COMMONWEALTH OF THE BAHAMAS.
IN THE SUPREME COURT

COMMERCIAL DIVISION
2019/COM/bnk/00077

IN THE MATTER OF THE COMPANIES ACT, 1992, CH. 308

AND IN THE MATTER OF PACIFICO GLOBAL ADVISORS LTD

Before:	**The Hon. Madam Justice Renae McKay**
Appearances:	**Mrs. Simone Morgan-Gomez and Ms. Philisea Bethel for the Official Liquidator**
	Mr. Phillip Davis Q.C, Mr. Phillip McKenzie and Mr. Andre Rahming for Receiver/Manager
	Mrs. Kystal Rolle Q.C. and Ms. Cyd Ferguson for Deltec Fund Services Limited, Deltec Fund Directors Ltd. and Deltec Fund Governors Ltd. (collectively referred to as "Deltec"),
	Mrs. Gail Lockhart-Charles for the Liquidation Committee
	Mr. Gwain Ward and Ms. Arimantha Hepburn holding watching brief for the Securities Commission
Hearing Date:	**9th June, 2020**
Ruling Date:	**17th September 2020**

RULING

Commercial Law – Liquidation – Receivership – Whether assets held by a company from a contractual relationship become trust assets of a company – Whether liquidator's fee can be paid from those assets – Whether application was a sanction application pursuant to the Companies (Winding Up Amendment) Act – Whether parties had a right to audience

Introduction

1. By Order dated 28th October, 2019 and filed on 8th November, 2019, Pacifico Global Advisors Ltd. (In Liquidation) **("PGAL")** was placed in voluntary liquidation under the supervision of the Supreme Court by The Hon. Mr. Justice Ian Winder **("Winder J")**, who has primary carriage of the liquidation proceedings. The current application involves a party

represented by Davis & Co., the firm which Winder J was formerly associated and as such he formally recused himself from the hearing of this application.

2. Mr. Edmund Rahming, the Official Liquidator **(the "OL")** appointed by the Court herein, seeks the sanction of the Court for a fee payment which represents liquidation fees and General Liquidation Costs incurred by him up to the date of the application, from the fifteen Sub Funds of Lyford Diversified Global Fund, SAC, which PGAL had carriage of in its capacity as Investment Manager.

Application

3. By Summons filed 26th May, 2020 the OL, pursuant to sections 204 (3) (4), 205 (3)(a) and section 7 of Part 1 of the Fourth Schedule of the Companies (Winding Up Amendment) Act, 2011 **("CWUAA")** sought an Order:

3.1 Sanctioning the OL to deduct or cause to be deducted costs solely attributable to the identification, realization, preservation, recovery, distribution and administration of assets being held by PGAL in the following fifteen segregated accounts, Alpha Pacifico Sub-Fund, WIK Sub-Fund, Pacifico Global Opportunities De Sub-Fund, Omega Pacifico Sub Find, LAM Sub Fund, Spectator Sub Fund, Pacifico Global Opportunities KA, AL Sub-Fund, Basur Sub-Fund, EUR Conservative Portfolio Sub-Fund, Satur Sub-Fund, Global Opportunities KR, Sub-Fund, Pacifico Global Opportunities CM Sub-Fund, Global Opportunities EUR Sub-Fund and Pacifico Global Opportunities GT Sub-Fund **("Sub Fund Trust Assets")**; and

3.2 Sanctioning the OL to deduct or cause to be deducted from the Sub Fund Trust Assets 90% of the balance of the liquidation costs not solely attributable to the Sub Fund Trust Assets **("General Liquidation Costs")** as the Sub Fund Trusts Assets constitute 90% of the assets in PGAL's name for such funds to maintain the liquidation process which would enable the OL to attend to the Sub Fund Trust Assets; and

3.3 That the Sub Fund Trust Assets and General Liquidation Costs be apportioned amongst the various Sub Fund Trust Assets in a manner established and approved by the Court upon application by the OL;

3.4 That the OL have liberty to apply.

3.5 The OL undertook to repay any portion of the General Liquidation Costs that would be paid from the Sub Fund Trust Assets **(the "Costs Summons").**

4. The OL relied on his Sixth, Seventh and Eighth Affidavits in support of the Costs Summons.

5. In addition to the Orders sought in the Cost Summons, preliminary objections were raised with respect to the right of audience at the hearing of the Receiver and Manager, Mr. Phillip Galanis **(the "Receiver and Manager")**, Deltec Fund Services Limited **("DFS")**, Deltec Fund Directors Ltd. **("DFD")** and Deltec Fund Governors Ltd. **("DFG") (collectively referred to as "Deltec")** and the Liquidation Committee **("LC")**.

6. The issues to be considered and decided on by the Court herein are:

6.1 Whether the Receiver and Manager, Deltec and the LC have a right of audience on the Costs Summons;

6.2 Whether the Costs Summons is a sanction application pursuant to Order 11, rule 1 of the CLR; and

6.3 Whether the assets termed "Trust Assets" by the OL are in fact trust assets held by PGAL and if so whether they can be used to pay the OL's costs of the liquidation.

7. The parties have filed numerous Affidavits in this matter. I rely on the uncontested facts as set out in each of them.

8. The first matter for my consideration is with respect to the preliminary objection by the OL with respect to the right of audience of the Receiver and Manager, Deltec and the LC.

OL's Preliminary Objection – Sanction Application and Right of Audience

9. With respect to the preliminary objection to the right of audience Counsel for the OL submitted that the application was a sanction application brought pursuant to the provisions of Section 7 of Part 1 of the Fourth Schedule of the CWUAA. This provision permits the liquidator to apply to court to enable him to deal with all questions in any way relating to or affecting the assets or the winding up of the company and to take any security for the discharge of any such call, debt, liability or claim and to give a complete discharge in respect of it.

10. The OL objected to the participation of Receiver and Manager, Deltec and the LC in the application, submitting that the parties do not fall within the definition of the classes of persons who could be heard pursuant to Order 11, rule 3 and Order 16 rules 1 and 6 of the Companies Liquidation Rules 2012 **("CLR")** and further that Order 1 of the CLR states that the Rules of the Supreme Court did not apply in liquidations.

Order 11, rule 3 of the CLR states:

"Hearing of sanction applications (0.11, r.3)

3.(1) Sanction applications shall not be heard in chambers unless –

...

(2) The official liquidator has the right to be heard on every sanction application and it is the official liquidator's duty to attend and be prepared to assist the court in respect of any sanction application made by the liquidation committee or any creditor or contributory.

(3) In addition to those who are entitled to be served in accordance with rule 2, the court may allow the following classes of persons to be heard –

(a) any other creditor, if the company is insolvent;

(b) and other contributory, if the company is solvent;

(c) any other creditor or contributory, if the official liquidator has determined that the company should be regarded as of doubtful solvency.

Evidence for use in sanction applications (O.11, r.4)

4.(1) When a sanction application is made by the official liquidator –

(a) he may rely upon affidavit evidence; and/or

(b) he may rely upon the whole or part of any report or reports which have been filed."

Order 16 CLR

"PART 1 – PROCEDURE FOR PROVING

Introduction (O.16, r.1)

1. (1).....

(2) Where a company which is insolvent or of doubtful solvency is being wound up by the court, a person claiming to be a creditor of the company and wishing to recover his debt must (subject to rule 7) submit his claim in writing to the official liquidator and is referred to as "proving" for his debt and the document by which he seeks to establish his claim is referred to as his "proof" or "proof of debt".

(3) .....

(4) It is the duty of the official liquidator to adjudicate the creditors' claims, for which purpose he acts in a quasi-judicial capacity.

(5).....

Admission and rejection of proof (O.16, r.6)

(6) (1) A proof may be admitted for dividend either for the whole amount claimed by the creditor, or for part of that amount.

(2) Where the official liquidator has admitted a creditor's proof in full, he shall notify the creditor of this fact in CLR Form No. 25.

(3) Where the official liquidator has rejected the creditor's proof or admitted it only in part, he shall notify the creditor in CLR Form No. 26"

Receiver and Manager

11. Mrs. Simone Morgan-Gomez, Counsel for the OL **("Mrs. Morgan-Gomez")** submitted that the Receiver and Manager lacked locus standi to appear at the hearing of the OL's Costs Summons because he was not a creditor. Counsel submitted that while the OL understood the Receiver and Manager's duties with respect to the Sub Fund Trust assets, the Receiver and Manager was still required to comply with the CWUAA and CLR which provided guidance on how to properly enter the PGAL liquidation in order to attend to such duties.

12. Mrs. Morgan-Gomez further submitted, that as the receivership order was still in place, both the directors of Deltec and the Receiver and Manager could not claim to represent

the segregated account interest. Counsel acknowledged that if any of those two parties were to be heard it was the Receiver and Manager. However, submitted that he lacked locus because he did not file a proof of debt.

13. Counsel for the Receiver and Manager, Mr. Phillip Davis Q.C **("Mr. Davis Q.C.")**, in response, submitted that the OL's Costs Summons was not a sanction application as envisioned by Order 11, rule 1 of the CLR. This order would ordinarily allow the OL to apply to the Court to sanction powers exercised by him pursuant to Part 1 of the Fourth Schedule in the CWUAA. He submitted that the OL's present application to defray liquidation costs and expenses was not in the powers listed.

14. Order 11, rule 1 of the CLR is in the following terms:

> **"Introduction (0.11, r.1)**
> **1. (I) Any application to the court made by-**
> **(a) the official liquidator for a order sanctioning his exercise or proposed exercise of any power conferred upon him by Part I of the Fourth Schedule to the Act or otherwise; or**
> **(b) a creditor or contributory for an order directing the official liquidator to exercise or refrain from exercising any of his powers in a particular way, is referred to in these Rules as a "sanction application".**
> **(2) Sanction applications shall be made by summons in CLR Form 16."**

Part I of the Fourth Schedule of the CWUAA provides,

> **"Powers exercisable with sanction**
> **1. Power to bring or defend any action or other legal proceeding in the name and on behalf of the company.**
> **2. Power to carry on the business of the company so far as may be necessary for its beneficial winding up.**
> **3. Power to dispose of any property of the company to a person who is or was related to the company.**
> **4. Power to pay any class of creditors in full.**
> **5. Power to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the company or for which the company may be rendered liable.**
> **6. Power to compromise on such terms as may be agreed all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, asce11ained or sounding only in damages) subsisting, or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company.**
> **7. Power to deal with all questions in any way relating to or affecting the assets or the winding up of the company, to take any security for the discharge of any such call, debt, liability or claim and to give a complete discharge in respect of it.**
> **8. The power to sell any of the company's property by public auction or private contract with power to transfer the whole of it to any person or to sell the same in parcels.**
> **9. The power to raise or borrow money and grant securities therefor over the property of the company.**
> **10. Power to disclaim onerous property."**

15. Mr. Davis Q.C. further submitted that upon a true construction of Order 11 of the CLR, even if the application was a sanction application any party likely to be affected by the order sought by the OL's Costs Summons would have a right to be heard. This Order, Counsel said, was permissive and not restrictive and to contend otherwise would make the provisions of Order 11 rule 2 (5) of the CLR, which gives the Court the discretion to direct that the hearing of the sanction application be advertised otiose.

16. Counsel continued that the Rule as constructed was to ensure justice. As such the applications are be advertise and upon advertisement, an interested party would not be denied the rights of audience. Mr. Davis Q.C. went on to say that in any event, the OL's Costs Summons did not fall within the categories of Part 1 of the Fourth Schedule.

17. In conclusion, Mr. Davis Q.C. submitted that given the Receiver and Manager's relationship in place prior to PGAL's liquidation, the Receiver and Manager should be allowed to be heard, even if only as amicus curiae. Mr. Davis also added that the Receiver and Manager was not a contributory. He further stated that on a true construction of section 7, Part 1 of the Fourth Schedule, it was not meant to deal with approval of liquidation fees as that was a separate jurisdiction.

Deltec

18. Counsel for the OL submitted that even Deltec's association with the Sub Funds did not qualify it to be heard at the hearing and there was no provision of the rules which allowed it to obtain locus stand. She added that based on the records of PGAL, DFS lacked locus standi as it was not and could not be a creditor in the liquidation because it had no proprietary claim to the Sub Fund Trust Assets. Counsel for the OL submitted that while DFS provided administrator services to the Sub Funds and was involved in matters before the Court which resulted in the grant of several Consent Orders concerning the Receiver and Manager's remuneration, it did not file a proof of debt and was therefore not a creditor. Counsel for the OL additionally submitted that even its association with the Sub Funds did not qualify it to be heard at the hearing as there were no provisions under the CWUAA or the CLA to obtain locus standi. She added that the Court was restricted by O. 11 rule 3(3) of the CLR as to who could be invited into a sanction application.

19. Counsel continued that DFD and DFG both lacked locus standi as they were neither a creditor nor a contributory and any rights they may have had as directors of the Sub Funds were given to the Receiver and Manager through the receivership pursuant to sections 38(3), 41 (3) and (5) of the Segregated Accounts Companies Act **("SAC Act")** and rendered them defunct.

20. Sections 38 (3), 41 (3) and (5) of the SAC Act are as follows:

> **"RECEIVERSHIP AND WINDING UP**
> **38. (1).....**

(3) A receivership order shall direct that the business and assets linked to a segregated account shall be managed by a receiver specified in the order for the purpose of –
(a) the orderly management, sale, rehabilitation, run-off or termination of the business of, or attributable to, the segregated account; or
(b) the distribution of the assets linked to the segregated account to those entitled thereto.
....
41. (1) The receiver of a segregated account –
(a) may do all such things as may be necessary for the purposes set out in section 38(3); and
(b) shall have all the functions and powers of the directors and managers of the company in respect of the business and assets linked to the segregated account.
....
(3) In exercising his functions or powers the receiver is deemed to act as the agent of the company in respect of the segregated account, and does not incur personal liability except to the extent that his conduct amounts to misfeasance.
(4) Any person dealing with the receiver in good faith is not concerned to enquire whether the receiver is acting within his powers.
(5) During the period of operation of a receivership order the functions and powers of the directors and managers and any liquidator of the company cease in respect of the business and assets linked to the segregated account in respect of which the order was made."

21. Counsel placed relied on **Moss Steamship Company Limited v Whinney [1912] A.C. 254** in which Lord Atkinson at page 265 stated:

> **"This appointment of a receiver and manager over the assets and business of a company does not dissolve or annihilate the company, any more than the taking possession by the mortgagee of the fee of land let to tenants annihilates the mortgagor. Both continue to exist; but it entirely supersedes the company in the conduct of its business, deprives it of all power to enter into contracts in relation to that business, or to sell, pledge, or otherwise dispose of the property put into the possession, or under the control of the receiver and manager. Its powers in these respects are entirely in abeyance....It would seem to me plain, therefore, that....the disabled and superseded company whose powers are dormant."**

22. Mrs. Morgan-Gomez additionally submitted that the OL was not a party to the actions in which the Consent Orders were made and was therefore not a party to the Consent Orders. The OL she said only became aware of them on 20th May, 2020 and that in any event if they were somehow mandatory they did not release the OL from his statutory duties for the liquidation.

23. Mrs. Rolle Q.C., in reply submitted that her clients did in fact have locus standi to be heard as prior to PGAL going into liquidation, Deltec was appointed to disburse the Sub Funds' assets along with the Receiver and Manager. She added that an application was also made to have the receivership discharged and relied on section 42(2) of the SAC Act which provides:

> **"The court, on hearing an application for the discharge or variation of a receivership order, may make any interim order it thinks fit or adjourn the hearing, conditionally or unconditionally."**

24. Based on this provision, she submitted that the Court was empowered to make any Order it deemed appropriate and that the Court had sanctioned the varied Order. It was, Counsel added, that the OL could not proceed as if the Consent Orders did not exist and that the Consent Orders

gave Deltec the authority to liquidate the Sub Funds, *inter alia*. Deltec, Counsel said, did not file a proof of debt because it did not purport to have a debt.

25. Additionally, Mrs. Rolle Q.C. submitted that because the assets are under receivership, the Court has the ability to allow any party who had the right or authority or ability to make a representation on the receivership in these proceedings to do so. With respect to jurisdiction, she contended that even where an Act limited the Court's powers, a party could still be heard under the Court's inherent jurisdiction.

Liquidation Committee

26. Counsel for the OL submitted that with respect to the Liquidation Committee, Gail Lockhart Charles & Co. **(the "Firm")** was not its lawful Counsel. As such, the Memorandum of Appearance filed on the LC's behalf should be ordered withdrawn and the LC be denied a right to be heard. The OL relied on Order 9 rule 5 (1) in that regard which states:

> **"Counsel to the liquidation committee (O.9, r.5)**
> **5. (1) The liquidation committee may resolve to appoint a counsel and attorney to give legal advice to the committee, either generally or in respect of any specific matter arising in connection with the liquidation."**

27. Counsel for the OL submitted that based on the wording of Order 9, rule 5(1), that not only would the LC have to appoint the Firm as its Counsel by resolution but that the OL needed to be provided with notice to attend such a meeting. Mrs. Morgan-Gomez further submitted that in order for any meeting to be properly constituted, the OL or his representative had to be present and he was required to prepare the agenda for the gathering.

28. Counsel for the OL further argued that the admission in the LC's affidavit of Mr. Luca Lanciano filed 21st May 2020, that a unanimous resolution was passed which appointed the Firm as the LC's counsel, was not in accordance with Order 9 of the CLR. She continued saying that the OL had a statutory discretion in relation to the content shared with the LC and that the LC's disfavor with the OL did not constitute legal grounds to refuse the OL access to the Sub Fund Trust Assets.

29. Mrs. Morgan-Gomez additionally contended that despite the meeting being held and the Firm's appointment being agreed to, the Firm was still not in compliance because the engagement letter between the Firm and the LC was not forwarded to the OL and should have been as he has to approve the LC's counsel's fees pursuant to Order 9 and Order 25 of the CLR.

30. Mrs. Gail Lockhart Charles, Counsel for the LC **("Mrs. Lockhart-Charles")** submitted that on 1st June, 2020 the LC held a meeting that was attended by the OL during which a motion was led by the chairman to appoint the Firm as Counsel for the LC **("1st June LC Meeting")**. Counsel added that this motion was passed unanimously together with a

motion approving all of the resolutions referred to in the "Unanimous Written Consent of the Members" executed on 22nd May, 2020. She added that by the "Unanimous Written Consent of the Members" and the 1st June LC Meeting, her appointment as the LC's Counsel was ratified.

31. Mrs. Lockhart-Charles, agreed with Counsel for the OL, that the OL's Cost Summons was a sanction application. She submitted that Order 11 Rule 2, 1A and B made it a requirement that a sanction application be served on each member of the LC along with its Counsel, which the OL did in this instance. She said that it would be strange for the Court not to permit Counsel to be heard for the LC where it was mandated by statute that they be served. The LC also relied on Order 9 Rule 5 of the CLR which states,

> **"The liquidation committee may resolve to appoint a counsel and attorney to give legal advice to the committee, either generally or in respect of any specific matter arising in connection with the liquidation."**

32. In that regard, Counsel for the LC referred the Court to paragraph 11 of the Affidavit of Mr. Luca Lanciano and Mr. Alexander Maillis filed 21st May, 2020 wherein they averred that they saw it prudent to engage counsel to provide advice on the OL's Costs Summons and what could be done to protect the interest of the creditors and the investors in the circumstances. Counsel further directed the Court to paragraph 12 of the same Affidavit which stated that the LC wished to have the OL participate in a meeting with the LC however, the OL nor any of his attorneys responded to the request or attended the meeting. Mrs. Lockhart-Charles also added that the LC fell within the classes of people who could be heard on a sanction application pursuant to Order 11 Rule 3 of the CLR. She also added that the OL was aware of the terms of engagement between the LC and the Firm.

Ruling

33. Having considered the evidence, submissions and authorities of the parties, I make the following findings:

33.1 The powers which are exercisable with sanction set out in Part I of the Fourth Schedule of the CWUAA relate to the company which is in liquidation. As such the term "assets" in this present matter can only relate to the assets of Pacifico Global Advisors Ltd. (In Liquidation) **(PGAL).** The assets of the fifteen segregated accounts, cannot fall within the definition of the term **assets** as set out in section 7 of Part I of the Fourth Schedule of the CWUAA. As such, the present application is not a sanction application as envisioned by Order 11, rule 1 of the CLR .

33.2 I accept the submissions of Mr. Davis, Q.C. the power to defray liquidation costs and expenses is also not included in the power which the liquidator sought to have sanctioned.

33.3 Moreover, even if the application was a sanction application, the legislature did not intend to exclude an interested party from being heard, given the provisions set out in the CLR to serve an interested party and advertise the hearing.

33.4 More importantly, the assets of the fifteen sub funds are the subject of a Court supervised receivership. Under the supervision of the Court, both the Receiver and Manager and Deltec are mandated to liquidate and disburse the assets. Accordingly, they have a sufficient interest in the present hearing and must be given the right of audience.

33.5 As the overriding objective of the Court is to ensure that justice is achieved for all involved, I find that the LC (who agreed that the application is a sanction one), is also an interested party and has the right to be heard. It would be inequitable to disallow a party, the right of audience because of irregularities which could later be properly addressed.

33.6 In any event, where the statutory provisions may limit who may be heard on an application, the Court pursuant to section 7 of the Supreme Court Act in its unlimited original jurisdiction in the interest of justice and has the authority to hear a party.

34. Accordingly, I find that the application is not a sanctions application and that the Receiver and Manager, Deltec and LC all have a right to be heard herein.

Whether the Sub Funds of Lyford Diversified can be considered as the Trust Assets of PGAL in order to deduct the General Liquidation Costs requested by the OL

35. With respect to the final issue for the Court's consideration, Counsel for the OL directed the Court to his Sixth affidavit filed 28th February, 2020. Therein, the OL averred that PGAL, as an investment manager and custodian, held most of its clients' assets as trust Assets in accounts in PGAL's name at either Banca CredInvest SA or Swissquote Bank Limited, which accounted for 99.6% of the cash and securities assets in PGAL's name. The OL continued on that 98% of the proprietary assets in PGAL's name were Trust Assets and that he and his team had analyzed those assets and identified the beneficial owners in order for the assets to be returned to the individuals/entities.

36. The OL further attested that PGAL had minimal proprietary assets and even less liquid proprietary assets and was therefore unable to fund the General Liquidation Costs, much less

the Trust Expenses. He went on to say that most of the assets held by PGAL were held on a fiduciary basis and appeared to qualify as Trust Assets. He also added that there were unresolved issues in relation to the alleged Trust Assets which needed to be investigated further before they could be disbursed to its beneficiaries or secured creditors.

37. The OL also stated that PGAL's clients had invested in Sub Funds which were currently under receivership and as at 30th November 2019, two were liquidated, two were not funded and one was closed. The OL also added that there were clients' assets invested in Sub Funds for which PGAL did not act as Custodian, yet it still maintained custody. He further stated that there were other issues that required consideration which needed to be addressed before they could be transferred.

38. The OL continued that three of the Sub Funds had made investments in each other and were now inextricably linked. He also attested that PGAL's record keeping was inadequate which resulted in PGAL's failure to perform its duty to conduct periodic reconciliations of the assets PGAL held for its clients and that contracts were improperly entered into between Sub Funds and PGAL which would have allowed clients to invest their assets and subscribe to various Sub Funds.

39. With respect to the transfer of the remaining Sub Funds, the OL avers that the Receiver and Manager had requested that PGAL transfer the trust assets to his control however, he was still reviewing the relevant documentation to decide whether the Receiver and Manger was the proper party to receive the trust assets. He added however that a separate sanction application would be made to address his findings along with a proposal of the way forward. The OL then stated that he had carried out certain tasks that were solely attributable to the trust assets which had to have been done to analyze and disburse the trust assets which made up 99.6% of the liquidation assets.

40. The OL further stated that the majority of the costs incurred to date by the liquidation process was for the benefit of the trust assets. He further stated that it was a priority to consider how to deal with the fifteen Sub Funds in receivership and how to minimize costs based on PGAL's lack of assets to cover any additional work being done. He added that his role as an Official Liquidator had become two fold as he was the Liquidator of an insolvent company and a trustee of fiduciary assets.

41. By his Seventh affidavit filed 19th May, 2020, the OL attested that at the first LC meeting held on 19th March, 2020 all three of the LC members were present when the OL's Costs Summons was discussed and that there was no approval or objection to the Order being sought. Thereafter, an email was sent on the 2nd April, 2020 which contained the draft minutes of the meeting and resolutions, one of which included a resolution regarding the payment of the General Liquidation Costs and Trust Expenses from the estate of PGAL inclusive of the Sub Fund Trust Assets. He added that the members of the LC failed to pass a resolution in favour of or objecting to the issue. He also added that the OL's Costs Summons and Affidavit

in support was posted on PGAL's website and that no objection was received by any creditor to the issue.

42. By his Eighth affidavit filed 27th May, 2020, the OL stated, *inter alia*, that the trusts costs which were sought in the OL's Costs Summons included the OL identifying, realizing, recovering and investigating losses and whether they could be recovered, all of which included the Sub Funds assets and that the General Liquidation Costs included the OL notifying known custodians of assets held in PGAL's name, dealing with clients and creditors, managing the assets and carrying out statutory duties and other tasks.

43. He added that it was counterproductive for the LC to attempt to hinder the OL from being paid from the Sub Fund Trust Assets when there was insufficient proprietary assets to pay liquidation costs only to turn around and request that the Sub Fund Trust Assets be lawfully disbursed by OL. The OL further stated that at the time the Affidavit had been sworn, PGAL had $171,000 in proprietary cash however, the OL's fees and General Liquidation Costs were approximately $715,119.79 which was the reason behind the OL's Costs Summons.

44. He went on to state that he and his team had been working unpaid for eight months and he would possibly have to reduce his duties as the OL in light of the possible non-payment. The OL added that he needed to be paid in order for him to finalize assessments on whether or not PGAL's clients who invested in the Sub Funds through Lyford Diversified Fund were PGAL's creditors.

45. In her submissions, Mrs. Morgan-Gomez relied on section 204 of the CWUAA which allowed a liquidator to be remunerated from assets held upon a trust by the company in liquidation. Section 204 of the CWUAA is in the following terms:

> **"204. Remuneration of official liquidators –**
>
> **(1) The expenses properly incurred in the winding up, including the remuneration of the liquidator, are payable out of the company's assets in priority to all other claims.**
>
> **(2) ....**
>
> **(3) Where in the course of the reasonable exercise of his functions as liquidator in relation to assets which the company in liquidation held upon a trust, expressed or otherwise, the liquidator –**
>
> **(a) Identified or attempts to identify;**
>
> **(b) Recovers or attempts to recover;**
>
> **(c) Realizes or attempts to realize;**
>
> **(d) Protects or attempts to protect; or**
>
> **(e) Distributes such assets to the person or persons beneficially entitled, the liquidator to the extent of such activities (or other activity in relation to such assets considered by the court to be beneficial to those entitled to them) shall be regarded as having acted in the administration of trust assets and the liquidator, subject to the approval of the court, shall be entitled to be indemnified out of those assets in respect of costs that are allocable to the said activities."**

46. Counsel further submitted that there were discrepancies with the Sub Fund Trust Assets which resulted in the OL making communication with DBT and other custodian banks to obtain documentation to rectify the concerns held. She added that the costs associated with the recovery of the assets should be paid by the assets of the Sub Fund Trust Assets as the OL had filled the

shoes of a trustee of PGAL. Mrs. Morgan-Gomez also submitted that because the trust assets constituted 99.6% of PGAL's assets it would benefit from the General Liquidation Costs.

47. Counsel for the OL relied on the authority of **Re Berkeley Applegate (Investment Consultants) Ltd. (In Liquidation) [1988] 3 ALL ER 71** which was cited by approval **in Re Lehman Brothers International (Europe) (a company) (in administration)** and another in which Lord Walker stated:

> **"Under the general trust law theory they would claim the whole of their respective contributions, so far as sufficient client money could be traced and identified, and there might be some deduction for administrative costs under the principle in Re Berkeley Applegate....."**

48. In **Re Berkeley Applegate**, Nugee J at page 74, paragraph 1 added,

> **"The principal questions which arise are whether the money in the clients' account or the benefit of the mortgages is held on trust for the investors or forms part of the assets of the company."....That is the question in the instant case. It is a Trust Asset and if not then it is an asset of the company to the proprietary asset and anybody claiming under it would have to do so as a general creditor."**

49. Mrs. Morgan-Gomez relied on **Re Berkeley Applegate** as authority for the proposition that the benefits of the mortgages and the other funds were held on trust for the company's investors and allowed the liquidator to deduce his remuneration from such trusts. Nugee J based his decision on the fact that the liquidator had to investigate the company's affairs, deal with inquiries from investors, manage the investments and attend to general liquidation matters. Mrs. Morgan-Gomez submitted that these acts and more had to be done by the OL.

50. She also placed relied on **In the Matter of Dominion Investments (Nassau) Ltd. (In Liquidation) [2008] 6 BHS J No. 22** which cited **Berkeley Applegate** with approval. She claimed that the facts of the Dominion case were analogous to PGAL's case as Dominion held assets on trust for its investor clients and most of the work performed was in relation to the majority of the assets that the liquidator had to consider. Therein the court held that the liquidator could be remunerated from the trust assets because the company's assets could not cover the remuneration. She relied on paragraph 22 which stated,

> **"In this instance, Dominion does not appear to operate as a trustee of any formal trust set up by its investors. Nonetheless a trust is capable of arising without having been specifically declared by an express deed. Such trusts are implied by the operation of law. They may be either resulting, constructive or implied trust. It is to a resulting trust that the court must turn its attention in this particular instance."**

51. Additionally, the OL's Counsel submitted that OL should be allowed to be paid 80% of Trusts Costs and General Liquidation Costs pursuant to the filing of the requisite documents under section 12 (2) of the Insolvency Practitioner's Rules, 2012, which states that an official liquidator shall prepare a report and accounts which would contain all the information reasonably required to enable a creditor or contributory to make an informed decision about the reasonableness of the proposed basis of the remuneration and amount for which the official liquidator intends to seek the court's approval.

52. In respect to the OL's statement that the assets of the Sub Funds were comingled, the OL's Counsel, placed reliance on the authority of **In re Goldcorp Exchange Ltd. (In Receivership) [Appeal from the Court of Appeal in New Zealand] – [1995] 1 A.C. 74** in which the Privy Council held that there was no ability for the trust beneficiary to claim directly from the trust assets when the company, while in liquidation, had trust assets which were irrevocably comingled and that they became general creditors in the liquidation.

53. Mrs. Morgan-Gomez sought to distinguish **Space Investment** by arguing that it was a banking case and that once a bank received money it no longer belonged to the customer but the bank. However, when PGAL received the assets the trust nature of the assets was maintained. In that regard she stated that **Dominion** was applicable because in the case it was stated that the banking relationship could not be compared to an investment manager relationship. It was additionally submitted that the proper course of business under section 205 of the CWUAA was for the OL to do his job, look at what he found, read the books and figure out from a legal point of view what belongs to who. She added that the Receiver and Manager would not be aware of the state of the books and records of PGAL.

54. Additionally, Mrs. Morgan-Gomez submitted that the OL did not accept that the Sub Fund Trust Assets belonged to the Sub Fund or to the Receiver and Manager or that they belonged to the investors and that such a determination would be dealt with by another application. She added that the OL wanted to establish that it was not accepted that the assets in PGAL's name relating to the Sub Funds should go to the Receiver and Manager and again added that they may have to go to the investors but that would be dealt with by another application.

Receiver and Manager's Opposition to the OL's Costs Summons

55. Mr. Davis, Q.C., Counsel for the Receiver and Manager, referred the Court to the Receiver and Manager's Affidavit filed 4th June 2020. Therein he averred that pursuant to paragraph 5 of the Custodian Agreement between DBT and Lyford Diversified, it was agreed that DBT "*shall open and maintain a cash account for the Company and shall hold in such Cash Account.....all cash received by it from time to time for the account of the Company and shall be responsible for the safe custody of all Cash so received.*" DBT also agreed that it would provide or procure banking facilities for the Company. He confirmed that he requested invoices for services that had been rendered to the Sub Funds after he had terminated the investment agreement with PGAL and the Power of Attorney.

56. The Receiver and Manager further stated that his work in respect of WIK Sub Fund, Spectator Sub Fund, EUR Conservative Sub Fund and Omega Pacifico Sub Fund were completed and then terminated which had resulted in the assets being distributed to the persons entitled. He added that the Sub Funds were not assets of PGAL and that the failure of the OL to release the assets of the Sub Funds had negatively impacted the receiverships and had handicapped him from fulfilling his mandate.

57. He also added that it would not be necessary to prove a debt because PGAL was never indebted to the Sub Funds as PGAL was either a trustee or as a result of having administrative control had signatory rights to the accounts. He continued that Luca, a member of the LC was now the attorney for all of the Sub Funds via a Deed of Power of Attorney, and that they were his clients that he had brought on board upon joining PGAL and had managed them through PGAL.

58. Mr. Davis Q.C. on behalf of the Receiver and Manager submitted that the assets dubbed the Sub Funds were a particular creature of statute under the SAC Act. He added that the establishment of the segregated accounts did not create a legal entity distinct from Lyford Diversified but that it was a separate and distinct account of a segregated accounts company pertaining to an identified or identifiable pool of assets and liabilities which are separated or distinguished from other asserts of the SAC Act. He went on to say that the costs and expenses of a winding up, including the liquidator's remuneration should be payable out of the company's own assets and not assets held by the company on trust or by a Power of Attorney and relied on **In Re Berkley Applegate (Investment Consultants) Ltd. (in Liquidation) 1989 1 Ch. 32**, section 204 (1) of the CWUAA and Order 20 rule 1(1) of the CLR in support of his contention.

59. Mr. Davis Q.C. added that they were not trust assets, express or otherwise, as envisioned by section 204 (3) of the CWUAA which would allow the OL to be indemnified out of those assets. Mr. Davis Q.C further submitted that the beneficiaries of the assets did not need the assistance of the Court to secure their right and that no further assistance had been sought as they were already under a court supervised receivership. He relied on **Bell v Birchall 2015 EWHC 141 and Gillian et al v Hec Enterprises Limited et al 2016 EWCH 3179** in support of this contention.

60. He further submitted that the relationship between PGAL and the sub funds was contractual, based on the investment agreement in which there was no provision contained that directly or indirectly created a trust and that such contractual relationship was terminated prior to the voluntary liquidation. Additionally, that the work of the OL, for which costs and expenses were claimed was officious and a frolic on the part of the OL.

61. The Receiver and Manager's Counsel also contended that there was no statutory basis to allow the costs and remuneration because the assets did not belong nor were they held upon trust, expressed or otherwise by PGAL. On that basis it was posited that the principle **In Re Berkeley** would have to be considered. He submitted that the principle of "he who seeks equity must do equity" was applicable.

62. Mr. Davis Q.C. added that it was not necessary that the benefit was directly to the assets in which investors have an interest but that the carrying out of the work was necessary before the asset could be realized for the benefit of the investors. The Receiver and Manager continued that having regard to the nature of the assets in question, the work for which the OL sought allowance for his costs and for the skill and labour expended were outside of the Berkeley Applegate principle and Section 204 (3) of the CWUAA Act and in any event not an order that the Court ought to make.

63. Counsel for the Receiver and Manager continued that it was not an Order that the Court needed to make because the beneficiaries of the assets did not need the Court's assistance to secure his or he rights, the word done could not have added any value to the assets or persons interested in them and that any work done by the OL, if needed to be done, had to be done by the Receiver and Manager.

64. Additionally Mr. Davis QC submitted that because of the existence of the now terminated Custodian Agreement, the Investment Funds Regulations would have regarded the Custodian as the trustee of the investment funds and not PGAL as the Investment Funds Regulations, 2020 required a Custodian to be a licensee under the Bank and Trust Companies Regulation Act. Therefore Deltec would have been the Custodian.

Deltec's Opposition to the OL's Costs Summons

65. Deltec relied on the Affidavit of James A. Moss **("Mr. Moss")** filed 28th May, 2020. Mr. Moss, the Chief Operations Officer of DFS averred that as PGAL was only contractually engaged to advise Lyford Diversified on investments and the management of its clients' securities and assets Deltec did not accept the proposition that the assets of the Sub Funds were *trust assets. He explained that in the Financial Services Sector*, a custodian was a company that had physical possession of the financial assets which differed from an investment manager, in that capacity only DBT had formal custodian agreements with respect to the Sub Funds.

66. Mrs. Rolle Q.C. submitted that **The Dominion Case,** the authority relied on by the OL was instructive on a number of points. She submitted that the Court has to examine the facts and circumstances of each particular case in order to consider whether assets held by the liquidator are indeed trust assets.

67. Mrs. Rolle Q.C. pointed out that the extent of the relationship held between the parties at the relevant time was germane to the determination of the issue of whether the assets were trust assets and added that at the time the OL was appointed in October 2019, PGAL had no relationship with the Sub Funds which were then being managed by Phoenix. She brought to the Court's attention Clause 11.2 of the Investment Agreement which set out the terms to be followed upon termination of the agreement.

> **"On termination of this Agreement:**
>
> **the Investment Manager shall be entitled to receive all fees and other monies accrued and due up to the date of such termination (including) any accrued performance fee which shall be calculated by reference to Aggregate Net Assets Value on the date of termination) but shall not be entitled to compensation in respect of such termination;**
>
> **the Investment Manager shall forthwith deliver to the Company or as it shall direct all correspondence and records of all and every description relating to the affairs of the Sub-Fund which are in the Investment Manager's possession or under the Invest Manager's control and shall not be entitled to any lien in respect of any foregoing."**

68. Mrs. Rolle Q.C. also relied on **Sinclair Investment Holdings SA v Versailles Trade Finance Ltd [2006] 1 BCLC 60** in support of the contention that the existence of a trust relationship was the assumption of loyalty and a manifest intention to create such a relationship. In that regard, she submitted that PGAL no longer had any loyalty and no relationship with the

Sub Funds and no rights to any of its records which meant that there could be no factual or legal basis for the existence of a trust relationship.

69. She added that custody of the Sub Funds were relinquished. And as such, Mrs. Rolle further submitted that Credinvest and Swissquote could not be sub-custodians if there was no custodian since PGAL had relinquished its capacity as custodian. Therefore it had ceased to be a trust account pursuant to section 47 of the Securities Industry Act, 2011.

70. In relation to the omnibus account she explained that it was a conduit which was defined as a channel used to convey something from one point to another and not an account pursuant to Section 47 of the Securities Industry Act, 2011 nor Section 88 of the Securities Industry Regulations which allowed a broker-dealer to establish a trust account for monies received from or on account of any person either for the purchase or from the sale of securities and hold them separate from its own property. In the alternative, if the Court accepted that it was a Section 47 account then Section 47 (2) would apply which prevented moneys held in a trust account from being used for the payment of the debts or expenses of a broker-dealer.

71. Mrs. Rolle Q.C. further relied on **Space Investments Ltd v. Canadian Imperial Bank of Commerce Trust Co. (Bahamas) Ltd [1986] 3 ALL E.R. 75** and an excerpt from **'Principle of Corporate Insolvency Law'** in support of the position that assets initially subject to a trust may cease to be so as the result of authorised dealing by the trustee. She read an excerpt from the text **'Principle of Corporate Insolvency Law'** at page 137 para. 2 which stated.

> **"(2) Assets which cease to be trust assets**
>
> **.....Thus in the case of a trading trust established by a trust instrument which authorize the trustees to carry on trade for the benefit of the beneficiaries any disposition of a trust asset, whether absolutely or by way of security, falling within the actual or apparent authority of the trustees binds the beneficiaries, so that the asset is lost to the trust fund (in the case of an absolute disposition) or held by the trustees subject to the security interest (in the case of a disposition by way of security), and any proceeds of the disposition received by the trustees will become part of the trust fund in place of the original asset."**

72. Mrs. Rolle Q.C. compared the facts of this instant case to that of **Space Investments Ltd**, a matter in which a settlement deed authorized the trustee bank to open and maintain savings or current accounts with any bank, including itself. Therein the bank placed monies on deposit with itself and later went into liquidation. The Privy Council held that since the deposit of trust funds with the bank was authorized by the settlement and under well-established principles of banking law became the general monies of the bank, whose obligations were those of a debtor, not a trustee, the beneficiaries ranked pari passu with other unsecured creditors and did not enjoy any special status or priority. The funds in question ceased to be impressed with a trust as soon as they were deposited.

73. Mrs. Rolle Q.C. posited that since the Sub Funds were in receivership and the investment management, custodian and sub custodian contracts had all been terminated and because PGAL had authorized the transfer of the assets of the Sub Funds as directed by PGAL, the nature of the

relationship now was that Credit Invest, DBT and Swissquote all held the funds as debtor for sub funds and not pursuant to any contractual relationship.

Liquidation Committee Opposition to the OL's Costs Summons

74. Counsel for the LC submitted that in the interest of the creditors and investors it opposed the OL's Costs Summons as the OL was attempting to conduct his costs improperly. She further submitted that the appropriate process for the OL's costs would involve those costs being submitted to the LC which would then consider the costs and make a determination on whether or not the costs were excessive. She went on to say that it wished to ensure that the OL was not allowed to pay himself eighty percent of the costs.

75. Mrs. Lockhart-Charles also submitted that the assets of clients at PGAL were assets held in bank accounts and that they were not the OL's assets. In relation to the argument that the Sub Fund was comingled, Mrs. Lockhart-Charles submitted that the OL's definition of comingling was ill-advised and confusing and she submitted that the assets of the Sub Funds were Trust Assets and were not comingled with PGAL's assets and that it would be proper to hand over the assets. It was additionally submitted that PGAL did in fact have assets and that the OL was ignoring PGAL's assets to get to the millions of dollars in Trust Assets.

76. Counsel for the LC also argued that the OL could only have gotten paid out of the Trust Assets if he could prove that the work benefitted the assets however, he had not explained what he did, how much he charged for it and how it would benefit the investors. Mrs. Lockhart-Charles contended that while she did agree with Mrs. Rolle and Mr. Davis that the assets should be released she did not agree with their notion that the assets were not trust assets on the ground that if they are not trust assets then they would be PGAL's assets.

Discussion and Ruling

77. The final issue that must be determined by this Court is whether the assets of the fifteen sub funds have or have not become trust assets of PGAL.

78. I accept the submissions of Mr. Davis Q.C. that the assets of the Sub Funds are assets of a segregated account are not trust assets which were not comingled as alleged by the OL.

79. I also accept the submission of Mrs. Rolle QC that as the Sub Funds are now in receivership and the investment management, custodial and sub-custodial contracts have all been terminated and as the transfer of the assets of the Sub Funds had already been authorized by PGAL, Credit Invest, DBT and Swissquote all now hold the funds in the capacity as debtors for the Sub Funds. Because the relationship was contractual, upon its termination, no trust could be formed over the assets of the Sub Funds.

80. Lyons J. in **In the Matter of Dominion Investments (Nassau) Ltd. (In Liquidation) [2008] 6 BHS J No. 22** stated the the determination of whether or not the assets are trust assets of PGAL is a question of fact. At paragraph 37 of the judgment he said:

> **"I agree with the submissions of counsel that there is a strong evidential and legal basis upon which I can safely conclude that the assets to which the liquidator refers in his material are**

held in the manner submitted by the liquidator. That is as to the greater percentage of them being held in trust for the investors. It is a question of fact to be determined by the court as to the extent of the relationship held between (in this case Dominion and its investors) and as to whether or not a "trust" arose."

81. Accordingly, I have examined the facts of the instant case and as a matter of fact I accept the factual matrix as comprehensively set out in the Affidavit of James Moss filed herein on 28th May, 2020.

82. I find as follows that:

82.1 By Unanimous Resolutions of the Board of Directors of Lyford Diversified passed 7th March, 2019 and 8th April, 2019, fifteen of the Sub Funds were placed into Receivership and the Receiver and Manager was appointed. In April and May 2019 the Receiver and Manager made an application for the Receivership to be placed under the supervision of the Court, which has become the subject of fifteen different actions pending before the Supreme Court.

82.2 Following the Receiver and Manager's appointment on the 20th May, 2019, the Receiver and Manager terminated all of investment management agreement for all of the Sub Funds by the 28th May, 2019.

82.3 On 19th July, 2019, Phoenix Capital Ltd. **("Phoenix")** and Luca Lanciano **("Luca")** by way of their attorney Messrs. Gail Lockhart Charles & Co., entered appearances in each of the fifteen receivership actions. On 17th September, 2019 Phoenix and Luca applied for the Sub Funds to be liquidated forthwith.

82.4 On 28th August, 2019 the COO of PGAL enclosed copies of its instructions to its sub-custodians Credinvest and Swissquote to transfer the assets of the Sub Funds to the Sub Funds' respective accounts at DBT. On the same date DBT sought confirmation from PGAL that further instructions would be sent by PGAL for the assets of the Sub Funds to be distributed to the respective Sub Funds' accounts. PGAL confirmed that the instructions were given to its custodians to transfer the assets of the Sub Funds and that no further instructions would be required and also confirmed that all other inquiries should be made to the addressee of the instructions.

82.5 Based on the instructions, the assets held by PGAL's sub-custodians CredInvest were transferred to DBT. PGAL faced issues with the transfer and requested that Deltec open an omnibus account for the sole purpose of facilitating the distribution of the assets of the Sub Funds from PGAL to the Sub Fund. The omnibus account was opened and existed for that sole and exclusive purpose. PGAL went into liquidation while the Sub Funds were passing through the omnibus account.

82.6 By Orders made in October 2019, the Court ordered that the Receiver and Manager disburse the assets of the Sub Funds with respect to the application made by Phoenix and Luca. Deltec was involved with the remaining orders which led the Court to order that it be served, to give Deltec the opportunity to be heard. Deltec was served and retained Mrs. Rolle Q.C., who in turn filed a Notice of Appointment of Attorney on Deltec's behalf in each of the fifteen receivership actions.

82.7 By Order made 28th October 2019 and filed on 8th November 2019, the voluntary liquidation of PGAL was placed under the supervision of the Court and Mr. Ed Rahming was appointed as the Official Liquidator and Intelisys Ltd. and Callenders & Co. were appointed the back-office service provider and legal counsel to the liquidation respectively.

82.8 On 6th December, 2019, Phoenix and Luca filed a Summons to discharge the Receiver and Manager on the ground that he had not disbursed the assets of the Sub Funds and for Deltec to instead be directed to disburse the Sub Fund assets. On 16th December, 2019, at the hearing of Phoenix and Luca's discharge application, the parties advised the Court that they had arrived at an agreement for the disposal of Phoenix and Luca's application. They additionally advised the Court that Deltec would be authorized to disburse the Sub Fund assets and Deltec and the Receiver and Manager would work together to do so.

82.9 The Receiver and Manager was not discharged and by paragraph five of the Consent Order, Deltec was authorized to liquidate the Sub Funds and to disburse the Sub Fund assets. Additionally, in the receivership actions the Court directed that the only deduction that should be made from the Sub Fund assets by Deltec were for the costs and expenses of the Receiver and Manager once determined by the Court.

82.10 Based on the Consent Order, Deltec, Phoenix and Luca had already successfully achieved the liquidation and disbursement of the WIK Sub-Fund, EUR Conservative Portfolio Sub-Fund and the Spectator Sub-Fund.

82.11 In December 2019, Deltec and the Receiver and Manager made a request to the OL for the immediate release of the Sub Fund assets which were still in the possession of PGAL and confirmed for the OL that they were not assets of PGAL. In response, the OL informed Deltec that he would review the matter and revert to him on a position after January 2020. However, the OL never confirmed to the Receiver and Manager what he had concluded with respect to the Sub Funds' assets. Instead, the OL filed the OL's Cost Summons which sought to deduct the General Liquidation Costs from the Sub Funds' assets.

83. As I have accepted the facts set out above, I find that while there was a contractual relationship that existed between PGAL and Lyford Diversified prior to PGAL's liquidation, that contractual relationship was terminated. Therefore, it was not the intention of Lyford Diversified for the assets to remain with PGAL. As a result, there could be no trust formed over the assets.

84. Oddly enough, the OL chose to ignore the Receiver and Manager and Deltec. The Receiver and Manager posited and I accept, that he reached out to the OL to request the immediate release of the assets of the remaining Sub Funds which were still in the possession of PGAL. Accordingly any question with respect to the assets could have been posed to the Receiver and Manager. The OL, despite his promise to revert to the Receiver and Manager never did and instead instituted these proceedings. I accept Mr. Davis Q.C.'s submission that he who seeks equity must do equity and sadly it appears as if the OL was on a frolic of his own.

85. Accordingly, I will accept the submissions of Deltec, the Receiver and Manager and the Liquidation Committee and dismiss the application of the Official Liquidator and direct that the Sub-Fund Assets be released to Deltec to be disbursed consistent with the Disbursement Orders and the Consent Orders which the Court has already made.

86. The final issue for the court's consideration is that of costs. The general rule is that costs follow the event. I see no reason to depart therefrom. As such, I order that the Official Liquidator shall bear the costs of and incidental to the proceedings of the Receiver and Manager and Deltec which costs I certify fit for two Counsel and are to be taxed if not agreed. Additionally, I order that the Official Liquidator is to bear one third of the costs of the Liquidation Committee which are also to be taxed if not agreed.

88. I thank all of the parties herein for diligently assisting the Court herein. I also wish to record my thanks for the helpful assistance given by my Judicial Research Assistant, Ms. Akeira Martin.

The Hon. Madam W. Renae Mckay

Justice of the Supreme Court