

IN CHAMBERS

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IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. 284/91

BETWEEN: IN THE MATTER OF **BANK OF CREDIT AND COMMERCE**  
INTERNATIONAL (OVERSEAS) LIMITED

AND: IN THE MATTER OF THE BANKS AND TRUST COMPANIES  
LAW 1989

AND: IN THE MATTER OF THE COMPANIES LAW (REVISED)

For the official liquidators: Mr. Nigel Clifford.  
For the creditors' committee: Mrs. Sheridan Brooks Hirst

BEFORE HARRE CJ

RULING

These applications for approval of the liquidators fees and expenses for three periods extending, in all, from 16th January to 15th October 1995 have been delayed in the expectation that a Report ordered by the Luxembourg Court in relation to the costs of the provisional liquidation of BCCI SA during the period 5th July 1991 to 4th January 1992 would be forthcoming by now.

It can safely be assumed that this Report will not seek to deal with the fee structure of the liquidators of BCCI (Overseas) Ltd. That is entirely a matter for this Court, which also accepts that consistency in rates charged (as opposed to discounts on those rates) cannot be

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fully achieved in view of the different conditions and currencies in different jurisdictions.

In 1995 the Cayman liquidators agreed with the local creditors committee on a 7 1/2% discount on their fees. Complaint is made on behalf of that committee that this was agreed on the basis of consistency with the position in London and Luxembourg. It is now known that there has been an additional retention of 8%, to be held in an escrow account pending the outcome of the Report. In fact the Cayman liquidators say, and I accept, that this retention applies only in London, and not in Luxembourg.

There have obviously been areas on misunderstanding between the committee and the Cayman liquidators in this matter. They are rehearsed in the respective affidavits of Mr. Wight and Mrs. Brooks Hirst. The only aspect on which I need comment is that I find it in the highest degree unlikely that the liquidators would have agreed to wait indefinitely for the Report and accept that they are not reneging on any previous agreement in that regard.

It is clear now that it will be some time before the Luxembourg court process is complete and the Report becomes a public issue. Although the English liquidators of BCCI SA have agreed to the 8% retention "in order to obtain certainty on their fees" (and I confess to being somewhat at a loss to understand how that is thus achieved) I do not think that it would be right for this Court, in respect of the liquidation of another company in the Group to leave the liquidators


of BCCI (Overseas) Ltd in a state of uncertainty as to their fees and expenses for work already done on the basis of speculation as to the contents of the Report and its relevance if any.

The liquidators are not at present pursuing their application for an increase in their rate of fees, nor do they seek to reduce the present 7 1/2% discount, although their volume of work has dropped over the relevant period by some 22%.

In the meantime, the liquidators are entitled to know the position in respect of work already done. They have produced their usual careful analysis. I will deal with the matter now and approve the official liquidators remuneration and expenses in the sum of US\$5,109,188, US\$4,009,010 and US\$2,672,029 for the respective periods set out in their summons dated 5th December which is before me today.

This does not preclude consideration of the Report and its relevance, if any, at a later stage of the liquidation which still has far to go.

Dated 29th January 1996

  
G.E. Harre

Chief Justice