

IN THE GRAND COURT OF THE CAYMAN ISLANDS

IN THE MATTER OF THE COMPANIES LAW (REVISED)

AND

IN THE MATTER OF THE GLOBAL OPPORTUNITY FUND LIMITED

C 564 of 1996

For the Petitioner - Mr. Guy Locke

For the Respondents - Mr. Roger Kaye, QC, Mr. Ross McDonough

For Morgan Stanley (Finance) Jersey Ltd. & Morgan Stanley (Structured Products)
Jersey Ltd. - Mr. Neil Timms

Before Harre CJ.

JUDGMENT

I deal first with an application by the joint official liquidators by paragraph 1 of a Summons dated 10th February 1997 for the appointment of the third joint official liquidator of the company. I mention the date of the summons at the outset because it was less than three weeks after my order confirming the petitioner's choice of two official liquidators. The respondents had objected strongly to the appointment of liquidators chosen by the Jersey companies because they said that justice would not be seen to be done by the appointment of those so chosen. I rejected that view but I am concerned that it can only be strengthened by an application of this nature at such an early stage.

The point was made at the hearing at which the two joint official liquidators were confirmed that this liquidation involves three jurisdictions, the Cayman Islands, the



United Kingdom and Luxembourg in relation to which the liquidators had particular expertise. That argument is advanced again in support of the appointment of the Third Liquidator but there is nothing new in it. Another point argued in favour of the original appointment of the two liquidators was that they had substantial backup strength in their firm. This court has had regular and favourable experience of this in relation to another major liquidation. Affidavits are frequently sworn in that matter by the people who have first hand knowledge of the particular facts concerned who are not necessarily the official liquidators. The court has also been liberal in accepting draft affidavits subject to an undertaking that the sworn copy will be lodged at the earliest opportunity. I decline at this early stage to approve the appointment of a third liquidator when all that is being said in favour of that could and should have been said at the original hearing. The respondents may rest assured that this court will keep matters of this kind under scrutiny and under its control.

Paragraph 2 of the summons is not for determination now.

The order sought in paragraph 3 of the summons with regard to the titles of various members of the staff of the joint official liquidators is made.

The fourth relief sought by the joint official liquidators was that they be directed to charge liquidation expenses pro rata to the assets of the various sub-funds save in so far as any liquidation expense is directly attributable to a fact or matter arising exclusively in respect of a particular sub-fund or sub-funds in which case such liquidation expenses will be charged exclusively to the assets of that sub-fund or sub-

funds (pro rata if applicable). The respondents opposed this. They say that the suggested method of allocating costs is unfair firstly because the reason why the company is being liquidated at all is because of problems which related solely to one of the funds, the Hedge Fund. They also say that the action of the Morgan Stanley directors in June of 1995 in carrying out redemptions of 97% of the shares in the Hedge Fund reduced the value of the assets retained in it by approximately US\$25.6 million and most of this was paid to Morgan Stanley. Moreover, there are substantial assets in other sub-funds, in particular the Apollo sub-fund, because the Morgan Stanley directors refused to comply with requests for redemptions in relation to that fund. The proposed method of allocating expenses would further prejudice shareholders in the sub-funds other than the Hedge Fund. The proposal which is put forward as being fairer is that general liquidation expenses should be allocated pro rata to the assets held by the various sub-funds prior to the redemption of the Hedge Fund.

I appreciate these concerns, but at this early stage of the liquidation I think that the direction sought would be premature. I do not doubt that further directions will be sought as this complex matter proceeds and before such payment back to investors as may be possible is made. That will be a more appropriate time than now to address the issues of apportionment as between the sub-funds of general liquidation expenses.

I therefore make the order in terms of paragraph 4 of the summons of the joint official liquidators dated 10th February 1997.



G.E. Harre
Chief Justice

Dated 1st August 1997

