BRITISH VIRGIN ISLANDS

EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

Claim No: BVIHCV 2008/0053

In the Matter of the BVI Business Companies Act, 2004
and In the Matter of the Insolvency Act, 2003
and In the Matter of Shangri-la International Development Holding Limited
and In the Matter of an Application by Mr. Nicholas Carter and Mr. David Walker, Joint Provisional Liquidators

BETWEEN:

RICH VICTORY INVESTMENT LIMITED

Applicant

and

SINO UNION (CARIBBBEAN) HOLDING LIMITED
TSAO KING LING
TINA LAN
SHANGRI-LA INTERNATIONAL DEVELOPMENT HOLDING LIMITED

Respondent

Appearances:

Mr. Jack Husbands, of Walkers, for the Applicants, Mr. Nicholas Carter of PricewaterhouseCoopers (BVI) Limited and Mr. David Walker of PricewaterhouseCoopers (Cayman) Limited as Joint Provisional Liquidators of the fourth Respondent, Shangri-La International Development Holding Limited
Ms Keisha Durham of Harney Westwood & Riegels for the first Respondent, Sino Union (Caribbean) Holding Limited
Mrs. Tana'ania Small-Davis for the Commonwealth of Dominica

[2009]: 23 September; 9 October

JUDGMENT in CHAMBERS

(Remuneration of Joint Provisional Liquidators – sections 432, 433 Insolvency Act, 2003 considered – principles on which interim remuneration to be awarded – *Mirror Group Newspapers v Maxwell & Ors* (1988) BCC 324 considered)

[1] Bannister J [ag]: This is an application stated as made under section 172 of the Insolvency Act, 2003 ('the Act') by Mr. Nicholas Carter of PricewaterhouseCoopers (BVI) Limited ('Mr. Carter' and 'PwC BVI') and Mr. David Walker of PricewaterhouseCoopers (Cayman) Limited ('Mr. Walker' and 'PwC Cayman') (together 'the JPL's') asking the Court to order that they be paid interim remuneration in their capacity as joint provisional liquidators of a company called Shangri-La International Development Holding Limited ('Shangri-La'). The JPL's were appointed as joint provisional liquidators of Shangri-La on 27 February 2008 and the period for which they seek an order for their remuneration in that capacity runs from 27 February to 30 September 2008. Since this is an application for interim remuneration it is more accurately described as being made under subsection 433(3) of the Act, which provides that the Court may at any time set an interim payment to be made to the relevant insolvency practitioner on account of his remuneration.

[2] Shangri-La has a wholly owned subsidiary called International Development and Management Limited ('IDML'). IDML is a Cayman registered company. IDML in turn has two wholly owned subsidiaries: one, Paradise Property Holding Limited ('PPHL') is a company registered in the Commonwealth of Dominica; the other, also incorporated under the laws of Dominica, is called Clark Hall International High School Inc. Between them IDML and PPHL own some 400 acres of land in Dominica known as the Clark Hall Estate. That land is the subject matter of a proposed development by Shangri-La which at present lies stalled.

[3] The need for the appointment of Mr. Walker jointly with Mr. Carter was plainly prompted by the fact that roughly 93% of the Clark Hall Estate is registered in the name of the Cayman registered IDML.

[4] The two PwC companies ask by way of interim remuneration for an aggregate of US$156,669 by way of professional fees. These are split as to US$150,000 (after applying a 3% discount to timed costs) for the BVI company and US$6,669 for the Cayman company. To the figure of US$156,669 is added a claim for $3,293.65 by way of office disbursements. In addition to the claim for professional fees, the JPL's claim a total of US$67,781.36 for expenses incurred for legal services. This figure can itself be broken down as comprising: US$54,359 billed by Walkers BVI; US$9,560 by Lovells (Hong Kong); and US$3,862 by De Freitas, de Freitas & Baron, legal counsel in Dominica.

[5] The JPL's application was served on (among others) Sino-Union (Caribbean) Holding Limited ('Sino Union'), which is registered as the holder of 40% of Shangri-La's shares. Sino Union has lodged a letter

from its legal advisers, Harneys Westwood & Riegels ('Harneys') by way of opposition to the JPL's application. Walkers, for the JPL's, have helpfully produced what is described as 'Points of Reply', but which is more in the nature of a schedule, setting out each of Harneys' complaints followed by the JPL's response.

The law

[6] I observe first that whereas subsection 430(4) of the Act gives creditors, in certain circumstances, the right to be heard on the remuneration of a liquidator and certain other appointees, no right is given to creditors to appear at a hearing to fix the remuneration of a provisional liquidator: see subsection 430(6). Having excluded creditors from such consideration, still less must the legislature be taken to have considered that members of a company had any standing to object to the remuneration of a provisional liquidator. Although I heard Ms Durham *de bene esse* and although, as usual, I found her submissions of assistance, I think that in future cases of this sort members as well as creditors would be well advised not to add to costs by attempting to appear and make representations at a hearing fixing the remuneration of a provisional liquidator.

[7] It is convenient to take the law first. Subsection 172(1) of the Act provides that in deciding to award remuneration to a provisional liquidator the Court must apply the general principles specified in section 432 of the Act. It was common ground, and in my judgment correct, that the 'principles' to which subsection 172(1) refers are to be found in subsections 432(3)(4) and (5). Those subsections are in the following terms:

> "(3) Subject to subsection (4), the remuneration of an insolvency practitioner shall be fixed by reference to the time properly given by him and his staff in carrying out his duties in the insolvency proceeding.
>
> (4) Where the insolvency practitioner so requests and the creditors' committee or the Court considers that the circumstances justify it, the remuneration of an insolvency practitioner may be fixed in whole or in part as a percentage of the value of the assets realized and the value of the assets distributed, or as a percentage of either.

(5) When fixing the remuneration of an insolvency practitioner in the circumstances specified in subsection (1) or sanctioning an interim payment under section 433(3), the creditors' committee or the Court

a) shall take into account

i. The need for the remuneration to be fair and reasonable;

ii. The time properly spent by the insolvency practitioner and his staff in carrying out his duties;

iii. The complexity of the insolvency proceeding and whether the insolvency practitioner has been required to take any responsibility of an exceptional kind or degree;

iv. The effectiveness with which the insolvency practitioner is carrying out, or has carried out, his duties;

v. The value and nature of the assets with which the insolvency practitioner has had to deal;

vi. The hourly rates charged by other insolvency practitioners, both within and outside the Virgin Islands, in undertaking similar work; and

vii. Whether any expenses which he incurred were properly incurred; and

b) may take into account

i. The commercial and personal risks accepted by insolvency practitioner;

ii. The time spent by the insolvency practitioner and his staff outside the Virgin Islands and the amount of travelling required; and

iii. The standards and practice used for assessing remuneration in jurisdiction other than the Virgin Islands.

[8] By subsection 2(1) of the Act 'remuneration' includes properly incurred expenses and disbursements.

[9] In my judgment, the following principles are to be derived from a consideration of these provisions:

> (a) the 'default position' for the Court when *fixing* an office holder's remuneration (something which takes place only after the conclusion of the relevant insolvency proceedings (subsection 433(1) of the Act)) is that it must be fixed by reference to time properly given by him in carrying out his duties; only if a request is made by the insolvency practitioner is the Court to consider fixing remuneration by reference to a percentage of assets realised or distributed: subsections 432(3) and 432(4);
>
> (b) where the Court is *fixing* remuneration and is proceeding under sub-section 432(3) the criterion in subsection 432(5)(a)(ii) (time properly spent) appears to be otiose. So far as the *fixing* of remuneration is concerned, this particular criterion would appear to be relevant only where the Court is deciding whether to accede to a request under subsection 432(4) or is deciding what is the appropriate percentage to fix under that subsection;
>
> (c) where, however, the Court is deciding whether to set an interim payment under subsection 433(3), then all the matters listed in subsection 432(5)(a) must be taken into account.

[10] How, then, is subsection 432(5)(a) to be applied? The requirement of subsection 432(5)(a)(i) that the interim award should be fair and reasonable seems to be in the nature of an overriding requirement. On its own, it provides no guidance as to the appropriate figure to be awarded. The Court cannot, by the light of nature, reach a 'fair and reasonable' award. In making its award, it needs to be able to apply some yardstick by which the award may be computed. None of the criteria identified in sub-sections 432(5)(a)(iii), (iv) and (v) provides a self standing means of measurement. The fact that the proceedings may have been complex may justify the expenditure of time which would be excessive in the context of a simple case, but

that fact does not by itself enable the quantum of an award to be calculated. The same consideration applies to the 'effectiveness' and 'value of assets' criteria.

[11] It seems to me that the simplest construction of subsection 432(5)(a) in relation to interim awards is that construe it as intended to operate on the underlying assumption that the calculation of the award will start from the time properly spent by the insolvency practitioner and his staff in carrying out his duties. Indeed, that is the only basis upon which the sub-section can be given practical application. This construction not only has the advantage of being consistent with the default position in subsection 432(3), it also makes sense of the reference in subsection 432(5)(a)(vi) (which is meaningless unless the starting point for the award is intended to be time-based) and it gives context against which subsections 432(5)(a)(iii), (iv) and (v) can be applied as checks upon the aggregate of hours spent when the question whether those hours were 'properly' spent falls to be considered.

[12] I was referred in argument to the decision of Hariprashad-Charles J in CDP limited v CDW International (BVI) Ltd[1]. The Judge there reviewed an application by certain insolvency practitioners for remuneration and expenses. The judgment referred to a decision of Ferris J in an English case called Mirror Group Newspapers v Maxwell and Ors (No 2)[2] . There are two passages in particular from the judgment of Ferris J which I think call for some comment. At page 334D of the judgment Ferris J said:

> "The test of whether office-holders have acted properly in undertaking particular tasks at a particular cost in expenses or time spent must be whether a reasonably prudent man, faced with the same circumstances in relation to his own affairs, would lay out or hazard his own money in doing what the office-holders have done. It is not sufficient for office-holders to say that what they have done is within the scope of the duties or powers conferred upon them. They are expected to deploy commercial judgment, not to act regardless of expense."

Further on, at pages 336 and 337, he said:

[1] BVIHCV 2003/0106.
[2] (1988) BCC 324

> 'In my judgment it is vital to recognize three things in this field. First, time spent represents a measure not of the value of the service rendered but of the cost of rendering it. Remuneration should be fixed so as to reward value, not so as to indemnify against cost."

[13] In my judgment there is no test under section 432 of the Act which requires insolvency practitioners to satisfy the Court that a reasonably prudent man, faced with the same circumstances in his own affairs, would have laid out or hazarded his own money in doing what the office holders have done. The tests to be applied are those set out in section 432. They are not to be glossed by reference to some hypothetical man of prudence. Secondly, insolvency practitioners, while obviously they must act responsibly and prudently, are not in the position of an ordinary man of business. They are subject to fiduciary responsibilities which often require them to take steps and to carry out activities which no ordinary person would think it worth spending his own money on. This supposed test seems to me not only at variance with the terms of the Act, but positively misleading.

[14] Next, I do not consider that it is correct, certainly not in this jurisdiction, to say that remuneration should be set so as to reward value, not so as to indemnify against costs. I have already considered the provisions of section 432 which, in my judgment, enjoin the Court (unless remuneration is being awarded on a percentage basis) to use time properly spent (or 'given') as the starting point for fixing remuneration – expressly in the case of subsection 432(3) and implicitly, in my judgment, in the case of subsection 432(5)(a). It needs to be stressed that there is nothing in the wording of the Act to support the proposition that the Court should act in the role of self-appointed expert and apply some sort of cost/benefit analysis to work done by insolvency practitioners. In my judgment it would be highly dangerous for a judge to attempt any such or similar exercise. First, he or she has no expertise in the costing of such work, let alone its valuation, and the result of a judicial attempt to carry out either exercise can result only in a subjective opinion with all the elements of unfairness which that will necessarily embody. Secondly, many of the tasks which have to be carried out by insolvency practitioners in the course of their duties are, in the real world, valueless. What, for example, is to be said to be the 'value' of a report which an insolvency practitioner is directed to make to the Court? What is the 'value' of time spent by an insolvency practitioner in seeking the directions of the Court as to whether he should enter into a particular compromise? This test proposed by Ferris J is, in my judgment, inherently unworkable as well as finding no reflection in the provisions of the Act.

[15] Nor do I think that the Court should be astute to tell insolvency practitioners after the event that this or that task could and should have been produced in fewer man-hours than were actually employed. For a start, unless an obviously excessive time is claimed for the performance of a task, the Court (in the absence of expert evidence) has no objective material upon which to make a judgment as to the precise amount of time which a particular task should have taken. Further, it must be firmly kept in mind that one of the statutory criteria in subsection 432(5)(a) (and in my judgment a critical one) is 'the time properly spent by the insolvency practitioner and his staff in carrying out his duties'. There is no suggestion in the sub-section that the Court has to be satisfied that what was done was done in the shortest time possible or that it has to ask itself whether a particular practitioner might have done a workmanlike job in a shorter time. The criterion is whether the time was 'properly' spent.

The challenges

[16] I therefore proceed on the basis that the hours spent by the insolvency practitioners and their staff form the starting point for calculation of the interim award. There is no challenge to the accuracy of the itemised time sheets submitted by the JPL's in support of their application. Dealing first with the charges made by the BVI office, the time sheets submitted evidence some 400 hours spent in total which, at the charge-out rates applied by the JPL's, results in a total time based claim (after applying a 3% discount) of US$150,000. What is said by Sino Union is that in light of the fact that the appointment was provisional only; that Shangri-La is presently non trading; and that the principal assets of Shangri-La are shares in non-trading entities, 'it appears . . . that these fees, on balance, are not reasonable'.

[17] I am not impressed by this challenge, which seems to me to amount to mere assertion. By contrast, Mr. Carter's affidavit of 5 December 2008 in support of the application details the steps taken by the JPL's in the performance of their duties. I do not think that it is necessary for the purposes of this very generalized ground of objection for me to repeat them in this judgment, but I am satisfied that the JPL's faced a far from straightforward task. Mr. Carter deposes to the fact that time spent by each member of staff has been reviewed and deductions (apart from application of the 3% discount mentioned above) made to the time claimed to account for possible inefficiencies and duplication of time. He produces evidence of comparable fee levels. I dismiss this head of complaint, on the basis that it is non-specific and in truth amounts to little more than what Lord Hoffmann, in another context, described as an expression of 'a priori incredulity'.

[18] The next complaint concerned the US$6,669.60 of charged time claimed by the Cayman office of PwC. Originally, there was considerable force in this since when the hearing commenced there was no supporting evidence before the Court to explain how the hours claimed had been spent. That was remedied after the short adjournment when over the protests of Ms Durham I admitted a schedule detailing the time spent. I accept that at first blush the document seems to evidence no more than the rather humdrum carrying out of routine tasks and liaison work caused by the fact that provisional liquidators had been appointed in two different jurisdictions. It may be that that was not, as things have turned out, strictly necessary, but that is not the fault of PwC Cayman. Once appointed, the firm had duties to carry out and since there was no provision in the order appointing the JPL's that either of them could act singly, there was an obvious need for them to liaise and Mr. Walker had to ensure that, while Mr. Carter obviously took the lead role, he was *au fait* and concurred with what was being done at Mr. Carter's end, so to speak. In those circumstances, I regard the figure of US$6,669.60 as modest.

[19] The next complaint is that it appears from a reading of the time sheets that Mr. Marsh, a Senior Associate at the PwC BVI office, repeated on 4 March 2008 work which he had already done on 3 March 2008. The JPL's explain that the narrative merely describes work done over the two day period and that no duplication of tasks took place. Since I find it difficult to believe that a firm such as PwC would countenance an employee duplicating work already done and in light of the assurance that there is no mistake in the claim for a total of 16 hours of Mr. Marsh's time, I reject this complaint as unfounded. Sino Union also complains, however, that on 3 March Mr. Carter claimed 6.5 hours of time on activities that appear to duplicate some of Mr. Marsh's work. I accept the explanation given, which in summary is that while Mr. Marsh as Senior Associate did the preparatory work it had to be reviewed and signed off by Mr. Carter as the responsible insolvency practitioner. This seems to me to evidence good practice rather than churning or double counting and I reject this complaint also.

[20] Sino Union next complains at the 38 hours spent by Mr. Marsh in the preparation of the JPL's first report to the Court – a document which they were obliged by the terms of their appointment to compile and present. The report itself is a painstaking and perhaps rather over elaborate document, but it is essential to keep in mind that the JPL's had a legal obligation, imposed by the order of the Court, to compile the report and it is wrong to criticize it as being informative rather than sketchy. Reading it, it is not difficult to understand that the assembly and collation of the evidence necessary to support its narrative must have been time consuming.

[21] Reminding myself that the starting point for computing the amount of an interim award is time properly spent, it seems to me plain that unless questions of effectiveness come into play (and it could hardly be suggested that the report was inadequate) or the Court has to make allowances for complexity (which I am not invited to do), the Court is concerned solely with the question whether the time was properly spent in preparing the report.

[22] It was the Court which directed the JPL's to produce this report. It has not been suggested and, without evidence to support such an allegation I am not prepared to assume, that hours claimed by Mr. Marsh were not spent by him in the production of the report, but rather on some unrelated activity. In those circumstances, how is the Court, having directed the JPL's to produce a report, to tell them that it took them too long? What is the absolute standard against which the time taken to produce such a report is to be measured? Obviously, the Court can recognize a case when time said to have been taken to perform a task is self evidently excessive, but I cannot say by the light of nature that that is the case here. It seems to me, therefore, that the 38 hours claimed for the production of the report must be treated, in the absence of any other direct evidence, as time properly spent in the performance of one of the JPL's duties.

[23] I reject the complaint based upon the preparation of the preliminary report.

[24] Sino Union next complains about a total of 15 hours spent by Mr. Marsh over 13 and 14 March 2008. The annotation in the time sheets describes this time as having been spent in

> 'Correspondence with agents in Dominica in relation to the Caveats to Title, Company Searches and serving of Appointment Documents to companies and individuals located in the Commonwealth of Dominica including: Draft follow up appointment to to Mr. Zhao and Mr. Felix Chen: Notice of statement of Affairs. Draft notices to Register Agent, Investment Dominica Authority, Auditor (current and previous) and Commonwealth of Dominica Company Registry'

[25] Although an attempt is made in Walkers' reply document to flesh out this narrative, I think that the Court should consider the time spent against PwC's own description of the work in its time sheets (time sheets which Mr. Carter says were carefully reviewed and, where appropriate, 'pruned'). 'Correspondence with agents in Dominica' cannot have amounted to more than one letter over a period of two days and the other

activities described appear to cover nothing more than the preparation and dispatch of what must be presumed to have been standard form notices of appointment to various parties. It does seem to me that even allowing for the fact that the letter to the agents in Dominica may have required the application of skill and judgment, a period of almost two whole working days falls into the self-evidently excessive bracket for the remaining routine form filling tasks identified in the time sheet. I shall reduce the claimable time for this work by half, a reduction of US$1,762.50.

[26] Sino Union says that US$235 claimed for a hour spent by Mr. Marsh in drafting an e-mail updating the JPL's on the outcome of a Court hearing on (it transpires) 25 March 2008 is excessive. Time updating the liquidators on such a hearing seems to me to have been time properly spent and it does not seem to me that there is anything obviously excessive in the amount of time taken. I reject this complaint.

[27] Next Sino Union complains about five hours of time, at a cost of US$2,625, claimed by Mr. Carter for 31 March 2008. The narrative in the PwC time sheets describes this time as spent as follows:

> 'Peruse Court Orders and supplementary documentation and development of strategy as a result of directions from the Court'

Walkers' response document attempts to elaborate upon this entry, but for the same reasons as I have given in paragraph [25] above, I think that PwC must be held to its own narrative, which must be presumed to have been compiled from its own internal papers. The directions from the Court were, so far as the JPL's own work as JPL's was concerned, no different from those made on 27 February 2008. I therefore find that the explanation given for this time spent is insufficient for the Court to reach the conclusion that it was properly spent within the meaning of subsection 432(5)(a)(ii) and I disallow this part of the claim accordingly.

[28] PwC BVI's time sheets include entries covering 25, 26 and 26 June 2008 which show Mr. Marsh as having spent a total of 20 hours drafting updated notes for inclusion into a proposed interim second liquidation report 'dated 31 May 2008' with review of original report and commencing update of outstanding issues. It seems to me that this complaint is justified. The JPL's were never directed to produce a further report to the Court. It follows that the time spent on this activity cannot correctly be described as time properly spent by the insolvency practitioners and their staff in carrying out their duties, since they were under no duty to

produce a second report. This element of the claim will therefore be disallowed, resulting in a deduction of US$4,700.

[29] Between 8 and 10 July 2008 Mr. Marsh and Mr. Carter together visited Dominica. The narrative states that during this period they met with local lawyers and visited the site of the hotel. Mr. Marsh claims for a total of 13 hours of time spent overall and Mr. Carter claims for 17.25 hours. Mr. Carter also claims for five hours of time spent by him in preparation for the visit to Dominica.

[30] As explained above, an asset of Shangri-La is the proposed hotel site in Dominica. At the hearing Ms Durham complained that the hotel site did not fall within the scope of the provisional liquidation because it was not an asset of Shangri-La but was held between two wholly owned subsidiaries of Shangri-La. This seems to me to be a bad point since the orders appointing and continuing the appointment of the JPL's specifically cover assets in the power, possession, custody and control of Shangri-La. That apart, it seems to me that the objection to this claim is unsustainable. It is true that the narrative is skimpy, but Mr. Carter's affidavit makes clear that there were serious issues relating to the title and to the security and insurance of the Clark Hall estate which, in my judgment, it would have been negligent of the JPL's not to address thoroughly. I can take judicial notice of the fact that travel to and from Dominica will have been time consuming and that it will have occupied the bulk of the time claimed for the first and third days of the visit. I do not consider that it was overkill for Mr. Carter to have his Senior Associate with him on the visit. I note, further, that the time claimed for Mr. Marsh during the visit itself was significantly lower than that claimed for Mr. Carter, satisfying me that there has not been mere duplication of hours away from the PwC BVI office but a genuine calculation of time worked. I find nothing obviously excessive in Mr. Carter's claim to have spent five hours in preparation for this trip. Overall, it seems to me that the JPL's had a clear duty to investigate the position regarding the hotel site, to inspect its physical condition and to take local counsel upon the steps needed to preserve it as an asset. Had the parties to the dispute co-operated, then the necessary steps could have been taken by agreement between them. It is not attractive when one of the parties to the very disagreements which have resulted in the appointment of the JPL's complains about the taking by them of essential steps in the performance of their duties. I reject this complaint.

[31] I now turn to the challenges made to the legal fees incurred by the JPL's to three sets of legal advisers.

[32] Three firms were involved. The first, Lovells (Hong Kong office) ('Lovells') became involved because a significant asset of Shangri-La is an account with RBS Coutts Bank Ltd, Hong Kong ('Coutts') containing

some US$3.4 million. Mr. Carter in his affidavit in support of this application says that upon their appointment the JPL's had difficulty in persuading Coutts to recognize that they were entitled to exercise the mandate over the account. It therefore became necessary to instruct Lovells to act in order to persuade the Bank to recognize the authority of the JPL's. Lovells have been successful in that effort, with the result that a major asset of Shangri-La has been secured and preserved. Sino Union does not appear to dispute that it was proper for Lovells to have been instructed. Its objection is principally to the fact that the JPL's have seen fit to redact their bills, on the grounds that the redacted parts contain privileged material. In my judgment, the redaction of the bills in these circumstances is wholly proper and I have not thought it necessary to take up the offer of the JPL's to disclose the full content of the bills to the Court *in camera.*

[33] Sino Union says, through Harneys, that it would like to see further details of the work done on particular dates by particular lawyers in order that it can be satisfied that the work carried out was reasonable. I think that this demand is misconceived. Subsection 432(5)(a)(vii) deals with insolvency practitioners' expenses (including legal expenses). As set out above, that subsection requires the Court to take into account 'whether any expenses which [the insolvency practitioners] incurred were properly incurred'. It does not seem to me that this language requires the Court to do any more than satisfy itself that the *instruction* by the insolvency practitioners in question of a firm of solicitors or advocates was proper. It is to the *incurring* of the expense that the Act directs the attention of the Court, not to the size of the lawyers' bill. That, it seems to me, the Act leaves to be dealt with as between the insolvency practitioner and the professionals whom he has engaged. The Court's need is to be satisfied that it was proper to engage them. There may, of course, come a point where the Court can see that the size of a bill rendered to the insolvency practitioner is wholly out of proportion to the value of any services rendered. If that point is reached, the question may well arise whether the expenses were indeed properly incurred. In the present case it seems to me impossible to suggest that it was not proper for the JPL's to incur the expense of instructing Lovells. Lovells' bills, totaling US$9,560, seem to me to be modest when set against the fact that their efforts secured an asset with a value of some US$3.4 million. There is therefore nothing to suggest that it was not proper for the JPL's to incur this expense.

[34] The second firm engaged by the JPL's were Counsel in Dominica, who advised the JPL's on steps necessary to protect the legal titles to the hotel site. It seems to me that the JPL's would have been liable to be accused of negligence had they not taken advice on the state of the subsidiaries' titles to the hotel site and they would have been equally liable to have been accused of negligence had they failed to act upon the advice received. It was, therefore, proper for the JPL's to incur the expense of instructing De

Freitas, de Freitas & Baron in Dominica. That firm's bills totalledUS$2,131.92. Again, it seems to me that it would be impossible to challenge the quantum of these bills as exorbitant so as to call into question the propriety of the incurring of this expense by the JPL's.

[35] Finally, the JPL's have instructed Walkers to advise them on legal matters arising during the conduct of the provisional liquidation. The specific tasks upon which Walkers were engaged are summarised at paragraph 22(c) of Mr. Carter's affidavit in support of this application. I do not need to say any more about them than that they are obviously matters upon which responsible insolvency practitioners would have needed (and indeed should have obtained) competent legal advice. These expenses were therefore *prima facie* properly incurred within the meaning of subsection 432(5)(a)(vii). Details of the hours worked, level of lawyers providing the services and rates charged are set out in the exhibit to Mr. Carter's affidavit. The total amount billed by Walkers for their advice and assistance between 1 April 2008 and 30 September 2008 is US$54,359.44. There is nothing in any of these figures to raise an eyebrow and this expense, as in the case of the other two law firm mentioned above, is therefore allowable in full as part of the JPL's remuneration (as defined).

[36] I therefore disallow US$9,087.50 of the fees claimed by PwC BVI and PwC Cayman and make an interim award of US$147,581.50 in aggregate to those two firms by way of their own charges. I approve the office disbursements of US$3,293.65, making a total interim award of US150,875.15. I approve the bills of Lovells (US$9,560), of De Freitas, de Freitas & Baron (US$2,131.92) and of Walkers (US$54,359.44) as properly incurred expenses and therefore add them to my interim reward, making a total interim award of US$216,926.51. Unless a costs order can be agreed, I will hear the parties on the question of costs at an adjourned hearing of this application.

Commercial Court Judge

9 October 2009