

**SCHEDULE OF DOCUMENTS**

**Referred to in Reasons for Judgment of Court of Appeal of the  
Cayman Islands in Pegasus Insurance Company**

<b><u>Document No.</u></b>		<b><u>Date</u></b>
1.	Memorandum to Chief Justice from Justice Henderson	May 16, 2003
2.	Memorandum to Chief Justice from Justice Henderson	May 29, 2003
3.	Memorandum to Henderson J. from Chief Justice	June 24, 2003
4.	Memorandum to Chief Justice from Henderson, J.	July 2, 2003
5.	Memorandum to Justice Henderson from Chief Justice	Oct. 16, 2003
6.	Memorandum to Justice Henderson from Justice Levers	Oct. 21, 2003
7.	Memorandum to Hon. Chief Justice from Justice Henderson	Jan. 15, 2004
8.	Memorandum to Counsel from Henderson, J.	Oct. 24, 2003
9.	Memorandum to Registrar, Court of Appeal, from Justice Henderson	Mar. 22, 2004

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MEMORANDUM

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TO: CHIEF JUSTICE  
FROM: JUSTICE HENDERSON  
DATE: 16<sup>TH</sup> MAY 2003  
SUBJECT: CHRISTOPHER JOHNSON

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Recently, Mr. Christopher Johnson was appointed Controller of the Western Oceanic Bank under the Banks and Trust Company Law by the Cayman Islands Monetary Authority. On May 2, 2003, Ms. Corbett applied to me in Chambers, ex-parte, for an order declaring that the Controller has the powers of a receiver under section 18 of the Bankruptcy Law. I made that order. She also asked for an order setting the Controller's remuneration at \$500 per hour (with lesser rates for the other staff members) but I declined to make any such order.

Subsequently, it has been suggested to me that Mr. Johnson should not be the beneficiary of such orders because of his past involvement with the Court. The purpose of this memorandum is to summarize my investigation into that subject.

In Re the Companies Law v Latin American Bank Ltd. (In Liquidation), Cause 651/97, an application was made by Mr. Johnson to Kellock, J. for approval of liquidator's fees. The application was refused because the material did not comply with the Court's *en banc* ruling. There is a file note by Kellock, J stating:

"I also asked if the Court should entertain any application from Johnson when he has not complied with the Court's instructions - (see *en banc* decision)".

The *en banc* decision (now overruled) mentions five actions in which Mr. Johnson was asked to seek and obtain approval of creditors' committees regarding his proposed fees. The judgment goes on to note (at page 15) that:

"Mr. Johnson did not come back to Court for subsequent approval and no explanation has been offered as to why this was not done. See written rulings delivered in Consolidated Application in Five

Causes on 19<sup>th</sup> December 1996 and 17<sup>th</sup> March 1997,  
in part reported at CILR [1996] N3 and [1997] N8."

In Uzzell v Uzzell, cause number D97/97, Sanderson, J, used strong language in rejecting expert evidence given by Mr. Johnson. He noted Mr. Johnson's "adversarial role" and improper expressions of opinion on the credibility of others. He said his final report "went beyond what an impartial or neutral expert would normally be expected to provide." Sanderson, J, characterized Mr. Johnson's conduct before trial as "confrontational and inflammatory" (see especially page 16).

In Re the Companies Law and Re Banco Del Progreso Ltd., causes number 655/02 and 657/00, Sanderson, J, was asked to appoint Mr. Johnson as one of two official liquidators. He declined to grant the order because of the inadequacy of the material. Having been told that the proposal was that Mr. Johnson be appointed without giving security and that "Mr. Johnson would be financially liable for any negligence or other misdeeds of" the other liquidator, who lived in Ecuador, Sanderson, J, said:

"The Court therefore requires that:

1. Mr. Johnson and Mr. Armendaris each file affidavits disclosing their individual total assets, liabilities, and annual income. They must also indicate their agreement that they will be jointly and severally liable for any negligence or other legal liability including fraud or other misdeeds of each other, or
2. That PriceWaterhouseCoopers file an affidavit indicating it will be jointly and severally liable for any negligence, legal liability, or other misdeeds including fraud of Mr. Johnson or Mr. Armendaris."

The requested material has not been filed.

In Johnson v Cook-Bodden [1999] CILR 399, Kellock, J, made extensive findings on the credibility of Mr. Johnson's evidence (at page 415 ff). He concluded:

"In my view, Johnson's affidavit evidence of June 1997 is much closer to the truth than his evidence at trial.... I asked him how this conflict would be avoided by undertaking this work as a personal rather than a firm engagement. His answer was that that was the decision he made at the time. I concluded at the time that this response was evasive and I continue to hold that opinion...I cannot understand how the arrangement Johnson said he made with Cook-Bodden could avoid the problem, or why Johnson thought that it would. Johnson did not attempt any explanation and I therefore conclude that Johnson was less than frank with the Court."

Ultimately, Kellock, J, did not believe Mr. Johnson's evidence.

The issue for discussion is this: in light of the matters described above, should Ms. Corbett be recalled to Chambers for a review of my ex-parte order? It can be argued that these matters, collectively, were material to my ex-parte decision and, with the exception of the facts set out in the *en banc* decision, I was not aware of them.

d. H.

A. Henderson

Judge

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MEMORANDUM

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TO: CHIEF JUSTICE  
FROM: JUSTICE HENDERSON  
DATE: 29<sup>TH</sup> MAY 2003  
SUBJECT: CHRISTOPHER JOHNSON

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"The Court therefore requires that:

1. Mr. Johnson and Mr. Armendaris each file affidavits disclosing their individual total assets, liabilities, and annual income. They must also indicate their agreement that they will be jointly and severally liable for any negligence or other legal liability including fraud or other misdeeds of each other, or
2. That PriceWaterhouseCoopers file an affidavit indicating it will be jointly and severally liable for any negligence, legal liability, or other misdeeds including fraud of Mr. Johnson or Mr. Armendaris."

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"In my view, Johnson's affidavit evidence of June 1997 is much closer to the truth than his evidence at trial....I asked him how this conflict would be avoided by undertaking this work as a personal rather than a firm engagement. His answer was that that was the decision he made at the time. I concluded at the time that this response was evasive and I continue to hold that opinion...I cannot understand how the arrangement Johnson said he made with Cook-Bodden could avoid the problem; or why Johnson thought that it would. Johnson did not attempt any explanation and I therefore conclude that Johnson was less than frank with the Court."

Ultimately, Kellock, J, did not believe Mr. Johnson's evidence.

In *Deloitte & Touche AG v Christopher Johnson and another* (Privy Council, June 10, 1999) the question was whether Deloitte & Touche AG had standing to bring an application for the removal of Christopher Johnson as a liquidator. The Privy Council held that it did not. The underlying facts are of interest. The proceedings arose from the liquidation of Omni Securities Ltd, which was placed in voluntary liquidation in 1991. The Grand Court assume supervision of the liquidation in 1992. Mr. Johnson was a joint liquidator of Omni and, at the time, a partner in the Cayman Islands firm of Coopers & Lybrand. The joint liquidators caused the company to start an action in the Grand Court against a number of defendants alleging negligence in the audit of the company's financial statements for 1988 and 1989. The Cayman Islands firm of Deloitte Haskins and Sells (later Deloitte & Touche) were the companies auditors.

It was alleged that Christopher Johnson was subject to a conflict of interest because the United Kingdom firm of Coopers & Lybrand merged with the United Kingdom firm of Deloitte, Haskins & Sells to form part of the international organization of Coopers & Lybrand. Mr. Johnson, as a partner in Coopers & Lybrand, would have a motive to refrain from suing the newly merged United Kingdom firm. It was alleged that the UK firm of Deloitte, Haskins & Sells was negligent in failing to provide Deloitte & Touche AG with information material to the audits. The Writ of Summons alleged negligence in relation to both the 1988 and 1989 audits, but the Statement of Claim made no allegation in relation to the former. It was argued that this showed the liquidators were tailoring the claim to protect the newly merged international firm. The report of this case contains no resolution of this factual question.

*In Re Transworld Bank and Trust Ltd. (in voluntary liquidation) (281/97)*, Murphy, J, was asked to remove Christopher Johnson and Robert Jenkinson as joint liquidators. His Lordship made a number of findings:

1. Since Transworld was insolvent and Johnson's firm had been its auditors, he should never have accepted the appointment. (page 56)
2. In any event, he should have resigned once he had cause to doubt Transworld's solvency. (page 57)
3. Johnson took an "aggressive adversarial stance" incompatible with his role as an officer of the Court. (page 58)
4. Murphy, J, suffered from "considerable unease as to the extent of [Johnson's] independence from former management." (page 58)
5. Murphy, J, "had serious concerns about [Johnson's] judgment and objectivity." (page 64)
6. He concluded that nothing was happening in the litigation except for the joint liquidators' efforts to "justify their position and deflect criticism." (page 65)
7. Murphy, J, said he did not attribute any bad faith to the joint liquidators but found they had "lost their objectivity and proper sense of direction." (page 66)

The Court had no hesitation in ordering that Johnson be removed as a liquidator.

A. A.

A. Henderson  
Judge



**MEMORANDUM**

*Tel: 345 244 3835  
345 949 4296  
Fax: 345 949 2812*

*Chief Justice's Chambers  
Grand Court  
PO Box 495 GT  
Grand Cayman  
Cayman Islands*

**To:** Henderson J. (upon return)  
**From:** Chief Justice  
**Date:** 24.6.2003  
**Subject:** Christopher Johnson


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I enclose a copy of your memo of 16<sup>th</sup> May 2003 to me. When we (the judges) met to discuss it earlier this month, I recall you would be awaiting the next step in the proceedings to bring the concerns to the attention of Mr. Johnson.

Is my recollection correct?  
If so has that taken place?

In addition to the several matters listed in your memorandum we also discussed the concerns of Murphy J. in Transworld Bank. I have had even more startling developments in another Liquidation of Mr. Johnson's which has been going on for 26 years! I may have mentioned this matter at our meeting: In the matter of Latin American Bank (In liquidation) Cause 659 of 1997, heard on 6.6.2003.

I am now resolved to "grasp the nettle" as I am satisfied that Johnson should be put on notice of our concerns which could lead to the Court no longer appointing him or approving of his appointments.



Anthony Smellie

MEMORANDUM

TO: Chief Justice

FROM: Henderson, J.

RE: Christopher Johnson

DATE: July 2, 2003

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You may recall that in my case Johnson had already been appointed a Controller by CIMA and applied for a declaration that he had the powers of a receiver under the Bankruptcy Law, powers which are conferred upon him by the Law in any event.

It was resolved at our meeting to await the NEXT occasion upon which Johnson applies for appointment and raise the whole issue then.

I later added further material to my memo on the subject; a copy of the revised version is attached.

*A.W.*

MEMORANDUM

*Chief Justice's Chambers  
Grand Court*

*PO Box 495,  
George Town, Grand Cayman  
Cayman Islands, B.W.I.*

*Telephone: 345 244 3835  
345 949 4296  
Facsimile: 345 949 2812*

**To:** Justice Henderson  
**From:** Chief Justice  
**Cc:**  
**Date:** 16<sup>th</sup> October 2003  
**Subject:** Appointment of Mr. Christopher Johnson as liquidator by the Court

---

I write to record views which I have expressed to you in our discussions about my own concerns which have arisen over the years that I have had to deal with Mr. Johnson in his capacity as a Court appointed or supervised liquidator.

It is my intention that this memorandum be brought to the attention of Counsel in the context of the application now before you for Mr. Johnson's appointment in The Matter of Pegasus Insurance Company.

My own concerns date back to 1996 in relation to Mr. Johnson's consolidated applications for the approval of fees (and increases in fee rates) in five matters.

His applications were considered and while no expressed order was made for requiring that he returned to the Court, the applications were refused requiring him to consult the creditors.

Given the nature of the concerns raised by the Court that the creditors be properly consulted before any increase in fees be implemented - the Court was entitled to at least the courtesy of a report back on how that process was implemented and the outcome. No such report was forthcoming nor, indeed, as far as I am aware, any reports as to the progress or otherwise of a number of the liquidations which were involved in that application. I was even then moved to observe that a number of those matters had been ongoing for a number of years.

The unfortunate impression left with me was that Mr. Johnson's primary concerns were about his fees.

As a judge of this Court I have been involved collegiately in discussions with the other judges in respect of many matters which respectively come before us involving insolvency matters. A number have involved Mr. Johnson.

Among ourselves, issues of common concern relating to the supervisory duties of the Court are discussed as a matter of course, in relation to Mr. Johnson, as they would be if similar matters arise in relation to any other officer of the Court. As judges we must repose complete confidence and trust in persons whom we appoint and this is perhaps most acutely so in the context of trustee, receivership and liquidators appointments.

For these reasons, the judges have over the years shared a collegiate concern over matters which might properly reflect upon Mr. Johnson's suitability for appointment to any Court appointed office.

In this view the findings and pronouncement of Judges of this Court in the Transworld Matter (per Murphy J); Cook-Bodden (per Kellock J); Uzzell (per Sanderson J) have not gone by without being of concern. Questions which were put by me to be addressed by Mr. Johnson in In Re Matter of Latin American Bank (in liq.) Cause 617/97; some 4 months ago remain unanswered. These are questions which express the Court's concerns about being invited by Mr. Johnson to sanction the conduct of the liquidation of a bank which has been ongoing for an extraordinarily long period of time.

These issues, to my mind, have had an accumulative effect such that they would have compelled me to raise concerns about the fitness of Mr. Johnson to be appointed similar to those which I understand you have raised.

I understand that Mr. Johnson has through Counsel, suggested that my own appointment of him in the matters of Banco del Progreso and Banco de Prestamos on 18<sup>th</sup> July 2003 is evidence of my implicit acceptance of his suitability for appointment, notwithstanding any earlier concerns.

Whether objectively that is a proper implication, will of course, be a matter for you. But I wish to be clear in two respects on this issue.

First, I regarded my remit then to consider the only residual issue as it was presented by Mr. Hall-Jones on behalf of the CIMA. This was as to whether the Court needed to insist upon personal professional indemnity coverage for Mr. Johnson in light of the fact that another partner of the firm of PWC, Mr. Nick Freeland, was to be appointed as joint liquidator, instead of the earlier candidate proposed from a foreign country to act as joint liquidator.

Mr. Hall-Jones argued that the only remaining issue of indemnity had fallen away by the candidacy of Mr. Freeland whose appointment would also imply the common responsibility of the firm of P.W.C. for any indemnity which may arise. The matter was

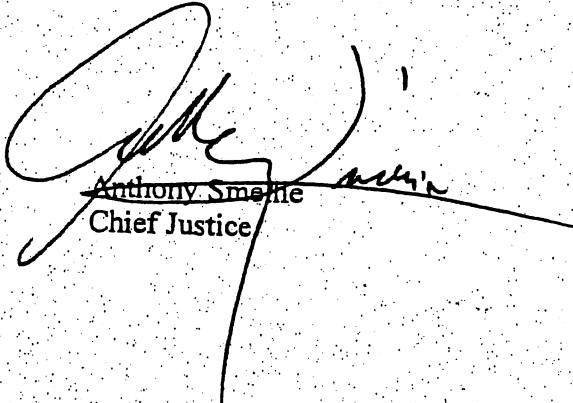
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an ongoing matter with Mr. Johnson already firmly ensconced as controller. Removing him would I was told, have been disruptive to the estate and Sanderson J in having earlier considered the matter, appeared only to have been concerned with the indemnity question.

Second, since that time on 18<sup>th</sup> July, three more months have gone by without a response from Mr. Johnson to the concerns which I raised in the Matter of Latin American Bank.

The circumstances of that matter, even if taken on its own would, in my view, justify some enquiry into the general manner of conduct of the large number of liquidations over which Mr. Johnson remains appointed.

Put frankly, were an application to come before me now for the appointment of Mr. Johnson, given the cumulative affect of the matters of which I am aware, I would feel obliged, as it appears you do, to raise the similar matters of concern about Mr. Johnson's suitability for further appointment.

  
Anthony Smellie  
Chief Justice

# MEMORANDUM

**TO:** Justice Henderson

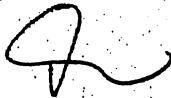
**FROM:** Justice Levers

**DATE:** 21<sup>st</sup> October, 2003

**SUBJECT:** JOHNSON

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I refer to our meeting and as requested I write to advise you that when I appointed the above named as a Provisional Liquidator, I was unaware of the matters that have been brought to my attention subsequently, and I was certainly not aware of the many concerns raised by the Hon. Justices Kellog, Sanderson and Murphy.



Justice Levers

MEMORANDUM

TO: HON. CHIEF JUSTICE  
FROM: JUSTICE HENDERSON  
DATE: JANUARY 15, 2004  
RE: CHRISTOPHER JOHNSON (PEGASUS INSURANCE COMPANY)

Here is a brief summary of the procedural argument which arose during the application to appoint Mr. Christopher Johnson an official liquidator of Pegasus Insurance Company.

As you know, the application was made by the Cayman Islands Monetary Authority. It had previously installed Mr. Johnson as a Controller of the Company. At the outset, in the presence of a court reporter but in Chambers, I placed on the record my concerns about Mr. Johnson because of several past instances of apparent misbehaviour. Rather than responding directly, the Authority had Mr. Johnson appear personally (with Counsel) and request standing, which I accorded to him.

Several of the incidents in question pre-dated a number of appointments by other judges of this court of Mr. Johnson to positions as a liquidator. A cornerstone argument advanced by Mr. Johnson was this:

I was obliged to infer from these orders appointing Mr. Johnson a liquidator that the other Judges did not share my concerns and were content with Mr. Johnson's suitability and performance.

I have examined the court files in these other cases and can confirm that there is no evidence on the record, which would have served to bring the alleged misbehaviour by Mr. Johnson to the attention of the other judges. Because of the importance accorded to the submission, I asked Mr. Johnson's counsel if I could speak to the Chief Justice and Levers, J. (but not to the relevant acting judges) to determine whether, and to what extent they directed their minds to the alleged misbehaviour prior to making the respective appointments. Mr. Johnson's counsel agreed to this initially, then said he would only agree to it if he were present, and eventually said that he would not agree to it at all. His ultimate position was that I was bound to draw the inference contended for but prohibited from ascertaining whether the issue was given mature (or, indeed, any) consideration.

Notwithstanding counsel's position, I requested Levers, J. and yourself to provide me with a brief memorandum on the question. Each of you did so, and these memoranda were sent to Mr. Johnson's counsel.

The present argument was that this was improper in the sense that I cannot have regard to information obtained from other judges or opinions held by them, even if those are fully disclosed. The result of this position is that those who are in the best position to assess the fitness and performance of a liquidator – the judges of this court – cannot pass that information on in any useful way to a colleague who is considering a similar application.

The issue is was it "improper", i.e., procedurally inappropriate, for me to request and consider the information?

Henderson, J.

THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 488 of 2003

IN THE MATTER OF THE COMPANIES LAW (2003 REVISION)  
AND IN THE MATTER OF THE INSURANCE LAW (2001 REVISION)  
AND IN THE MATTER OF PEGASUS INSURANCE COMPANY

MEMORANDUM TO COUNSEL

TO: Mr. R. Alberga, Q.C., for Christopher Johnson  
Instructed by Mr. K. Farrow of Quin & Hampson



Ms. S. Tomkins and Ms. W. Straker for the Monetary Authority

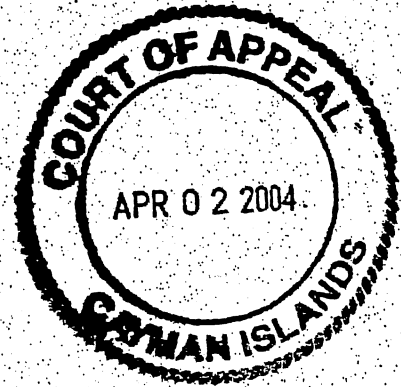
After the recent hearing, I decided to consult the Chief Justice and Levers, J., and request statements from them (to be disclosed to counsel) concerning their earlier orders appointing Mr. Johnson as a liquidator. I now attach a statement from the Chief Justice dated October 16, 2003, and one from Levers, J., dated October 21, 2003. The parties are at liberty to submit further evidence and argument on the matters mentioned in these memoranda.

*Henderson, J.*

Henderson, J.

October 24, 2003

MEMORANDUM



TO: REGISTRAR, COURT OF APPEAL  
FROM: JUSTICE HENDERSON  
DATE: MARCH 22, 2004  
RE: PEGASUS INSURANCE COMPANY - CICA (Civil) No. 2/04

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Mr. Quin has brought to the Court's attention an Order of mine made May 2, 2003 in which I conferred upon Mr. Johnson and Mr. Russell Smith the powers of a receiver or manager under Section 18 of the *Bankruptcy Law*. Mr. Quin asks if I have any comment on this Order.

I have no actual recollection of this application. My bench notes show that Ms. Corbett of Walkers applied for the Order *ex parte*. Mr. Smith was present but Mr. Johnson was not. I can say that the matters which were of concern to me and which I discussed in detail in my judgment under appeal were not known to me on May 2, 2003.

Mr. Quin has asked for copies of all written communications between myself and other judges of this Court (including past or acting judges) in relation to the application for appointment of Mr. Johnson of Pegasus and "which are relevant to the decision making process." I do not think there are any such written communications. However, for the

sake of completeness, I attach copies of the following memoranda passing between myself and the Chief Justice:

- 1) Memorandum from myself to the Chief Justice dated May 16, 2003
- 2) Memorandum from myself to the Chief Justice dated May 29, 2003
- 3) Memorandum from the Chief Justice to myself dated June 24, 2003
- 4) Memorandum from myself to the Chief Justice dated July 2, 2003
- 5) Memorandum from myself to the Chief Justice dated January 15, 2004.

*Henderson, J.*

Henderson J.