THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

COMMERCIAL DIVISION

CLAIM NO. SLUHCM2021/0005

BETWEEN:

SEMPRE FIDELES INC.

Claimant

AND

1. **RELIANT GROUP & CASUALTY INSURANCE ICC, LTD.**
2. **OUTDOOR LIVING INC.**
3. **COSMO IMPORT AND EXPORT LLC**
4. **GENEVA INTERNATIONAL INSURANCE INC.**

Defendants

AND

RELIANT GROUP & CASUALTY INSURANCE ICC, LTD

Ancillary Claimant

AND

1. **OUTDOOR LIVING INC**
2. **COSMO IMPORT AND EXPORT LLC**
3. **GENEVA INTERNATIONAL INSURANCE INC.**

Ancillary Defendants

Before:

The Hon. Mde. Justice Cadie St Rose-Albertini — High Court Judge

Appearances:

Mr. Bota Mc Namara with Ms Alex Boland for the Claimant
Mr. Frank Walwyn with Ms Kayla Theeuwen and Ms Eugenia Dickson for the First Defendant/Ancillary Claimant
Mr Leslie Prospere with Ms Joelle Greene for the Second and Third Defendants/ First and Second Ancillary Defendants
Ms Faye Finisterre for the Fourth Defendant/ Third Ancillary Defendant

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2024: October 21; 22; 23, 24, 25; 28; 29; 30; 31;
November 11; 12; 13; 14; 15;
2025: March 5; 12
December 29

JUDGMENT

[1] **ST ROSE-ALBERTINI, J. [Ag]:** The claimant Sempre Fidelis Inc. (Sempre) is the named insured under a Master Policy of Insurance ("the Master Policy") issued by the first defendant Reliant Group & Casualty Insurance ICC Ltd. (Reliant). Sempre was authorized by Reliant to admit other insureds under the Master Policy, to whom Certificates of Insurance were issued for coverage of various health and business risks, under the Master Policy. The arrangement involves the pooling of risks among all insureds and is referred to as captive insurance. The second and third defendants Outdoor Living Inc and Cosmo Import & Export LLC (together "the Cosmo Parties") were admitted as insureds under the Master Policy from 30th December 2016, and continued as such for successive years, until the relationship deteriorated in late 2020, and came to an end in January 2021.

[2] Reliant has filed an ancillary claim against the Cosmo Parties and Geneva seeking to be indemnified, in the event that it is found liable for damages to Sempre. The Cosmo Parties and Geneva have filed defences in the main and ancillary claim and The Cosmo Parties have filed a counterclaim against Reliant alleging fraudulent misrepresentation and inducement. They seek a refund of all premium payments made to date.

The Parties

[3] Reliant is an insurance company incorporated as an international business company pursuant to the laws of Saint Lucia, and operates a group insurance pool under a Master Policy issued to Sempre.

[4] Sempre is an international business company incorporated pursuant to the laws of Saint Lucia and is the named insured under the Master Policy, with authority to admit insureds into the insurance pool, who are underwritten and insured by Reliant.

[5] The Cosmo Parties are companies incorporated pursuant to the laws of the State of Wyoming, in the United States of America ("the USA"). Jennifer Hayes "(Mrs Hayes") is the beneficial owner, director and directing mind of the Cosmo Parties. She owns and operates several other companies. David Lockwood ("Mr Lockwood") is Ms Hayes' tax advisor and performs an integral role in advising and managing her companies. Between 2016 to 2020 the Cosmo Parties purchased annual insurance coverage under the Master Policy.

[6] Geneva is an insurance company incorporated in Barbados, that provides Private Placement Life Insurance ('PPLI"), and afforded this service to Mrs Hayes and her trust companies.

Sempre's Claim

[7] In 2021, Sempre commenced a breach of contract claim against the Cosmo Parties and Geneva seeking the cancellation and termination of all certificates of insurance and all rights and benefits thereunder which had been issued for the benefit of the Cosmo parties and Geneva, retention of premiums already paid, general damages for breach of contract, interest and costs ("Sempre's Claim").

[8] Under the Master Policy issued by Reliant, Sempre was authorized to issue certificates of insurance to other persons. In November 2016 the Cosmo parties applied for insurance through Sempre, which application was submitted to Reliant for approval under the Master Policy. The application was approved and the relevant certificates of insurance[1] issued to the Cosmo parties by Sempre. The certificates of insurance provided coverage to the Cosmo Parties for the periods 31st December 2016 to 30th December 2017, 31st December 2017 to 30th December 2018 and 30th December 2019 to 30th December 2020. According

[1] Certificate Numbers 10201-1, 3, 6, 7, 8, 9, 14, 15, 16, 17 and 18

to the terms of the certificates of insurance, coverage was only provided for claims made against the Cosmo Parties within the policy periods specified in the respective certificates of insurance. It is also alleged that Sempre had a right of cancellation in the event of default by a certificate holder.

[9] Sempre further alleges that the Cosmo Parties requested certain amendments to extend the period for reporting claims under the certificates of insurance which had already expired ("Extended Reporting Coverage or ERC"). The parties agreed that the premium for the ERC would be computed by an agreed actuary, and the Cosmo Parties commenced remitting payments to be applied to the premium to Sempre and made 6 payments totaling US$7.0 million by October 2020, with the balance by 31st December 2020. Thereafter it was determined by the actuary that the total premium was US$14,837,424.00. Sempre and Reliant agreed to grant the Cosmo Parties a 10% discount if the premium payment was made in full by November 2020. Sempre accordingly issued the certificates of insurance for the ERC. It is alleged that the Cosmo parties failed and/or refused to pay the balance of the premium due. Reliant and Sempre advised the Cosmo parties of the default and terminated the ERC in January 2021.

[10] Under the Reliant/Sempre insurance program, the Cosmo Parties were conditionally entitled to a Return of Premium Benefit (RPB") if certain conditions were satisfied, net of claims and expenses. In or about 2018 and continuing thereafter, the Cosmo Parties sought and Reliant's consent to assign their RPB interests to Geneva, which was thought to be an unrelated third party, as Reliant's consent was required before an assignment could take effect. Reliant consented to the assignment and waived the fee to which it was otherwise entitled. Sempre alleges that the assignment was done to funnel the RPB back to the Cosmo Parties and their ultimate owner, Mrs Hayes, using a trust in her favour in order to evade taxes. Sempre avers that the Cosmo Parties breached the terms of the certificates of insurance by assigning the return of premium benefit to a related third party (Geneva) and that such misrepresentations voided its consent and terminated any benefit to Geneva under the assignment.

[11] Sempre alleges that as a result of the Cosmo parties breach, it provided coverage without proper consideration, it was exposed to claims or potential claims under the certificates of insurance without payment of the agreed consideration and further that it was exposed to possible claims by Reliant for providing coverage under the group Master Policy without due and proper consideration. Sempre also claims that in the event of any loss it is entitled to indemnification from Reliant since it was Reliant who instructed Sempre to cancel the coverage and benefits to the Cosmo Parties and Geneva.

Reliant's Defence to Sempre Claim

[12] Reliant filed a bare defence to the Sempre's Claim stating only that it makes no admissions as to the allegations contained in the statement of claim and that it denies the claim against it for indemnification to Sempre.

Cosmo Parties' Defence to Sempre's Claim

[13] The Cosmo Parties filed a joint defence to the Sempre Claim asserting that they had no direct contractual relationship with Sempre and that their insurance dealings were strictly with Reliant. As such, they deny having any contractual obligations toward Sempre and refute the breach of contract claims regarding outstanding premiums or defaults under the group master policy. They emphasize that their discussions with Reliant were exploratory and that they never agreed to the premium amounts now being claimed by Sempre, arguing that there was no finalized agreement or commitment from them to purchase the ERC or any other amendment to the existing certificates. They state that any said coverage was issued prematurely[2] and without their consent. They state further that US$7.0 million was paid to Reliant in trust since they intended to reach an agreement.

[14] The Cosmo parties also deny any fraudulent misrepresentation related to the return of premium benefits, maintaining that their assignments to Geneva were legitimate and done in good faith for business purposes. The Cosmo parties also challenge the forum selection

[2] At paragraph 16 of the Defence filed on 15th March 2021, the Cosmo parties aver that Reliant backdated the date of issue of the coverage in relation to the extended reporting periods to October when they requested a return of the $7 million paid.

clause, asserting that Reliant's operations in California make the American jurisdiction more appropriate. They further deny that Sempre suffered any loss or damage and state further that if Sempre suffered loss or damage, same was not occasioned by them. Accordingly, the Cosmo Parties deny that Sempre is entitled to the relief claimed or any other relief and seek a refund of the payments made in respect of the ERC.

Geneva's Defence to Sempre's Claim

[15] Geneva's defence centers on the terms of an insurance policy[3] ("the VUL") issued to the Cosmo Parties. It emphasizes that the terms of the policy limit its liability strictly to the assets linked to a specific account established under the policy. Geneva references an assignment agreement dated 11th June 2019 between itself and the Cosmo parties wherein the Cosmo parties agreed to indemnify and defend Geneva from any liabilities arising from claims related to the policy.

[16] Geneva also asserts that it was not involved in any negotiations or communications between Sempre, Reliant and the Cosmo Parties, nor did it make any representations to Sempre. Since it had no direct role in the discussions or agreements leading up to the claim, it denies any responsibility for alleged misrepresentations, liability for any outstanding sums claimed by Sempre, or breach of contract. Geneva also notes that it was not necessary to be made a party to these proceedings for the purpose of terminating the benefits afforded to it under the assignment, since it would be bound by any consequences of termination or cancellation of the certificates of insurance. Additionally, Geneva maintains that if it were found liable, it would be entitled to full indemnification from the Cosmo parties under the terms of the assignment agreement.

Reliant's Ancillary Claim

[17] Reliant filed an ancillary claim against the Cosmo Parties and Geneva asserting it was induced into the insurance agreements with the Cosmo Parties which it avers fraudulently misrepresented their intentions during the assignment of the RPB to Geneva. Reliant

[3] Non-Participating Variable Universal Life Insurance Policy (Contract Number VUL-2017-314D)

states that Geneva was acting as an alter ego for the Cosmo Parties' principal, Mrs Hayes. Reliant also claims that the Cosmo parties contracted to the ERC, made partial payments, but ultimately defaulted on the remaining balance. Due to these misrepresentations and defaults, Reliant cancelled the ERC. Reliant seeks a declaration that the Master Policy and all associated rights be terminated, damages of US$7,837,424.00, interest, and legal costs.

Cosmo Parties' Defence and Counterclaim to the Ancillary Claim

[18] In its amended defence to the ancillary claim the Cosmos Parties deny most of the allegations made by Reliant. They dispute Reliant's allegations that they are liable for any breach of insurance contracts and deny ever making claims on the insurance policies. They also dispute the allegation that they were in default of any premium payment, arguing that they never contracted to purchase the extended reporting period coverage and that they had merely requested a quote. Additionally, they aver that the claim for indemnity is an abuse of process and should be dismissed. They deny any wrongdoing and claim that if Reliant suffered loss and damage they are not liable for same.

[19] Included in the Cosmo parties' amended defence to the ancillary claim was a counterclaim against Reliant alleging fraud and misrepresentation in relation to the certificates of insurance issued to them under the Master Policy. In the counterclaim, the Cosmo Parties provide a detailed account of their interactions with Reliant, starting in 2016.They allege that Reliant misrepresented the benefits of its captive insurance scheme, which was marketed as a tax-saving tool. From 2016, they had paid over US$18.0 million in premiums, expecting a RPB after five years. They made advance payments based on representations that these funds would be held in trust while insurance negotiations were finalized. In 2020, when they inquired about extended reporting period coverage, they received a preliminary quote of US $10.0 million, and thereafter received a maximum coverage quote of US$14,837,424. After discussing the ERC further, the Cosmo parties claim they decided not to pursue this coverage and requested the return of the US$7.0 million as advance payments they had made during negotiations. Reliant refused to pay, falsely asserting that the Cosmo Parties had agreed to purchase the ERC. Reliant then

declared the Cosmo Parties in default and terminated all insurance certificates and benefits, including the RPB, which the Cosmo Parties had been expecting to recover based on the original agreement.

[20] The Cosmo Parties allege that Reliant acted in bad faith, using the assignment of their return of premium benefit to Geneva, which Reliant had previously approved, as grounds to wrongfully terminate their coverage. They claim that Reliant's actions were part of a deliberate scheme to terminate their coverage and retain the premiums they had paid since 2016. They state further that Reliant's actions amounted to fraud, breach of trust, and negligent misrepresentation, and they seek US$18.7 million in damages as premiums paid, along with interest and costs.

Geneva's Defence to Reliant's Ancillary Claim

[21] In its defence to the ancillary claim, Geneva asserts that it bears no liability in the dispute between Reliant and the Cosmo Parties. Geneva's main argument is that its liability is limited by the terms of the VUL policy, which segregates assets into separate accounts. This legal structure ensures that each policy is linked to a specific account, and if the assets in that account are exhausted, there is no recourse to Geneva's general assets or other accounts. This limitation of liability is a key point in Geneva's defence, as it is argued that any claim for indemnity must be limited to the assets linked to the specific account involved in the dispute.

[22] Geneva acknowledges that it entered into an assignment agreement with the Cosmo Parties, under which the RPB was assigned to it but denies acting as an alter ego for the Cosmo parties. It argues that the assignment agreement includes provisions for indemnification, meaning that the Cosmo parties are responsible for any breaches related to the assignment. Geneva claims that it is not liable for any damages caused by the Cosmo parties' actions and that it should be indemnified by them if any liability is found. Geneva also denies that it played any role in causing monetary loss to Reliant or that it abetted the Cosmo parties in any fraudulent activities. It states further that if it is found to be liable to Reliant, any liability is limited in accordance with the VUL account and that it is entitled to full indemnification from the Cosmo Parties.

[23] Geneva avers that it was joined as a defendant in Sempre's claim so that the benefits purportedly afforded it by the assignment agreement could be terminated. However, there is no privity of contract between itself and Sempre or even itself and Reliant. All in all, Geneva denies any wrongdoing and rejects Reliant's claims for indemnity, arguing that the liability lies with the Cosmo Parties under the terms of the assignment agreement.

Reliant's Reply to Cosmo Parties' Defence to the Ancillary Claim

[24] In its amended reply to the Cosmo parties' defence to the ancillary claim, Reliant denies all allegations made by the Cosmo parties in its defence to the ancillary claim. Reliant acknowledges that the Cosmo parties made no claims during the term of their insurance coverage but denies that it is affiliated with Sempre. With respect to the extended reporting period coverage, Reliant asserts that the Cosmo parties exercised the option to purchase extended reporting period coverage, making payments totaling US$7 million. Reliant reiterates its prior claims and defenses, relying on its previously filed Notice of Claim for Indemnity.

Reliant's Defence to the Counterclaim

[25] In Reliant's amended defence to the counterclaim most of the allegations presented by the Cosmo Parties are denied. Reliant explains that the Cosmo Parties applied for insurance coverage in 2016 through a "Private Information Packet" signed by Mrs Hayes, the beneficial owner of the Cosmo parties. The coverage was subsequently renewed for several periods until 2020. Reliant explains that it initially consented to the assignment based on representations made by the Cosmo Parties, but later discovered these representations were fraudulent. Specifically, Reliant had refused to approve any assignment related to estate planning or creditor protection. However, it later learned that Mrs Hayes had set up a complex arrangement involving a life insurance trust, designed as an estate planning tool, which Reliant argues exposed it to potential proceedings with the USA Internal Revenue Service.

[26] Regarding the ERC, Reliant clarifies that, contrary to the Cosmo Parties' assertions, no specific premium was quoted until November 2020, when an actuary determined it to be $14.8 million. Though the Cosmo Parties had begun making payments amounting to US$7 million, they failed to pay the balance, despite commitments to do so. As a result, Reliant canceled the Cosmo Parties' insurance coverage for failing to fulfill their payment obligations and for misrepresentations made in connection with the assignment of the return of premium benefit.

[27] Reliant also strongly disputes allegations of fraud, negligent misrepresentation, and breach of trust, stating that the Cosmo Parties have failed to provide specific facts to support these claims. It emphasizes that there was no trust arrangement or fiduciary relationship between the parties regarding the insurance payments. Reliant also argues that the Cosmo parties' claim for negligent misrepresentation is barred by the statutory limitation period, asserting that the Cosmo parties knew or should have known the relevant facts as early as 2016, and no later than 2018, when Reliant refused to approve the assignment of the return of premium benefit for estate planning purposes.

[28] Lastly, Reliant contends that any damages claimed by the Cosmo Parties are exaggerated and that the Cosmo parties failed to take reasonable steps to mitigate their losses. If any damages are awarded, Reliant insists they should be offset by the indemnification agreement under which the Cosmo parties agreed to fully indemnify Reliant for any costs or expenses incurred due to their actions. Reliant concludes by requesting that the Cosmo parties' counterclaim be dismissed in its entirety, with full costs awarded to Reliant.

Cosmo Parties' Reply to Reliant's Defence to Counterclaim

[29] In response to Reliant's defence to the counterclaim, the Cosmo parties allege that Reliant, through its representatives Neil Rubin and Bradley Barros, misrepresented their roles during the negotiation process. These individuals, they claim, acted as agents of Reliant using official Reliant communication channels and led the Cosmo parties to believe they were authorized to negotiate on the company's behalf. One significant focus of the Cosmo parties' response is the role of Stuart Anolik. The Cosmo parties allege that Stuart

Anolik was actually Reliant's personal attorney, and this was not disclosed to them until years later, after litigation had commenced. Stuart Anolik played a central role in brokering the contractual relationship between the Cosmo Parties and Reliant, and also orchestrated the assignment of the RPB to Geneva. The Cosmo Parties accuse Stuart Anolik and Reliant of colluding to deceive them by giving the false impression that he was providing independent legal advice to the Cosmo Parties. This alleged conspiracy also extended to tax management advice, where the Cosmo Parties were led to believe that certain tax-saving strategies, including the use of PPLI, would benefit them. These representations, they argue, were part of an orchestrated effort to induce them into contracts that were ultimately unfavorable.

[30] Moreover, regarding the payments made to Reliant, the Cosmo Parties reiterate that these payments made were part of ongoing negotiations, before the premium price was fully settled, and were contingent on a final agreement, which was never reached. They assert that when Reliant received funds in October 2020 a constructive trust was formed, meaning Reliant had a fiduciary duty to hold the funds on their behalf. They claim that Reliant breached this duty by fraudulently misapplying the funds and refusing to return them when the Cosmo Parties decided against purchasing further coverage. The Cosmo Parties maintain that no binding agreement was reached on the ERC, contrary to Reliant's claims that such an agreement existed.

[31] The Cosmo Parties also challenge Reliant's attempts to invoke clauses from the insurance agreement to avoid liability for fraud, arguing that fraud invalidates these provisions under Saint Lucian law. They contend that Reliant's efforts to revoke their insurance coverage were unfounded, based on fraudulent and deceptive practices. They also reject Reliant's argument of estoppel and laches, asserting that there was no undue delay in bringing their claims once the facts of the case were revealed. The reply concludes with a demand for damages, including the return of funds sent to Reliant, general damages for fraud, interest, and litigation costs, with the Cosmo Parties asserting that Reliant's actions were entirely responsible for the financial losses they suffered.

The Issues

[32] The following matters will engage the Court's attention as the principle issues to be determined:-

Preliminary Issue : Whether the Part 12 Limitation Clause was void, illegal or unenforceable on account of Public Policy?

Substantive Issues:

1 Whether the counterclaim is barred by the two-year limitation period specified in Part 12 of the Information Packet, and/or Articles 2122 and 2129 of the Civil Code?
2 If the answer to the question (i) is no, have the Cosmo Parties established the respective claims deployed in the counterclaim?
3 Whether the Cosmo Parties contracted to receive Extended Reporting Coverage under the Master Policy and breached the terms of the policy by:
(i) misrepresenting the purpose for assignment of RPB in order to fraudulently obtain Reliant's consent;
(ii) engaging in a USA tax evasion scheme; or
(iii) failing to pay the full premium for extending reporting coverage?
4 Was the payment of US$7 million made by the Cosmo Parties in October 2020 intended as part payment of the premium for extended reporting coverage or was intended to be held in trust; pending agreement?
5 Was Reliant entitled to cancel the certificates of insurance for the ERC.
6 Whether any claims were established against Geneva?

Trial

[33] The trial which commenced in October 2024 unfolded over an extended period of 17 days, culminating with filing of written closing submissions, followed by oral closing submissions in March 2025. Over the period the parties adduced written and oral evidence, from ordinary and expert witnesses. Voluminous amounts of documentary evidence, was also adduced. The Court has given full and due consideration to this material.

[34] During oral closing submissions Counsel for the Cosmo parties raised for the first time that Part 12 of the Information Packet which Reliant sought to rely on, for its limitation defence to the counterclaim, was void for being contrary to public policy. This matter will be considered as a preliminary issue later in the judgment.

The Evidence

Marc Anolik ("Mr. Anolik")

[35] Mr. Anolik, the Director of Operations for Reliant, gave evidence on behalf of Sempre. He outlined the structure, terms and operation of the group master insurance policy and explained the RPB, offered to insureds, which was designed to return unused premiums under specific conditions. He gave testimony concerning the relationship between Sempre and Reliant and detailed the chain of communications between Sempre, Reliant, and the Cosmo Parties about the ERC. He confirmed that the group Master Policy was issued by Reliant (the insurer) to Sempre (the named insured under the group policy) and that Sempre was authorized to issue certificates of insurance on behalf of Reliant.

[36] Mr. Anolik alleged that the Cosmo Parties misrepresented their intentions for/ the purpose of the RPB assignments to Geneva, claiming they were for legitimate business purposes like debt financing when they were actually part of a tax evasion scheme to benefit Mrs. Hayes through a trust structure. His evidence was supported by internal communications and contractual documents. Mr. Anolik testified that the funds flowed in a circular manner from the Cosmo Parties, through Geneva and back to Mrs. Hayes via a life insurance trust, thus evading USA tax laws. He highlighted the financial harm caused by these misrepresentations and breaches, including a US$7.8 million shortfall in premiums. His evidence was that based on these misrepresentations, Sempre issued a cancellation notice for the Cosmo Parties' policies. Mr. Anolik confirmed that Reliant relied on internal procedures, such as the information packet, and did not sell insurance directly to the Cosmo Parties. Mr. Anolik also detailed the chain of communications between Sempre, Reliant, and the Cosmo Parties about the ERC.

[37] Under cross-examination, Mr. Anolik admitted to having familial ties with Stuart Anolik, a former director of Reliant, and acknowledged that full disclosure of these connections were not made to Mrs. Hayes/ and the Cosmo Parties. He argued, however, that it did not affect the integrity of his dealings or Reliant's operations. When asked about Stuart Anolik's conflicts of interest, Mr. Anolik emphasized that such allegations were outside his

knowledge and irrelevant to this case. He also refuted allegations regarding the conflating of Reliant and other entities, asserting that Reliant maintains distinct operations and ownership from its affiliated companies. Mr. Anolik acknowledged that Sempre did not directly sell insurance to the Cosmo Parties, undermining some claims of breach by the Cosmo Parties against Sempre. He acknowledged that Reliant did not conduct independent due diligence on Geneva before approving the assignment of RPB. He stated that Reliant relied on representations made by the Cosmo Parties and their advisors, including Mr. Lockwood, and believed these were sufficient.

[38] He was questioned about discrepancies in Reliant's documentation, including unsigned draft agreements, invoices that omitted key details such as prepayments made by the Cosmo Parties and lack of documentation regarding certain agreements and processes, including the issuance of certificates of insurance and premium calculations. Mr. Anolik conceded that Reliant did not engage external experts or third-party verification when investigating the alleged misrepresentations. He stated that Reliant's investigation and termination process were based on internal reviews. He faced scrutiny over delays in issuing certificates of insurance, particularly for the ERC, and whether these omissions deprived the Cosmo Parties of their rights. He stated that the certificates were issued as soon as premiums were finalized and relied upon the provisions in the group Master Policy to justify the timing. Mr. Anolik was also challenged on the reduction in the number of insured perils under the tail coverage. He confirmed the reduction but defended these actions and the coverage terms as consistent with what was agreed under the Master Policy and the reflected actuarial assessments/advice.

Bradley Barros ("Mr. Barros")

[39] Mr. Barros testified that he acted as a marketing agent and consultant for Reliant Delaware and was previously involved in selling life insurance. He clarified that his role was limited to introducing Reliant's insurance products to prospective clients and denied making representations to or agreements with the Cosmo Parties or Mrs. Hayes on behalf of Reliant. He also clarified his employment relationship and lack of authority over the matters at hand. He described the benefits of captive insurance including cost savings, flexibility in

insuring non-standard risks, and potential tax advantages (tax deferrals). Mr. Barros admitted to engaging Mrs. Hayes in discussions about life insurance policies but claimed these discussions did not result in binding agreements or any misrepresentation.

[40] During cross-examination Mr. Barros was questioned about his previous ownership of Bancroft, Reliant's predecessor, and its litigation history. He admitted ownership and claimed he did not recall whether he disclosed litigation details. He conceded, however, that Bancroft and Reliant had been defendants in multiple lawsuits, but downplayed their relevance to the current case.

[41] Mr. Barros also faced challenges regarding potential conflicts of interest. He acknowledged that his dual roles as a life insurance agent and marketing consultant for Reliant could create potential conflicts but denied any improper conduct. He defended himself stating that his actions were always transparent and that his experiential knowledge of Bancroft's operations was an asset, not a liability. Mr. Barros also emphasized that he was not involved in direct dealings between Reliant and the Cosmo Parties beyond introductions. He was further questioned about whether Reliant marketed its products with tax benefits as a key feature. He stated that tax benefits were discussed only as a potential feature, contingent on proper use, and not as guaranteed outcomes.

<u>Neil Rubin ("Mr. Rubin")</u>

[42] Mr. Rubin, a consultant to Reliant, detailed his role in negotiating insurance terms and handling premium-related matters. He supported Reliant's position to terminate the Cosmo Parties' policies citing misrepresentations about the purpose of the ROPB assignments and failure to make full premium payments. He highlighted discussions with Mr. Lockwood about premium calculations and alleged that the Cosmo Parties sought extended reporting coverage without meeting contractual requirements. Mr. Rubin emphasized Reliant's compliance with the information packet and master policy terms.

[43] During cross-examination, Mr. Rubin acknowledged that much of his testimony relied on information provided by Mr. Anolik and internal documents, rather than first-hand

knowledge. He argued that his role as a consultant did not require firsthand knowledge of all issues and that his testimony was based on reliable internal communications and documentation. He maintained that Reliant followed proper procedures in approving premium contributions and assignments. He emphasized Reliant's efforts to ensure transparency and compliance, especially regarding ROPB assignments, which were contingent on arm's-length third-party transactions.

[44] He was also questioned about discrepancies in Reliant's premium calculations and the scope of ERC, which reduced the number of insured perils. He acknowledged the reduction in insured perils under ERC but defended the reduction as actuarially justified and aligned with the agreements made between the parties. He was asked about verbal agreements with Mr. Lockwood regarding a US$10 million premium cap. He denied any agreement to cap the Cosmo Parties' premium contributions at this sum, stating that all premium calculations were based on actuarial assessments and aligned with the terms of the Master Policy.

[45] Mr. Rubin faced questions about the adequacy of Reliant's documentation, particularly regarding its termination decisions and premium adjustments. He admitted that Reliant did not seek written confirmation from the Cosmo Parties regarding certain agreements, relying instead on verbal understandings and email exchanges. Mr. Rubin also acknowledged discrepancies in communications about premium caps and the scope of extended reporting coverage. He was also challenged on whether Reliant acted transparently in disclosing its litigation history and the terms of extended coverage. Mr. Rubin refuted allegations from Mr. Lockwood and Ms. Hayes that Reliant failed to disclose conflicts of interest.

<u>David Lockwood ("Mr. Lockwood")</u>

[46] Mr. Lockwood served as the external accountant for the Cosmo Parties and was central in exploring captive insurance options. His testified that he facilitated negotiations with Reliant and Sempre on behalf of the Cosmo Parties. He alleged that Reliant failed to honor agreements to cap premiums and improperly withheld refunds owed to the Cosmo Parties. He presented documents purportedly supporting his position. Mr. Lockwood claimed that

the Cosmo Parties were misled about the terms of extended reporting coverage and tail coverage, particularly regarding the reduced number of insured perils. Mr. Lockwood also alleged that Reliant withheld critical documents and delayed the issuance of certificates of insurance. He further alleged that Reliant and its representatives, including Stuart Anolik, had undisclosed conflicts of interest that undermined the integrity of the insurance agreements.

[47] During cross-examination Mr. Lockwood confirmed his fiduciary duties as a certified public accountant but faced questions about his objectivity. He was asked about his authority to act on behalf of the Cosmo Parties without formal documentation, such as a power of attorney. He admitted that he did not possess formal authority but claimed that his long-standing role as the Cosmo Parties' accountant and advisor gave him implicit authority to represent their interests. He was questioned about his oversight of financial matters and whether his role contributed to the alleged misunderstandings. He admitted to limited direct oversight of certain transactions and correspondence. Mr. Lockwood also faced scrutiny over email correspondence in which he questioned Reliant's premium calculations, raising doubts about whether there was a mutual understanding of the agreements. He asserted that Reliant's calculations were inconsistent and that he sought clarification on behalf of his clients. He was probed on his knowledge and understanding of the group pool's operations and whether his representations to the Cosmo Parties were accurate. He stated that Reliant's refusal to provide complete documentation hindered his ability to advise his clients effectively. He maintained that his focus was always on protecting the interests of the Cosmo Parties.

<u>Jennifer Hayes ("Mrs. Hayes")</u>

[48] Mrs. Hayes is the principal and controlling mind of the Cosmo Parties, as well as the ultimate beneficiary of the Geneva trust structure. She alleged that Reliant engaged in deceptive practices, conflated roles between entities and failed to disclose conflicts of interest. She also argued that Reliant wrongfully terminated the Cosmo Parties' policies and improperly retained premiums, causing financial harm to the Cosmo Parties.

[49] During cross-examination Ms. Hayes admitted to having limited knowledge of the operations of captive insurance and relied heavily on Mr. Lockwood for financial guidance. She stated that her reliance on professional advisors was reasonable and consistent with industry practices. She faced questions about the purpose of the RPB assignments and whether they were intended to evade taxes. Ms. Hayes denied allegations of fraud, arguing that the assignments were for estate planning and fully disclosed to Reliant. She asserted that the assignments of ROPB to Geneva were legitimate.

[50] Cross examination revealed inconsistencies in her statements about the nature and scope of the assignments. Mrs. Hayes was also tested on her qualifications and understanding of the agreements she entered into with Reliant. She asserted that her knowledge was adequate and that Reliant's practices, not her understanding, caused the disputes, and denied that her conduct contributed to any breaches.

<u>Carson Tillner ("Mr. Tilner")</u>

[51] Mr. Tilner, testifies on behalf of Geneva, stated that Geneva acted as an assignee of the RPB but had no direct contractual relationship with Sempre or Reliant. He emphasized that Geneva relied on the documentation provided by the Cosmo Parties and that it was unaware of any alleged misrepresentations or fraud. He described Geneva's role as limited to executing assignments presented by the Cosmo Parties.

[52] Under cross-examination, Mr. Tillner admitted that Geneva had no direct contractual relationship with Sempre or Reliant and was not privy to/ copied on certain correspondence between the Cosmo Parties and Reliant critical to the assignments. He stated that Geneva's involvement was limited to the documents presented to it and did not include participation in negotiations.

[53] Mr. Tilner was also questioned on Geneva's due diligence practices and whether it verified the legitimacy of the RPB assignments. He acknowledged that Geneva was part of a financial arrangement benefiting Mrs. Hayes but argued that Geneva's involvement was based on representations made by Cosmo and its legal advisors. Mr. Tillner faced scrutiny

over the extent of Geneva's and whether it should have sought further clarification from Reliant. He admitted that Geneva did not independently verify information provided by the Cosmo Parties. He defended Geneva's reliance on the Cosmo Parties' documentation, arguing that its limited role did not require further verification. He maintained that Geneva acted in good faith based on the information available to it at the time.

Expert Witnesses

<u>Christopher S. Rizik ("Mr Rizik")</u>

[54] Mr Rizek, is an experienced tax attorney and professor with a background in U.S. tax law compliance. He was instructed to address whether the structures implemented by the Cosmo Parties constituted a circumvention or evasion of U.S. tax law. He was appointed by the Court at the request of Sempre/Reliant. He opined that he was unable to conclusively determine the legality of the tax structures due to the failure of the Cosmos Parties and Geneva to provide requested documentation.

[55] Mr. Rizek detailed the principles of U.S. taxation, particularly the anti-deferral regimes and disclosure requirements, and explained that compliance relies heavily on accurate reporting. In his report he clarified that the legality of the structures depended on whether the parties adhered to the operational and disclosure requirements imposed under U.S. tax law. Mr. Rizek observed that the overall arrangement utilized by the Cosmo Parties (which included the use of captive insurance, the assignment of the RPB under the captive insurance policy to a third party, the purchase of a VUL insurance policy and the establishment of a foreign trust funded by the RPB from the captive insurance arrangement) bore similarities to strategies historically used to evade U.S. taxes (i.e., means of obscuring beneficial ownership and avoiding third-party reporting). Mr. Rizek acknowledged that no single aspect of the transaction was illegal per se, and that the structures could theoretically comply with tax laws if properly reported. He, however, expressed skepticism about likely compliance with reporting obligations, noting that simpler more transparent alternatives existed if compliance was the goal. Mr. Rizek also

highlighted the potential exposure to civil and criminal penalties for all parties if the structures were used improperly.

[56] Mr. Rizek was asked several questions by the Cosmo Parties and Geneva regarding his qualifications, the methodology of his analysis, the documents he relied upon, and the conclusions drawn from his review. In response to inquiries regarding his expertise, Mr. Rizek clarified that while he did not specialize in drafting or designing insurance contracts, his professional background included interpretation of contracts (including insurance contracts and/or policies) and representation of captive insurers and insureds insurance during IRS investigations/litigation, making him qualified to assess the issues at hand. He discussed the distinction between tax avoidance and tax evasion, emphasizing that courts have struggled to define the boundary between legally minimizing tax liability and illegally evading taxes. He asserted that tax avoidance involves lawful structuring of financial affairs to minimize tax liability whilst tax evasion includes deception or concealment.

[57] Mr. Rizek was questioned on the completeness of his analysis, particularly whether he had reviewed sufficient documentation to make definitive conclusions. He confirmed that his conclusions were constrained by the absence of certain documents requested from the Cosmo Parties and Geneva, but were guided by his review of the documents submitted and his expertise in tax controversies. He indicated that the arrangements undertaken by the Cosmos Parties (lack of transparency and the complexity of the arrangements) bore the hallmarks of known tax avoidance schemes but, in the absence of full disclosure, he could not state with certainty whether they were executed in a compliant manner. Mr. Rizek was also questioned on the practical necessity of such complex structures, to which he replied that simpler, compliant alternatives were available, further suggesting that tax avoidance might have been a motivating factor.

[58] The expert further opined that the VUL insurance policy, a key component of the disputed transactions, may or may not have been used as a legitimate tax planning tool. He asserted that without a review of whether the VUL insurance policy met regulatory criteria and was properly reported by the Cosmo Parties, its use in the current structuring as a legitimate tax planning tool cannot be confirmed. Finally, Mr. Rizek addressed inquiries

regarding potential conflicts of interest, his interactions with associated parties and any professional affiliations that could inform his testimony. He noted that he was unaware of any prior business relationship between key figures involved but stating that such matters are governed by professional conduct rules. He also confirmed that he had not received legal fees (or any other fees) from Reliant, Bancroft, or any of its affiliates for any matter other than his work as an expert witness in connection with this case.

Davis S. Neufeld ("Mr Neufeld")

[59] Mr Neufeld is a tax attorney with expertise in the design and taxation of captive insurance structures. He has over three decades of experience advising businesses on complex insurance and tax matters, including compliance with U.S. tax regulations. Mr. Neufeld was tasked with assessing the use of group captive insurance, the industry practice and effect of instalment payment of premiums in contemplation of further coverage in the captive insurance market, and tax implications of captive insurance in the US. He affirmed his independent and unbiased approach to the matter, detailing his reliance on filed case documents, including witness statements, insurance policies, and prior opinions.

[60] In his report, Mr. Neufeld explained that group captive insurance allows businesses to pool risks with the possibility of recovering premium payments if certain conditions are met. He noted that there was nothing inherently improper, illicit, illegal or tax-abusive with captive insurance. When structured and used properly it is a valid and valuable arrow in the quiver of corporate financial management. In the context of US federal tax compliance, however, there is a long history of impropriety arising from the irresistible attraction of avoiding taxes.

[61] Mr. Neufeld emphasized that for the premiums to be deductible under U.S. tax law, the arrangements must demonstrate genuine risk distribution and comply with statutory guidelines. He indicated that based on his knowledge of captive insurance and his review of the captive insurance policy documents, he was of the opinion that the ERC was never acquired by the Cosmo Parties, that the pricing was excessive to the point of being fraudulent, and that Sempre or Reliant prohibited the Cosmos Parties from acquiring the

ERC by revoking their right to acquire it before that right expired. Mr. Neufeld indicated that several risks were listed in the ERP endorsement that are not appropriate for an ERP and should not be priced into the ERP premium.[4] He also noted that, in industry practice, multi-year ERP premiums may be paid in installments after policy issuance, but he was unfamiliar with pre-payment before coverage issuance, raising questions about the validity of the transactions in question. He also commented on the implications of premium payments made before calculation and invoicing, questioning their binding nature. Additionally, Mr. Neufeld examined U.S. tax law as it pertains to captive insurance, noting that while certain structures may be compliant, their execution must align with IRS guidelines.

[62] In his response to questions about the materials he reviewed and whether he had access to information beyond the provided case documents, Mr. Neufeld clarified his methodology and confirmed that his analysis relied strictly on the materials exchanged in the case and his expertise in similar disputes concerning tax liability of US persons artificially bypassing reporting obligations.

<u>Sir Trevor A. Carmichael KA, LVO, QC,</u>

[63] Sir Trevor Carmichael is an attorney-at-law, admitted to practice in Barbados and the United Kingdom. His experience spans over 35 years, particularly in banking, regulatory advisory services, and financial services law. He played a pivotal role in developing financial regulations in Barbados and has been involved in advising the government on regulatory and policy matters since 2008. His instructions was to produce a report to assist the court on (a) Barbados law in relation to the Companies Act Cap. 308, the Exempt Insurance Act Cap. 308A and the Insurance Act Cap. 310, in particular general and separate account insurance and (b) whether the liabilities of a separate account attach to the assets of the general account insurer.

[4] In one case an ERP premium referencing 2016-2017 is charged for a policy that was not issued in the 2016-2017 period. In five other cases ERP premium was charged based on a policy limit in excess of the policy limited in the reference year.

[64] Sir Trevor examined the legality of separate account structures utilized by Geneva under Barbados law, concluding that such structures were fully compliant with Barbadian law and offered robust asset protection mechanisms. His report outlined the statutory framework governing such accounts, as prescribed by the Barbados Companies Act.[5] He explained that the Companies Act of Barbados mandates strict segregation of assets within separate accounts, insulating them from the general liabilities of the insurer. He opined that, under Barbadian law, liabilities linked to a separate account, such as Policy Account No. VUL-2017-314D issued by Geneva do not attach to the assets of the general insurer. He supported this conclusion by citing statutory provisions that impose a fiduciary duty on separate account insurers to maintain asset segregation. He further explained that in the event of insolvency, creditors of the general insurer cannot claim against assets held within a separate account. His report underscored that the policy in question explicitly included terms that limit liability to separate account assets, reinforcing the statutory protection. His report also outlined the contractual provisions of the disputed policy, emphasizing that it expressly stipulates segregation of assets and liability limitation, reinforcing the statutory framework.

[65] Responding to questions from Counsel, Sir Trevor elaborated on his extensive role in shaping the legislative framework for financial services in Barbados and confirmed that his opinions were rooted in his firsthand knowledge of the law. He reiterated that Barbadian legislation provides a clear legal foundation for separate account structures. He clarified that the Companies Act and Insurance Act create a statutory fiduciary duty, ensuring that separate account funds are used exclusively for their designated liabilities. He was asked whether any exceptions exist that could allow claims against the general assets of Geneva. He confirmed that no such exceptions apply under Barbados law and that the separate account framework is designed to ensure asset protection. When questioned on the implications for Geneva in the present case, he maintained that the insurer's liability would be confined to the assets held in the separate account associated with Policy VUL-2017-314D.

[5] Part III Division F of the Companies Act of Barbados.

[66] He was also asked to address the interplay between compliance with Barbadian law and international tax obligations, to which he emphasized the importance of transparency and adherence to disclosure requirements under U.S. and global standards. He concluded that, though the structures were lawful under Barbadian law, such structures could potentially be misused to shield assets improperly if international reporting obligations were not adhered to. Consequently, their application in this case needed to be examined within the broader context of the parties' reporting obligations, particularly regarding the Cosmo Parties obligations under US tax law. He stated that damages awarded against Geneva would be subject to a limit set by the provisions of the Companies Act of Barbados.

Preliminary Issue

[67] In addressing the preliminary and substantive issues raised in this claim it must be stated here that the Court has read and considered the pleadings, the extensive evidence adduced at trial (documentary and otherwise), the extensive submissions (written and oral) and applicable law, and will only state or engage with what is pertinent for resolving the respective issue under consideration.

Whether the Part 12 Limitation Clause was void, illegal or unenforceable on account of Public Policy?

[68] During oral closing submissions the Cosmo Parties contended for the first time that the contractual limitation provision contained in Part 12[6] of the Information Packet was unenforceable as being contrary to public policy. Reliant opposes the submission and contends that the argument was never pleaded, never the subject of evidence at trial, and is without legal foundation.

[6] Trial Bundle 8, Tab 113, pp. 460–461

[69] Part 12 states inter alia:

> "...Further any claim involving any facts, circumstances or claimed representations relating to this Private Information Packet must without exception be brought, by legal action duly filed in Saint Lucia, no later than the expiration of two calendar years immediately following the date on which Certificate Holder ... delivers to Reliant its Application for Group Benefits..."

[70] The issue for determination is whether this Court should entertain and uphold the public policy challenge advanced by the Cosmo Parties.

[71] There is force in Reliant's submission that the public policy point was not pleaded. Reliant was granted leave to amend its pleadings specifically to rely upon the contractual limitation provision contained in Part 12 of the Information Packet. The Cosmo Parties were granted corresponding leave to file a reply and subsequently did so. At no stage in that reply did the Cosmo Parties plead that Part 12 was void, unenforceable, illegal, or contrary to public policy.

[72] It is trite that the purpose of pleadings is to define the issues for trial and to ensure that parties know the case they are required to meet. A party is generally not permitted to advance a new and substantive legal issue for the first time in closing submissions, particularly where the argument may have required the opposing party to adduce evidence or otherwise conduct its case differently.

[73] The public policy challenge was not identified as an issue in the pleadings. It was not raised during the evidentiary phase of the trial, and was not the subject of testimony or expert evidence. It emerged only after the close of evidence and after written closing submissions had already been exchanged.

[74] It is this Courts view that it would be procedurally unfair to permit the Cosmo Parties to effectively amend their case at the conclusion of the proceedings.

[75] On this basis alone, the public policy argument should be dismissed.

[76] If the Court is wrong on the procedural aspect, the substance of the argument will now be considered.

[77] The Cosmo Parties rely principally on the decisions of the Supreme Court of Canada in **Garcia Transport Ltée v Royal Trust Co**.[7] and **Gauthier v Beaumont**[8] Neither authority assists them.

[78] **Garcia c**oncerned statutory provisions of the Civil Code of Lower Canada designed to protect debtors in the context of enforcement. The Supreme Court of Canada held that certain statutory protections, being matters of public order, could not be waived before the rights in question had crystallized.

[79] The decision turned on the existence of a specific legislative scheme and a clear legislative intention that a debtor could not waive the rights provided under protective public order statute before these rights have accrued. The present case involves no equivalent statutory prohibition against contractual limitation clauses in commercial insurance contracts. The Cosmo Parties have not identified any Saint Lucian legislation declaring such provisions as the limitation clause contrary to public order or public policy.

[80] **Gauthier** was concerned with whether a legislatively prescribed limitation period could be suspended because the claimant was incapable of acting due to psychological distress or trauma. The case has no direct bearing on the enforceability of a contractual limitation clause voluntarily agreed upon by commercial parties. No issue of incapacity arises on the facts of this case, nor has any evidence been adduced which would justify extending the reasoning in *Gauthier* to commercial insurance agreements.

[81] The parties are all sophisticated commercial entities operating with the benefit of professional advisers, including lawyers, accountants and other consultants, when they entered into the insurance contract. The evidence throughout trial demonstrated that the Cosmo Parties were experienced business operators and were not consumers requiring special statutory protection.

[82] The court will generally give effect to contractual bargains freely negotiated between commercially sophisticated parties unless the contract is prohibited by statute, or procured

[7] 1992] 2 S.C.R.499
[8] [1998] 2 S.C.R. 3.

by illegality, or contrary to an established rule of public policy. No such statutory prohibition has been identified in the present case.

[83] In those circumstances, the Court can find no basis upon which to declare Part 12 is rendered unenforceable on public policy grounds. As the public policy challenge was not pleaded and was raised for the first time during oral closing submissions after the conclusion of the evidentiary phase of the trial, the Court declines to permit the Cosmo Parties to advance this new case at that stage of the proceedings. In any event, the authorities upon which the Cosmo Parties rely are distinguishable and do not establish that contractual limitation provisions contained in a commercial insurance contract are unenforceable as a matter of public policy, in this jurisdiction.

[84] Consequently, Part 12 remains enforceable according to its terms, subject to the Court's determination elsewhere in this judgment as to its scope, application, and effect on the various claims and counterclaims before the Court.

Issue 1: Whether the counterclaim is barred by the two-year limitation period specified in Part 12 of the Information Packet, and/or Articles 2122 and 2129 of the Civil Code?

The Counterclaim

[85] The Cosmo Parties allege that they were induced to enter into the insurance contract by fraudulent and/or negligent misrepresentations said to have been made by Reliant, its representatives, and persons associated with it. The allegations concern events occurring principally during 2016, prior to the execution of the Information Packet and admission of the Cosmo Parties into the group pool.

[86] In their written submissions, the Cosmo Parties do not advance a detailed or discrete answer to Reliant’s limitation and prescription arguments. Their position, as the Court understands it, is that the dispute is not confined to representations made in 2016, but concerns wrongful cancellation, fraud, nullity, and facts said to have been discovered only later, including the 2021 termination decisions.

[87] Reliant contends that the Counterclaim is barred by the two-year contractual limitation provision contained in Part 12 of the Information Packet and, in any event, by prescription under the Civil Code.

[88] Reliant further submits that the allegations of fraud are vague and insufficiently pleaded. It is said that Mr Barros and Mr Stuart Anolik were not Reliant's agents, that the Insurance Application expressly disclaimed reliance on outside representations, and that the Cosmo Parties knew Reliant's consent was required before any assignment of the Return of Premium Benefit. Reliant's position is that the Cosmo Parties received the insurance they purchased, and that the termination of coverage resulted from their own misrepresentations and non-payment rather than any misleading conduct by Reliant.

Analysis

[89] The Court has considered the pleadings, evidence, submissions, and applicable law. The evidence establishes that the insurance contract was entered into by sophisticated commercial entities acting with the benefit of legal, accounting, actuarial, and other professional advice. Mr Hayes and Mr Lockwood each played significant roles in evaluating and implementing the insurance structure. There is no evidence that the limitation provision is unconscionable, contrary to public policy, or otherwise unenforceable.

[90] The Court accepts Reliant's submission that Part 12 of the Information Packet constitutes a valid contractual limitation provision binding upon the parties. The Cosmo Parties executed the Insurance Application in November 2016 and thereby agreed to the terms of the Information Packet and Master Policy, which together formed the insurance contract. Part 12 provides that *"any claim involving any facts, circumstances or claimed representations relating to this Private Information Packet must without exception be brought ... no later than the expiration of two calendar years immediately following the date on which Certificate Holder ... delivers to Reliant its Application for Group Benefits."*

[91] The language of Part 12 is broad and unequivocal. It is not limited to contractual disputes, but extends to any claim involving facts, circumstances, or alleged representations relating to the Information Packet. The Counterclaim is principally founded on alleged representations said to have induced the Cosmo Parties to enter into the insurance arrangement and participate in Reliant's program. Those allegations fall squarely within the wording of Part 12. The Court therefore gives effect to the parties' contractual allocation of risk and limitation of claims.

[92] The Insurance Application was delivered in November 2016. Accordingly, any claim captured by Part 12 was required to be commenced no later than November 2018. The counterclaim was not filed until May 2023, several years outside the contractual limitation period. Its gravamen is that, but for the alleged representations, the Cosmo Parties would not have entered into the insurance arrangement. The claims pleaded therefore fall within the scope of Part 12 and are contractually barred.

[93] The alleged inducements occurred in 2016, before the Cosmo Parties joined the Group Pool and obtained coverage under the Insurance Contract. The alleged representations by Mr Barros, Mr Stuart Anolik, and others are all said to have occurred in the period leading to execution of the Information Packet and issuance of the first certificates of insurance. By the time the amended pleading advancing these allegations was filed in 2023, the contractual limitation period had long since expired.

[94] Absent a valid basis to avoid or suspend the operation of Part 12, the counterclaim is barred by contract.

Prescription Under the Civil Code

[95] Even if the Court were wrong as to the operation of Part 12, the Court would reach the same conclusion under the Civil Code. Article 2122 of the Saint Lucia Civil Code provides that certain claims must be brought within **three years**, including claims for damages arising from delicts or quasi-delicts (civil wrongs). Article 2129 complements these prescription rules by allowing a party to raise a defence of prescription (that the claim is time-barred) at any stage of the proceedings, including on appeal, provided the relevant

facts are already before the court. Together, these provisions establish time limits for bringing certain actions and permit defendants to rely on prescription as a defence where those limits have expired.

[96] The causes of action pleaded by the Cosmo Parties are grounded in fraud, negligent misrepresentation, and related delictual wrongdoing arising from alleged conduct occurring before entry into the insurance contract.

[97] The material facts relied upon were known to the Cosmo Parties, or were reasonably discoverable by them, at the time the insurance arrangement was implemented. They were represented by professional advisers, received extensive documentation concerning the structure, and proceeded with the arrangement over several years. It is also significant that the Cosmo Parties renewed their insurance coverage annually from 2016 through 2020, paid substantial premiums, assigned the Return of Premium Benefit on multiple occasions, and continued their relationship with Reliant throughout that period.

[98] In any event, the negligent misrepresentation claim is independently prescribed. Such a claim is properly characterized as an action in delict or quasi-delict. It is clear that the Cosmo Parties possessed knowledge of the facts giving rise to their complaint by September 2018, when Reliant questioned and initially declined to consent to the proposed assignment of the RPB. By then, the Cosmo Parties were aware the Reliant's was taking a position which was different to alleged representations upon which they seek to rely. The three-year prescriptive period therefore expired by September 2021, before the counterclaim was commenced in May 2023.

Allegations of Fraud

[99] The Cosmo Parties submit that allegations of fraud prevent the limitation and prescription periods from operating against them. The Court does not accept that submission.

[100] First, the fraud allegations do not displace the contractual limitation provision which the parties agreed would govern disputes of this nature. Second, even assuming that fraud could in principle suspend or postpone prescription, the facts relied upon were known to

the Cosmo Parties, or were reasonably discoverable by them, years before the Counterclaim was commenced. Third, the Counterclaim does not identify any concealed fact discovered only shortly before litigation was commenced. The allegations are based largely upon relationships, transactions, and events occurring openly throughout the parties' dealings from 2016 onward.

[101] The Court therefore finds no basis for postponing, suspending, or interrupting prescription.

[102] For these reasons, the Court finds that the claims advanced in the counterclaim fall within its scope of Part 12 of the Information Packet which is valid and enforceable, and the contractual limitation period expired before commencement of the counterclaim. In the alternative, the claims are prescribed under the applicable provisions of the Civil Code.

[103] Accordingly, the counterclaim is dismissed in its entirety as barred by limitation and prescription.

Issue 2 : Whether the Cosmo Parties contracted to receive Extended Reporting Coverage under the Master Policy and breached the terms of the policy by:
(i) misrepresenting the purpose for assignment of RPB in order to fraudulently obtain Reliant's consent;
(ii) engaging in a USA tax evasion scheme; or
(iii) failing to pay the full premium for extending reporting coverage?

Issue 3: Was the payment of US$7 million made by the Cosmo Parties in October 2020 intended as part payment of the premium for extended reporting coverage or was intended to be held in trust; pending agreement?

Issue 4: Was Reliant entitled to cancel the certificates of insurance for the ERC.

[104] Issues 2, 3 and 4 will be addressed together for convenience, as they are related.

<u>Whether a binding ERC contract existed?</u>

[105] Reliant contends that the parties entered into a binding agreement for the ERC in 2020 and that the Cosmo Parties subsequently breached that agreement by refusing to pay the balance of the premium. The Cosmo Parties deny that any binding contract was concluded and contend that negotiations never progressed beyond preliminary discussions.

[106] Having reviewed the contemporaneous communications, the conduct of the parties, the payment history, and the surrounding circumstances, I am satisfied that a binding ERC contract came into existence.

[107] The Court's task is not to determine the parties' undisclosed subjective intentions but rather whether their words and conduct, viewed objectively, demonstrated agreement on the essential bargain. The evidence establishes that the parties negotiated ERC coverage over an extended period, that Reliant agreed to provide the coverage, and that the Cosmo Parties elected to obtain it.

[108] Significant weight must be attached to the payment of US$7,000,000 made by or on behalf of the Cosmo Parties in connection with the ERC transaction. Such substantial payment is wholly inconsistent with the proposition that the parties remained merely in exploratory discussions. It is instead entirely consistent with Reliant's case that the parties had reached agreement and had commenced performance of their respective obligations.

[109] The Court further accept Reliant's submission that the parties contemplated that the final premium would be determined through an agreed actuarial process. A contract is not rendered unenforceable merely because a price is to be fixed by an agreed mechanism at a later date. The evidence demonstrates that the parties proceeded on precisely that basis.

[110] The Court also find that Reliant was entitled to rely upon the actions and communications of Mr Lockwood. Throughout the parties' dealings, Mr. Lockwood acted as the principal representative of the Cosmo Parties in relation to insurance matters, premium discussions, and the ERC negotiations. At a minimum, he possessed ostensible authority to act on their behalf and Reliant was entitled to proceed on that basis.

[111] The Court therefore finds that the parties entered into a binding ERC agreement and that ERC coverage attached, in accordance with its terms.

Was Reliant entitled to terminate?

[112] Having found that a binding ERC contract existed, the next issue is whether Reliant was entitled to terminate that contract following the Cosmo Parties' failure to pay the balance of the premium.

[113] The evidence establishes that the actuarially determined premium was approximately US$14,837,424 and that, after credit for the US$7,000,000 payment, a substantial balance remained outstanding.

[114] Payment of premium is a fundamental obligation under a contract of insurance. Reliant provided the benefit of ERC coverage and assumed the corresponding risk. The Cosmo Parties were therefore obliged to pay the premium determined in accordance with the agreed mechanism.

[115] The refusal or failure to pay the balance constituted a repudiatory breach of the ERC agreement.

[116] In those circumstances, Reliant was entitled to treat the contract as terminated and to exercise such contractual remedies as were available to it arising from that breach.

Was the US$7 Million payment refundable?

[117] On the totality of the evidence the Court rejects the Cosmo Parties' submission that this payment was merely provisional or refundable.

[118] The payment was made in direct connection with the procurement of ERC coverage. It was received and applied as part-payment of the premium due under the ERC agreement. The surrounding communications and conduct demonstrate that the payment was intended to secure and maintain the coverage sought by the Cosmo Parties.

[119] Once the Court concluded that a binding ERC contract existed, the legal basis for characterizing the payment as a refundable deposit would fall away. The payment

constituted performance of an existing contractual obligation and was properly credited against the total premium payable. The Court therefore finds that the payment was final, was properly applied toward the ERC premium, and is not recoverable by the Cosmo Parties.

[120] In summary the Court concludes that a binding ERC contract was concluded between the parties. The premium was contractually payable in the amount determined through the agreed actuarial process; the US$7million payment constituted a non-refundable premium payment under that contract; the Cosmo Parties breached the contract by failing to pay the balance of the premium when due and Reliant was entitled to terminate the ERC coverage by reason of that breach.

<u>The allegation of misrepresentation made by purpose for assignment the RPB, in order to fraudulently obtain Reliant's consent</u>

[121] Reliant's allegation that consent to the assignment of the RPB was procured by misrepresentation is not supported by the evidential record.

[122] First, Reliant was aware from the inception of the parties' relationship that the Cosmo Parties intended to utilize a "PPLI" structure in connection with the RPB. The evidence shows that Stuart Anolik and Bradley Barros promoted that structure to the Cosmos, and Reliant was informed before the insurance program was even implemented that an assignment of the RPB to a PPLI provider was contemplated. Reliant thereafter repeatedly engaged with, negotiated, and ultimately approved the assignment arrangement.

[123] Second, the fact that Mrs Hayes was a beneficiary of the trust structure does not establish that the assignment was not arm's length. The assignment was made to Geneva, a separate legal entity, for consideration based on an independent valuation. Reliant has not demonstrated that Geneva was Ms. Hayes' alter ego or that the assignment was a sham. The existence of estate-planning trusts benefiting Ms. Hayes is entirely consistent with the nature of a PPLI arrangement and does not, without more, amount to a misrepresentation.

[124] Third, Reliant's conduct is inconsistent with a party that believed it had been deceived. After receiving explanations of the proposed assignment, Reliant negotiated alternative wording, granted consent in 2018, and continued approving subsequent assignments in 2019 and 2020. It did not undertake further due diligence, rescind its consent, or raise any complaint of fraud or tax evasion until the separate dispute concerning extended reporting coverage arose.

[125] Finally, Reliant's theory is undermined by the absence of evidence that any representation made to obtain consent was false. At most, Reliant has shown that the trust structure allowed Mrs Hayes and her family to benefit from the broader estate-planning arrangement. That does not contradict the fact that the RPB was assigned to Geneva pursuant to a transaction for value approved by Reliant itself. The allegation therefore appears to be a retrospective attempt to recharacterize a structure that Reliant knew of and accepted for years, rather than evidence of a material misrepresentation inducing its consent.

<u>USA Tax Evasion Allegations</u>

[126] The Court is not satisfied on the evidence that the Cosmo Parties, Geneva, or any other party engaged in USA tax evasion. While Sempre and Reliant raised concerns regarding the structure through which the Return of Premium Benefit was assigned and relied upon expert evidence questioning its efficiency and purpose, no tax authority determination, expert conclusion, or other persuasive evidence established that any act of tax evasion occurred. The Court finds that allegations of USA tax evasion were not proved. Mr Rizik was unable to concluded that tax evasion had occurred, and no determination of wrongdoing by any tax authority was placed before the Court. Accordingly, the Court makes no finding of tax evasion against the Cosmo Parties, Geneva, or any other party.

Issue 6 ; Whether any claims were made out against Geneva

[127] Sempre and Reliant contend that Geneva was complicit in a scheme by which the Cosmo Parties secured consent to assign the return of premium benefit by material

misrepresentations. They further allege that Geneva functioned as an alter ego of Mrs Hayes, or participated in a non-arm's-length structure designed to conceal the true beneficiary of the assignment. They seek, among other relief, damages arising from the alleged misrepresentations and assignment of the RPB.

[128] Geneva denies those allegations. It maintains that it made no representations to either Sempre or Reliant; that it was not a party to the insurance contract between Reliant and the Cosmo Parties; that the evidence does not establish tax evasion, fraud, or alter ego status; and that, in any event, any liability would be limited under Barbados law to the assets of Separate Account VUL-2017-314D.

<u>The Alter Ego Allegation</u>

[129] A central feature of the case advanced by Sempre and Reliant is the assertion that Geneva was not a genuinely independent third party, but functioned as an alter ego of Mrs Hayes. The Court is unable to accept that submission. The evidence establishes that Geneva is a licensed Barbados insurance company authorized to establish and maintain separate accounts under Barbados law. Separate Account VUL-2017-314D was one such account. The policyholder was Premier Trust Inc., as trustee of the Green Horizons Trust, later decanted into the Blue Horizons Trust.

[130] Sir Trevor Carmichael's evidence demonstrated that the separate account regime is a recognized feature of Barbados insurance law and serves to segregate assets and liabilities associated with particular insurance products.

[131] Although the evidence establishes that Mrs Hayes was connected to the trust structure and was a beneficiary of the trust, that fact alone does not establish that Geneva was her alter ego. No evidence was adduced to show that Mrs Hayes owned Geneva, controlled Geneva, directed its corporate affairs, or exercised such domination over it as would justify disregarding Geneva's separate legal personality. The evidence instead demonstrates an ordinary insurer-policyholder relationship operating through a statutorily authorized separate account structure.

[132] The Court therefore rejects the alter ego allegation.

Tax Evasion Allegations

[133] Sempre and Reliant further allege that Geneva participated in, facilitated, or benefited from a tax evasion scheme. Those allegations have not been proved. The expert evidence does not establish tax evasion by Geneva. Mr Rizek's evidence did not conclude that Geneva or the Cosmo Parties had engaged in tax evasion. Although concerns were raised regarding aspects of the structure, no finding of tax evasion is established on the evidence before the Court. Nor is there independent evidence that Geneva participated in unlawful conduct or knowingly assisted others in doing so.

[134] Accordingly, the allegation that Geneva participated in a tax evasion scheme fails.

Misrepresentation

[135] Sempre and Reliant also contend that Geneva is liable for fraudulent or material misrepresentations in relation to the assignment of the RPB.

[136] The Court is unable to find any evidential basis for such a claim.

[137] The evidence established that the communications relied on by Reliant in granting consent were communications exchanged between Reliant, the Cosmo Parties, and their respective representatives.

[138] The Court notes that Mr Anolik accepted during cross-examination that Geneva was not copied on the assignment correspondence and could not identify any representation made by Geneva upon which Reliant relied. Mr Rubin similarly accepted that, to the best of his knowledge, Geneva was not involved in the correspondence seeking consent to the assignment. Fraudulent misrepresentation requires proof, among other things, that the defendant made a false representation intending that it be relied upon, and that the claimant in fact relied upon it.

[139] The Court accepts Geneva's submission that the evidence does not establish any representation made by Geneva to Sempre or Reliant, and follows that one of the essential elements of the tort is entirely absent.

[140] The Court therefore finds that no case of fraudulent or negligent misrepresentation has been established against Geneva.

Privity of Contract

[141] The Court also accepts Geneva's submission that it was not a party to the insurance contract between Reliant and the Cosmo Parties. The duties of disclosure and utmost good faith arising under that contract rested upon the parties to it. Geneva was not one of those parties. The assignment transferred rights associated with the ROPB; it did not impose upon Geneva obligations owed by the Cosmo Parties to Reliant under the insurance contract.

[142] To the extent that Reliant's complaint is that it was induced to consent by representations made by the Cosmo Parties, any such complaint lies against the makers of those representations and not against Geneva absent proof of knowing participation. Such proof is lacking.

Limitation of Liability

[143] In light of the conclusions above, it is unnecessary to determine Geneva's alternative argument that any liability would be confined to Separate Account VUL-2017-314D under Barbados law. Nevertheless, the Court notes that substantial expert evidence was led in support of the proposition that any liability associated with the separate account would be limited to the assets of that account.

[144] Given the Court's findings on liability, no further determination of that issue is required. The claims against Geneva therefore fail.

Costs

[145] On the issue of costs the Court considers that costs should be awarded to Reliant to be paid by the Cosmo Parties in the ancillary claim. Costs should also be awarded to Geneva to be paid by Sempre in the main claim and by Reliant in the ancillary claim. No costs will be awarded to Sempre as it was for all intents the agent of Reliant and a middle man in the context of these transactions. Any award of costs would be a duplication of costs which have already been awarded to reliant as the umbrella insurer in relation to this captive insurance program.

Conclusion

[146] In light of all the forgoing findings, this Court makes the following orders:

1. The Cosmo Parties' public policy challenge to Part 12 of the Information Packet is dismissed.
2. The Cosmo Parties counterclaim is barred by limitation and prescription and is dismissed.
3. The Court declares that a binding Extended Reporting Coverage agreement existed between Reliant and the Cosmo Parties.
4. The Court declares that the US$7.0 million payment was a final and non-refundable premium payment made pursuant to that agreement.
5. The Court declares that the Cosmo Parties were in breach of the Extended Reporting Coverage agreement by failing to pay the balance of the premium due.
6. Reliant was therefore entitled to terminate the ERC agreement and coverage arising thereunder by reason of that breach.
7. Judgment is entered for Reliant on this issue and the Cosmo Parties' claim for repayment is dismissed.
8. The claims against Geneva are dismissed in entirety.
9. Costs is awarded to Reliant on the ancillary claim to be paid by the Cosmo Parties, such costs to be assessed if not agreed.
10. Costs is awarded to Geneva in the main claim to be paid by Sempre, such costs to be assessed if not agreed.

11. Costs is awarded to Geneva in the ancillary claim to be paid by Reliant, such costs to be assessed if not agreed.

12. There is no order as to costs in relation to Sempre.

Cadie St Rose-Albertini
High Court Judge

EASTERN CARIBBEAN SUPREME COURT
SEAL
HIGH COURT

By the Court

Registrar