



## INTRODUCTION

This is a case in which the Attorney General appeals from a judgment finding that a religious organization's health benefit plan is not insurance and that, even were it insurance, the plan is exempt from Kentucky's insurance code.

## STATEMENT CONCERNING ORAL ARGUMENT

Appellant desires oral argument. Oral argument would allow the Court to delve thoroughly into, and permit Appellant to explain thoroughly, Appellant's contention that the trial court and the Court of Appeals erroneously construed both the statutory definition of "insurance" and the statutory requirements for exemption of a religious organization's health plan from Kentucky's insurance code.

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STATEMENT OF THE CASE

PROCEDURAL HISTORY

The parties to this appeal are the Attorney General of the Commonwealth of Kentucky, on behalf of the Commonwealth (“the Commonwealth”) and E. John Reinhold, who does business under the names American Evangelic Association, the Christian Care Ministry and “Medi-Share” (“Reinhold”).<sup>1</sup> The Attorney General and Commissioner of the Kentucky Department of Insurance (“the Commonwealth”) filed this civil action on June 21, 2002, in Franklin Circuit Court, attempting to enjoin the unauthorized sale of health insurance by an unlicensed entity or person. (Complaint, R.

<sup>1</sup> According to Reinhold, “Christian Care Ministry” (CCM) is an unincorporated ministry of the “American Evangelical Association” (AEA), which is an unincorporated association of churches. Answers to Interrogatories. No. 4. AEA and CCM share the same board of directors and the same employees. Reinhold Depo., pp. 8, 12. These entities merged after the death of the founder of AEA. Reinhold Depo., p. 17. Medi-Share® was created July 3, 1993, the same day as CCM, which was created to administer Medi-Share. *Id.* pp. 23-24. Reinhold is now the chairman of the Board of AEA and CCM.

1-5). Plaintiffs asserted Reinhold was selling an insurance product called “Medi-Share”<sup>2</sup>, and attached to their complaint affidavits indicating Reinhold was not licensed and sales literature describing the “Christian Care Ministry Medi-Share Program 2001 Guidelines.” (R. 6-38).

The Commonwealth sought and obtained a restraining order against Reinhold precluding him from transacting insurance business in the state without a license. (Order, R.40-41). Reinhold responded to the complaint by moving to quash the restraining order and moving to dismiss the complaint. (Response and Motion, R.42-49). Reinhold asserted “Medi-Share” is exempted from the Kentucky Insurance Code by the so-called “religious publication” exemption, set forth in KRS 304.1-120. He also argued that because Medi-Share, for a defined premium paid, only “matches subscribers who have financial, physical, or medical needs and subscribers who choose to assist with those needs,” that Medi-Share is not “insurance”. *Id.* The Commonwealth then moved for a temporary injunction (R. 77-82) and responded in opposition to Reinhold’s motion. (R.85-87). Both parties relied on the same Medi-Share sales literature exhibits. See Defendant’s exhibit A. (R.51-74).<sup>3</sup> The circuit court conducted an evidentiary hearing on the Commonwealth’s motion for a temporary injunction on October 22, 2002. The Court also considered post-hearing briefs filed by both parties on November 12, 2002.

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<sup>2</sup> Medi-Share® is a registered trademark of the American Evangelistic Association, Christian Care Ministry. Sales literature describes the plan as “Affordable, Biblical Healthcare”.

<sup>3</sup> Medi-Share’s sales literature disclaims this product is “insurance” and says payments are not guaranteed but it lulls consumers by claiming “thousands of Christians have shared millions of dollars through the years and no eligible need has ever gone unpaid.” (R. 54). The literature also contains “member testimonials”, designed to appeal to Christians, such as one that thanked “the Lord . . . for bringing the Christian Care Ministry into [the member’s life].” (R.54-61).

Reinhold urged the court to set aside the temporary injunction and deny the Commonwealth's motion for temporary injunction. (Memorandum, R. 96-131). The Commonwealth opposed Reinhold's motion to set aside the restraining order and argued for a temporary injunction. (Memorandum, R. 132-137). The circuit court granted Reinhold's motion to quash and set aside the restraining order and also dismissed the complaint (Opinion and Order entered April 25, 2003, R. 143-146). The Commonwealth moved to alter, amend, or vacate the judgment on May 2, 2003 (Motion, R. 147-148), which was granted in part on June 3, 2003 (order, R. 212-213). The Franklin Circuit Court reaffirmed its dissolution of the temporary injunction but agreed with the Commonwealth that the case was not ripe to consider defendant's motion to dismiss in advance of discovery (Order, R. 212-213). Reinhold answered the complaint on July 24, 2003 (Answer, R. 242). He was deposed on September 10, 2003 (Transcript of Deposition filed October 1, 2003). The parties participated at an evidentiary hearing on October 22, 2002, where Reinhold and others testified. (See Video Record, tape 1).<sup>4</sup>

On April 19, 2004, Reinhold moved for summary judgment (R. 250-251), supported by a memorandum of law and other exhibit including: *Exhibit 1*, the July 2, 2002, Medi-Share's "Program Guide; *Exhibits 2 and 3*, envelopes in which the sales brochure was mailed; *Exhibit 4*, state disclaimer notices; *Exhibit 5*, IRS tax exemption letter issued to the American Evangelic Association (AEA) on June 19, 1958;<sup>5</sup> and *Exhibit 6*, July 18, 1993, agreement merging the American Evangelic Association and Christian Care Ministry (CCM)(Memorandum and Exhibits, R. 252-341). The Commonwealth responded with a Memorandum in Opposition, arguing that material

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<sup>4</sup> Tape 1 of the court video record includes hearings conducted on the following dates: 9-12-02; 10-22-02; 2-4-03; 5-12-03; 6-30-03; 5-11-04; 11-3-04; 9-19-05; 4-28-06 and 3-28-07.

<sup>5</sup> The tax exemption was issued long before the AEA began selling "Medi-Share".

factual issues precluded granting summary judgment (Response Memorandum, R. 253-356).

The Franklin Circuit Court denied Reinhold's motion for summary judgment on October 7, 2004, agreeing that disputed material facts precluded a summary disposition (Opinion and Order, R. 370-372). Thereafter, the circuit court conducted a bench trial on October 25-26, 2006 (Video Record – Tapes 2 and 3). Following this bench trial, and the submission of post-judgment briefs (Commonwealth's post-trial briefs R. 445-453; 527-532; Reinhold's post-trial briefs, R. 454-526; 534-550), the Franklin Circuit Court issued Findings of Fact, Conclusions of Law and a Final Order on January 18, 2007. The court held Medi-Share is not insurance because there is no "risk shifting". The court also concluded Medi-Share "fits squarely within [the] exemption provided by KRS 304.1-120," which is the so-called "religious publication" exemption. (*Id.*, R. 551-557). The Commonwealth filed a motion to vacate on January 26, 2007 (Motion, R. 558-560). Reinhold responded on February 12, 2007 (Response, R. 561-571). The circuit court denied the Commonwealth's motion to vacate on February 28, 2007 (Order, R. 572).

Reinhold moved for his attorney fees on March 19, 2007 (Motion, Notice, Order, R. 574), supported by his memorandum of law (R. 580-600). The Attorney General timely filed a notice of appeal from the final judgment on March 28, 2007 (Notice of Appeal, R. 752-753). The Commissioner of the Department of Insurance was not permitted by the Executive Branch to appeal the circuit court's judgment. Both plaintiffs, however, responded to defendant's motion for attorney fees.<sup>6</sup> In their responses, plaintiffs

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<sup>6</sup> The Attorney General and Commissioner of the Department of Insurance separately responded to Reinhold's motion for attorney fees. (R.623-751). The court heard arguments on March 28, 2007 (TAPE 3-28-07; 9:35:00). On April 26, 2007, the Franklin Circuit Court denied Reinhold's motion for an award of attorney fees, noting that "the actions of the Commonwealth were not unreasonable and were substantially

pointed out that trial courts in South Dakota, Montana, Illinois, Wisconsin, and Oklahoma have all held Medi-Share is “insurance” and (where applicable, under their own insurance codes) was not exempted by the religious publication exemption. Accordingly, the circuit court agreed the Commonwealth was substantially justified in litigating this test case, thus fees are precluded. Reinhold did not appeal from that order.

The Court of Appeals affirmed the judgment of the Franklin Circuit Court by opinion entered October 10, 2008. The Attorney General appeals from that opinion.

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#### Summary of Sworn Testimony and Trial Exhibits

From the very beginning of this case, the two legal issues which are now the subject of this appeal have remained exactly the same. Reinhold stipulated he was not licensed to sell insurance in Kentucky or any other state. He stipulated he had been promoting Medi-Share to Kentucky consumers since 1993 (Video Record, 9-12-02; 10:10:40), but he has consistently argued this plan is not insurance; and that even if it were, it qualifies for the religious publication exemption in Kentucky’s insurance code (Video Record, 9-12-02; 10:14:08). The Commonwealth has consistently disagreed. *Id.*

E. John Reinhold is the Chairman of the American Evangelistic Association and Christian Care Ministry of Melbourne, Florida, which promotes “Medi-Share”. This organization has about 160 employees (Video Record 10-25-06; 2:45:29). Prior to his

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justified in bringing matters before the Court.” The court also noted that the Commonwealth had cited out-of-state cases where trial courts in other states determined that Medi-Share is “insurance”, and while the court found the facts of those cases distinguishable, it held plaintiffs had a reasonable justification to assert their claims that the defendant was selling “insurance”. Reinhold did not appeal from that post-judgment order. Consequently, the clerk of the Franklin Circuit Court did not include that order in the records certified for appeal. For the convenience of this court, Appellant attaches a copy of the court’s order denying attorney fees as well as the out-of-state trial court opinion cited in the Commonwealth’s response briefs and referred to by the circuit court in the order denying fees.

employment with this organization, Reinhold was the vice-president of two life insurance companies and was later a consultant for “the Christian Brotherhood Newsletter”, from about 1990 to 1992 (Video Record 10-25-06; 1:25:19 - 1:38:17).<sup>7</sup> At the time of the bench trial, Medi-Share covered about 19,000 member households nationwide, including about 300 households in Kentucky (Video Record 10-25-06; 1:51:41). The promotional material and program guidelines (which reads like an insurance policy) for Medi-Share repeatedly states that it is *not* insurance (Video Record 10-25-06; 1:55:51).

Instead of labeling the product “insurance”, the promotional materials for Medi-Share, indicate it is a “sharing ministry” where members voluntarily share paying for each other’s medical needs. After raking off about 17% to 20% of the gross income for administrative overhead and salaries, the remaining premium dollars are paid to members for their submitted eligible medical claims (Video Record 10-25-06; 2:21:41; 2:44:26). These administrative expenses have recently fallen because the promoters cancelled the stop-loss insurance protection purchased from a third-party provider. This cancellation occurred several weeks before the trial in October of last year (Video Record 10-25-06; 2:44:26). Notwithstanding the arguments of its promoters and the disclaimers printed in its promotional materials, it is undisputed that the Medi-Share plan has many of the same attributes as a traditional health insurance, except its promoters often use different terminology than the standard terms used in the insurance industry.

Reinhold admitted these similarities to insurance and his conscious decision to change the terminology in the promotional material for Medi-Share when he testified at

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<sup>7</sup> See COK Trial Exhibit 2, Defendant’s second amended response to plaintiff’s interrogatories.

his discovery deposition and at the bench trial<sup>8</sup> (Video Record 10-25-06; 10:15:13). Applicants must apply and pay a \$175 application fee, which is refunded if the application is denied. This detailed application form is similar to an application for health insurance.<sup>9</sup> Prospective members are told this “alternative to expensive health insurance could save [them] \$2,000 to \$4,000 a year or more”.<sup>10</sup> The Medi-Share Guidelines define “eligible need”, provide for deductibles, place a yearly and lifetime limit upon benefits and offer plans for both individual and family memberships. The Guidelines also encourage the use of a Preferred Provider Organization by providing for penalties for the use of out-of-network providers. The program also has an underwriting manual which details the treatment afforded individuals with certain afflictions.<sup>11</sup> In some cases, the individual may be declined for coverage, rated, or be subject to exclusion.

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<sup>8</sup> See COK Trial Exhibits 1 and 4. Thus “member” correlates with “insured”, eligible bill is an eligible claim; the monthly premium is called a monthly share; annual membership renewal fee is the annual premium; eligible children is similar to eligible dependents in traditional health insurance; like traditional insurance, persons 65 and older must be enrolled in Medicare; application review is similar to underwriting standards for health insurance, preexisting conditions are medical and lifestyle information; co-pays or deductibles are called the “initial member responsibility”; annual and lifetime policy limits are called “maximum sharing limits”, premiums for optional disability insurance are called “variable share amount”, late fees are “extra blessing gifts”; pre-notification is required for non-emergency procedures so that members can be referred to a preferred provider organization (PPO) like similar health plans; penalties are imposed for going out of network to other providers; needs (claims) must be submitted on a standardized form; preexisting conditions are excluded from coverage; a long list of medical conditions are excluded from coverage in the same way they are often excluded from health policies (see COK Trial Exhibit 1, pp. 11-13); denied claims are submitted to the CCM “medical review board; when appeals are exhausted the policy calls for mandatory binding arbitration. The plan has a coordination of benefit provision similar to insurance that makes Medi-Share secondary coverage from other benefits such as Medicare, Medicaid, workers’ compensation etc. Medi-Share has subrogation rights similar to typical insurance policies; the policy has standard exclusions for motorized vehicle accidents. Premiums (“shares”) for the two types of policies are adjusted based on an actuarial analysis (COK Trial Exhibit 1, last 2 pages). Payment is made to providers based on standardized AMA medical codes (COK Trial Exhibit 4).

<sup>9</sup> See Defendant’s Trial Exhibits 3 and 4 (Enrollment Applications in back of brochures).

<sup>10</sup> Defendant’s Trial Exhibit 6.

<sup>11</sup> COK Trial Exhibit 4. This underwriting and procedure manual uses standard medical abbreviations and acronyms with the same coding used by physicians.

CCM randomly assigns any eligible member's claims with paid in premium dollars which is paid from a trust account.<sup>12</sup> Individual members do not choose the persons to receive their money, nor do they make a decision about whether an individual's needs are worthy of their "charity" dollars. CCM pays an advertising/public relations firm \$3,750 per day for marketing strategy meetings and \$150 per hour plus invoiced media expenses for advertising to recruit new members and "improve profitability."<sup>13</sup> This promotional material prominently proclaims: "Over \$250 million shared since 1993!"<sup>14</sup> Testimonials from members emphasize claims that have been paid and one testimonial distinguishes the joy of "helping our brothers and sisters in Christ" as contrasted to "lining the pockets of [insurance] corporations." These promotional materials also boast that "Medi-Share members have faithfully shared every need since 1993!"<sup>15</sup>

The new president of CCM candidly admitted Medi-Share differs from traditional religious publications because, in the original business model, subscribing members sent payments directly one to another (Video Record 10-25-06; 2:28:40). By contrast, it is undisputed Medi-Share members send claims directly to the "ministry" for review by claims adjusters and then, after deducting co-payments, eligible claims are paid directly by Medi-Share from the monthly premiums collected by Medi-Share from other members in the preceding months. (Video Record 10-25-06; 2:15:12).

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<sup>12</sup> Defendant's Trial Exhibit 8, pp.7-9. (Showing accounting of CCM SunTrust bank account).

<sup>13</sup> COK Trial Exhibit 3; Defendant Trial Exhibit 2.

<sup>14</sup>COK Trial Exhibit 4.

<sup>15</sup> COK Trial Exhibit 5.

Prior to 1993, when Reinhold created the Christian Care Ministry and Medi-Share, he testified, "AEA had a loose form of sharing", that more closely resembled the Christian Brothers Newsletter plan. "When they [AEA] had a member who could not pay bills . . . , they would pass the hat through the mail and raise the money to try to take care of those needs. There was no inquiry about pre-existing medical conditions, and there were no underwriting standards." (Reinhold, Dep., pp. 25-26, 38).

By contrast, Medi-Share is much more sophisticated and insurance-like. It looks more like a business than a charity. Reinhold admitted, "We formalized the program." Using a third party administrator, he and his associates developed conservative underwriting standards with a pre-existing condition exclusion and other typical insurance exclusions. Medi-Share has an advertising budget with the Lloyd Daniels Company for promotions and public relations (Video Record 10-26-06; 10:28:50). It offers single, couple, and family plans with differing deductibles and premiums.<sup>16</sup> Subscribing members are issued cards that look like insurance cards. Members pay annual fees and monthly premiums. Memberships are cancelled if fees are not paid and coverage forfeited. (Video Record 10-26-06; 10:11:46). There is a preferred list of medical network providers. Medical claims submitted by members are reviewed by claim-adjusters. Physicians earning up to \$100,000 serve as "consultants".<sup>17</sup>

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<sup>16</sup> Defendant's Trial Exhibit 2, p. 26 (Medi-Share Program Options).

<sup>17</sup> Reinhold Depo., pp.29, 32.

Medical claims that are denied are subject to mandatory binding arbitration after all internal appeals are exhausted (Video Record 10-25-06; 10:17:17). Judicial review is forbidden.<sup>18</sup>

An offshore trust, presumably beyond the reach of state court judgments, was created to pay claims, and co-insurance was at one time obtained for the benefit of the members to obtain stop-loss coverage, like traditional medical insurance. Late fees called “extra-blessing gifts” are assessed against members who do not pay their monthly premiums by the due date. Medi-Share’s policy includes a right of subrogation and reimbursement if a member obtains medical coverage from another source, such as, workers’ compensation. The monthly premium costs have increased over time based on claim history and an actuarial analysis of risk. Paying annual membership fees and monthly “premiums” by any other name is no more voluntary than a traditional insured paying his monthly premiums—if a member expects to remain eligible for his own medical claims being covered. Significantly, while Reinhold denies Medi-Share includes “risk shifting”, he admits “risk-shifting is not the only factor courts consider in determining whether a given product is ‘insurance’”. (Video Record 3-28-07; 9:35:00). On this basis, the Commonwealth urges this Court to reverse the Court of Appeals and to vacate the judgment of the Franklin Circuit Court.

#### ARGUMENT

Appellant submits that the issues of the lower courts' errors have been preserved for this appeal. Throughout the action in the trial court and the case before the Court of Appeals, Appellant consistently has argued that Medi-Share is insurance and that Medi-

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<sup>18</sup> COK Trial Exhibit 1.

Share does not qualify for the religious publications exemption in Kentucky's insurance code. (R. 1-5; Video Record at trial 10-25-06 and 10-26-06; Motion, R. 558-560; Appellant's brief in the Court of Appeals; Opinion of the Court of Appeals, October 10, 2008).

I. THE COURT OF APPEALS ERRED IN AFFIRMING THE FRANKLIN CIRCUIT COURT'S JUDGMENT THAT MEDI-SHARE IS NOT INSURANCE

Affirming the judgment and order of the Franklin Circuit Court made the majority of the Court of Appeals panel complicit with the circuit court in amending the General Assembly's definition of "insurance." KRS 304.1-030 defines "insurance" as "a contract whereby one undertakes to pay or indemnify another as to loss from certain specified contingencies or perils called 'risks,' or to pay or grant a specified amount or determinable benefit or annuity in connection with ascertainable risk contingencies, or to act as surety." Yet, the Court of Appeals narrowed what constitutes "insurance" simply to risk-sharing. The Court of Appeals asserted conclusions by the United States Supreme Court that "insurance" is a matter of risk-sharing. *Metropolitan Life Insurance Co. v. Massachusetts*, 471 U.S. 724, 105 S.Ct. 2389, 85 L.Ed.2d 728 (1985); *Group Life & Health Insurance Co. v. Royal Drug Co.*, 440 U.S. 205, 99 S.Ct. 1067, 59 L.Ed.2d. 261 (1979). That reliance on *Metropolitan Life Insurance Co.*, *supra*, and *Royal Drug Co.*, *supra*, though, is misplaced. Those cases deal solely with a Federal question involving the Employee Retirement Income Security Act of 1974 (ERISA); in fact, both *Metropolitan Life Insurance Co.* and *Royal Drug Co.* stand for the generality of State power to regulate insurance, which would include stating what "insurance" is. A Kentucky-bred case, *Kentucky Association of Health Plans, Inc., v. Miller*, 538 U.S. 329, 123 S.Ct. 1471, 155

L.Ed.2d 468 (2003), represents a more recent expression of that view. Thus, the General Assembly is free to define "insurance" beyond risk-sharing. It does.

The legislature has seen fit---and reasonably so---to conclude that one who by contract *undertakes* to pay or indemnify another as to loss from specified contingencies or perils called "risks" engages in insurance. The *Oxford English Dictionary* defines "undertake," as "to enter upon an enterprise." Medi-Share is Appellee's enterprise in the world of health benefit plans. Appellee *contracts* with its members such that, for the consideration of a member's annual and monthly payments, *Appellee will attend to the payment of the member's medical bills*; failure to meet the required payments, however, results in dismissal from the plan (R. 1, Medi-Share Guidelines and application; Video Record 10-25-06: 10:11:00). Besides this "pay-to-play" approach, Appellee's enterprise mimics the traditional health insurance model in other ways, as well: exclusions for pre-existing conditions, use of underwriting standards, a deductible (R. 1, Medi-Share Guidelines and application). It is this scenario in its totality which led Judge Thompson, in the dissent in the Court of Appeals case, to opine that Appellee does engage in "insurance." (Opinion of the Court of Appeals, pp. 15-16.) The Court of Appeals erred when it impermissibly construed risk-sharing as the definition of "insurance" over the plain reading of the statutory definition. *Lincoln County Fiscal Court v. Department of Public Advocacy, Commonwealth of Kentucky*, 797 S.W.2d 162 (Ky., 1990); see, also, *Kentucky Unemployment Insurance Commission v. Jones*, 809 S.W.2d 715 (Ky. App., 1991).

The Court of Appeals also erred in misconstruing the statutory definition of "insurance" to the detriment of clear legislative intent. The General Assembly expresses a

presumption that insurance exists, if coverage is provided for medical expenses. KRS 304.11-045(2). The record proves such coverage is the essence of Medi-Share. Together KRS 304.1-030 and KRS 304.11-045(2) reveal the General Assembly's intent to broaden the compass of the insurance code in order to protect consumers and to make known to all comers just of whom the Department of Insurance exercises oversight. Here, the Court of Appeals's decision again fails muster, for "[t]he essence of statutory construction is to ascertain and give effect to the intent of the legislature." *Hale v. Combs*, 30 S.W.3d 146, at 151 (Ky., 2000). The Court of Appeals should have considered, and this Court now must consider, "the intended purpose of the statute---the reason and spirit of the statute---and the mischief intended to be remedied." *City of Louisville v. Helman*, 253 S.W.2d 598, at 600 (Ky., 1952). When the intent of the General Assembly is examined, the determination that Medi-Share is insurance and the application of the insurance code to Medi-Share's activities appear abundantly justified.

This Court has the opportunity to correct the direction in which the Court of Appeals has driven this case. No deference is due a circuit court's conclusions concerning judicial construction of statutes. *Wheeler and Clevenger Oil Co., Inc., v. Washburn*, 127 S.W.3d 609 (Ky., 2004). Appellant submits the same principle holds true for the decision of the Court of Appeals in this matter. The Court of Appeals erred in finding Medi-Share outside the definition of "insurance." This Court is not obligated to follow that error.

**II. THE COURT OF APPEALS ERRED IN AFFIRMING THE FRANKLIN CIRCUIT COURT'S JUDGMENT THAT MEDI-SHARE MEETS THE REQUIREMENTS OF THE RELIGIOUS PUBLICATIONS EXEMPTION FROM THE KENTUCKY INSURANCE CODE**

The effect of the Court of Appeals opinion is to affirm the Franklin Circuit Court's judgment that Medi-Share, even were it insurance, would be exempt from Kentucky's insurance code as a religious publication. See KRS 304.1-120(7). This is the case despite the concurring (in result only) opinion and the dissenting opinion indicating those judges' belief that Medi-Share does not meet the requirements to gain that exemption. (Opinion of the Court of Appeals, pp. 11-12, 16.) Given that a majority of the Court of Appeals panel denied Medi-Share meets the criteria for the exemption, Appellant submits that this Court perforce should reverse the opinion of the Court of Appeals on this issue. It seems anomalous for a minority view to override the expressed and contrary view of the majority. Certainly, it is error to affirm the circuit court's judgment that Medi-Share meets the requirements for a religious publication exemption. The "official" majority of the Court of Appeals varied from the proper construction of the religious publication statute---that all criteria must be met in order to be exempt from the insurance code---and this Court is not bound by that error. *Wheeler and Clevenger Oil Co., Inc., supra.*

The Court of Appeals ignored the clear wording of KRS 304.1-120(7) that all criteria set out in the statute must be met to have the exemption. The Court of Appeals offered no examples of how Medi-Share meets each of the criteria for exemption, just as the Franklin Circuit Court gave no explanation to that end. The weight of the evidence in the record demonstrates there is no substantial evidence to support either the circuit court's judgment that the exemption criteria are all met, or the Court of Appeals deference to the circuit court on this issue. The relevant statute states:

“No provision of this code shall apply to:

....

(7) A religious publication (as identified in this subsection), or its subscribers, that limit their operations to those activities, and:

(a) Is a nonprofit religious organization;

(b) Is limited to subscribers who are members of the same denomination or religion;

(c) Acts as an organizational clearinghouse for information between subscribers who have financial, physical, or medical needs and subscribers who choose to assist with those needs, matching subscribers with the present ability to pay with subscribers with a present financial or medical need;

(d) Pays for the subscribers' financial or medical needs by payments directly from one (1) subscriber to another;

(e) Suggests amounts to give that are voluntary among the subscribers, with no assumption of risk or promise to pay either among the subscribers or between the subscribers and the publication; *and*

(f) Provides the following verbatim written disclaimer as a separate cover sheet for all documents distributed by or on behalf of the exempt entity, including all applications, guidelines, promotional or informational materials, and all periodic publications:

"This publication is not issued by an insurance company nor is it offered through an insurance company. This publication does not guarantee or promise that your medical bills will be published or assigned to others for payment.

Whether anyone chooses to pay your medical bills will be totally voluntary. This publication should never be considered as a substitute for an insurance policy.

Whether you receive any payments for medical expenses, and whether or not this publication continues to operate, you will always remain liable for any unpaid bills."

-----KRS 304.1-120(7) [emphasis added]

Again, the statute makes it clear that every criterion must exist to entitle Medi-Share to the exemption. Medi-Share does not accomplish this. To get the exemption a plan must be limited to subscribers who are members of the same denomination or religion. Under the Medi-Share plan, though, the member does not have to remain a Christian in order to have his medical expenses paid. As long as the member makes the

annual and monthly payments as they come due, no further inquiry is made into the member's religious beliefs (Video Record, 10-25-06: 10:47 to 10:50:00).

Medi-Share also must act as a clearinghouse matching subscribers with needs to subscribers with the present ability to pay. There is no matching in Medi-Share. At best, every month a member pays into the plan, and every month another member receives payment for a claim, but there is no connection. Medi-Share expects a member's payment to be made whether that member knows whom he is helping, or whether this particular monthly payment is going to anyone, as is the case during months when the amount of claims does not rise to the amount of payments (Video Record, 10-25-06: 11:20:00). Moreover, in regard to matching needs with ability to pay, Medi-Share bases the amount of the monthly fee required of its members in any month upon statistical trending (Video Record, 10-25-06: 11:24:00). Clearly, no matching of need to payor occurs in Medi-Share.

Payments from subscriber to subscriber must be direct, but this does not happen in Medi-Share. Medi-Share receives monthly payments, from which the plan takes a percentage for administrative costs, and sees to the distribution of money for claims payments. That, however, is the extent of any connection between the needy and the payors. A payor does not even necessarily know to whom the payor's monthly payment goes. There is no direct payment from subscriber to subscriber (Video Record, 10-25-06: 11:24:00; COK trial exhibit 1, Medi-Share Guidelines and application).

The amounts given by subscribers must be voluntary, with no promise to pay either among the subscribers or between the subscribers and the publication. Medi-Share involves a promise to pay. The member acknowledges the necessity to make the monthly

payments on time for the benefit of other members (COK trial exhibit 1, Medi-Share application). Medi-Share couples the member's acknowledgement with a warning that the member who does not pay either the monthly fee or the annual fee (even if the member paid the monthly fee faithfully) will have coverage by Medi-Share terminated (COK trial exhibit 1). It is worth noting that the annual fee---the non-payment of which brings termination from Medi-Share---goes strictly for Medi-Share's administrative costs (Video Record, 10-25-06: 10:13:00). Thus, a promise to pay runs from member to member and from member to Medi-Share.

In sum, the substantial evidence is that Medi-Share does not meet every criterion for the religious publication exemption, when it is necessary that every criterion be met. The Court of Appeals erred in upholding a judgment that the plan deserves the exemption.

#### CONCLUSION

For the reasons stated above, this Court should reverse the opinion of the Court of Appeals and vacate the Franklin Circuit Court's judgment that Medi-Share is not insurance. Too, this Court should reverse the opinion of the Court of Appeals and vacate the judgment of the Franklin Circuit Court that Medi-Share qualifies for a religious publications exemption from the Kentucky insurance code. This Court should direct the Franklin Circuit Court to enter a judgment and order permanently enjoining Appellee from operating the Medi-Share plan in the Commonwealth of Kentucky.

Respectfully submitted,  
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