

30-04-03

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

C.I.C.A. (Civil) #s 01 & 02- 04 of 2003  
(GC Cause # 522 of 2002)  
(GC Cause #s 579-581 of 2002)

IN THE MATTER OF THE COMPANIES LAW (2002 REVISION)

- and -

IN THE MATTER OF THE WATERFORD INSURANCE LIMITED

- and -

IN THE MATTER OF LIBERTY CAPITAL LIMITED, INTEGRITY LIMITED AND  
SUN HOLDINGS LIMITED

("Appellants")

**BEFORE:** The Rt. Honorable Mr. Justice E. Zacca, President  
The Honorable Mr. Justice G. Collett, JA  
The Honorable Mr. Justice I. Rowe, JA

**Appearances:** Mr. Gabriel Moss Q.C. and Mr. Guy Locke of Walkers, Mr.  
Andrew Jones Q.C. of Maples and Calder, Ms. Sarah  
Dobbyn of Hunter & Hunter for the liquidators.

**Heard:** 29<sup>th</sup> April, 2003

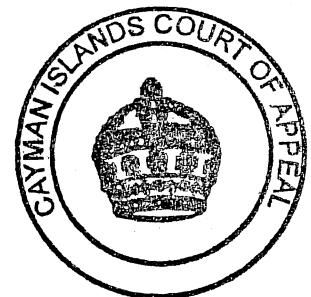
**Oral Judgment Delivered:** 30<sup>th</sup> April, 2003

**ZACCA P.**

On December 20<sup>th</sup> 2002, the Grand Court sitting *en banc* heard four winding-up petitions in causes:

579/02 –	In the matter of Liberty Capital Ltd.
580/02 –	In the matter of Integrity Limited
581/02 –	In the matter of Sun Holdings Limited
522/02 –	In the matter of Waterford Insurance Limited

The Court entered a judgment in all 4 matters. No formal order was drawn up to reflect what were the precise orders made by the Court. However, the Liquidators in each of the causes listed above, have filed identical notices of appeal in which they have identified 9 specific orders from the *en banc* judgment.



These are:

1. Official Liquidators and their staff may only charge fees at prescribed rates according to guidelines laid down by the Court and more fully set out at page 17 of the Judgment;
2. No separate fees should be allowed for Official Liquidators' non-professional support staff save where this is for a significant and identifiable task more complex or onerous than usual;
3. Such non-professional support staff may charge fees, if applicable, at a set rate of \$50.00 per hour;
4. Costs associated with applications for obtaining approval of fees will not be approved by the Court for payment out of the liquidation estate;
5. Time records of Official Liquidators and their staff must be recorded at minimum intervals of 0.10 per hour;
6. When considering the reasonableness of fees charged by Official Liquidators and their staff, the Relevant Creditors Committee, if constituted, should do so on the basis of the prescribed guidelines laid down by the Court and more fully set out at pages 27 to 29 of the Judgment;
7. Pre-approved international fee protocols accepted by a foreign court and presented for approval by The Grand Court must show evidence of the foreign court's informed consideration of the issues raised in the Judgment;

8. Current time rates generally adopted by insolvency practitioners for similar types of work are not accepted as a criterion for setting appropriate rates of remuneration for Liquidators and their staff; and
9. Fees charged by Liquidators and their staff are to be submitted to Court for approval.

Counsel have argued before us that the Grand Court sitting *en banc* erred by not following the English Insolvency Rules 1986 as the primary method for fixing the remuneration of the Liquidators in a winding-up in the Cayman Islands.

The English Insolvency Rules 1986 are applicable to the Cayman Islands by virtue of Grand Court Rules Order 102 Rule 17 introduced in the Cayman Islands in 1995. These Insolvency Rules were applied by Smellie J in 1996 in the matter of In Re Johnson 1996 CILR Note 3:

“An application by the liquidators of a company for increased fees should be made in accordance with the Insolvency Rules, rr. 4.129 and 4.130 (as applied to the Cayman Islands by the Grand Court Rules, 1995, 0.102, r.17) and may not be made *ex parte*. The fees of liquidators are set, in the first instance under r.4.127 by a liquidation committee or, if there is none, by a meeting of the company’s creditors. If they are considered to be insufficient the liquidators may then apply to the creditors, and/or to the court with notice to the liquidation committee or creditors as appropriate, for an increase. The court may then have regard to purely economic factors, such as the increased costs of practising in the Cayman Islands, consumer price indices and the fees of other Cayman practitioners in determining a reasonable fee (*In re Phillips (Joseph) Ltd.*, [1964] 1 W.L.R. 369, applied).

**In re Johnson** (Grand Ct., Smellie,J), December 19<sup>th</sup>, 1996.” (emphasis added)

The 1986 English Insolvency Rules were applied by this Court and the Privy Council in the matter of Cleaver and Bodden v. Delta American Reinsurance Company 2001 CILR 34.

In our view the English Insolvency Rules 1986 – particularly Rules:

4.127, 4.128, 4.129, 4.130 and 4.131

are the applicable Rules in the Cayman Islands for fixing the remuneration of liquidators. They should be followed.

In the absence of any challenge to the process set by the Insolvency Rules by the Official Liquidator or Stakeholders under those Rules, no recourse to the Court is required.

We therefore allow the appeals in numbers 1, 2, 3, and 4 of 2003, and set aside in its entirety the judgment of the Grand Court sitting *en banc*.

There is no order as to costs at the request of Counsel for the appellants.

Zacca, P.

Collett, J.A.

Rowe, J.A.

