IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

BETWEEN

CAUSE NO FSD 205 of 2017 (NSJ)

(1) LEA LILLY PERRY
(2) TAMAR PERRY

PLAINTIFFS

AND

(1) LOPAG TRUST REG.
(A Trust Enterprise registered under the laws of the Principality of Liechtenstein)
(2) PRIVATE EQUITY SERVICES (CURAÇAO) N.V.
(A Company incorporated under the laws of Curaçao)
(3) FIDUCIANA VERWALTUNGSANSTALT
(An Establishment incorporated under the laws of the Principality of Liechtenstein)
(4) GAL GREENSPOON-PERRY
(5) YAEL PERRY
(6) DAN GREENSPOON
(7) RON GREENSPOON, (8) MIA GREENSPOON

(both children, by **HAGAI GREENSPOON**, *their guardian ad litem)*

DEFENDANTS

AND

(1) ANDREW CHILDE
(2) CHRISTOPHER ROWLAND

THIRD PARTIES

On the papers
The Honourable Mr. Justice Segal

JUDGMENT ON THE JOINT RECEIVERS' APPLICATION FOR APPROVAL OF THEIR FEES

The application

1. This is my judgment on the Joint Receivers' (***JRs***) application (by ex parte summons) dated 17 May 2019 for approval of the JRs' fees, costs and disbursements incurred in the period 5 April 2018 to 31 March 2019 (the ***Period***). The total remuneration claimed by the JRs is US$812,078.

Of this total amount, $412,392 related to time charged by the JRs; $194,651 was charged by a director; $3,591 was charged by a manager or assistant manager; $198,306 was charged by a senior assistant and $3,140 was charged by administrative assistants. The JRs also seek approval in respect of their additional fees, costs and disbursements in the sum of US$287,458.17 incurred in the Period.

The order appointing the JRs

2. The JRs were appointed pursuant to my order dated 5 April 2018 (the ***Order***). They were appointed over the share (the ***Share***) in Britannia Holdings (2006) Ltd (***BH06***). BH06 has a number of direct and indirect subsidiaries including Britannia Guarantee National Insurance Company (***BGNIC***).

3. Paragraph 3 of the Order set out the purposes for which the JRs were to exercise their powers (which were set out in paragraph 4 of the Order). These were (a) to protect and preserve the Share and its value pending the conclusion of the main action; (b) ensuring that BH06 and BGNIC were managed by competent and independent directors, so as to protect and preserve the value of their assets, to discharge liabilities properly incurred and ensure that their books and records were properly maintained; and (c), to the extent the JRs considered it necessary or appropriate to achieve the objective set out in (a), to review the conduct and actions (including transactions, payments and disposals) by Mr. Childe and Mr. Rowland in respect of (or other purporting to act for) BH06 and the directors of (or other purporting to act for) BGNIC.

4. Paragraph 5 of the Order dealt with the JRs' remuneration and stated as follows:

> *5. The Receivers' remuneration is to be calculated by reference to time spent at their ordinary hourly rates from time to time subject to approval of the Court. The Receivers' fees, costs and disbursements are to be paid out of the assets of BH06, subject to the Court's approval of such amounts.*

5. On 5 April 2018, I also handed down a Note of Orders to be Made Following the 21 - 23 February Hearing (the ***Note***) in which I gave guidance, inter alia, on how I expected the JRs to exercise their powers and discharge their duties. The following are the relevant extracts from the Note:

> *3(a).* ……..
>
> *The receivers are to be appointed for defined purposes (set out in paragraph 3 of the [Order]) and with certain powers (set out in paragraph 4 of the [Order]). In particular the receivers are to exercise the rights under and in respect of the [Share] for the purpose of ensuring that the value of the [Share] is protected and preserved pending the conclusion of the action; for ensuring that competent and independent directors are in control of BH06 and BGNIC (and may appoint or remove*

directors...); for ensuring that action is taken by those directors to preserve the assets and discharge the proper liabilities of BH06 and BGNIC and for ensuring that these directors in consultation with the receivers consider whether further action or proceedings are required to preserve and protect the rights and remedies of BH06 and BGNIC in relation to the recapitalisation of and payment of dividends by Solid Holdings NV (Solid) or other transactions, payments or matters occurring prior to the appointment of the receivers and to procure or assent to the taking of such action as is appropriate (provided that procuring or assenting to the commencement of new proceedings in any jurisdiction shall require the sanction of the Court).

……

5. I should add that I wish to make it clear that:

……

(b). I expect the receivers to take a considered and proportionate approach to the need for and the extent of further investigations into the Solid recapitalisation and its consequences. The receivers' role is to ensure that the value of the [Share] is protected and preserved pending the conclusion of the action. It will be appropriate for them to have regard to the overall position as established by the injunction as varied by the undertakings. If these ensure that all or a substantial part of the property and funds that were previously held by Solid are protected and cannot be and are not being dissipated or diminished and that rights of action are preserved (by tolling agreements or the commencement of proceedings which are then stayed) then spending a significant amount of time and costs on an investigation and taking further action would appear to me to be disproportionate. I would expect that if the receivers are unclear as to what course to take they would apply to the Court for directions (and do so before embarking on any investigation or action plan that would involve incurring substantial expense).

[underlining added]

The JRs' activities and actions during the Period

6. One of the JRs, Mr. John Royle, filed his second affidavit in support of the JRs' application. This noted that the JRs had regularly during the course of the receivership prepared and submitted to the parties to the main action a monthly report on their activities and then outlined the work done by the JRs. This fell into eleven different areas:

(a). dealing with BHO6 by, for example, appointing a new director; liaising with the Cayman Islands Monetary Authority (***CIMA***); obtaining recognition of the JRs' appointment in Switzerland to ensure that the JRs could be added to the mandate for BH06's account with Pictet & Cie SA (***Pictet***); liaising with Pictet; contacting other Swiss banks; reviewing

BH06's debtors and potential debtors (including claims against Mr. Perry's UK estate); considering and monitoring BH06's investment in its subsidiaries (including BGNIC, Greetnwin.com Inc. and Leadenhall Properties Limited) and reviewing the claims made by the Second Plaintiff to ownership of shares in Mobileye which are registered in the name of BH06.

(b). dealing with BGNIC, for example investigating BGNIC's insurance business operations; communicating with all parties relevant to the reinsurance business (including for example GenRe, with whom BGNIC have a reinsurance contract to cover 85% of its insured exposure); reviewing BGNIC's insurance/ reinsurance contracts; communicating with BGNIC's insurance manager and actuary regarding BGNIC's insurance operations (to ensure that BGNIC was in compliance with the Insurance Law 2010); considering BGNIC's management accounts and financial standing and ensuring that the correct channels of communication were maintained with CIMA; investigating BGNIC's financial exposure resulting from its insurance business relationships; communicating with BGNIC's auditors regarding issues preventing the issue of a clean audit opinion for BGNIC; attending BGNIC board meetings and meetings with CIMA regarding the operations of BGNIC, license requirements, an audit extension application and discussing the process for replacing directors of a regulated insurance entity; reviewing BGNIC's legal agreements and contracts; regular discussions with BGNIC's board, and requesting, reviewing and monitoring management accounts; communications with the Court of Chancery of the State of Delaware by request of the Fifth Defendant to the main action regarding the BGNIC's lien on property located in France; considering and making changes to the BGNIC board (with the consent of CIMA) in order to replace existing directors with independent directors and considering BGNIC's ability/liquidity to make upstream dividends to BH06 subject to CIMA approval.

(c). dealing with Solid Holding NV (***Solid***), a Curacao company which is a subsidiary of BGNIC, by, for example, investigating the dilution of BGNIC's shareholding in Solid and considering at length options available to reverse that dilution or otherwise protect BGNIC's interests in Curacao and other jurisdictions; communicating with Solid's directors and the parties to the main proceedings regarding the dilution and requesting and reviewing Solid's monthly Pictet bank statements.

(d). dealing with the Solid Fund Private Foundation (***SFPF***), a Curacao foundation to whom new shares in Solid were issued, by for example communicating with both Pictet and SFPF's attorneys to arrange for the JRs to be added to the bank account mandate in respect

of SFPF's account with Pictet, and requesting and reviewing SFPF's monthly Pictet account statements.

(e). dealing with Leadenhall Property Limited (***Leadenhall***) a subsidiary of BGNIC by for example communicating with Leadenhall's board as to vacancies and plans to fill those vacancies; assisting with the establishment of a Cayman bank account for Leadenhall after it received a withdrawal notice from its previous bankers to the effect that its account would be closed; making arrangements for the replacement of existing directors (in conjunction with the board of BGNIC as Leadenhall's parent company); reviewing and analysing Leadenhall's business in order to determine what was needed to preserve the value of BH06's/BGNIC's investment; monitoring monthly rental income and occupancy levels in the two real estate assets owned by Leadenhall;, considering the debt due to BGNIC from Leadenhall and discussing repayment options with Leadenhall's directors and undertaking a detailed review of refurbishment bids for the vacant units in Leadenhall's properties.

(f). dealing with GreetnWin.com Inc. (***GNW***) by, for example, communicating and aiding GNW's directors to complete outstanding US federal tax returns dating back to 2014 (by assisting in obtaining missing information); assisting in regularising Federal Bank Account Reporting dating back to 2016; communicating with tax attorneys in the US to ensure GNW's compliance with applicable tax requirements; investigating and discussing various options to mitigate GNW's tax exposure and penalties due to late filings and considering the composition of the board and whether changes were required.

(g). dealing with RECAP Chelsea/Chelsea Associates (***RECAP*** and ***Chelsea***) by, for example, communicating with their directors to obtain updates on the status of operations; researching outstanding loans at RECAP; reviewing shareholder agreements to determine voting rights and what was required to make board changes and reviewing management accounts and financial statements of Chelsea to consider Chelsea's equity investment in a New York real estate asset.

(h). reviewing evidence filed and developments in the main proceedings, for example by sending a junior staff member to attend the trial to ensure that any queries relating to the assets and liabilities within the receivership could be dealt with immediately and that the JRs were made aware immediately of any issues that might impact those assets or liabilities.

(i). ensuring legal obligations were satisfied by for example, preparing and sending monthly accounts in compliance with the Order.

(j). dealing with the issue of who should be liable to and could pay the premium due in respect of insurance for Mr. Perry's art collection including liaising with the parties to the main action; discussing the form of payment (loan or dividend) and its terms; considering the insurance application and evidence in support of it to determine the appropriate response and writing to the Court and all parties setting out the JRs' support for the application but their wish to avoid incurring costs to estate by appearing at a hearing to consider the issue.

(k). dealing with the English proceedings relating to Mr. Perry's UK assets and estate by for example liaising with BH06 and its English solicitors in relation to BH06's potential claim in the English estate in order to ensure its preservation; considering with BH06 the appropriate position to take on the appointment of executors and their identity; considering the English court's judgment and the merits of an appeal and taking all steps with BH06 to ensure that its claims were recognised and preserved.

The basis of and justification for the JRs' remuneration and details of disbursements

7. Mr. Royle in his Second Affidavit explained that he considered that that this was a large and complex assignment involving contentious/litigious parties, multiple subsidiaries and assets, many jurisdictions and cross border issues. He submitted that a monthly average cost rate of US$67,673 represented a very reasonable and proportionate amount of time costs incurred under the circumstances. He identified the rates at which the JRs and their staff had been charged out (all amounts were in US dollars, which is the approach I have followed in this judgment) and confirmed that these rates were within the permitted rates contained within the Insolvency Practitioners' Regulations 2018 (the ***Regulations***) and had not increased during the receivership (whilst the Regulations do not apply to receiverships, the JRs had ensured their hourly rates did not exceed those contained in the Regulations). He also confirmed that the JRs had at all times endeavoured to ensure that a member of staff with the appropriate level of experience had carried out the relevant task in question and that the JRs had not drawn or received any fees to date.

8. As regards the JR's disbursements, these related to the JR's Cayman Islands attorneys Mourant Ozannes and additional costs and disbursements. Mourant Ozannes had submitted three invoices dated 8 August 2018, 31 January 2019 and 17 May 2019 in the total sum of US$287,458.17. The other costs and disbursements totalled US$4,711.44 and related to

printing, scanning, notary fees and CIMA director change application fees paid by the JR's firm, Grant Thornton.

The objections

9. Objections to the amount of the remuneration claimed by the JRs have been made by the two plaintiffs in the main action (the ***Plaintiffs***). They have not been formally joined as parties to the application but the JRs and the Plaintiffs have agreed that the Court should when dealing with the application take into account and consider the challenges and objections made by the Plaintiffs. None of the other parties to the main action have raised any objections. The JRs, the Plaintiffs and the other parties have requested that the application be dealt with on the papers without the need for a hearing.

My decision

10. I have carefully reviewed:

(a). the JRs application and evidence in support including Mr. Royle's Second, Fourth and Fifth Affidavits and the documents exhibited thereto, which included the JRs' detailed statement of time entries and charges (the ***Analysis***) with brief narrative explanations for each entry and sum claimed.

(c). the Plaintiffs' submissions dated 24 July 2019 (the ***Plaintiffs' First Submissions***) and 20 September 2019 (the ***Plaintiffs' Further Submissions***) and their line by line response (the ***Response***) to the Analysis (which identifies the line items to which objection is made, the reason, in summary form, for the objection and the amount which the Plaintiffs' consider the JRs are entitled to claim).

(d). the JR's submissions in response to the Plaintiffs' objections (dated 27 August 2019 and 3 October 2019).

11. I have concluded that, save for the Plaintiffs' challenges to a number of entries as being duplicative of other items and to certain entries as representing ordinary course of business administration for which the estate should not be responsible, the Plaintiffs' objections are unjustified and the JRs' fees, costs and disbursements in the amounts claimed should be approved. I am satisfied that the JRs' claim for remuneration (both the basis on which the remuneration has been calculated and the quantum of the remuneration) is fair and reasonable in

the circumstances and represents value for money (or is otherwise reasonable and commensurate with the nature and extent of the task to be performed and with the JRs' functions and responsibilities in this complex and challenging case). I find that the JRs' explanations provide an adequate response to the Plaintiffs' objections and justify the charges as reasonable and proper in the circumstances, having regard to their powers, duties and role as court appointed receivers in this case.

The Plaintiffs' objections in detail

12. The Plaintiffs explained the various grounds for their objections in the Plaintiffs' First Submissions, which were elaborated in the Plaintiffs' Second Submissions and particularised in the Response. The following, in summary, were the main grounds:

(a). the JRs', after having appointed independent professional directors to the boards of BH06 and BGNIC and other subsidiaries, involved themselves in in the boards' corporate decision making at a granular level, thereby devoting a substantial amount of time (and incurring substantial cost) to a task that was not required to protect the value of the Share and was duplicative of the work done by the independent directors (the ***Review of Corporate Decision Making Issue***).

(b). the substantial amount of work done by Mr. Saville, at an hourly charge out rate of US$705, could and should have been done by another and more junior member of staff based in the Cayman Islands at lower hourly rates (the ***Mr. Saville Issue***).

(c). the JRs had improperly included time costs for junior administrative staff who were carrying out basic administration and IT support which should have been treated as business overhead of the JRs' firm which was covered by and came within the charge out rates of the professional staff working on the case (and therefore should not have been included as a separate charge) (the ***Administration Issue***).

(d). it was unnecessary for the JRs to spend time reviewing court papers filed in the main proceedings in this Court and in related proceedings in other jurisdictions (the ***Review of Litigation Papers Issue***).

(e). it was unnecessary for the JRs to have Mr. Still attend the trial and it would have been sufficient and more cost effective for them to have relied on a review of the daily hearing transcripts. Furthermore, having arranged for Mr. Still to attend the trial, others (including

Mr. Royle) spent an unjustifiable amount of time in reviewing the transcripts and communicating with Mr. Still. Nothing of direct relevance was in issue at trial and it would have been sufficient and proper for the JRs to confine themselves to a brief review of the daily transcripts to see if relevant issues or information had been discussed (which had been the approach which the JRs had initially said they intended to follow) (the ***Attendance at Court Issue***).

(f). certain items should be disallowed since they inadequately particularised or were duplicative of other identical entries or required adjustment for some other reason (the ***Incomplete Description Issue***).

13. The Plaintiffs identified in the Response each adjustment they sought and briefly identified the reason and justification for the adjustment by reference to the explanations given in their written submissions. The result of the Plaintiffs' adjustments was to reduce the amounts payable to the JRs from $812,078 to $621,494.22.

14. As regards the Review of Corporate Decision Making Issue:

(a). the Plaintiffs identified a number of time entries in the Analysis which they said related to activities which were unnecessary and unjustifiable. These should be disallowed.

(b). these were as follows (by reference to entry numbers in the Analysis): 307 (Mr. Royle - discussion of BGNIC with new independent directors: $975); 380 (Mr. Royle - courtesy email to BGNIC board about appointment of new BHO6 director: $195); 511 (Mr. Still - review of BGNIC board minutes, 3.4 hours: $1,156); 535 (Mr. Royle - review of BGNIC draft board agenda: $195); 550 (Mr. Still -review of BGNIC reinsurance agreements and amendments and producing note: $1,156); 580 (Mr. Still - preparing a chronology relating to BGNIC based on board minutes: $1,802); 731 (Mr. Still - review of BGNIC board agenda and agenda items: $325); 778 (Mr. Royle -$1,625) and 785 (Mr. Still - $578) (both attending BGNIC board meeting – only one justified); 827 (Mr. Still - review of Lexinta investment: $136); 870 (Mr. Royle - preparing amendments to draft BGNIC board minutes: $260); 999 (Mr. Royle – review of engagement letter for Travers Thorp Alberga, BGNIC's new Cayman attorneys: $195); 1032 (Mr. Still - meeting in connection with appointment of Travers Thorp Alberga: $612); 1064 and 1102 (Mr. Royle, half of time spent attending meeting in New York with Mr. Jacobs and Mr. MacKay: $5,200 for both entries); 1084 (Mr. Still, reviewing documents relating to the Heritage insurance matter: $816); 1144 (Mr. Saville - call with Yael Perry's counsel regarding bank accounts: $423);

1267 (Mr. Saville - discussion with Travers Thorp Alberga regarding Swiss bank accounts: $70.50); 1360 (Mr. Still - attending BGNIC board meeting with Mr. Royle – only one attendee justifiable: $714) and 1429 (Mr. Royle - advice from Travers Thorp Alberga regarding BGNIC claims: $520).

15. As regards the Mr. Saville Issue, the Plaintiffs submit that the work done by Mr. Saville should only be charged at an hourly rate of $495, representing a blended average of the rates charged by Mr. Royle and Mr. Still. They have identified every entry in the Analysis relating to Mr. Saville and adjusted the amount charged by applying the revised hourly rate.

16. As regards the Administration Issue:

(a). the Plaintiffs have identified every entry in the Analysis relating to administration and argue that the relevant items be disallowed. However, they have confirmed that they are content for the Court to make such deduction as it considers appropriate.

(b). the objections relate to the following entries: 2 (Mr. Royle – email to set up case management software following appointment - $260); 7 (Ms. Argenbright, an administrative assistant – contacting IT to have case file created on Livelink and uploading documents - $195); 8 (Ms. Argenbright - undertaking searches and working on case management software -$214.50); 17 (Mr. Royle – download of affidavits - $325 – only allow $97.50 because the download should have been done by an administrative assistant); 53 (Mr. Royle – download of affidavits - $650 – only allow $195.00 because the download should have been done by a junior member of staff); 64 (Ms. Kianna Rankin – working on different aspects of IT system and creating conflict checklist - $292.50); 65 (Ms. Argenbright - dealing with anti-money laundering issues and creating case binder - $58.50); 78 (Mr. Royle – test of video conference system ahead of call with the Fifth Defendant's counsel - $195); 79 (Mr. Segal – manager/assistant manager - no relation! – reviewing emails and meeting notes, preparing draft letter and giving instructions regarding the preparation of a cheque and expediting delivery by mail - $410 – since largely administrative, reduce by 50%); 106 (Ms. Kianna Rankin – working on conflict checklist - $97.50); 107 (Ms. Kianna Rankin – further work on conflict checklist - $97.50); 121 (Mr. Segal – discussing email from Mr. Royle relating to the removal of BGNIC directors – preparing letter and reviewing Mr. Royle's comments and printing and scanning - $533 – part administrative task therefore reduce to $410); 139 (Mr. Segal – exporting time report - $82); 154 (Ms. Kianna Rankin – scanning filing and saving documents - $58.50); 250 (Mr. Saville – filing documents - $70.50); 312 (Mr. Segal – save

documents to Livelink - $205); 324 (Mr. Royle - billing analysis - $195); 484 (Mr. Saville – discussions regarding opening of case code - $70.50); 549 (Mr. Still – generating time reports - $170); 588 (Mr. Saville – time analysis for monthly report - $493.50); 598 (Ms. Kianna Rankin - scan document - $19.50); 629 (Ms. Kianna Rankin – file review - $780); 630 (Ms. Argenbright - file review - $97.50); 631 (Ms. Argenbright - further work on file review - $78); 641 (Ms. Kianna Rankin – completing one month's file review - $390); 655 (Ms. Kianna Rankin – amend Britannia file review - $58.50); 656 (Ms. Argenbright – discussions on file review with Ms. Kianna Rankin - $58.50); 717 (Mr. Royle – emails regarding Appian system - $130); 727 (Mr. Saville – providing emails for risk analysis - $352.50); 734 (Mr. Saville – emails regarding Appian system - $493.50); 736 (Mr. Royle – emails regarding the Appian system - $260); 741 (Mr. Saville – dealing with email regarding assets available to meet fees following Appian questions - $352.50); 749 (Mr. Royle – Appian research - $195); 759 (Mr. Royle – review of Grant Thornton UK time - $130); 769 (Mr. Saville – providing cost estimate for JR reporting - $705); 783 (Ms. Kianna Rankin - sign off diary lines - $19.50); 815 (Mr. Still – communications with JRs' attorneys asking them to raise an invoice to be submitted to Swiss Prosecutor to release cash - $68); 858 (Ms. Kianna Rankin – checking diary prompts - $19.50); 863 (Mr. Saville – dealing with issues relating to Appian status - $282); 914 (Mr. Saville – review time costs and provide input to Mr. Royle - $282); 1051 (Mr. Saville – update on time recorded - $282); 1078 (Mr. Saville – review monthly report to parties and UK time for inclusion - $352.50); 1180 (Mr. Royle – reviewing emails onto Livelink - $325); 1181 (Ms. Argenbright - discussion of court stamp verification queried by Grant Thornton UK - $39); 1185 (Prudence Pryce, manager/assistant manager – dealing with issues regarding court stamp verification - $90); 1219 (Mr. Saville – checking Grant Thornton UK time for monthly reporting - $211.50); 1290 (Mr. Royle – reviewing work in progress figures - $195); 1305 (Mr. Still – discussion with Mr. Royle regarding monthly reporting and analysis of JRs' fees spent on reports - $102); 1389 (Mr. Royle – search of Livelink for reference - $195); 1462 (Mr. Still – completing compliance forms for Steven Wilson - $714); 1463 (Mr. Still – discussion regarding compliance forms - $34); 1464 (Prudence Pryce – discussion regarding money laundering issues - $45); 1472 (Mr. Still – completing compliance forms for Steven Wilson - $1088); 1473 (Mr. Still – conversation with Steven Wilson on compliance matters - $102); 1480 (Mr. Still – discussions with Mr. Royle on compliance matters - $102); 1482 (Mr. Still – reviewing compliance forms in guidance relating to the applicable Cayman legislation - $442); 1483 (Mr. Still – review of remuneration cap calculation - $102); 1484 (Mr. Still – completion of compliance forms - $544); 1489 (Mr. Still – answering queries from Grant Thornton UK on compliance matters - $136); 1490 (Mr. Still – conversation with Grant Thornton UK on compliance

matters - $102); 1500 (Mr. Still – conference call on compliance matters - $136); 1528 (Mr. Still – further calls with Grant Thornton UK on compliance matters - $918); 1663 (Mr. Royle – reviewing work in progress estimates - $130); 1694 (Mr. Saville – dealing with take on issues central requests re CTOP - $423); 1809 (Mr. Dickson – completion of take on forms - $159); 1816 (Mr. Royle – emails regarding take on process - $195); 1818 (Mr. Still – discussion with the JRs regarding compliance matters - $68); 1828 (Mr. Saville – identifying time for December report - $70.50); 1939 (Schizandra Porter, administrative assistant – checked case diaries - $19.50); 1972 (Schizandra Porter – posting printing and scanning costs - $19.50); and 2091 (Schizandra Porter – posting printing and scanning costs - $19.50).

(c). in addition, the Plaintiffs objected to items 138 and 145 (Ms. Argenbright - review of CIMA policies relating to the replacement of directors - in BGNIC, I assume – total $136.50 and $234) on the basis that this activity represented general knowhow development which should not be charged to the estate.

17. As regards the Review of Litigation Papers Issue:

(a). the Plaintiffs identified a number of time entries in the Analysis which relate to reading and discussing evidence and pleadings in the main action. They argue that such activities were unnecessary and unjustifiable and the time charged should be disallowed.

(b). these were as follows (by reference to entry numbers in the Analysis): 13 (Mr. Royle – reading skeleton argument for February hearing: $650); 21 (Mr. Saville – review of pleadings: $352.50); 24 (Mr. Royle – reading affidavits relating to pre-appointment proceedings: $650); 26 (Mr. Saville - reading affidavits relating to pre-appointment proceedings: $1762.50 – unnecessary and duplicative of review by Mr. Royle); 27 (Mr Saville – review of hearing transcript of 21 February hearing - $3,172.50 – allow 1 hour: $495); 34 (Mr. Saville – review of hearing transcript of 22 February hearings, reading submissions and research relating to Dr Neupert and others: $4,230 – reduce to one hour: $495); 50 (Mr. Royle – reading Second Plaintiff's pre-appointment affidavits: 1.5 hours - $975); 81 (Mr. Saville – call with Ms Boulton to discuss documents disclosed by the Second Defendant and issues arising - $282); 132 (Mr. Saville – reading affidavits including the Second Plaintiff's sixth affidavit - $1,198.50); 136 (Mr. Saville – review of affidavits: $2,467.50); 163 (Mr. Saville – review of affidavits and cross-reference to other facts: $916.50); 308 (Mr. Royle – calls relating to the defence and counterclaim: $390); 317 (Mr. Sill – review of rulings handed down by the Court rulings and Campbells'

briefing: $204); 320 (Mr. Still – same description as previous item said to be both duplicative and unnecessary; $476); 1082 (Mr. Still - reading correspondence relating to hearing dates and new affidavits: $646); 1571 (Mr. Royle - review of my judgment on double derivative strike out application: $650 – only allow $325); 1581 (Mr. Saville – also reviewing my judgment and sending emails to JR and others in connection therewith: 2.6 hours - $1,833); 1648 (Mr. Saville - reviewing the First Defendant's defence and counterclaim: 1.9 hours - $1,339.50); 1749 (Mr. Still - reviewing orders handed down by the Court following the 29 November 2018 hearing: 2.3 hours - $782); 1752 (Mr. Still - reviewing the Court's judgment after that hearing for references to JRs and considering action points: 1.3 hours - $442 – allow half hour of blended rate of $170); 2008 (Mr. Royle - reading skeleton argument of the Fifth Defendant: 0.5 hour - $325); 2014 (Mr. Royle - reading First Defendant's skeleton argument for trial: 1.5 hours - $975); 2017 (Mr. Saville - review of skeleton arguments and summaries of issues arising at trial: 2.3 hours - $1,621.50); 2027 (Mr. Still - reviewing skeleton arguments: 3.1 hours - $1054); 2026 (Mr. Still – discussion of adjournment application based on allegations of fraud in discovery process: 0.5 hours - $170); 2030 (Mr. Royle - discussion of outcome of day 1 of trial, reading transcript: 2 hours - $1,300); 2032 (Mr. Still - discussion of the outcome of day 1 of trial: 0.6 hours - $204); 2034 (Mr. Saville, being given an update by Mr. Still of the hearing to adjourn and making an internal call: 0.7 hours, $493); 2035 (Mr. Royle update from Mr. Still: 0.3 hours - $195); 2042 (Mr. Still - briefing Mr. Royle and Mr. Saville: 0.4 hours - $136); 2047 (Mr. Royle - reading day 3 transcript: 2 hours - $1300); 2051 (Mr. Royle - reading day 2 transcript: 1.5 hours - $975); 2054 (Mr. Royle - finishing reading day 3 transcript and messages to Mr. Still: 1.5 hours - $975); 2063 (Mr. Royle - reading day 4 transcript: 2 hours - $1300); 2075 (Mr. Royle - reading trial transcripts: 2 hours - $1300); 2087 (Mr. Saville - review of transcripts: 4 hours - $2820); 2093 (Mr. Saville - review of day 11 transcript and closing arguments: 1.2 hours - $846); 2101 (Mr. Saville - review of closing arguments and transcripts: 2.5 hours - $1762); 2103 (Mr. Royle - reading penultimate day transcript: 2 hours - $1300); 2105 (Mr. Royle - reading transcripts: 1.5 hours - $975) and 2109 (Mr. Royle - reading transcripts: 1.5 hours - $975).

(c). the Plaintiffs also identified a number of entries relating to the review of court papers filed in other proceedings and once again argue that such activities were unnecessary and unjustifiable and the time charged should be disallowed.

(d). these were as follows (by reference to entry numbers in the Analysis): 102 (Mr. Royle – review of papers from Ogier relating to contempt proceedings: $260); 118 (Mr. Royle – sending email to Ogier regarding contempt claim: $260); 319 (Mr. Still – review of UK

court hearing documents : $714 – allow one hour at $340); 437 (Mr. Saville – reviewing papers from Fieldfisher regarding an appeal and receiving update: $705); 485 (Mr. Saville – review of affidavits in English proceedings relating to the UK estate: 1.4 hours - $987 - 0.4 hours allowed - $198); 1131 (Mr. Royle - discussion regarding Swiss criminal prosecution with Yael Perry's legal team: $520); 1322 (Mr. Still - searching for Delaware judgment relating to Cote D'Azur property/transaction: $170); 1529 and 1534 (Mr. Saville - review of hearing transcript in English court hearing regarding the appointment of an executor to Mr. Perry's estate: $4,582.50 - 6.5 hours – allow 1 hour at Plaintiffs' blended rate of $495); 1561 (Mr. Saville - further review of the transcript in the English proceedings: $4,794 – 6.8 hours – allow 1 hour at $495); 1672 (Mr. Saville - review of Lopag's Solid claim: 1.4 hours - $987); 1735 (Mr. Still - review of affidavits for support of preservation of witness evidence relating to Solid dilution: 1.8 hours, $612); 1769 (Mr. Still - reviewing affidavits relating to Solid dilution so can identify and preserve relevant evidence for any subsequent claim: 3.4 hours - $1156 – only allow one hour at $340); 1879 (Mr. Saville - review of English court judgment on appointment of administrator to Mr. Perry's UK estate: 1.3 hours - $916); 2019 (Mr. Royle - reviewing Lichtenstein criminal complaint: 1.5 hours - $975) and 2029 (Mr. Saville - reviewing Lichtenstein criminal complaint: 2.2 hours, $1551);

18. As regards the Attendance at Court Issue:

(a). the Plaintiffs identified every entry relating to time spent attending Court, communications taking place while Mr. Still was in Court or after Court. They submit that the issues dealt with at trial were of no relevance to the JRs' role or activities; that they made their concerns known before and during the trial commenced and the JRs chose to ignore them; it would have been sufficient for Mr. Still to receive and review the daily transcripts and report to others if he identified points of relevance to the JRs; the review of each day's transcript would only have taken less than 2 hours; the JRs' approach was unnecessary and inefficient and resulted in substantial fees in excess of $50,000 all of which should be disallowed.

(b). the relevant entries were as follows (by reference to entry numbers in the Analysis): 2033 (Mr. Still - attending hearing of application to adjourn – 8 hours - $2720); 2043 (Mr. Still – attending opening submissions - 7 hours: $2,380); 2053 (Mr. Still – attending the trial - 8 hours - $2720) 2057 (8 hours - $2720); 2064 (7 hours, $2,380); 2070 (8 hours - $2720); 2074 (Mr. Still – attending the trial - 8 hours - $2720); 2076 (Mr. Still – attending the trial - 8 hours - $2720); 2081 (Mr. Still – attending the trial - 8 hours - $2720); 2084 (Mr. Still – attending the trial - 8 hours - $2720); 2085 (Mr. Still – attending the trial - 7 hours,

$2,380); 2090 (Mr. Still – attending the trial - 7 hours, $2,380); 2049 (Mr. Royle - messages from Mr. Still during the hearing: 0.4 hours - $260); 2052 (Mr. Still - catch up with Mr. Royle after the hearing: 0.5 hours, $170); 2058 (Mr. Still - catch up discussions: 0.6 hours - $204); 2060 (Mr. Royle - catch up: 0.5 hours - $325); 2062 (Mr. Royle - messages from Mr. Still during the hearing: 0.4 hours - $260); 2065 (Mr. Still - catch-up: 0.4 - $136); 2086 (Mr. Still - discussion with Mr. Saville regarding transcripts: 0.3 - $102); 2088 (Mr. Royle - messages to Mr. Still: 0.3 hours - $195); 2094 (Mr. Still - providing update on hearing to JRs: 0.5 hours - $170); 2097 (Mr. Royle - emails regarding the conclusion of the trial: 0.3 hours - $195) and 2099 (Mr. Still - giving update to Mr. Saville and sending transcripts: 0.2 hours, $68).

19. As regards the Incomplete Description Issue:

(a). the Plaintiffs identified the following entries as being unclear and failing adequately to describe the activity in question : (by reference to entry numbers in the Analysis): 46 (Mr. Royle – reading affidavits: $1300 – unclear which affidavits and purpose); 135 (Mr. Saville - review of letter of wishes: $352.50); 180 (Mr. Saville – considering where we are and outstanding tasks: $141); 189 (Mr. Saville – sort out emails and ensure dealt with: $211.50); 248 (Mr. Saville – various emails to file away, subsequent emails: $141); 373 (Mr. Saville – catch up call: 454 (Mr. Saville – various emails – ensuring all dealt with: $211.50); 739 (Mr. Still - review of records to establish the ultimate beneficial owner of the Share: $612 – said to be unclear why necessary); 1037 (Mr. Royle - review of letter of wishes: $325) 1042 (Mr. Still - review of letter of wishes: $238); 1046 (Mr. Still - review of board minutes and chronology $102 – what does this refer to?); 1567 (Saville, just a reference to Solid NV dilution of Curacao, $282 – insufficiently particularised); 1756 (Mr. Saville - file away emails, and ensure all dealt with: 0.3 hours, $211 – insufficiently particularised) and 2031 (Mr. Royle - read correspondence from Lewis Baach: 0.5 hours - $325 – unclear as to what is being referred to)

(b). the Plaintiffs also identified the following entries as requiring adjustment: 1765 (Mr. Royle - reviewing Oakley affidavits for purpose of preparing report to Court: 1 hour - $650 - allow half) and 2153 (Mr. Still as second representative of the JRs attending meeting with CIMA: 1.7 hours - $578 – disallow as only one representative needed).

(c). the Plaintiffs identified the following entries as being duplicative: 36; 49

(d). the Plaintiffs identified the following entries as requiring adjustment since the time spent on the relevant task was considered to be excessive and unjustifiable: 144 (Mr. Royle – preparing first draft of JRs' accounts: 2 hours - $1300 – only 0.2 hours and $130 should be allowed); 325 (Mr. Royle asking a colleague to review invoices: 0.3 hours - $195 – allow 0.1 hours: $65); 340 (Mr. Royle asking colleague to review documents: 0.4 hours - $260 – allow 0.2 hours: $130); 506 (Mr. Royle – asking colleague to review Appleby invoices – 0.3 hours - $195 – allow 0.1 hours - $65) and 523 (Mr. Royle – asking colleague to prepare draft balance sheet: 0.3 hours - $195 – allow 0.1 hours - $65).

(e). I note that the Plaintiffs' also challenged item 11 dated 6 April 2018, the day after the Order (Mr. Saville – reviewing order and discussing next steps with Ms Boulton - $564). However, since this appears to relate to a discussion concerning the Order pursuant to which the JRs had just been appointed there is no basis on which an objection could properly be raised.

The JR's explanations and response

20. The JR's response to these objections and challenges can be summarised as follows:

(a). as regards the Review of Corporate Decision Making Issue, the JRs' argue that all the entries related to activities which clearly fell within their mandate and scope of work as defined by the Order and explained in the Note. Many of the entries related to the operations, governance and assets of BGNIC. It was clear that the JRs were required to familiarise themselves with the activities and assets/liabilities of BGNIC and continually to monitor them to ensure that the board was acting properly and where appropriate the JR's views were made known and considered. The work complained of was part of the JR's necessary and proper oversight of the affairs and investments of BGNIC. Furthermore, there were other subsidiaries in the BH06 group holding assets which had a gross value in excess of $500 million whose affairs need to be understood and monitored. A failure actively to understand and monitor the activities and assets/liabilities of BGNIC and the other subsidiaries would have resulted in a failure by the JRs to fulfil the task of preserving the value of the Share and exercise the oversight which the terms of the Order required and the Court expected of them.

(b). as regards the Mr. Saville Issue, the time charged by Mr. Saville was both necessary and cost effective. He is a senior and experienced insolvency practitioner who has held a

number of appointments from this Court. His involvement allowed Mr. Dickson to reduce significantly the time he had to spend on the receivership (to just 4.1 hours). Had Mr. Dickson performed these tasks he would have been charged out at a significantly higher rate ($795 as compared to $705). He also performed important tasks many of which were conveniently conducted from London, where he was based (for example, his work in relation to the real estate owned by Leadenhall Properties Limited (a wholly owned subsidiary of BGNIC). Furthermore, although not directly applicable, the rate charged by Mr. Saville was within the range of rates permitted for a director in Part A of the Schedule to the Regulations. The JRs' pointed out that in this jurisdiction insolvency practitioners were permitted to engage staff from an associated firm in another jurisdiction provided that the charge out rate for such a person fell within the permitted range in the Regulations (the JRs had in mind, I assume, the decision of the Chief Justice in a case in which they were involved, *In Re Saad Investments Company Limited (in official liquidation)* (unreported, 6 December 2012, the Chief Justice) (***Saad***)).

(c). as regards the Administration Issue, the JRs explained that they applied their firm's standard policy and charged for the time of administrative staff where the work being done was outside the usual type of administrative work that members of staff had to perform on an assignment. However, since the amounts involved were relatively small they also indicated that they would accept whatever sum the Court considered to be appropriate.

(d). as regards the Review of Litigation Papers Issue, the JRs argued that since they had no prior involvement in the proceedings and dispute between the parties to the main action and because challenges had been made with respect to transactions entered into by and the activities of BGNIC and Solid, which they were required by the Order and Note to investigate, it was necessary for them to read the evidence and pleadings in the main action to ensure they were fully briefed and aware of all relevant matters. It was also important for them to read papers filed in other proceedings such as Lichtenstein and Switzerland, as these were directly relevant to the investigation which they were required to oversee and the decisions that had to be made as to whether further action was required to protect the position of BGNIC and Solid. The Delaware proceedings were also relevant because the Plaintiffs had relied on the proceedings as providing evidence of wrongdoing by the First Defendant (which might give rise to claims) and because one of the parties to the Delaware proceedings was a debtor of BGNIC.

(e). as regards the Attendance at Court Issue, the JRs considered that relevant information might be discussed during the trial (including information relating to assets of BH06 and

its subsidiaries, information relating to the matters to be investigated and possible claims – including information that the JRs had sought but been unable to obtain). It was therefore important that they were aware of what was said during the hearings. Previous interlocutory hearings had also demonstrated that the conduct of the JRs had been discussed during the hearings and the action taken by the JRs or their position had been misrepresented resulting in the Court proceeding on the basis of factual errors. The JRs only had one representative in attendance (Mr. Still). The JRs had carefully considered other options but concluded that having Mr. Still attend was the most cost effective and efficient alternative. They considered that it was preferable to an approach which involved them only reviewing transcripts. They considered that this was likely to be the more expensive alternative, for example if Mr. Royle had been required to read, and rely just on his own reading of, all the transcripts. Mr. Royle charge out rate was, as noted above, $650 whereas Mr. Still's was $340. Mr. Royle was able to limit his review to those parts of the transcript that Mr. Still reported as being relevant to the JRs.

21. The Plaintiffs criticised the JRs for electing to wait for over a year after their appointment to submit their first application for Court approval of their fees. An earlier application would have made the application more manageable and importantly the desirability and appropriateness of a number of practices, to which the Plaintiffs now objected, could have been reviewed and if appropriate stopped much sooner. The Plaintiffs also noted that they had informed the JRs of their objection to the JRs' sending a member of their staff to attend the trial and the JRs had ignored the Plaintiffs' objections and, after initially informing the parties to the action that they did not intend to send anyone to the hearing, pressed ahead and sent Mr. Still to observe the whole of the trial. Mr. Royle, in his Fifth Affidavit, rejected these criticisms. He noted that, as the Plaintiffs were aware, there were no funds available from which to pay the JRs' fees and disbursements until shortly before the JRs' application was made, so that an earlier application would have been pointless. The Plaintiffs had been kept informed about the JRs' fees and disbursements as they had been sent the JRs' monthly accounts and reports which contained details of and updates on the JRS' fees and disbursements. There was therefore no prejudice to the estate or the Plaintiffs in the JRs delaying their application for just over a year until the estate was in funds to allow the fees and disbursements to be paid.

Discussion and decision

22. In disposing of the JRs' application I need to deal not only with those elements of their fees to which the Plaintiffs object but with the whole claim since before approving any part of the JRs' claim the Court must be satisfied that the fees are fair and reasonable in the circumstances.

23. Neither the JRs nor the Plaintiffs in their written submissions dealt with the approach to be adopted and principles to be applied by the Court when reviewing fee approval applications. In the absence of the citation of any authority, I do not intend to set out or analyse the case law in any detail but will briefly mention the principles that seem to me to be applicable on this application:

(a). the amount of remuneration and disbursements of court-appointed receivers is directly and exclusively within the court's discretion to fix and approve.

(b). the Court will have regard to and generally apply the principles and approach developed in relation the review of the remuneration and disbursements of insolvency officeholders in this jurisdiction and other relevant jurisdictions (particularly England and Wales).

(c). the Regulations do not apply to court appointed receivers. However, to the extent that they establish rules governing the remuneration of official liquidators the Regulations provide an important basis for the review of receivers' remuneration. The Regulations set out the permissible bases on which official liquidators may be remunerated (including being remunerated upon a time spent basis, as in the present case) and establish (in Part A of the schedule) maximum hourly rates for different grades of staff involved in the liquidation. It appears that these requirements have been complied with in the present case. However, the Regulations do not provide any guidance as to the principles to be applied by the Court when reviewing whether the work done, for which remuneration is claimed, was justified and whether the amount of time spent was appropriate.

(d). in *In the Matters of Liberty Capital Limited, Integrity Limited, Holdings Limited and Waterford Insurance Limited* [2002 CILR 606], this Court referred with approval to the following statement of principle in the Ontario Court of Appeal decision in *Belyea* v. *Federal Business Dev. Bank* (44 N.B.R (2d) 248 at 250 per Stratton J.A.):

> *"The governing principle appears to be that compensation allowed a receiver should be measured by the fair and reasonable value of his services and while sufficient fees should be paid to induce competent persons to serve as receivers, receiverships should be administered as economically as reasonably possible. Thus, allowances for services performed must be just, but nevertheless moderate rather than generous."*

(e). the decision in *Liberty Capital* dealt, of course, with the Court's jurisdiction to determine and approve the fees of official liquidators under the old from of the Companies Winding

Up Rules, which were based on and referred to the English rules (and was ultimately upheld by the Privy Council). Nonetheless the Court approved and applied the approach of the Ontario court to the review of receivers' fees.

(f). in *Saad,* the Chief Justice, when approving the joint official liquidators' revised remuneration agreement noted that:

> *"I consider that the quantum of remuneration for which approval is sought is reasonable and the work done is value for money. I also consider that the spread of ....work between the levels of staff appears reasonable. As a result, I am content to approve the quantum of the JOLs' remuneration."*

(g). the UK's Practice Direction: Insolvency Proceedings (the ***UKPD***), issued in July 2018 (see [2018] BCC 421), while not being directly applicable, sets out a helpful statement of the objective which the Court should seek to achieve in any remuneration application:

> *"21.1 The objective in any remuneration application is to ensure that the amount and/or basis of any remuneration fixed by the Court is fair, reasonable and commensurate with the nature and extent of the work properly undertaken or to be undertaken by the office-holder in any given case and is fixed and approved by a process which is consistent and predictable."*

(h). Paragraph 21.2.3 of the UKPD set out a number of guiding principles by reference to which remuneration applications should be considered by the court. These include: (1) "Justification" (namely that it is for the appointee to justify his claim and be prepared to provide full particulars of it); (2) "The benefit of the doubt" (namely that the corollary of (1) was that if the court is left in any doubt as to the appropriateness, fairness or reasonableness of the remuneration, it should be resolved against the appointee); and (3) "Proportionality of remuneration" (namely that the amount of remuneration should be proportionate to the nature complexity and extent of the work done by the appointee, and to the value and nature of the assets and liabilities).

(i). the (extensive) English case law (starting with *Maxwell No 1* [1998] BCLC 638) includes decisions dealing with the proper approach to the treatment of ancillary services such as secretarial time. In *Re Independent Insurance Co Ltd (In Provisional Liquidation) (No.1)* [2002] EWHC 1577 [2002] 2 B.C.L.C. 709 (***Independent Insurance***) the court drew a distinction between time spent in relation to the provision of specialised ancillary services, such as a treasury service, in a case which required specialist support case compared with the provision of ordinary support services commonly provided within and by the

accounting firm of which the officeholders were partners. In this case the practice adopted by the court in dealing with the fixing of solicitors remuneration was followed. Such a cost is considered an overhead and consequently irrecoverable on an assessment. Secretarial services were normally considered part of a firm's overheads and were subsumed in the claim for remuneration. Any separate claim for such services had to be justified by reference to the performance of exceptional duties attributable to the requirements of a particular assignment.

24. The scope of the JRs' role in this case was defined in the Order and explained in the Note. The JRs' fee application must be considered by reference to the Order and the Note. These make it clear that the JRs had an active role that required them to ensure that certain objectives were achieved. After selecting and appointing competent and independent directors they needed sufficiently to understand what assets were held by and what was going on in BH06 and its subsidiaries so as that they could decide what needed to be done in order to ensure that the Share (and its value) was protected and preserved. In addition, they needed sufficiently to understand what had happened in BH06 and BGNIC prior to their appointment in order to be able to decide what action needed to be taken to preserve and protect the position of those companies (and through them the Share). Having appointed competent and independent directors they needed to maintain sufficient oversight of the activities of and issues facing the BH06 and BGNIC boards so that they were in a position to be consulted by the boards when appropriate and if necessary make suggestions and intervene to ensure that their primary objective of the preservation of the value of the Share could be achieved. Their task was not complete merely by appointing competent and independent directors. As I explained in the Note:

> "*In particular the receivers are to exercise the rights under and in respect of the [Share]..... for ensuring that action is taken by those directors to preserve the assets and discharge the proper liabilities of BHO6 and BGNIC and for ensuring that these directors in consultation with the receivers consider whether further action or proceedings are required to preserve and protect the rights and remedies of BHO6 and BGNIC in relation to the recapitalisation of and payment of dividends by Solid Holdings NV (Solid) or other transactions, payments or matters occurring prior to the appointment of the receivers and to procure or assent to the taking of such action as is appropriate (provided that procuring or assenting to the commencement of new proceedings in any jurisdiction shall require the sanction of the Court).*"
>
> [underlining added]

25. In view of the history of hostility between the parties to the main action, the challenges to the integrity and lawfulness of the actions of certain directors of BGNIC and Solid and the extensive and multi-jurisdictional litigation that had been commenced and was being actively prosecuted prior to their appointment, this was a challenging and complex assignment. I accept Mr. Royle's

characterisation of the assignment in his Second Affidavit. The JRs, as they point out in their submissions, had no advance knowledge of the case and were required rapidly to familiarise themselves with the relevant background. As a result, it was reasonable and proportionate for them to spend time reading the evidence and pleadings in the main action. It was also important for them to keep up to date with further evidence as and when filed. Even though the causes of action relied on in the main action related to the circumstances surrounding the transfer many years ago of the Share into the Lake Cauma Trust, the evidence related in part to the creation and operation of BH06 and its subsidiaries, which are the corporate structures and entities holding the assets which are determinative of the value of the Share. The various interlocutory proceedings also related to these entities and the conduct of their directors, which were relevant to the JRs' core functions.

26. It seems to me that the Plaintiffs' objections in relation to the Review of Corporate Decision Making Issue are unfounded. A substantial number of the entries challenged by the Plaintiffs, as the JRs point out, related to the operations, governance and assets of BGNIC. For the reasons I have set out above, it is plain that the JR's were required to familiarise themselves with the important activities of and issues facing the BGNIC board and where appropriate involve themselves in important decision making to ensure that their primary objective of the preservation of the value of the Share could be achieved. I see nothing in the descriptions of the activity undertaken by the JRs and their staff to suggest that the issues relating to BGNIC were not relevant and important in this sense. The summary of the work done by the JRs in relation to BGNIC, in Mr. Royle's Second Affidavit, confirms that the tasks undertaken were appropriate and within the terms of the Order. Reviewing the terms of engagement of and having discussions with BGNIC's new attorneys, Travers Thorp Alberga, attending board meetings, reviewing board minutes and documents relating to the investments and activities of BGNIC was a necessary and proper part of the JRs' functions. There are two entries that relate to a meeting in New York attended by Mr. Royle. These are 1064 and 1102. They charge for half of the time spent by Mr. Royle in travelling to New York and returning to Cayman, to attend a meeting with Mr. Jacob and Mr. MacKay. The Plaintiffs object to the JRs charging for travelling time because it was unclear why it was necessary for the JRs to hold a face to face meeting in New York. The nature of the meeting is explained by the narrative included in entry 1079. This refers to a meeting on 12 September 2018 in New Jersey which Mr. Royle had with Mr. Michael Jacob. Mr. Jacob was at the time a director of BGNIC and one of the key players in the recapitalisation of Solid. He was subsequently removed as a director by a shareholders' resolution dated 3 December 2018. The entry records that there was a pre-meeting to discuss BGNIC issues with Mr. Casey McDonald and Mr. Simon Owen, who were independent directors of BGNIC appointed at the instigation of the JRs. It also states that the meeting with Mr. Jacob was

predominantly to discuss BGNIC issues. The Plaintiffs have not objected to the time spent at the meeting (or travelling from Manhattan to New Jersey). While this is not mentioned in the JRs' written submissions, Mr. Jacob was, I believe, resident in New Jersey (and other proceedings had to be issued against him in the US District Court there). I am prepared to infer, in light of these facts and circumstances, that the JRs considered that it was important to meet with Mr. Jacob at that time and that it was necessary to travel to him, in New Jersey, to do so. Accordingly, I consider that the Plaintiffs' objection to the JRs charging for travelling time – with a 50% discount note – is unjustified.

27. As regards the Mr. Saville Issue, I accept the JR's explanation as to why they were justified in using Mr. Saville on this matter and why his charge out rate was reasonable. Mr. Saville's experience and expertise meant that he was able to undertake important tasks on behalf of the JRs and I consider that the JRs were entitled to select and deploy, in complex and urgent cases of this kind, the suitably qualified members of their staff who they considered to be most suitable and best placed to take on the tasks and role required by the particular case. There is no suggestion that the JRs were improperly using staff members in London at higher rates than equally well qualified and available members of their staff in Cayman and, as the JRs pointed out, the rate at which Mr. Saville was charged out was in accordance with the range of permitted rates in the Regulations.

28. As regards the Administration Issue:

(a). it seems to me that the approach set out in *Independent Insurance* is the right one to adopt. Accordingly, any separate claim for secretarial, IT or other ancillary services has to be justified by reference to the performance of exceptional duties attributable to the requirements of a particular assignment.

(b). the Plaintiffs have objected to charges for a variety of different tasks and activities. I shall deal with the objections by reference to the different types of activity in question:

(i). Mr. Royle downloading affidavits – if this was to be a lengthy operation, best practice demanded that it be done by junior or secretarial staff – I accept the Plaintiffs' approach in relation to items 17 and 53;

(ii). the work of Ms. Argenbright, Ms. Rankin, Ms. Pryce and Ms. Porter – it appears (without in any way disparaging the importance or quality of their work) that the tasks they were performing, based on the narratives provided, were basic

administrative tasks which cannot be said to be exceptional duties attributable outside the scope of their normal work for and supporting fee earners and attributable to the particular needs and requirements of a this receivership. Accordingly, the claims in respect of their entries and charges is disallowed.

(iii). there are a number of entries relating to Mr. Royle, Mr. Saville and Mr. Still which appear to relate to minor administrative tasks which I would expect not to be charged. This applies to the following entries: 2; 250 and 484.

(iv). there are number of entries relating to the Appian system (entries 717, 727, 734, 736, 741, 749 and 863). I have been given no explanation as to what this refers to. If the JRs wish to maintain their claim to charge for these items they will need to explain what the Appian system is and why time spent dealing with it was not ordinary administrative activity relating to Grant Thornton's internal systems.

(v). billing analysis, time analysis and generating time reports - where Mr. Royle or one of his colleagues is reviewing billing and time cost information for the purpose of preparing reports to the parties, this is legitimate and chargeable (as compared with a review for internal Grant Thornton purposes). I am prepared to assume that the entries that refer to billing analysis, time analysis and generating time reports fall into this permissible category and are properly chargeable (for example 324, 549, 588 and 759).

(vi). there are number of entries relating to compliance matters (for example, 1462, 1463, 1472 and 1473). If the relevant tasks and work was required because of the particular requirements of the receivership, for example because BGNIC is a regulated entity thereby giving rise to heightened and special compliance standards and requirements, then they are properly chargeable. If the JRs wish to maintain their claim to charge for these items they will need to provide further details of the compliance requirements and issues that were being and had to be dealt with.

(vii). the same issues arise in relation to the entries relating to completion of take-on forms (1694, 1809 and 1816) and I shall adopt the same approach. If the JRs wish to maintain their claim to charge for these items they will need to explain what the take on process related to and whether the steps taken were required because of the exceptional and particular circumstances of this receivership.

(viii). I see no proper basis for discounting Mr. Segal's time which appears to have been spent on relevant tasks for someone of his grade and charge out rate.

(ix). nor do I see a proper basis for disallowing the remaining items identified by the Plaintiffs.

29. As regards the Review of Litigation Papers Issue:

(a). I accept the JRs' explanation of why the work done and time spent was necessary and justifiable.

(b). it is true that the main focus of the action was not directly relevant to the JRs role or activities (since it relates to historic events relating to Mr. Perry's reasons for and state of mind at the time of the transfer of the Share into the Lake Cauma trust and the facts and law giving rise to matrimonial property rights under Israeli law). But to say that it was of no concern to the JRs would be to take too narrow a view – both of the matters covered in the evidence adduced and arguments made in the main proceedings and of the JRs' role.

(c). for example, the evidence adduced in the main proceedings covered the creation of the various family trusts and the BH06 group structure and the operation and governance of BGNIC which was at least relevant background for the JRs and might provide them with information relevant to the assets and operations of BH06 and BGNIC. In addition, the evidence also covered the actions of and issues relating to the integrity and reliability of the First Plaintiff, the Second Plaintiff, the First Defendant and the Fifth Defendant and it was important for the JRs to be aware of what had been done and of the allegations regarding the conduct of the parties both because this was relevant to the investigations they were required to undertake and to their dealings with the parties. Accordingly, the Plaintiffs are wrong to argue that the JRs had no business reviewing the papers filed in the main action.

(d). in my view, the same is to be said with respect to the review of the papers relating to other proceedings that were reviewed by the JRs. In each case, the JRs had an interest in knowing what was taking place in those proceedings and it was reasonable for them to take the view that the information obtained from a review of the court papers might be useful (and indeed that failing to keep themselves informed of what was taking place might be prejudicial or damaging and interfere with the achievement of their primary purpose of preserving the value of the Share).

(e). it was therefore appropriate and proper for the JRs to spend time reviewing the papers in the main action and the other proceedings. There is then a further issue, namely whether the time spent was reasonable and value for money, to use the Chief Justice's formulation (or otherwise reasonable and commensurate with the nature and extent of the task to be performed). In my view it was. There is no doubt that a substantial amount of time was spent on this aspect (the total amount of the time challenged by the Plaintiffs was approximately $44,400) however I regard the amount of time spent as fair and reasonable in the circumstances in view of the JRs' role and the nature of the receivership, as explained above. I also do not accept the Plaintiffs' criticisms that there was unnecessary duplication or overlap where more than one member of the JRs' team reviewed the same transcripts or papers. It was only the members of the core team who conducted the review of the papers and it was reasonable to think that they each needed to be aware of the relevant matters and might add their own perspective and thoughts to the review.

30. As regards the Attendance at Court Issue, I consider that it was reasonable for the JRs to decide that there was a realistic prospect of there being a benefit to be derived from having one member of the JRs' staff sit in Court and that their selection of Mr. Still was reasonable and proportionate. This was not the only way of proceeding however. The JRs obviously had to think carefully and hard about how to proceed since they did initially consider that attendance was unnecessary and not cost effective. In my view, it would have been possible to review transcripts alone and to pass to on to the parties' attorneys details of any points in the evidence or argument relating to the JRs activities (or matters of which they were aware) that needed correcting. This would however have involved Mr. Still spending more time reviewing transcripts although I think that the Plaintiffs are probably correct to say that he was likely to spend much less time each day reviewing transcripts than he did in court. The amount spent on attendance at Court was significant ($33,365 is the total time identified and challenged by the Plaintiffs) and I do have some concerns that the process adopted by the JRs could have been more structured and efficient – for example by Mr. Still producing a short note for other members of the team of points of importance or interest for them to focus on when reviewing transcripts, thereby reducing the amount of time they needed to spend and identifying the points of relevance and interest to the JRs. However, I do not consider it appropriate for the Court, at least in a case such as this one, to attempt with hindsight to micromanage the JRs' decision making as to how best to undertake the task of keeping informed of relevant matters emerging from the evidence and argument at the trial. The JRs clearly applied their mind to the question of how to adopt a cost effective and balanced approach; they limited attendance at Court to one member of staff; they carefully selected the person to attend and balanced the need to have someone with sufficient seniority

and involvement in the case to make the most of attendance with the need to keep costs to a minimum. Overall I am satisfied that the time spent and costs incurred on this aspect were reasonable and value for money and that the Plaintiffs' objections should be rejected (I would note, as a footnote point, that where the JRs notify the parties of a course they intend to take and receive considered and sustained objections, it is probably preferable, assuming that the issue is material and may result in the incurrence of substantial cost, to seek the Court's directions in advance of taking the relevant steps).

31. As regards the Incomplete Description Issue:

(a). as regards the entries which the Plaintiffs say should be disallowed for being unclear and failing adequately to describe the activity in question, I consider that the Plaintiffs are being somewhat pedantic and overly critical. Save for entry 2031, I am satisfied that the entries provide sufficient particulars – admittedly in some cases only just - to allow the reader to understand that they refer to activities which the JRs were properly undertaking. But I would note that it would have been helpful if the JRs had, before submitting the Analysis, reviewed and tidied up or clarified these entries. Furthermore, the time spent seems to me to be reasonable and value for money. If the JRs wish to continue to charge for entry 2031 they will need to explain who Lewis Baach is or are.

(b). as regards the entries which the Plaintiffs have adjusted on the ground that in their view too much time was spent on the relevant task or the charge was otherwise unjustifiable (entries 1765, 2153, 325, 340, 506 and 523), I reject the Plaintiffs' objections and adjustments which appear to me to be speculative and without foundation.

(c). as regards the entries which are said to be duplicative, the Plaintiffs are correct and these entries should be disallowed.

32. Save for the entries I have disallowed above, I am satisfied that the JRs' remuneration and the other entries are fair and reasonable in the circumstances and represent value for money (or is otherwise reasonable and commensurate with the nature and extent of the task to be performed and with the JRs' functions and responsibilities in this complex and challenging case). The sums involved are substantial and for that reason it has been necessary to review carefully the basis of the JRs' claim and the Plaintiffs' objections. My approach is I believe also consistent with (although of course does not seek directly to apply) paragraph 21.2.3 of the UKPD (by utilising the justification, benefit of the doubt and proportionality of remuneration principles). I also consider that the JRs disbursements appear to be properly incurred and reasonable. I am satisfied

that the JRs should be able immediately to arrange for payment out of the estate of the sums which I have approved. In so far as the JRs wish to provide further information about the items I have not approved but said require further information, they should do so within 21 days from the date of this order and the Plaintiffs may file written submissions within a further 14 days and I shall thereafter decide on whether to approve those items. But there is no reason why this process should hold up the payment of amounts which I have approved.

33. I would add that I do not consider that the JRs are fairly to be criticised in this case for delaying their application for approval of the remuneration and disbursements for just over a year until liquid funds are available in the estate. However, in my view, lengthy delays such that applications need to be dealt with by the Court long after the relevant events and activities of the officeholders have taken place, are undesirable. I acknowledge that the recent amendments to the Companies Winding Up Rules do not impose time limits for fee approval applications where remunerations is based on time spent but I still consider that receivers and other officeholders should generally make their applications promptly and at a time when memories of what has been done and why are reasonably fresh.

GRAND COURT CIV-02 CAYMAN ISLANDS

Mr. Justice Segal
Judge of the Grand Court, Cayman Islands

20 April 2020