

IN THE GRANT COURT OF THE CAYMAN ISLANDS

CAUSE NO: 138 of 2009



IN THE MATTER OF THE COMPANIES LAW (2007 REVISION)

AND

IN THE MATTER OF THE WEAVERING MACRO FIXED INCOME FUND
LIMITED (IN LIQUIDATION)

IN CHAMBERS
THE 7th October 2009
BEFORE THE HON. CHIEF JUSTICE

Appearances: Ms. Tina Asgarian of Ogier for the JOLs

REASONS FOR RULING

1. This is the application of Ian Stokoe and David Walker acting in their capacity as Joint Official Liquidators (“JOLs”) of Weaving Macro Fixed Income Fund Limited (In Liquidation) (“the Company”).
2. By a Summons, dated 11 September 2009 (“the Summons”), the JOLs seek an order from the Court, pursuant to Regulation 10 of the Insolvency Practitioner’s Regulations 2008 (“the IPR”), that the Court approve their remuneration for the period 19 March 2009 to 30 June 2009.
3. Pursuant to Regulation 13 of the IPR, the Summons and all supporting evidence has been served on counsel for the Liquidation Committee.

4. This is one of the earliest applications brought pursuant to the IPR which, in keeping with the statutory provisions of the Companies Law (2007 Revision as amended “the Law”) seeks to set the frame-work for the charging of the liquidator’s fees and expenses and for the approval of them by the Court. While enabled by the Law, it is a frame work that reflects as well, the development of the jurisprudence on this issue in the Cayman Islands prior to the IPR and the potential benefits taken from earlier Court approval of “best practices”. The IPR therefore embodies a code of practice which is intended to ensure that while liquidators are fairly and reasonably remunerated for their services the interests of creditors, shareholders and other stakeholders in liquidation estates are fully protected against unreasonable or extravagant fees and expenditure.
5. In keeping with the IPR, applications for Court approval must be formally made and supported by relevant evidentiary material.
6. This application meets the requirements and following are the reasons for the grant of the Court’s approval. The application is grounded primarily by Mr. Ian Stokoe’s third affidavit and by the JOL’s First Report to this Court dated 31 August 2009 (“the Report”).

BACKGROUND

7. On 19 March 2009, the Applicants were appointed Joint Voluntary Liquidators of the Company. Following an indication from the Directors of the Company that they would not be providing a Declaration of Solvency, the Applicants petitioned for an order that the voluntary liquidation be continued subject to the supervision

of the Court. By an Order dated 3 April 2009, it was ordered that pursuant to Section 124 of the Law, the voluntary liquidation would continue under the Court's supervision and that the Applicants be appointed as the JOLs of the Company.

8. The Company is an open-ended investment company, established as an exempted company with limited liability under the laws of the Cayman Islands. The Company's trading activities were controlled by Weaving Capital (UK) Limited ("WCUK"), the Company's UK based investment advisor. Since 2005, the Company's investment portfolio was dominated by interest rate swaps with Weaving Capital Fund Ltd., a company incorporated in the British Virgin Islands ("the BVI Fund").
9. By 30 September 2008, approximately 75% of the Company's net asset value ("NAV") was represented by interest rate swaps. The JOLs investigations have revealed that the value attributed to these swaps was severely overstated, and accordingly when faced with the large volume of redemption requests that were made between the period October 2008 - January 2009, the Company faced severe liquidity problems which ultimately led to its insolvency.
10. It appears from the Report that since the date of their appointment, the JOLs have spent a considerable amount of time and effort ascertaining the group structure, the background to the Company's trading history, including but not limited to investigating the BVI Fund and placing it into liquidation, proving in the administration of WCUK, and also undertaking a detailed forensic analysis of the Company's trading activities, including both the swaps, as well as the Company's

other chosen methods of trading; derivatives, primarily futures and options. Mr. Stokoe states that the Company's lackadaisical approach to the organisation of its affairs and the retention of information has made the work of the JOLs much more onerous than it perhaps would have been. The JOLs have worked closely with the Company's Administrator and the administrators of WCUK to secure relevant financial and contractual information about the Company and have interviewed a number of the key individuals involved in the day-to-day management of the Company. A detailed account of the JOLs investigations is set out in the Report.

11. In addition, on 30 April 2009, the JOLs attended a meeting of the creditors, shareholder-creditors and shareholders, which took place in London. Immediately after this meeting, there was a separate meeting of creditors and investors for the purpose of voting for a formal Liquidation Committee and an informal investors' committee. Since their establishment, three meetings of each committee have been held, and three telephone conferences for all investors and creditors, shareholder-creditors and investors were held on 24 March 2009, 9 April 2009 and 28 July 2009. The purpose of these calls was to provide an update on progress in the liquidation followed by a question and answer session.
12. The bulk of the investigatory work has now been done, and the JOLs are of the view that soon they will be in a position to shift the focus towards deciding whether to commence proceedings against third parties with a view to recovering some of the value lost by the Company.

THE APPLICABLE LAW

13. Regulation 10 of the IPR provides that:

- (1) *Subject to paragraph (2), an official liquidator is not entitled to receive any remuneration out of the assets of a company in provisional or official liquidation (including a liquidation under the supervision of the Court) without the prior approval of the Court.*
- (2) *An official liquidator may receive a payment on account, the amount of which shall not exceed eighty percent of the remuneration sought in the report and accounts prepared in accordance with Regulation 12(2).*
- (3) *In the event that the amount of remuneration approved by the Court is less than the amount paid on account, the official liquidator shall forthwith repay the balance to the company.*

14. Regulation 11 (1) of the IPR provides that an official liquidator may be remunerated on the basis of the time spent by him and his staff upon the affairs of the liquidation.

15. Regulation 12 of the IPR goes on to state that:

- (1) *An official liquidator may not make an application to the Court under Regulation 13 without first –*
 - (a) *seeking the liquidation committee's approval of the basis of his remuneration and the amount of the remuneration for which he intends to seek the Court's approval;*
- (2) *The official liquidator shall prepare a report and accounts containing all the information reasonably required to enable a creditor or contributory to make an informed decision about the reasonableness of the proposed basis of remuneration and amount for which the official liquidator intends to seek the Court's approval.*
- (3) *If the Official Liquidator seeks to be remunerated on a time spent basis, his report and accounts shall provide full particulars of the work done; the staff engaged; and the hourly rates applicable to each grade of staff.*
- (4) *The official liquidator's report and accounts shall be provided to the liquidation committee..."*

APPLICATION OF THE LAW TO THE FACTS

16. The basis upon which the JOLs seek to be remunerated is by reference to time spent.
17. The JOLs seek the Court's approval to receive remuneration for the period 19 March 2009 to 30 June 2009. The total sum claimed for this period is US\$1,050,041.89.
18. From Mr. Stokoe's third affidavit it appears that in accordance with Regulation 12 of the IPR, the JOLs have:
 - (i) Sought and obtained the Liquidation Committee's approval of the basis and the amount of remuneration upon which this application is based;
 - (ii) Prepared and circulated reports to the Liquidation Committee containing all the information needed to enable a decision to be made;
 - (iii) Ensured that the reports have provided full particulars of the work done and the staff engaged (with the applicable hourly rates) to permit recovery on a time spent basis.
19. From the exhibits to Mr. Stokoe's third affidavit the following appears:
 - (i) To date, there have been three Liquidation Committee meetings. At the second meeting, held on 12 May 2009, the Liquidation Committee unanimously passed a resolution approving the JOLs fees, in the sum of US\$ 619,219.39 for the period 19 March 2009 to 30 April 2009.
 - (ii) At the third Liquidation committee meeting, held on 10 July 2009, the JOLs sought the Liquidation committee's approval of their fees for the period 1 May 2009 to 30 June 2009. The total sum claimed was US

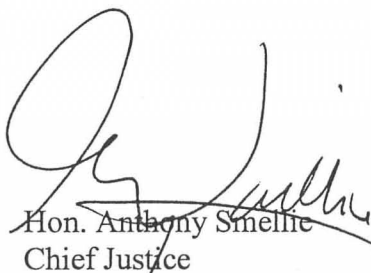
\$430,750.50. On this occasion, following a discussion of the fees sought, the Liquidation Committee requested more time to consider the amounts claimed.

20. By a letter dated 14 July 2009, Counsel for the Liquidation Committee wrote to the JOLs to advise that the Liquidation Committee had approved the JOLs' remuneration for the period 1 May 2009 to 30 June 2009.

21. Pursuant to Regulation 10(2) of the IPR, the JOLs have received payment of eighty percent of the remuneration sought.

CONCLUSION

22. By reason of the matters set out above, the JOL's request, that pursuant to Regulation 10 the Court approves their fees for the period 19 March to 30 June 2009 in the sum of US \$1,050,041.89, is granted.


Hon. Anthony Smellie
Chief Justice



November 25 2009