

COMMONWEALTH OF THE BAHAMAS

2019

IN THE SUPREME COURT

COM/com/0019

COMMON LAW & EQUITY

**BETWEEN**

**IN THE MATTER OF** Lyford Diversified Global Fund, SAC

**AND**

**IN THE MATTER OF** Alpha Pacifico Sub-Fund, a Segregated Account  
linked to Lyford Diversified Global Fund, SAC

**AND**

**IN THE MATTER OF** a Unanimous Resolution of the Board of Directors of Lyford  
Diversified Global Fund, SAC dated 7<sup>th</sup> day of March, 2019 wherein inter alia Philip  
Christopher Galanis was appointed as Receiver and Manager of Alpha Pacifico Sub-Fund

**AND**

**IN THE MATTER OF** the Segregated Accounts Companies Act, 2004

**AND BETWEEN**

COMMONWEALTH OF THE BAHAMAS

2019

IN THE SUPREME COURT

COM/com/0025

COMMON LAW & EQUITY

**BETWEEN**

**IN THE MATTER OF** Lyford Diversified Global Fund, SAC

**AND**

**IN THE MATTER OF** WIK Sub-Fund, a Segregated Account  
linked to Lyford Diversified Global Fund, SAC

**AND**

**IN THE MATTER OF** a Unanimous Resolution of the Board of Directors of Lyford  
Diversified Global Fund, SAC dated 8<sup>th</sup> day of April, 2019 wherein inter alia Philip  
Christopher Galanis was appointed as Receiver and Manager of WIK Sub-Fund

**AND**

**IN THE MATTER OF** the Segregated Accounts Companies Act, 2004

**AND BETWEEN**

COMMONWEALTH OF THE BAHAMAS

2019

IN THE SUPREME COURT

COM/com/0026

COMMON LAW & EQUITY

**BETWEEN**

**IN THE MATTER OF** Lyford Diversified Global Fund, SAC

**AND**

**IN THE MATTER OF** Pacifico Global Opportunities DE Sub-Fund, a Segregated Account  
linked to Lyford Diversified Global Fund, SAC

**AND**

**IN THE MATTER OF** a Unanimous Resolution of the Board of Directors of Lyford  
Diversified Global Fund, SAC dated 8<sup>th</sup> day of April, 2019 wherein inter alia Philip  
Christopher Galanis was appointed as Receiver and Manager of Pacifico Global  
Opportunities DE Sub-Fund

**AND**

**IN THE MATTER OF** the Segregated Accounts Companies Act, 2004

**AND BETWEEN**

COMMONWEALTH OF THE BAHAMAS

2019

IN THE SUPREME COURT

COM/com/0027

COMMON LAW & EQUITY

**BETWEEN**

**IN THE MATTER OF** Lyford Diversified Global Fund, SAC

**AND**

**IN THE MATTER OF** Omega Pacifico Sub-Fund, a Segregated Account  
linked to Lyford Diversified Global Fund, SAC

**AND**

**IN THE MATTER OF** a Unanimous Resolution of the Board of Directors of Lyford  
Diversified Global Fund, SAC dated 8<sup>th</sup> day of April, 2019 wherein inter alia Philip  
Christopher Galanis was appointed as Receiver and Manager of Omega Pacifico Sub-  
Fund

**AND**

**IN THE MATTER OF** the Segregated Accounts Companies Act, 2004

**AND BETWEEN**

COMMONWEALTH OF THE BAHAMAS

2019

IN THE SUPREME COURT

COM/com/0028

COMMON LAW & EQUITY

**BETWEEN**

**IN THE MATTER OF** Lyford Diversified Global Fund, SAC

**AND**

**IN THE MATTER OF** LAM Sub-Fund, a Segregated Account  
linked to Lyford Diversified Global Fund, SAC

**AND**

**IN THE MATTER OF** a Unanimous Resolution of the Board of Directors of Lyford  
Diversified Global Fund, SAC dated 8<sup>th</sup> day of April, 2019 wherein inter alia Philip  
Christopher Galanis was appointed as Receiver and Manager LAM Sub-Fund

**AND**

**IN THE MATTER OF** the Segregated Accounts Companies Act, 2004

**AND BETWEEN**

COMMONWEALTH OF THE BAHAMAS

2019

IN THE SUPREME COURT

COM/com/0029

COMMON LAW & EQUITY

**BETWEEN**

**IN THE MATTER OF** Lyford Diversified Global Fund, SAC

**AND**

**IN THE MATTER OF** Spectator Sub-Fund, a Segregated Account  
linked to Lyford Diversified Global Fund, SAC

**AND**

**IN THE MATTER OF** a Unanimous Resolution of the Board of Directors of Lyford  
Diversified Global Fund, SAC dated 8<sup>th</sup> day of April, 2019 wherein inter alia Philip  
Christopher Galanis was appointed as Receiver and Manager of Spectator Sub-Fund

**AND**

**IN THE MATTER OF** the Segregated Accounts Companies Act, 2004

**AND BETWEEN**

COMMONWEALTH OF THE BAHAMAS

2019

IN THE SUPREME COURT

COM/com/0030

COMMON LAW & EQUITY

**BETWEEN**

**IN THE MATTER OF** Lyford Diversified Global Fund, SAC

**AND**

**IN THE MATTER OF** Pacifico Global Opportunities KA Sub-Fund, a Segregated Account  
linked to Lyford Diversified Global Fund, SAC

**AND**

**IN THE MATTER OF** a Unanimous Resolution of the Board of Directors of Lyford  
Diversified Global Fund, SAC dated 2<sup>nd</sup> day of May, 2019 wherein inter alia Philip  
Christopher Galanis was appointed as Receiver and Manager of Pacifico Global  
Opportunities KA Sub-Fund

**AND**

**IN THE MATTER OF** the Segregated Accounts Companies Act, 2004

**AND BETWEEN**

COMMONWEALTH OF THE BAHAMAS

2019

IN THE SUPREME COURT

COM/com/0031

COMMON LAW & EQUITY

**BETWEEN**

**IN THE MATTER OF** Lyford Diversified Global Fund, SAC

**AND**

**IN THE MATTER OF** ALM Sub-Fund, a Segregated Account  
linked to Lyford Diversified Global Fund, SAC

**AND**

**IN THE MATTER OF** a Unanimous Resolution of the Board of Directors of Lyford  
Diversified Global Fund, SAC dated 2<sup>nd</sup> day of May, 2019 wherein inter alia Philip  
Christopher Galanis was appointed as Receiver and Manager of ALM Sub-Fund

**AND**

**IN THE MATTER OF** the Segregated Accounts Companies Act, 2004

**AND BETWEEN**

COMMONWEALTH OF THE BAHAMAS

2019

IN THE SUPREME COURT

COM/com/0032

COMMON LAW & EQUITY

**BETWEEN**

**IN THE MATTER OF** Lyford Diversified Global Fund, SAC

**AND**

**IN THE MATTER OF** Basur Sub-Fund, a Segregated Account  
linked to Lyford Diversified Global Fund, SAC

**AND**

**IN THE MATTER OF** a Unanimous Resolution of the Board of Directors of Lyford Diversified Global Fund, SAC dated 8<sup>th</sup> day of April, 2019 wherein inter alia Philip Christopher Galanis was appointed as Receiver and Manager of Basur Sub-Fund

**AND**

**IN THE MATTER OF** the Segregated Accounts Companies Act, 2004

**AND BETWEEN**

COMMONWEALTH OF THE BAHAMAS

2019

IN THE SUPREME COURT

COM/com/0033

COMMON LAW & EQUITY

**BETWEEN**

**IN THE MATTER OF** Lyford Diversified Global Fund, SAC

**AND**

**IN THE MATTER OF** EUR Conservative Portfolio Sub-Fund, a Segregated Account linked to Lyford Diversified Global Fund, SAC

**AND**

**IN THE MATTER OF** a Unanimous Resolution of the Board of Directors of Lyford Diversified Global Fund, SAC dated 2<sup>nd</sup> day of May, 2019 wherein inter alia Philip Christopher Galanis was appointed as Receiver and Manager of EUR Conservative Portfolio Sub-Fund

**AND**

**IN THE MATTER OF** the Segregated Accounts Companies Act, 2004

**AND BETWEEN**

COMMONWEALTH OF THE BAHAMAS

2019

IN THE SUPREME COURT

COM/com/0034

COMMON LAW & EQUITY

**BETWEEN**

**IN THE MATTER OF** Lyford Diversified Global Fund, SAC

**AND**

**IN THE MATTER OF** Saturr Sub-Fund, a Segregated Account  
linked to Lyford Diversified Global Fund, SAC

**AND**

**IN THE MATTER OF** a Unanimous Resolution of the Board of Directors of Lyford  
Diversified Global Fund, SAC dated 8<sup>th</sup> day of April, 2019 wherein inter alia Philip  
Christopher Galanis was appointed as Receiver and Manager of Saturr Sub-Fund

**AND**

**IN THE MATTER OF** the Segregated Accounts Companies Act, 2004

**AND BETWEEN**

COMMONWEALTH OF THE BAHAMAS

2019

IN THE SUPREME COURT

COM/com/0035

COMMON LAW & EQUITY

**BETWEEN**

**IN THE MATTER OF** Lyford Diversified Global Fund, SAC

**AND**

**IN THE MATTER OF** Global Opportunities KR Sub-Fund, a Segregated Account  
linked to Lyford Diversified Global Fund, SAC

**AND**

**IN THE MATTER OF** a Unanimous Resolution of the Board of Directors of Lyford  
Diversified Global Fund, SAC dated 2<sup>nd</sup> day of May, 2019 wherein inter alia Philip  
Christopher Galanis was appointed as Receiver and Manager of Global Opportunities KR  
Sub-Fund

**AND**

**IN THE MATTER OF** the Segregated Accounts Companies Act, 2004

**AND BETWEEN**

COMMONWEALTH OF THE BAHAMAS

2019

IN THE SUPREME COURT

COM/com/0036

COMMON LAW & EQUITY

**BETWEEN**

**IN THE MATTER OF** Lyford Diversified Global Fund, SAC

**AND**

**IN THE MATTER OF** Pacifico Global Opportunities CM Sub-Fund, a Segregated Account  
linked to Lyford Diversified Global Fund, SAC

**AND**

**IN THE MATTER OF** a Unanimous Resolution of the Board of Directors of Lyford  
Diversified Global Fund, SAC dated 2<sup>nd</sup> day of May, 2019 wherein inter alia Philip  
Christopher Galanis was appointed as Receiver and Manager of Pacifico Global  
Opportunities CM Sub-Fund

**AND**

**IN THE MATTER OF** the Segregated Accounts Companies Act, 2004

**AND BETWEEN**

COMMONWEALTH OF THE BAHAMAS

2019

IN THE SUPREME COURT

COM/com/0037

COMMON LAW & EQUITY

**BETWEEN**

**IN THE MATTER OF** Lyford Diversified Global Fund, SAC

**AND**

**IN THE MATTER OF** Global Opportunities EUR LU Sub-Fund, a Segregated Account



linked to Lyford Diversified Global Fund, SAC

**AND**

**IN THE MATTER OF** a Unanimous Resolution of the Board of Directors of Lyford Diversified Global Fund, SAC dated 2<sup>nd</sup> day of May, 2019 wherein inter alia Philip Christopher Galanis was appointed as Receiver and Manager of Global Opportunities EUR LU Sub-Fund

**AND**

**IN THE MATTER OF** the Segregated Accounts Companies Act, 2004

**AND BETWEEN**

COMMONWEALTH OF THE BAHAMAS

2019

IN THE SUPREME COURT

COM/com/0038

COMMON LAW & EQUITY

**BETWEEN**

**IN THE MATTER OF** Lyford Diversified Global Fund, SAC

**AND**

**IN THE MATTER OF** Pacifico Global Opportunities GT Sub-Fund, a Segregated Account linked to Lyford Diversified Global Fund, SAC

**AND**

**IN THE MATTER OF** a Unanimous Resolution of the Board of Directors of Lyford Diversified Global Fund, SAC dated 2<sup>nd</sup> day of May, 2019 wherein inter alia Philip Christopher Galanis was appointed as Receiver and Manager of Pacifico Global Opportunities GT Sub-Fund

**AND**

**IN THE MATTER OF** the Segregated Accounts Companies Act, 2004

**Before:** The Hon. Madam Justice Renae McKay

**Appearances:** Mrs. Kystal Rolle Q.C. and Ms. Cyd Ferguson of Counsel for Deltec Fund Services Limited, Deltec Fund Directors Limited and Deltec Fund Governor's Limited ("Deltec")

**Mrs. Gail Lockhart-Charles and Ms. Lisa Esfakis of Counsel for  
Phoenix Capital Ltd. And Luca Lanciano**

**Mr. Phillip McKenzie Mr. Andre Rahming and Ms. Glenda Roker  
for Mr. Philip Christopher Galanis Receiver/Manager**

**Mr. Gawaine Ward, Ms. Aramantha Hepburn and Mr. Gladstone  
Brown for the Bahamas Securities Commission**

**Hearing Date: 18<sup>th</sup> August 2020**

**Ruling Date: 16<sup>th</sup> September 2020**

## **COSTS RULING**

1. On 4<sup>th</sup> August 2020 I rendered a written decision with respect to the costs of the Receiver and Manager in relation to the fifteen segregated accounts linked to Lyford Diversified Global Fund, SAC. Therein I found that, *inter alia*, it was not the contemplation of the parties for there to have singular billing for the work done in respect thereof. Thereafter I invited the parties to present their respective submissions on costs.

### **Submissions of Deltec**

2. Mrs. Krystal Rolle, Q.C. on behalf of Deltec (“**Mrs. Rolle Q.C.**”) submitted that pursuant to the orders appointing the Receiver and Manager in May and April of 2019, there was a common provision in each order that the costs of the Receiver and Manager and any expenses reasonably incurred by him shall be payable in priority to all other unsecured claims from the assets of the funds. In that regard, she submitted that it was in the contemplation of the Court and the Receiver and Manager that all of his expenses incurred in the context of the receivership were to be paid from the assets of the fifteen segregated accounts.
3. Mrs. Rolle Q.C. reminded the Court that the statement of account and the invoices tendered were the subject of the Court’s assessment process and included legal costs and costs of dealing with certain matters including Court appearances. She added that on 16<sup>th</sup> December, 2019, the Court confirmed the consent position of the parties that the Court would assess and fix the costs and expenses.
4. She further submitted that the process is ordinarily non-contentious and not adversarial and that the assessment process could not be extricated from the receivership proceedings which it was part and parcel of. Mrs. Rolle Q.C. added that the scenario that costs follows the event was non-existent in these proceedings and that the costs associated with the assessment process should be paid from the funds.
5. On the issue of quantum, Counsel submitted that since the Court was called upon to assess and fix the proper costs and expenses of the Receiver and Manager, the Court should also fix the costs associated with the cost assessment process. In response to the

Receiver and Manager's position that costs should be certified fit for two Counsel, Mrs. Rolle Q.C. contended that the Court had already come to a position as it related to the receivership proceedings and that it would be logical to carry that position through to its logical conclusion.

6. Mrs. Gail Lockhart-Charles ("**Mrs. Lockhart-Charles**") submitted that section 43 of the **Segregated Accounts Companies Act ("SAC Act")** was a binding provision which governed the parties. Section 43 of SAC Act states,

**"43. The remuneration of a receiver and any expenses properly incurred by him shall be payable in priority to all other unsecured claims from the assets linked to the segregated account in respect of which the receiver was appointed but not from any assets of the general account or any assets linked to other segregated accounts."**

7. She further submitted that the exercise that the Court undertook in looking at the Receiver and Manager's costs was done so as a result of the Court's supervisory role in the receivership after the Receivership was placed under the supervision of the Court. Mrs. Lockhart-Charles added that in its supervisory role, the Court ordered Deltec, Phoenix and the Securities Commission of The Bahamas to be served and that the issue was not one of Phoenix's making but the Court's, who recognized that there were interested parties who would need to be heard.
8. Additionally, Counsel submitted that the Receiver and Manager's contention that Phoenix and Deltec should bear the responsibility for the payment of the Receiver and Manager's costs was wholly out of sync with the SAC Act as well as the order which placed the receivership under Court supervision. Mrs. Lockhart-Charles added that any submissions that were made were made for the Court's assistance. She disagreed with Mr. McKenzie's submission that the proceedings fell under Order 59 of the Rules of the Supreme Court as asserted by the Receiver and Manager as Phoenix did not commence proceedings against the Receiver and Manager.
9. Mr. Phillip McKenzie, on behalf of the Receiver and Manager ("**Mr. McKenzie**") directed the Court to section 30 (1) of the Supreme Court Act ("**SC Act**") and Order 59 Rule (2) of the Rules of the Supreme Court ("**RSC**") which he submitted are authorities for payment of costs in all proceedings in the Supreme Court.

10. Section 30 (1) of the SC Act states,

**"Subject to this or any other Act and to rules of court, the costs of and incidental to all proceedings in the Court, including the administration of estates and trusts, shall be in the discretion of the Court or judge and the Court or judge shall have full power to determine by whom and to what extent the costs are to be paid."**

Order 59 of the RSC states,

**"2. (1) Where by virtue of any Act the costs of or incidental to any proceedings before an arbitrator or umpire or before a tribunal or other body constituted by or under any Act, not being proceedings in the Supreme Court, are taxable in the Supreme Court, the following provisions of this Order, that is to say, rule 7(4) and (5), rule 8(5) rules 13 and 14, rule 15(1),**

rule 16, rule 19 (except paragraph 3), rules 20 and 24 and rules 31 and 33, shall have effect in relation to proceedings for taxation of those costs as they have effect in relation to proceedings for taxation of those costs of or arising out of proceedings in the Supreme Court.

(2) The costs of and incidental to proceedings in the Supreme Court shall be in the discretion of the Court and that Court shall have full power to determine by whom and to what extent the costs are to be paid, and such powers and discretion shall be exercised subject to and in accordance with this order.”

11. In that regard, Mr. McKenzie posited that, while Section 43 of the SAC Act intended for a Receiver and Manager to recover from the assets of the segregated accounts, it did not exclude the Court from making an order under Order 59 generally in a proper case where receivership proceedings were concerned. He submitted that the Receiver and Manager did not voluntarily enter into a contentious assessment process and that the fifteen engagement letters clearly outlined how the Receiver and Manager's fees and disbursements would be compensated.
12. Mr. McKenzie conceded that it was true that the Receiver and Manager's appearance before the Court was consensual. However, he said that this particular issue was not consensual and was thrust upon him. Counsel continued that the issue need not have been canvassed by the Court because there was an agreement in place between the parties which outlined how the Receiver and Manager's fees were to be assessed and determined. He added that while the proceedings started in a non-contentious matter, they later became contentious and engaged a significant amount of judicial time.
13. Mr. McKenzie further explained that the documents were before the Court and that Deltec and Phoenix were fully aware of their terms, and as such, they should bear the burden and be made to pay the costs if the application failed. He referred the Court to the provisions of Order 59 Rule (3) (2) which states that a Court has a discretion in all proceedings before it, as to whether to make an order for costs and if it does, that costs should follow the event, unless there were circumstances that would direct the Court to rule otherwise.
14. Continuing, Mr. McKenzie submitted that Phoenix and Deltec were minimally successful in the objections to the Receiver and Manager's remuneration. Counsel pointed out that the Court took issue with his billed hourly rate of \$350.00 as opposed to the agreed rate of \$300.00 together with the costs of photocopies which the Court determined should be reduced.
15. He added that Deltec was a party to the engagement letter, if not directly, then by its other functions and/or its supervisory function under the SAC Act. He continued, that early in the process of determining or assessing the Receiver and Manager, Phoenix had become aware of the terms of the engagement letters and that based on those factors, they should have both abandoned their objections.
16. In concluding, Counsel for the Receiver and Manager said that as deposed in his Affidavit, his client always maintained, that the fees were to be determined wholly in accordance with the contractual position engaged. He went on to say that his client only consented to appearing before the Court because the issue became contentious as it was

clear that one of the parties to the contract was challenging the very method by which the fees were to be assessed.

17. In reply to the Receiver and Manger's submissions, Mrs. Rolle Q.C. submitted that the Receiver and Manager was a party to the order made, by consent, on 16<sup>th</sup> December, 2019, thus he could not assert that the process was thrust upon him, that it was unnecessary or that he did not participate voluntarily as the sole purpose of the consent order was to state that the process of the cost assessment was to be assessed and fixed by the Court. She added that it was inappropriate for the Receiver and Manager to abrogate an order entered into by consent just because the proceedings became contentious.
18. She further contended that it was envisioned by the initial appointment orders that the costs should be paid out of the funds, which was consistent with Section 43 of the SAC Act. Mrs. Rolle Q.C. also reminded the Court and the Receiver and Manager that at one point, there was the assertion that he was entitled to recover on the basis of proportionality which did not arise in the engagement letter and therefore had to be addressed.
19. Mrs. Lockhart-Charles also replied to the Receiver and Manager's contention by stating that this was a process that was agreed to as points of dispute arose and the Court was summoned to embark upon an assessment to evaluate whether the disputed costs were justified. She continued that the Court determined that there was a retainer letter which meant that the work had been done and was agreed to be paid.

### **Discussion and Ruling**

20. By unanimous written consent Resolutions passed on 7<sup>th</sup> March, 2019 and 8<sup>th</sup> April, 2019, the Board of Directors of the Lyford Diversified Global Funds, SAC approved the appointment of the Receiver and Manager. By order dated 25<sup>th</sup> April, 2019 and filed 29<sup>th</sup> April, 2019, it was ordered, *inter alia*, that the receivership be continued under the supervision of the Court for the orderly management, sale, rehabilitation, run-off or termination of the business of or attributable to, the segregated account and for the distribution of the assets linked to the segregated account to those entitled thereto.
21. Following therefrom, Phoenix and Deltec entered an appearance by way of Memorandum of Appearance filed 19<sup>th</sup> July, 2019 and a Notice of Appointment of Attorney filed 5<sup>th</sup> November, 2019 respectively. As a result, by Consent Order dated 16<sup>th</sup> December, 2019 and filed 30<sup>th</sup> January, 2020, it was ordered, *inter alia*, that the costs and expenses of the Receiver and Manager properly incurred by him in the receivership be assessed and fixed by the Court in accordance with Order 30 Rule 3 of the RSC.
22. Subsequent to the aforementioned orders being made, a dispute arose with respect to the Receiver and Manager's invoiced costs and the issue was presented before me for determination. As Deltec has submitted, the hearing was conducted as a part of the Court's supervisory jurisdiction under the receivership order.
23. As a result, it was Deltec's contention that the Receiver and Manager's costs should be deducted from the assets of the fifteen segregated accounts. Phoenix has also expressed

the sentiment that the costs should be conducted from the assets but on the basis of Section 43 of the SAC Act.

24. As Counsel for both Deltec and Phoenix have submitted and I accept, it was previously ordered that all costs and expenses of the Receiver and Manager should be deducted from the assets linked to the fifteen segregated accounts.
25. In **Glatt v Sinclair (the Former Court Appointed Receiver) - [2011] 6 Costs LR 943**, Parker J discussed what was the settled position with respect to a Receiver's remuneration. He opined that parties were beholden to a previous court order in which it was stated that the costs of the Receiver were to be derived from the estate the Receiver was managing. At para. 5 he stated,

**"5. The entitlement to costs from the estate derives from para 5 of the receivership order made by Mr Justice Morrison under the provisions of the Criminal Justice Act 1988 on 15 February 2001. The relevant part of that paragraph reads as follows:**

**"The costs of the receivership shall be paid out of the assets received or managed by the receivers in priority to any other payments ... but if no or insufficient assets are so received or so managed the costs of the receivership to the extent of the deficiency should be paid by the Commissioners of Customs and Excise."**

6. There is no dispute between the parties that the terms of para 5 which I have cited fell properly within the powers of the court under the Criminal Justice Act 1988. A succinct and authoritative statement of the law in this area was given by the Court of Appeal in *Glatt v Sinclair* [2009] EWCA Civ 176 by Longmore LJ:

**"It is now settled that such a receiver, like a receiver at common law, is entitled to recover his remuneration, costs and expenses from the assets which he has been appointed to receive ('the receivership assets'). That is so whether or not he ought to have been appointed in the first place or the order appointing him has been discharged, see *Mellor v Mellor* [1992] 1 WLR 517. Even if the defendant, whose assets have been caught by the order appointing the receiver, is subsequently acquitted or has his conviction quashed, the receivership assets must bear the costs of the receivership; this is also the position if, as in the present case, a confiscation order is made but subsequently quashed, *Hughes v Customs and Excise Commissioners* [2003] 1 WLR 177. Even if the receiver carries on his receivership unnecessarily and should have agreed that his receivership should have been discharged at a time before a court application is made to terminate his receivership, the receivership assets bear those costs reasonably incurred up to the date he is actually discharged. *Capewell v Revenue and Customs Commissioners* [2007] 1 WLR 386 [2007] 2 Costs LR 287."**

26. Accordingly, I am minded to follow my previous order made on 25<sup>th</sup> April, 2019, which sets out that the costs of the receivership are to be paid from the assets linked to the fifteen segregated accounts, such order being in conformity with the common law and the statutory provisions as found in the Rules of the Supreme Court and the Segregated Accounts Companies Act. I am in agreement with and accede to the submissions made by Deltec and Phoenix that the costs incurred by the Receiver and Manager in relation to the costs should be deducted from the assets linked to the fifteen segregated accounts.

27. I accept the submissions that generally matters of this sort are non-contentious in nature. I also accept and agree with Counsel for the Receiver and Manager's submissions that the proceedings were unnecessarily adversarial. At times these hearings became unnecessarily contentious and emotionally charged. While I appreciate the differences in litigation styles, it is always incumbent upon all Counsel to be respectful and courteous.

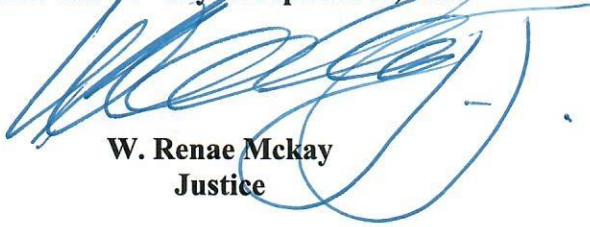
## Quantum

28. The parties have left the issue of quantum in the Court's hands, given the order made by the 16<sup>th</sup> December 2019 Consent Order, that the costs and expenses of the Receiver properly incurred would be assessed and fixed by the Court.
29. If the Receiver and Manager was awarded costs to be taxed which were not agreed and a taxation proceeding was held by a Registrar of the Supreme Court, the Registrar would only allow such costs that were necessary and reasonable. In determining the amount of costs that should be deducted, I find it necessary to take certain factors into consideration.
30. My first consideration is that the Receiver and Manager's lead Counsel, Mr. Philip Brave Davis, Q.C. ("**Mr. Davis, Q.C.**") is just that, a Queens Counsel and in that capacity he is entitled to a junior. Accordingly, the costs should be fit for two Counsel.
31. My second consideration is the hourly rate of Mr. Davis Q.C. and his Junior, Mr. McKenzie. Mr. Davis Q.C. became a member of The Bahamas Bar on 5<sup>th</sup> March, 1975 which would make him 45 years called. Mr. McKenzie became a member of The Bahamas Bar on 29<sup>th</sup> April, 1994 which would make him 25 years called.
32. **Rule X of The Bahamas Bar Association Code of Conduct** entitled **FEES** states that an attorney should not stipulate for, charge or accept any fee which is not fully disclosed, fair or reasonable. In its commentary it was stated that a fair and reasonable fee would depend upon the time and effort required and spent, the difficulty and importance of the matter, whether special skill or service has been required and provided, the customary charges of other attorneys of equal standing in like matters and circumstances, the amount involved or the value of the subject matter, the results obtained, scales advised by the Bar Association and other special circumstances such as loss of other employment, uncertainty of reward and urgency. The fees must be justified in light of the circumstances of the particular matter.
33. Mr. Davis Q.C., has been called to The Bahamas Bar for 45 years. Therefore, I consider the hourly rate of \$900 to be reasonable in this instance for Mr. Davis Q.C. In respect of Mr. Davis Q.C.'s junior, Mr. McKenzie, he is a senior Attorney, who has been called for 25 years. In consideration of the foregoing factors at paras. 30 - 32, I find that the amount of \$500 is reasonable.
34. I have also considered the amount of time that the Receiver and Manager would have spent on reviewing and considering Phoenix's and Deltec's documents, in addition to the amount of time that would have been spent preparing their own documents and finally the time spent on reviewing and considering all of the aforementioned documents in order to

appear before me for the hearing. Given their years of experience, I consider that a per diem rate of \$10,000 would be reasonable for Mr. Davis Q.C and \$4,000 is reasonable for Mr. McKenzie.

35. Based on the foregoing considerations, I find that it would be reasonable to award the Receiver and Manager fixed costs in the amount of Forty Three Thousand Dollars, (\$43,000) to be paid from the assets linked to the fifteen segregated accounts.

**Dated this 16<sup>th</sup> day of September, 2020**



**W. Renae McKay  
Justice**