,000 a payment of TTD75,000, with the balance of their claim being satisfied by the issue of GORTT bonds in 20 equal instalments at a zero-percent interest rate, with maturities ranging from 1-20 years;

(iii) in return for the payments and other consideration referred to above, the STIP holders are required to assign all their rights against CLICO under the STIPs to GORTT;

(b) the second element is the transfer of traditional long-term insurance liabilities, and a rateable proportion of the assets in the Statutory Fund of CLICO to a new company which is yet to be named. Mr Farrell refers to this company as ‘New Clico’ so I adopt that definition.

32. Paragraph 27 of Farrell 3 is therefore denied.

33. As to paragraph 28 of Farrell 3, in addition to the objective of protecting the interests of depositors and policy holders as a basis for GORTT's intervention, GORTT also sought to achieve the objective of minimising the risk to the financial system of Trinidad and Tobago and maintaining public confidence.

34. I draw to the Court's attention the fact that at the date of this affidavit, approximately 68.7% by number totalling 57.5% by value of EFPA holders have accepted the offer set out at paragraph [31] above.

35. Farrell 3 contains a fundamental misunderstanding of how the restructuring of CLICO will operate. As a result, I am advised by Counsel and believe that the Claimants' application for constitutional relief is misconceived. Mr Farrell's view appears to be that:

- (a) there is a 'common design' against STIP holders (see paragraph V on page 26 of Farrell 3) which has two elements;
- (b) the first is the imposition of a stay under the CBAA which deprives the STIP holders of their right to complain about the terms of the restructuring;
- (c) the second element consists (it is said) of assets in the Statutory Fund, which it is asserted are held in trust for the STIP holders, being stripped out for the benefit of New Clico and to the detriment of STIP holders. Mr Farrell's views on this are made clear at paragraph 27 of Farrell 3; and in even more dramatic language, he describes the Claimants' right as being 'systematically taken away, destroyed, diminished, trampled upon' (paragraph IV at page 21 of Farrell 3).





36. This represents a complete misunderstanding of how the restructuring will operate.

37. First, I am advised by my lawyers that policyholders (whether STIP holders or otherwise) do not have any proprietary rights to, or ownership of, any assets in the Statutory Fund. Rather, the assets belong beneficially to CLICO but can only be dealt with in accordance with the statutory regime under the Insurance Act. The assets are in effect ring-fenced, such that the assets of the Statutory Fund cannot be applied to any class of business other than that for which the Statutory Fund was established.

38. I am advised by my lawyers that this is an issue which will be the subject of legal submissions. I say further, and as will be seen herein, STIP holders are **not** being deprived of anything. It is very important to note that their rights under the Insurance Act in relation to assets presently in the Statutory Fund will be protected under the terms of the restructuring.

39. Secondly, the transfer of the traditional business to New Clico will involve and be effected by an insurance business transfer scheme under section 84 of the Insurance Act (*the Transfer Scheme*). The section 84 process is a transparent one. The terms of the scheme will be publicly available, and a hearing to consider the Transfer Scheme will be scheduled. Interested parties will be given notice of that hearing, and all affected persons will be entitled to be heard.

40. It is important to note that under the terms of the Transfer Scheme, only a rateable proportion of the assets in the Statutory Fund of CLICO which is held in respect of the traditional liabilities will be transferred to New Clico. This amounts to [X%] of the assets in the Statutory Fund, and this will be transferred in consideration of New Clico assuming the liability to pay the traditional policyholders. It is equally

important to note that a rateable proportion of the assets in the Statutory Fund of CLICO, held in respect of STIP holders who have not accepted GORTT's offer, will remain in CLICO post-Transfer Scheme. This is the key point which Mr Farrell and his lawyers have failed to understand. In light of this, it is not correct to claim that the rights of the STIP holders are being prejudiced in any way by the restructuring.

41. The position of Mr Farrell and other STIP holders is that they have a choice to make. They can accept the offer set out in paragraph [31] above; or they can reject it. There is no element of compulsion involved: the choice is entirely voluntary.

42. Finally, I note that at paragraphs 29, 30, 31 and 32 of Farrell 3 it is suggested by Mr Farrell that STIP holders should be treated in the same way as depositors in CIB. I note that CIB and CLICO are different companies subject to different regulatory regimes. I do not agree that it is appropriate to treat depositors in CIB in the same way as STIP holders. Paragraphs 29, 30, 31 and 32 of Farrell 3 are denied.

### C. CBAA

#### Background to the CBAA

43. The Central Bank Act empowers the Central Bank to exercise emergency powers in respect of a systemically important insurance company in the interest of policy holders as well as the stability of the financial system. These powers include the power to assume control of and carry on the affairs of the institution (section 44D(1)(ii)); to take all steps it considers necessary to protect the interests and preserve the rights of policy holders and creditors (section 44D(1)(iii)); and to restructure the business or undertaking of the institution or to reconstruct its capital base (section 44D(1)(iv)). There was a deficiency in the legislative framework in that all of the



emergency powers, which were designed to protect the financial system, could be rendered useless and of no effect if creditors were to execute judgments against the assets of the company or liquidate the company. This had the effect of frustrating and/or nullifying all efforts of the Central Bank to effect appropriate resolution strategies in the interest of all policyholders and creditors and the financial system as a whole.

44. To facilitate the exercise by the Central Bank of its powers, it was therefore necessary to seek an amendment to the CBA, to allow for a stay of legal proceedings and the enforcement of certain rights against CLICO while it remains under the control of the Central Bank under Section 44D. It must be remembered that legal proceedings were continuously being filed in the High Court against CLICO by persons seeking recovery of their monies. Some of these matters included:

- (a) CV2010-02917 St. Christopher and Nevis Social Security Board v CLICO;
- (b) CV2010-03995 Alvin Fitzpatrick v CLICO;
- (c) CV2010-04309 Darryl Goede and Nancy Goede v CLICO;
- (d) CV2010-04378 Lesley-Ann Lucky-Samaroo v CLICO;
- (e) CV2010-4784 Vindra Amar v CLICO; and
- (f) CV2011-01131 David Knott v CLICO.

45. I am advised by the Ministry's attorneys that on the 22 July 2011, the High Court delivered judgments in these matters (which were heard together) and made the following orders:



*"IT IS HEREBY ORDERED AS FOLLOWS:*

**A) CV2010-02917 St Christopher and Nevis Social Security Board v CLICO  
(Trinidad) Limited**

1) *There shall be judgment for the Claimant against the Defendant in respect  
of*

- (i) *US Executive Flexible Premium Annuity (EFPA) bearing policy number US0004126 and*
- (ii) *US Executive Flexible Premium Annuity (EFPA) bearing policy number US00051895.*

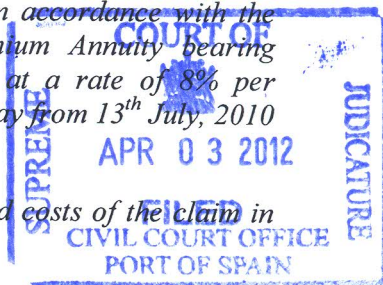
2) *The Defendant shall pay to the Claimant:*

- (i) *the sum of TT\$ 10,388,198.83 under US Executive Flexible Premium Annuity bearing policy number US0004126 and;*
- (ii) *the sum of TT\$ 9,090,341.87 under US Executive Flexible Premium Annuity bearing policy number US00051895*

3) *The Defendant shall pay to the Claimant:*

- (i) *interest in the sum of TT\$827,512.50 in accordance with the terms of US Executive Flexible Premium Annuity bearing policy number US00041426 computed at a rate of 9% per annum or US\$348.06/TT \$2,206.70 per day from 13<sup>th</sup> July, 2010 to the date of judgment, 22<sup>nd</sup> July 2011.*
- (ii) *interest in the sum of TT\$607,781.25 in accordance with the terms of US Executive Flexible Premium Annuity bearing policy number US00051895 computed at a rate of 8% per annum or US\$255.64/TT\$1,620.75 per day from 13<sup>th</sup> July, 2010 to the date of judgment, 22<sup>nd</sup> July 2011.*

4) *The Defendant shall pay to the Claimant prescribed costs of the claim in the sum of \$331,392.70.*



**B) CV2010-03995 Alvin Kenneth Fitzpatrick v Colonial Life Insurance Company (Trinidad) Limited**

1) *There shall be judgment for the Claimant against the Defendant in respect of Executive Flexible Premium Annuity (EFPA) bearing policy number R000208663.*

- 2) *The Defendant shall pay to the Claimant the sum of TT\$ 1,188,100.00 under Executive Flexible Premium Annuity (EFPA) bearing policy number R000208663.*
- 3) *The Defendant shall pay to the Claimant interest in the sum of TT\$ 128,962.08 computed at a rate of 9 percent per annum compounded annually on the sum of TT\$ 1,188,100.00 from the 15<sup>th</sup> May 2010 to the date of judgment, 22<sup>nd</sup> July 2011.*
- 4) *The Defendant shall pay to the Claimant prescribed costs of the claim in the sum of TT\$ 118,405.00.*

**C) CV 2010-04309 Darryl Arthur Goede and Nancy Louise Goede v Colonial Life Insurance Company (Trinidad) Limited**

- 1) *There shall be judgment for the Claimant against the Defendant in respect of US Executive Flexible Premium Annuity (EFPA) bearing policy number US00053929.*
- 2) *The Defendant shall pay to the Claimant the sum of US\$3,500,000.00 (TT\$22,525,650.00) under US Executive Flexible Premium Annuity (EFPA) bearing policy number US00053929.*
- 3) *The Defendant shall pay to the Claimant interest in the sum of US\$395,067.59 (TT\$2,542,615.50) computed at a rate of 8 percent per annum or US\$767.12 per diem in accordance with the terms of US Executive Flexible Premium Annuity bearing policy number US00053929 from the 23<sup>rd</sup> October, 2010 to the date of judgment, 22<sup>nd</sup> July, 2011.*
- 4) *The Defendant shall pay to the Claimant prescribed costs of the claim in the sum of TT\$346,628.25.*

**D) CV2010-04378 Lesley-Ann Lucky Samaroo v Colonial Life Insurance Company (Trinidad) Limited**

- 1) *There shall be judgment for the Claimant against the Defendant in respect of Executive Flexible Premium Annuity (EFPA) bearing policy number R000149810.*
- 2) *The Defendant shall pay to the Claimant the sum of TT\$200,357.50 under Executive Flexible Premium Annuity (EFPA) bearing policy number R000149810.*
- 3) *The Defendant shall pay to the Claimant interest in the sum of TT\$26,184.68 computed at a rate of 7 percent per annum in accordance with the terms of Executive Flexible Premium Annuity bearing policy number R000149810 from the 12<sup>th</sup> September, 2009 to the date of judgment, 22<sup>nd</sup> July 2011.*
- 4) *The Defendant shall pay to the Claimant prescribed costs of the claim in the sum of TT\$39,053.63.*



**E) CV2010-04784 Vindra Amar v Colonial Life Insurance Company (Trinidad) Limited**

- 1) *There shall be judgment for the Claimant against the Defendant in respect of Executive Flexible Premium Annuity (EFPA) bearing policy number R000114926.*
- 2) *The Defendant shall pay to the Claimant the sum of TT\$465,037.18 under Executive Flexible Premium Annuity (EFPA) bearing policy number R000114926.*
- 3) *The Defendant shall pay to the Claimant interest in the sum of TT\$45,968.60 computed at a rate of 8 percent per annum on the sum of TT\$465,037.18 in accordance with the terms of Executive Flexible Premium Annuity bearing policy number R000114926 from 29<sup>th</sup> April, 2010 to the date of judgment, 22<sup>nd</sup> July, 2011.*
- 4) *The Defendant shall pay to the Claimant prescribed costs of the claim in the sum of \$68,003.72.*

**F) CV2010-01131 David Knott v Colonial Life Insurance Company (Trinidad) Limited**

- 1) *There shall be judgment for the Claimant against the Defendant in respect of*
  - (i) *US Executive Flexible Premium Annuity (EFPA) bearing policy number R00192936*
  - (ii) *US Executive Flexible Premium Annuity (EFPA) bearing policy number R00192937*
  - (iii) *US Executive Flexible Premium Annuity (EFPA) bearing policy number R00192938.*
- 2) *The Defendant shall pay to the Claimant*
  - (i) *the sum of TT\$1,304,608.67 under US Executive Flexible Premium Annuity bearing policy number R00192936;*
  - (ii) *the sum of TT\$1,304,608.67 under US Executive Flexible Premium Annuity bearing policy number R00192937;*
  - (iii) *the sum of TT\$1,297,916.55 under US Executive Flexible Premium Annuity bearing policy number R00192938;*
- 3) *The Defendant shall pay to the Claimant*
  - (i) *Interest in the sum of TT\$37,314.88 computed at a rate of 9 percent per annum or \$321.68 per diem in accordance with the terms of Executive Flexible Premium Annuity bearing policy*



number R00192936 from 29<sup>th</sup> March, 2011 to the date of judgment, 22<sup>nd</sup> July, 2011.

(ii) Interest in the sum of TT\$37,314.88 computed at a rate of 9 percent per annum or \$321.68 per diem in accordance with the terms of Executive Flexible Premium Annuity bearing policy number R00192937 from 29<sup>th</sup> March, 2011 to the date of judgment, 22<sup>nd</sup> July, 2011.

(iii) Interest in the sum of TT\$37,077.08 computed at a rate of 9 percent per annum or \$319.63 per diem in accordance with the terms of Executive Flexible Premium Annuity bearing policy number R00192938 from 29<sup>th</sup> March, 2011 to the date of judgment, 22<sup>nd</sup> July, 2011.

4) *The Defendant shall pay to the Claimant prescribed costs of the claim in the sum of \$206,678.35.*”

46. A true copy of the written judgment of the Honourable Madam Justice Rajnauth-Lee made in respect of the proceedings above is now produced and shown to me and hereto annexed and marked “WD2”. It should be noted that if all these judgments and any others were to be enforced against CLICO, the judgment creditors would likely receive full satisfaction thereby leaving an even smaller pool of assets to satisfy the remaining policyholders and creditors (including the Claimants).

47. Further, on the 15 April 2011, the matter of CV2011-01446 was filed in the High Court by Percy Farrell, Gordon Rohlehr, Marina Inalsingh, David Dayal, Michael Alexander, Brian Gibbons, Hamish Herrera, Sandra Mc Shine, Eugene Mc Shine and Norris Gomez (Applicants) against CLICO and the Central Bank of Trinidad and Tobago. By these proceedings, the applicants sought leave to present a petition for winding-up of CLICO. A true copy of the Summons filed by the applicants is now produced and shown to me and hereto annexed and marked “WD3”.

48. On 13 October 2011, the Honourable Mr. Justice Devindra Rampersad dismissed the applicants’ summons on a preliminary point. A true copy of the written

judgment of the court is now produced and shown to me and hereto annexed and marked “WD4”.

49. Without an amendment to the CBA to provide for a stay of proceedings, any proposed restructuring of CLF and its subsidiaries to facilitate payments to depositors and policyholders would have been rendered futile. It was necessary to put a clear and predictable legal framework in place to enable systemically important regulated institutions to be re-organized in an orderly fashion. Key features of the required legislation were that it should:

- (a) afford adequate protection for a regulated institution and its assets from creditors while the institution is under the control of the Central Bank and while there is a threat to the financial system;
- (b) afford protection to the Central Bank and its officers from litigation while the Central Bank was taking steps to rescue the institution in circumstances where there existed a threat to the financial system; and
- (c) provide “breathing space” for any requisite restructuring of the distressed entity.

50. The Ministry of Finance retained a technical and legal team to design an appropriate legislative and regulatory framework to deal with distressed, systematically important financial institutions such as those in the CLF Group.



51. The Central Bank Amendment Bill 2010 was subsequently introduced in Parliament on Tuesday 28 September 2010. That Bill was not proceeded with because Cabinet agreed, on 30 September 2010, to the establishment of a Ministerial Committee mandated to meet with and engage in discussions with the various



stakeholders/investors in CLICO and BA with a view to taking into consideration their concerns about the financial crisis in the companies. That Ministerial Committee comprised Senator The Honourable Vasant Bharat, The Honourable Vernella Alleyne-Toppin, the Honourable Dr. Tim Gopeesingh, the Honourable Prakash Ramadhar and the Honourable Carolyn Seepersad-Bachan.

52. It remained the case that legislative amendments were necessary to prevent creditors from enforcing remedies against distressed financial institutions. A stay of proceedings by creditors is an effective tool, used to prevent a multiplicity of legal proceedings.

53. As a result, the Central Bank (Amendment) Bill 2011 was produced. On Wednesday 25 May 2011 the Legislation Review Committee reviewed the Bill and recommended that the Bill be approved and that it be introduced in Parliament at the earliest opportunity. It was approved by the Cabinet with the recommendations made by the Legislation Review Committee and the Finance and General Purposes Committee.

54. The CBAA was passed and became law on 20 September 2011.

55. The CBAA was a necessary piece of legislation to pursue the legitimate aims and objectives of dealing with a perilous financial and economic situation. Further, the legislation was proportionate to the legitimate objectives to be achieved.

56. The CBAA was passed against a backdrop where, prior to its enactment, there were no special mechanisms to deal with the resolution of systemically important financial institutions. CLF's inability to financially support its subsidiaries or to meet its debts to institutions in the domestic financial sector posed a significant threat to the

stability of the economy. The CBAA was necessary to provide space for an economic solution to be implemented and for CLICO to be subjected to a higher level of control than previously existed.

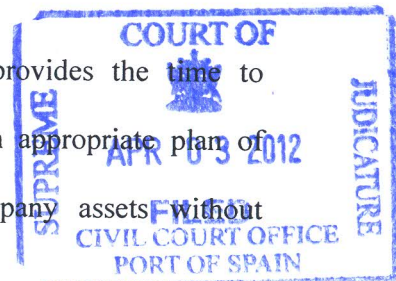
**Scope of the stay imposed**

57. As to paragraphs 18 (g) to (l) inclusive of Farrell 3, I make the points below. Save for these points, paragraphs 18(g) to (l) are denied.

58. Section 44E(5)(a) of the CBA, as amended by the CBAA, provides that no person *“shall commence or continue any action, execution or other proceedings...against the institution or its successor or the transferee of the whole or any part of any property, assets or undertaking of the institution for the recovery of any claim or in respect of any other liability, until the publication of a notification under section 44G(1) in relation to the institution”*.

59. Section 44E(5)(c) of the CBA (again as amended by the CBAA) provides that no person *“shall commence or continue any claim, action, execution or other proceedings...[against the Central Bank]...in respect of any act, omission, claim, fact or matter connected with or arising out of the acts or omissions of the [Central Bank] in respect of the institution, until the publication of a notice under s. 44(G)(1)”*.

60. I say further that the suspension of legal actions provides the time to investigate the position within the company, to formulate an appropriate plan of action, and to take action to preserve the value of company assets without interference.



61. In summary, the purpose of the automatic stay is to prevent disruption in the event that the Central Bank is required to intervene in the affairs of an institution.

The stay will only arise in circumstances where systemic risk exists within the financial sector, and it is necessary for the Central Bank's emergency powers to be exercised to prevent turmoil.

62. Following the exercise by the Central Bank of its powers under section 44D of the CBA on 13 February 2009, and the subsequent passage of the CBAA, an automatic stay has been imposed on proceedings against CLICO or the Central Bank, pursuant to section 44E(5) of the CBA.

63. Mr Farrell appears to proceed on the basis that GORTT adopted the provisions of the CBAA without any consideration of possible alternatives. That is not correct. Detailed and careful consideration was given by GORTT as to whether it would be appropriate to include a provision in the CBAA under which individuals could make an application asking the High Court to lift the stay imposed pursuant to the exercise of emergency powers under the CBA.

64. As I explained to House of Representatives when introducing the CBAA – and the reason why the CBAA acknowledges in its Preamble that it contains provisions which are inconsistent with sections 4 and 5 of the Constitution, and so was passed by a three fifths majority of the House and Senate – the inclusion of such a provision to lift the stay as mentioned above could well have negated the usefulness of the stay of proceedings provision. After careful consideration, GORTT decided that providing such a mechanism in circumstances in which the Central Bank needed to take urgent action in relation to a company under its control, in order to avert significant damage both to the financial sector and to the economy as a whole, would be counterproductive.

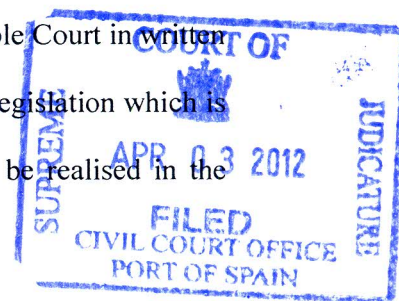


65. Given the wide-ranging scope of CLICO's business interests and the number of Trinidad and Tobago citizens holding policies and investments in CLICO products, it is very likely that if GORTT had included such a mechanism to lift the stay, the result would have been chaos: the Central Bank administration would rapidly have been completely distracted from the immediate need to stabilise CLICO by defending multiple applications to lift the stay. This is evidenced by the multiplicity of actions referred to at paragraphs [44-48] above. This in turn could easily have had the effect of compromising the wider restructuring of CLICO and negating the powers conferred on the Central Bank in the first place.

66. The Claimants have alleged that the automatic stay infringes various of their rights under sections 4 and 5 of the Constitution, namely:

- (a) the right not to be deprived of property except by due process of law;
- (b) the right to equality before the law; and
- (c) the right to the protection of the law.

67. In this regard, I have been advised by Counsel that these matters will be the subject of full legal arguments to be presented before this Honourable Court in written and oral form. I say further that the CBAA is a necessary piece of legislation which is proportionate to the legitimate aims and objectives which are to be realised in the circumstances as presented.



68. The CBAA does not – and cannot – operate, as Mr Farrell asserts, to deprive anyone of their assets. The CBAA merely provides, *inter alia*, for a stay of proceedings which is to be lifted when the institution is released from the emergency

powers of the Central Bank or at such earlier time as the Central Bank deems appropriate (per section 44E(5)).

69. Moreover, as noted above, I am advised by the Ministry's attorneys that policyholders do not have a proprietary right to, or ownership of, any assets held in the CLICO Statutory Fund. Such a position would be inconsistent with the applicable legislative regime, and such assets are owned by CLICO.

70. It is very important to note that STIP holders' rights under the Insurance Act in relation to assets presently in the Statutory Fund will be protected under the terms of the restructuring.

#### **D. COMPARATIVE INSOLVENCY REGIMES**

71. As explained at paragraphs [43-56] above, the CBAA – and the stay it imposes – was passed to prevent disruption in the event that the Central Bank is required to exercise its emergency powers in relation to a systemically important regulated institution. According to Farrell 3, comparative legislation for the rescue of financial institutions throughout the Commonwealth does not impose equivalent stay mechanisms to that operating in Trinidad and Tobago. The Claimants specifically refer to the legislative provisions in Canada, Australia, New Zealand, England and Wales, Hong Kong and India.

72. However, I am advised by my lawyers and believe that:

- (a) foreign law is a matter of expert evidence, which Mr Farrell has not sought to adduce. Neither the Claimants nor (as far as I know) their lawyers are qualified in matters of foreign law;



- (b) as an illustration, I am advised that, in several cases, Farrell 3 refers to the incorrect legislative provisions. For example, it is interesting to note that Farrell 3 refers to the English Insolvency Act 1986 but fails to refer to the Banking Act 2009 (i.e. the legislation introduced by the UK government in response to the financial crisis);
- (c) the CBA, as amended by the CBAA, establishes a legal framework for taking control of and restructuring a financial institution, which operates as an administrative process. I am advised that the jurisdictions to which Mr Farrell refers all contain a legal framework for resolution of a financial institution, which operates independently of the general, corporate insolvency laws; and
- (d) when considering the approach taken by other jurisdictions, I am advised by my lawyers that it is not appropriate to consider the position taken in relation to stays without considering the wider legislative and policy background. Mr Farrell has not sought to do this.

73. The Honourable Court should therefore ignore Mr Farrell's assertions of the comparative law position. Submissions will be made on these points at the hearing listed for 26/27 April.

**E. SAFEGUARDS WITHIN THE CBAA**

74. I believe the CBAA itself contains a number of safeguards for STIP holders such as the Claimants.



### **High Court oversight of Central Bank actions**

75. As the Claimants are aware, the CBAA imposes (in section 44E(7) of the amended CBA) an obligation on the Central Bank to report quarterly on the restructuring of an institution over which it is exercising control pursuant to its emergency powers. As I explained when introducing the legislation before the House of Representatives (see page 4 of “PF 21”), this provides the Trinidadian public – including STIP holders such as the Claimants – with transparency and accountability in the exercise by the Central Bank of its emergency powers. GORTT is committed to preserving the rights of individual citizens, whilst balancing against those rights the needs of the wider Trinidad and Tobago population for financial stability.

76. The Central Bank submitted its first quarterly report to the High Court on 31 December 2011 and its second report on 29 March 2012 in compliance with its reporting obligations under the legislation. True copies of the reports are now produced and shown to me marked “WD5”.

77. I therefore say that the Claimants’ assertion that the moratorium on Court proceedings occurs “without any supervision of the Supreme Court” (paragraph 18(i) of Farrell 3) is misconceived.

### **Purely suspensory effect of the stay**

78. Nor does the CBAA deprive concerned citizens and policyholders in CLICO (including the Claimants) of a forum in which to bring proceedings to vindicate their rights. Further I say that the CBAA does not extinguish their right to bring a claim. It merely postpones their ability to a launch – or continue – a claim until after the stay is lifted. Once the stay is lifted individuals may bring proceedings – and in this regard I

reiterate what I said to the House of Representatives on 14 September 2011 to the effect that a stay can be relinquished even before the Central Bank has relinquished control (see section 44G of the CBAA).

79. I also make the following points in relation to the temporary effect of the stay:
- (a) the Central Bank is under an obligation to relinquish control of an institution where the requirements set out in section 44G(2) of the CBA are satisfied. There is therefore no question of the stay lasting indefinitely; and
  - (b) section 44G(4) of the CBA gives locus to the directors of an insurance company in CLICO's position to apply to the High Court to bring to an end the Central Bank's control of the institution (and so bring an end to the stay).

#### **F. THE ALTERNATIVE**

80. It is clear from what I have said above that no creditor of CLICO will be placed in a worse position as a result of the restructuring. Each policyholder will receive at least an amount equivalent to the amount he would have been entitled to receive on a liquidation of CLICO and, if he accepts GORTT's offer, is likely to receive more than that.

81. I say as well that it is necessary for the Claimants to appreciate the alternatives to the restructuring of CLICO being implemented by GORTT.

82. In this regard, I say that there are two potential alternatives.

83. The first is no restructuring of CLICO, and no further injection of government funds into CLICO. I am advised that, were this to be the case, CLICO would immediately be placed in insolvent liquidation. This would lead to risks, delay, and





hardship for all CLICO policyholders. I am advised that it would likely lead to all policyholders receiving less than they would do under the restructuring, as realisable asset values received in an insolvent liquidation may well be “fire sale” values.

84. Moreover, I am advised that a non-restructured and insolvent CLICO may represent a systematic risk to the health of the financial system of the country.

85. The second alternative is a further injection of government funds into CLICO, so that its deficit is fully funded. GORTT simply could not afford to do this without a very significant (and in GORTT’s view undesirable) impact on other areas of GORTT expenditure. In essence, funding CLICO in full would not be fiscally responsible, and would mean a cut in expenditure for ordinary citizens, as well as a significant risk to the credit rating of Trinidad & Tobago.

86. The restructuring of CLICO as pursued by GORTT is therefore not only the best, but the only realistic option open to Trinidad and Tobago.

## **G. CONCLUSION**

87. For the reasons given above, I believe that the CBAA was a necessary piece of legislation proportionate to the objectives to be realised and was passed in accordance with Parliament’s law-making power for the peace, order and good governance of society.

88. I am advised by Counsel and believe that the grounds stated by the Claimants at paragraphs 33 and 34 of Farrell 3 are without merit and that the reliefs sought cannot be sustained. In any event, as to this paragraph and all the particulars thereunder, I repeat the matters stated above.

89. I am further advised by Counsel and believe that the matters referred to at paragraph 33 and 34 of Farrell 3 will be the subject of detailed legal arguments to be presented before this Honourable Court in the form of written and oral submissions.

90. I therefore ask this Honourable Court to dismiss the Claimants' application for relief.

Dated this 3<sup>rd</sup> day of April, 2012

Sworn to at Ministry of Finance )  
Financial Towers, Independence )  
Square, Port of Spain, this 3<sup>rd</sup> )  
Day of April, 2012, )

*Winston Doreen*

Before me,

*George Oliver*

.....  
**COMMISSIONER OF AFFIDAVITS**

**GEORGE OLIVER**  
Commissioner Of Affidavits

