



**THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA**

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: 21 September 2011
Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

REGISTRAR OF MEDICAL SCHEMES v SUREMED MEDICAL SCHEME

The Supreme Court of Appeal (SCA) today held that the Registrar of the Council for Medical Schemes does not have the power in terms of section 63 of the Medical Schemes Act 131 of 1998 to confirm an exposition which is not underpinned by a valid and binding agreement. It dismissed an appeal against an order of the North Gauteng High Court, Pretoria reviewing and setting aside the Registrar's confirmation of an exposition that was not underpinned by a valid transaction between two medical schemes.

Thebemed Medical Scheme and Suremed Medical Scheme had concluded a memorandum of understanding in terms of which they agreed to merge. The merger was subject to approval by members of each scheme and by the Council for Medical Schemes. Before they could secure the approval of their members, the Schemes jointly prepared an exposition which was accepted by the boards of both schemes and was subsequently lodged with the Registrar. The exposition was open for public inspection and the Registrar gave

interested parties a certain period within which to comment on it. Subsequently, Thebemed's members voted in favour of the merger while the majority of Suremed's members voted against it. As a result of the vote of its members, Suremed asked the Registrar to withdraw the exposition. The Registrar nevertheless confirmed the exposition. Suremed then appealed to the Medical Schemes Appeal Board, which dismissed the appeal. Suremed then successfully instituted a review application in the high court.

Before the SCA the Council and Thebemed argued that the Registrar had the power to confirm an exposition even if it was not underpinned by a binding agreement to merge. According to their interpretation of section 63, the exposition became binding on the Schemes independently of any underlying agreement and immediately after confirmation by the Registrar. In rejecting this argument, the SCA held that the inclusion of the word *transaction* in section 63 clearly indicates that there must be agreement between the parties concerned, before the process created by the section can be set in motion. It stated that an exposition, as used in the section, is intended to explain and comment on the underlying transaction. Without an underlying transaction, the SCA held, there would be nothing to explain or deliver comment on. It further held that section 63 does not obviate the necessity of an agreement between the parties. The SCA also rejected the argument that once a party had knowledge of the exposition and willingly participated in the process provided for in the section, and in particular allowed the exposition to lie open for inspection, it was not possible for such party to contend that it had not consented to the proposed transaction, as the process was then under the control of the Registrar. It held that it was absurd to suggest that a transaction could be foisted upon a party where such party had not agreed to a merger or transfer of business, but merely because such party had, in some way, participated in the process created by section 63. Consequently, the SCA dismissed the appeal with costs.