14.8.98

Mr. Harris file

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CAUSE NO. 296/98 & 294/98

BETWEEN:

IN THE MATTER OF MID OCEAN & EXEL LIMITED

Petitioners

AND:

IN THE MATTER OF SECTION 85 OF THE COMPANIES LAW (1995 REVISION)

Appearances

Miss Minakshi Jafa of Hunter & Hunter for Exel Limited
Mr. Guy Locke of W.S Walker & Co. for Mid Ocean Limited

BEFORE DOUGLAS J.

RULING

Before me are two petitions, one by Mid Ocean Limited (Mid Ocean), the other by Exel Limited (EXEL), each seeking the sanction of the Court to a Scheme of Arrangements (The Schemes) pursuant to Section 85 of the Companies Law (1995 Revision). The purpose of each Scheme is to effect an exchange of Scheme Shares for shares in a new company, EXEL Merger Company Limited ("New Parent") with the holders of the relevant class of the Scheme Shares receiving equivalent shares on an

equal basis in real terms of New Parent. Both Schemes are parallel, the joint effect of these Schemes is to place a holding company (New Parent) over both Mid Ocean and EXEL. Both these companies are listed on the New York Stock Exchange with a total joint assets of approximately US$9.6 billion. The form of document relating to the Schemes were approved by the United States Security Exchange Commission prior to being sent to the shareholders. Both Ocean and Exel, whilst being Cayman Islands companies carry on the business of Reinsurance through their mostly Bermudan Subsidiaries.

The Court, in exercising its powers under Sections 85 and 85 of the Law will consider:-

1. Whether the statutory conditions have been complied with in the calling of the various class meetings.

2. Whether the classes summonsed to the meeting were fairly represented by those who attended and whether the requisite majority of the meetings were in favour of the Scheme and acted *bona fide.*

3. Generally, whether the arrangement is such that a man of business, acting in his interest, would reasonably approve ***In Re Dorman Long & Co. Limited*** **(1934) Ch. 635** Maugham J set out the duty of the Court as being to determine whether "the proposal is such that an intelligent and honest man, a member of the class concerned and acting in respect of his interest, might reasonably approve."

Any kind of reconstruction, merger or division can be carried under a Scheme of Arrangements. This wide jurisdiction is exemplified by the Court's power under Section 86 of the Law to make ancillary orders when approving a reconstruction or amalgamation and specifically:-

> "Whenever an arrangement is proposed for the purpose of, or in connection with a scheme for construction of any company or companies." (See Section 86(1) of the Law).

Pursuant to orders made by Graham J, Class Meetings were held by both Mid Ocean and Exel. Before the Court can exercise its discretion and sanction the Scheme, it must be satisfied that those who attended these meetings were fairly representative of the Class, and that the statutory majority did not coerce the minority in order to promote interest adverse to those of the Class whom they purport to represent. with respect to the first of those propositions, in ***Sovereign Life Assurance Co. v. Dodd (1892) 2 QB 573*** the Court had to consider whether certain creditors formed a single class or two different classes. Bowen L.J. said at page 583:-

> "It seems plain that we must give such a meaning to the term "class" as will prevent the section being worked so to result in confiscation and

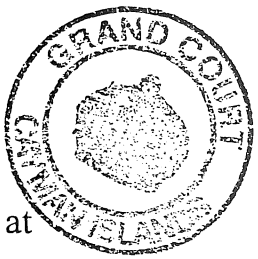
> injustice, and that it must be confined to those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest."

For example, the classic case where classes would not be fairly represented would be where the scheme proposed to take away a secured creditor's right over property. If that secured creditor were placed in a class with unsecured creditors who, in value, represented greater than 75% of those voting the Court would for obvious reasons be reluctant to sanction a scheme based on that class majority.

However, the Court would also be reluctant to withhold it sanction if the parties interested have been properly consulted and consider the Scheme is for their benefit. Provided the Scheme is fair and equitable, the Court will not itself judge upon the commercial merits and will be slow to differ from the conclusion of the majority. (See ***re Empire Mining Co. (1890) 44 CH. D. 402, re London Chartered Bank of Australia (1893) 3 Ch. 540 and re M B Group plc (1989) BCLC 672.***

What the Law seeks to exclude in such Schemes is the element of bad faith. It is essential that the majority of voters view the Scheme with regard to the interest of those they represent, and take a view which can

reasonably be taken by a business man. With that in mind it is incumbent on the Court to examine the record of voting at each meeting. In re ***M B Group*** (supra) Harman J. whilst approving the reasonable man approach, added that the underlying commercial purpose of the Scheme need not to be investigated by the Court provided the correct procedure of majority approval had been followed and obtained. As has been submitted both Mid Ocean and EXEL are publicly listed it is therefore difficult to see how any member could have been coerced.



I have been provided with a Table of persons attending and voters cast at the Meetings of each company. that for Mid Ocean shows that the holders of Class A Ordinary Shares (with the exception of any shares being held by Exel Limited or by its Directors or Officers). 128 voted by proxy of which 127 were in favour, and 1 against, providing a majority of 99.79 %. [The holders of Class B Ordinary Shares in the company, 1 voted proxy, none against, again providing a majority of 100%.] WSW - Class C results.

At the meeting held by Exel the result of the voting was much the same. The Table of Meeting shows that 148 shareholders were present by

proxy. 146 voted in favour of the resolution and 2 against, which equated to a 99.78 % vote in favour and no person abstained from voting at the said meeting. The interested directors provided their consent in writing.

I am satisfied that in the case of both companies, the schemes have been approved by the requisite majority at the various class meetings, and that the statutory provisions of Section 85 have been complied with. I accept counsel's submission that the majority was of the view that there are good business reasons for effecting the Schemes. I am of the opinion that on the basis of the test mentioned above, the Schemes are such that a man of business would reasonably approve.

I therefore sanction the Schemes of Arrangement in question as prayed by both companies.

14th August 1998

Kipling Douglas
JUDGE OF THE GRAND COURT