

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

SECURITIES AND EXCHANGE)	CASE NO. 3:01CV00116
COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	
)	
TERRY L. DOWDELL, et al.)	
)	
Defendants.)	JUDGE JAMES H. MICHAEL, JR.
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**RECEIVER’S MOTION FOR COURT APPROVAL OF
THE INTERNATIONAL CO-OPERATION AGREEMENT
FOR FUNDS HELD IN FORTIS BANK
AND MEMORANDUM OF LAW IN SUPPORT THEREOF**

NOW COMES Roy M. Terry, Jr. and the law firm of DuretteBradshaw PLC (“Receiver”), filing this motion for an order approving an international co-operation agreement relating to the collection of funds held in Fortis Bank (Belgium) in the name of Investors Bank & Trust Limited, and in support thereof respectfully represents to the Court as follows:

JURISDICTION

1. This Court has jurisdiction over this action pursuant to section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], section 27 of the Securities Exchange Act [15 U.S.C. § 78aa], and 28 U.S.C. § 1331. Defendant Dowdell and the other Defendants, directly and indirectly, have made use of the means and instrumentalities of interstate commerce and of the mails in connection with the transactions, acts, practices and courses of business alleged in the First Amended Complaint herein in the Western District of Virginia and elsewhere.

BACKGROUND

Underlying Fraud

2. During the period from at least April 1998 through the commencement of this lawsuit by the United States Securities and Exchange Commission (“SEC”) on November 19, 2001, Terry Dowdell (“Dowdell”) orchestrated a Ponzi scheme raising more than \$70 million from more than 60 investors in the United States and abroad (“Vavas seur Investors”) through the sale of fictitious securities in a trading program (the “Vavas seur Program”) purportedly being operated by Defendant Vavas seur Corporation (“Vavas seur”), a Bahamian corporation. *Consent and Stipulation of Terry L. Dowdell, Dowdell, Dutcher & Associates and Emerged Market Securities, De-LLC to Order of Permanent Injunction* ¶ 3, at 1 (docket no. 218, filed June 4, 2002).

3. Dowdell owned and controlled Vavas seur during the period from at least April 1998 through at least March 2001. *Id.* ¶ 17, at 4.

4. In March 2001, Dowdell represented to the SEC through his attorneys that Vavas seur had terminated its relationship with Dowdell and had ceased doing business in the United States. *Id.* ¶ 21, at 5.

5. Shortly after making this representation, Dowdell transferred title ownership in Vavas seur to a foreign corporation owned and controlled by Ian Collins (“Collins”), but Dowdell continued to exert full operational control over Vavas seur. *Id.* ¶¶ 22, 25, at 5.

6. After transferring title over Vavas seur in the spring of 2001, Dowdell utilized the services of Shinder Gangar (“Gangar”), Alan White (“White”) and Collins in continuing to operate the Vavas seur Program, and that the Vavas seur Program raised millions of dollars of additional investor funds after March 2001. *Id.* ¶ 26, at 5-6.

7. Upon information and belief, Gangar, White and Collins are all citizens and residents of the United Kingdom. *Id.* ¶ 27, at 6.

8. Gangar and White were partners in the accounting firm of Dobb White & Company, and allegedly conducted this fraud through that partnership.

9. The overseas accounts into which Vavasaur investors deposited funds after March 2001 include, without limitation, Investors Bank & Trust Limited (“IBT”)(formerly Overseas Development Bank & Trust) in Dominica, and Fortis Bank in Belgium. *Id.* ¶ 38, at 8.

10. The Belgian authorities have frozen an account number 001-3703796-24 at Fortis Bank held in the name of IBT (the “Account”).

U.S. Receiver

11. This Court appointed Roy M. Terry, Jr. and the law firm of DuretteBradshaw PLC (“Receiver”) as Receiver over Terry L. Dowdell, Dowdell, Dutcher & Associates, Inc., and Emerged Market Securities, DE-LLC (pursuant to the “Dowdell Appointment Order” entered July 12, 2002); over Authorized Auto Services, Inc. (pursuant to the “AAS Appointment Order” entered September 17, 2002); and over Vavasaur Corporation (pursuant to the “Vavasaur Appointment Order” entered February 18, 2003), (collectively, the “Appointment Orders”).

12. The Vavasaur Appointment Order states in the relevant parts:

1. Roy M. Terry, Jr. and the law firm of DuretteBradshaw, PLC are appointed as Receiver for the benefit of Vavasaur’s investors to marshal, conserve, protect, hold funds, operate and, with the approval of the Court, dispose of any wasting assets, wherever those assets may be found, of Defendant Vavasaur, including . . . all other assets owned, controlled or in possession of Vavasaur and all assets in which Vavasaur has a legal or equitable interest . . . (collectively the “Receivership Property”).

2. The Receiver shall have the following powers and duties to fulfill his obligations:

(a) Use reasonable efforts to determine the nature, location, and value of all assets and property owned by Defendant Vavas seur and the Receivership Property;

(b) Engage and employ, with the approval of the Court, any individuals or entities the Receiver deems necessary to assist in his duties (“Retained Personnel”);

(c) Take such action as necessary and appropriate to prevent the dissipation or concealment of any funds or assets constituting Receivership Property and otherwise preserve any such funds and assets;

...

(e) Bring such legal actions based on law or equity in any state, federal, or foreign court as he deems necessary or appropriate in discharging his duties as Receiver or on behalf of investors whose interests he is protecting.

...

8. The Receiver shall be specifically empowered to seek the repatriation of all assets and funds of the territories of the United States that are held by Vavas seur or under its direct or indirect control, including, without limitation, all funds held in any of the following accounts:

...

(e) Forts Bank, Antwerp, Belgium, Account No. 001-3703796-24 in the name of Investors Bank & Trust, Ltd.

Vavas seur Appointment Order ¶¶ 1-2, at 2-3, ¶8, at 5.

13. By Order entered February 14, 2003, this Court empowered the Receiver to seek repatriation of all the funds held in the Account to the U.S.

U.K. Liquidators

14. Pursuant to the Order of the Companies Court of the High Court of Justice of England and Wales (“U.K. Court”) entered December 2, 2003, the U.K.’s Official Receiver appointed Colin Haig as Liquidator to wind up the affairs of the accounting firm Dobb White & Co. as of January 12, 2004. Colin Haig was also appointed as Trustee in Bankruptcy over both

Gangar and White. Colin Haig has left Baker Tilly, and was replaced as Liquidator by Ross Connock and Tracey Callaghan (“U.K. Liquidators”).

IBT Liquidator

15. Pursuant to the Order of the High Court of Justice of the Commonwealth of Dominica (“Dominica Court”) entered February 3, 2003, Marcus A. Wide of PriceWaterhouseCoopers LLP (“IBT Liquidator”) was appointed as Liquidator of IBT. That order was amended by order entered January 24, 2005, which clarified and expanded the duties and authority of the IBT Liquidator.

16. By Order entered January 24, 2005, the Dominica Court empowered the IBT Liquidator to seek repatriation of all the funds held in the Account.

International Co-operation Agreement

17. The Receiver, U.K. Liquidators and the IBT Liquidator have agreed, subject to Belgian legal advice to the contrary, that it is appropriate for them to jointly seek to recover to the U.K. all the funds held in the Account upon the terms and conditions set forth in Co-operation Agreement relating to the collection of funds held in Fortis Bank in the name of Investors Bank & Trust Limited (“Co-operation Agreement for funds at Fortis Bank”), attached as Exhibit A.

18. The terms of the Co-operation Agreement for funds at Fortis Bank sets forth the parties conduct and dispute resolution.

19. The Co-operation Agreement for funds at Fortis Bank is expressly subject to the approval of to the respective courts in the U.S., U.K., and Dominica. All parties have stated their intention to submit the Co-operation Agreement for funds at Fortis Bank to the respective courts for approval.

RELIEF REQUESTED

20. The Receiver respectfully requests that the Court approve the Co-operation Agreement for funds at Fortis Bank by and between Ross Connock and Tracey Callaghan (U.K. Liquidators), Roy M. Terry, Jr. and DurrettetBradshaw PLC (U.S. Receiver), and Marcus A. Wide (IBT Liquidator) attached as Exhibit A. In doing so, the Receiver points out that the Co-operation Agreement for funds at Fortis Bank provides for international arbitration in the event the parties are unable to reach an agreement as to the disposition of such assets. It is in this context that the Receiver now discusses international arbitration.

MEMORANDUM OF LAW

Arbitration is a strongly favored form of dispute resolution in the federal courts. It is considered a substitute for litigation, not a prelude to it. Essentially, any issue may be arbitrated, including federal statutory rights. *See, e.g., O'Neil v. Hilton Head Hospital*, 115 F. 3d 272 (4th Cir. 1997). This policy is expressed in the Federal Arbitration Act, codified at 9 U.S.C. § 1 *et seq.* (the "Act"). The scope of the Act includes "a contract evidencing a transaction involving commerce" *Id.* § 2. "Commerce" means "commerce among the several States *or with foreign nations*" *Id.* § 1 (emphasis supplied).

Chapter 1 of Title 9 (9 U.S.C. §§ 1-16) addresses domestic arbitration agreements. Chapter 2 of Title 9 (9 U.S.C. §§ 201-08) addresses foreign arbitration agreements, by incorporating the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958.¹ The provisions of Chapter 1 apply to foreign arbitration agreements to the extent that the provisions from Chapter 1 are not in conflict with the provisions of Chapter 2 or the Convention. 9 U.S.C. § 208.

¹ The United States and the United Kingdom are signatories to the Convention, but Ireland is not.

Article I(1) of the Convention states that it shall “apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.” In keeping with Article I(1), 9 U.S.C. §§ 202, 203 vests United States’ district courts with original jurisdiction, regardless of the amount in controversy, over actions concerning “an arbitration agreement or arbitral award arising out of a legal relationship . . . which is considered as commercial. . . .” The Receiver believes the Co-operation Agreement for funds at Fortis Bank is “commercial” in nature, thus Chapters 1 and 2 of Title 9 are applicable.

In *Bergesen v. Joseph Muller Corp.*, 710 F.2d 928 (2d Cir. 1983), the Second Circuit set forth a definition of a nondomestic award under the Convention, which would necessarily include agreements which are commercial in nature:

The Convention did not define nondomestic awards. The definition appears to have been left out deliberately in order to cover as wide a variety of eligible awards as possible, while permitting the enforcing authority to supply its own definition of “nondomestic” in conformity with its own national law. . . .

We adopt the view that awards “not considered as domestic” denotes awards which are subject to the Convention not because made abroad, but because made within the legal framework of another country, *e.g.*, pronounced in accordance with foreign law or involving parties domiciled or having their principal place of business outside the enforcing jurisdiction.

Id. at 932.

Further guidance is found in *Prograph Int'l v. Barhydt*, 928 F. Supp. 983 (N.D. Ca. 1996):

Section 202 provides that legal relationships considered as “commercial” include “a transaction, contract, or agreement described in section 2 of this Title.” Section 2 provides for enforceability of a written arbitration provision in “a contract evidencing a transaction involving commerce.” 9 U.S.C. § 2. Section 2 applies to all contracts that Congress could regulate under the full sweep of its Commerce Clause powers. *Allied-Bruce Terminix Cos. v. Dobson*, 130 L. Ed. 2d 753, 115 S. Ct. 834, 839-40 (1995).

Id. at 988.

The Supreme Court later explained that

We have interpreted the term “involving commerce” in the FAA as the functional equivalent of the more familiar term “affecting commerce”--words of art that ordinarily signal the broadest permissible exercise of Congress’ Commerce Clause power. *Allied-Bruce Terminix Cos. v. Dobson* , 513 U.S., at 273-274, 130 L. Ed. 2d 753, 115 S. Ct. 834. Because the statute provides for “the enforcement of arbitration agreements within the full reach of the Commerce Clause,” *Perry v. Thomas*, 482 U.S. 483, 490, 96 L. Ed. 2d 426, 107 S. Ct. 2520 (1987), it is perfectly clear that the FAA encompasses a wider range of transactions than those actually “in commerce”--that is, “within the flow of interstate commerce,” *Allied-Bruce Terminix Cos.*, *supra*, at 273, 130 L. Ed. 2d 753, 115 S. Ct. 834 (internal quotation marks, citation, and emphasis omitted).

Citizens Bank v. Alafabco, Inc., 539 U.S. 52; 123 S. Ct. 2037, 2040; 156 L. Ed. 2d 46; 2003 U.S. LEXIS 4418 (2003).

All of this suggests that the language in § 202 (“arising out of a legal relationship, whether contractual or not, which is considered commercial”) which includes any “transaction, contract or agreement described in section 2 of this Title [9 U.S.C. § 2] incorporates the broad “within the flow of interstate commerce” standard of the *Allied-Bruce Terminix Cos.* case. Thus, the meaning of “commercial” for the purposes of Chapters 1 and 2 of title 9 is as broad as Congress’ interstate commerce power.

The factual predicate for the exercise of the commerce power is an act or transaction between a state of the United States and another state or a foreign nation. The act or transaction need not be actually “in commerce” but may rather be “in the flow of interstate commerce”. It appears to the Receiver that the flow of funds from U.S. investors to Vavasseur in London *via* national and international banking channels would be “within the flow” of commerce, and hence

with the scope of the Convention. Thus, to complete establishing the Receiver's right to proceed under the Convention, it must arbitrate either (i) in accordance with foreign law or (ii) with parties domiciled or having their principal place of business outside the enforcing jurisdiction.

The Co-operation Agreement for funds at Fortis Bank calls for a separately designated deposit account in their joint names to be opened at a branch of the Clydesdale Bank in London, United Kingdom, into which all sums realized from the Account, net of costs will be paid, pending a resolution of the entitlement issues and for the arbitration to be conducted in London, applying the laws of the United Kingdom and Wales. We think it unlikely, given the nature of the appointment of the U.K. Liquidators and IBT Liquidator, that their supervising courts would have approved any other choice of law.² The Receiver's London counsel advises that English law, while more focused on tracing principles than current American law, has precedent favorable to the outcome that we currently believe appropriate, *i.e.*, a common fund to be shared by all Vavasseur Investors. We also believe that the escrow of the funds in the U.K. would reduce, but not entirely eliminate, the possibility that the Receiver could successfully be sued in the U.K. by a disgruntled English investor.

The Receiver believes that the plan proposed is practical and likely to forestall collateral attacks by disappointed investors here and in Europe. Enforcement of this type of agreement is a matter of course in the United States and, we are informed by counsel, in the United Kingdom as well.

The relief requested herein is analogous to that granted by Order entered April 27, 2004, though this request is restricted to just funds held in Fortis Bank in the name of IBT.

² As drafted, the choice of law provision would incorporate English principles of conflict of laws, which could bring the laws of other countries into play.

WHEREFORE, the Receiver respectfully prays that the Court approve the Co-operation Agreement for funds at Fortis Bank attached hereto, and grant to the Receiver such other and further relief as may be just and proper.

Respectfully submitted, this the 17th day of May, 2005.

/s/ Roy M. Terry, Jr.
Roy M. Terry, Jr. and DuretteBradshaw PLC
Receiver

Roy M. Terry, Jr., VSB No. 17764
Douglas Scott, VSB No. 28211
DuretteBradshaw, P.C.
600 E. Main St., 20th Floor
Richmond, Virginia 23219
☎ 804.775.6900
📠 804.775.6911

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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of May, 2005, a true copy of the foregoing Motion was mailed by first class mail, postage fully prepaid, addressed to:

Steven J. Levine, Esquire
Securities and Exchange Commission
Suite 900, 175 West Jackson Boulevard
Chicago, IL 60604-0003

Robert D. Luskin, Esquire
Patton Boggs, LLP
2550 M Street, N.W.
Washington, DC 20037-1350

Frederick T. Heblich, Jr., Esquire
801 East Jefferson Street
Charlottesville, VA 22902

Kenneth G. Mason
Suite 700
123 W. Madison Street
Chicago, IL 60602

Charles T. Rose, Esquire
2425 Graham Circle
Savanna, IL 61074

Bryan B. House, Esquire
Foley & Lardner
Washington Harbour, Suite 500
3100 K Street, N.W.
Washington, DC 20007-5109

Ronald Lee Livingston, Esquire
Tremblay & Smith
P.O. Box 1585
Charlottesville, VA 22902

/s/ Roy M. Terry, Jr.

DATED

2005

(1) MR ROSS CONNOCK AND MS TRACEY CALLAGHAN

- and -

(2) MR ROY M TERRY JR AND DURRETTE BRADSHAW PLC

- and -

(3) MARCUS A. WIDE

**CO-OPERATION
AGREEMENT**

relating to

The collection of funds held in Fortis Bank in
the name of Investors Bank & Trust Limited

EXHIBIT A

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BETWEEN

- (1) **MR ROSS CONNOCK AND MS TRACEY CALLAGHAN** of Baker Tilly, Spectrum House, 20-26 Cursitor Street, London EC4A 1HY as joint liquidators of Dobb White & Co (a firm) ("**DWC**") which abbreviations shall include any successors in title to them ("**UK Liquidators**"); and
- (2) **MR ROY M TERRY JR** of Durette Bradshaw PLC **and DURRETTE BRADSHAW PLC** of Main Street Centre, 20th Floor, 600 East Main Street, Richmond, Virginia, 23219, USA, as receiver of Terry L Dowdell, Dowdell Dutcher & Associates, Vavasseau Corporation ("**Vavasseau**") and other related entities (together Roy Terry and Durette Bradshaw Plc "**Receiver**"); and
- (3) **MR MARCUS A. WIDE** of PriceWaterhouseCoopers LLP of 600-1809 Barrington Street, Halifax, NS, B3J 3K8, Canada as liquidator of Investors Bank & Trust Limited ("**IBT**"), incorporated under the laws of Dominica ("**IBT Liquidator**").

RECITALS

- (A) On 12 July 2002, the Receiver was appointed by the United States District Court (in proceedings for the Western District of Virginia, Charlottesville Division ("**US Court**"), captioned Securities and Exchange Commission ("**SEC**") v The Dowdell et al, Civil Action No. 301CV00116) Receiver over the property of Terry L Dowdell ("**Dowdell**") and related entities. On 18 February 2003, the Receiver was also appointed as receiver over Vavasseau and several other entities related to Dowdell.
- (B) An order for the winding up of DWC was made by the Companies Court of the High Court of Justice of England and Wales ("**UK Court**") dated 2 December 2003. Colin Haig was, with effect from 12 January 2004, appointed liquidator of DWC by the Secretary of State for Trade and Industry. On the same day Mr Haig was also appointed as Trustee in Bankruptcy of Mr Shinder Singh Gangar and Alan White, former partners of DWC. Ross Connock was appointed joint liquidator and joint trustee in bankruptcy at meetings of creditors of all three insolvent estates on 16 July 2004.

- (C) By order of the UK Court dated 10 March 2005, Colin Haig was removed as joint liquidator of DWC and joint trustee in bankruptcy of Mr Shinder Singh Gangar and Mr Alan White and Tracey Callaghan was appointed joint liquidator and joint trustee in bankruptcy respectively.
- (D) By order of the High Court of Justice of the Commonwealth of Dominica ("**Dominica Court**") of 3 February 2003, Mr Wide was appointed liquidator of IBT. The order of 3 February 2003 was amended by order dated 24 January 2005, which order clarified and expanded the duties and authority of the IBT Liquidator.
- (E) Dowdell, principally by and through the Bahamian company Vavasseur, conducted what became an international ponzi scheme ("**Ponzi Scheme**"), whereby generous returns were promised to be paid on purported "investments" in "prime bank securities". In fact, no such securities existed and no "investments" were ever made. Instead, the funds from new investors were paid out as purported interest to the old investors. Dowdell and his associates diverted millions of dollars from the Ponzi Scheme for their own personal uses.
- (F) The Ponzi Scheme was conducted by Dowdell personally from the United States until approximately March 2001 when, following investigation by the SEC, he represented to the SEC that all investor monies had been repaid and that no trading program was being conducted by Vavasseur. It is alleged that the Ponzi Scheme was continued without interruption, or new similar schemes were initiated by Dowdell or his confederates in the United Kingdom, Gangar and White, who conducted the same on his instructions or on their own account, through their accountancy partnership, DWC.
- (G) The Ponzi Scheme and the schemes operated by DWC utilised a network of international banking institutions, offshore banks, and companies/corporations to process payments and deposits. When law enforcement officials in the US, the UK and other countries became aware of Dowdell's fraudulent Ponzi Scheme and the connected schemes operated by DWC, asset freezing orders were entered against accounts, and other assets of relevant persons and entities in several countries, including, *inter alia*, Ireland, Mexico, Belgium and Guernsey. IBT was one such entity.
- (H) An account is held at Fortis Bank, Antwerp, Belgium, account number 001-3703796-24 in the name of IBT ("**Account**"). The Account has been frozen by the Belgian authorities.
- (I) On 14 February 2003 the Receiver obtained an order in the US Court which, *inter alia*, specifically empowered the Receiver to seek repatriation of all the funds held in the Account to the US.

- (J) The Dominica Court issued an order on 24 January 2005, vesting in the IBT Liquidator funds held in the Account.
- (K) The UK Liquidators, the Receiver and the IBT Liquidator have agreed, subject to Belgian legal advice to the contrary, that it is appropriate for them to jointly seek to recover to the UK all the funds held in the Account upon the terms and conditions set forth in this Agreement.
- (L) The UK Liquidators, the Receiver and the IBT Liquidator have entered into this agreement in the spirit of cooperation, and will endeavour, where their duties and obligations as office holders permit, to share documents and information.

NOW IT IS HEREBY AGREED as follows:

1. REALISATION OF SUMS IN THE ACCOUNT

- 1.1 The UK Liquidators, the Receiver and the IBT Liquidator agree that they will cooperate fully with each other to seek to recover to the UK sums held in the Account and shall follow and comply with the advice of a jointly appointed firm of Belgian legal advisors. The UK Liquidators, the Receiver and the IBT Liquidator agree to disclose documentation to each other to assist in the recovery of funds in the Account, subject to obtaining their respective appointing court's permission and/or any necessary permission of any relevant authority. If appropriate, the UK Liquidators, the Receiver and the IBT Liquidator will, on the advice of such Belgian legal advisers, bring proceedings in the name of all or any combination of them in Belgium or any other jurisdiction to seek to recover to the UK funds held in the Account on the terms hereby agreed.
- 1.2 Immediately upon execution of this Agreement, the UK Liquidators, the Receiver and the IBT Liquidator shall seek to agree, in writing, upon one firm in Belgium to represent them jointly to seek to recover to the UK sums held in the Account. Such firm shall have relevant insolvency litigation experience under Belgian law. In the absence of written agreement within 14 days of the date of this Agreement, the Batonnier of L'Order des Advocates, Antwerp region, shall be asked by all parties to this Agreement to nominate a Belgian firm with relevant insolvency litigation experience (with no conflict of interest). (The firm appointed under this clause shall hereinafter be referred to as the "**Belgian Adviser**").

- 1.3 The UK Liquidators, the Receiver and the IBT Liquidator shall be jointly responsible for initially instructing the Belgian Adviser and the initial letter of instruction shall be drafted and approved by all parties to this Agreement. The initial letter of instruction shall ask the Belgian Adviser to provide clear written advice on the appropriate method of seeking to recover to the UK the funds in the Account and the prospects of success. The initial written advice from the Belgian Adviser shall be sent to all parties to this Agreement. The costs of the Belgian Adviser in providing this initial advice shall be borne equally by the UK Liquidators, the Receiver and the IBT Liquidator.
- 1.4 The UK Liquidators, the Receiver and the IBT Liquidator shall at all times seek to collectively follow the advice of the Belgian Adviser. Where the Belgian Adviser requires ongoing instructions in relation to the recovery into the UK of the funds in the Account, any such instructions shall, subject to clause 1.5 below, be given jointly by the UK Liquidators, the Receiver and the IBT Liquidator. The costs of the Belgian Adviser shall, subject to clause 1.6 below, be borne equally by all parties.
- 1.5 In the event that the Belgian Adviser recommends that it is appropriate for only one or two of the parties to this Agreement to take the necessary action (including the commencement of proceedings) in Belgium or elsewhere in order to seek to recover to the UK the funds in the Account, the UK Liquidators, the Receiver and the IBT Liquidator hereby agree that it is appropriate for the party or parties so identified ("**Claimant**") to directly instruct the Belgian Advisers to seek to recover to the UK the funds in the Account in accordance with the terms of this Agreement. The Belgian Adviser shall, in this event, correspond with and take instructions directly from the Claimant.
- 1.6 In the event that clause 1.5 becomes operative, the Claimant must instruct the Belgian Advisor to provide a monthly breakdown of costs (including disbursements) to all parties to this Agreement. If any of the parties to the Agreement, acting reasonably, consider that the costs of the Belgian Advisor are becoming excessive, then the parties to the Agreement will reconsider the division of the future legal fees of the Belgian Advisor.
- 1.7 In the event that clause 1.5 becomes operative, the Claimant shall be under an obligation to report to the remaining parties to this Agreement on a regular basis in connection with all steps taken to seek to recover to the UK the funds in the Account.

Without prejudice to this general obligation to report, the Claimant shall immediately advise the remaining parties to this Agreement of:

- 1.7.1 Any relevant Court dates in connection with the matter;
- 1.7.2 The outcome of any hearings in connection with the matter;
- 1.7.3 Any proposed negotiations for settlement with the Belgian authorities or others;
- 1.7.4 The outcome of any settlement discussions;
- 1.7.5 Any advice from the Belgian Adviser regarding prospects of success; and
- 1.7.6 Any claim by any third party to the funds in the Account.

In addition, the Claimant is under an obligation to respond as soon as reasonably possible, to any queries raised by any of the remaining parties to this Agreement and to forward copies of documentation received by the Claimant/the Belgian Adviser from third parties (including Fortis Bank) during the course of the retainer between the Claimant and the Belgian Adviser provided that such queries/documentation must be directly relevant to the sums held in the Account.

- 1.8 The remaining parties to this Agreement (other than the Claimant) shall be at liberty to request updates, documentation or relevant confirmation(s) from the Belgian Adviser and the Claimant shall not object to the Belgian Adviser providing such update, documentation or confirmation(s), provided always that the party seeking to obtain such update, documentation or confirmation(s) shall at all times be under a duty to act reasonably in making any request.
- 1.9 In the event that the Belgian Adviser advises the Claimant that settlement of the matter is appropriate, each of the remaining parties to this Agreement are at liberty to seek their own legal opinion and take whatever action they see fit provided that they keep the Claimant fully informed of their actions.
- 1.10 The Belgian Adviser may not be replaced without the agreement of two out of the UK Liquidators, the Receiver and the IBT Liquidator.
- 1.11 The UK Liquidators, the Receiver and the IBT Liquidator agree that all Costs (as defined below) incurred in connection with seeking to recover to the UK the funds in

the Account (including any costs award made in favour of any other party thereto against the UK Liquidators, the Receiver and/or the IBT Liquidator) shall be paid as follows:

- 1.11.1 if sufficient, from part or all of the funds recovered from the Account;
 - 1.11.2 if insufficient sums are recovered to pay all such Costs, the funds that are recovered from the Account will be applied pro rata to the Costs of the UK Liquidators, Receiver and the IBT Liquidator based upon the ratio established by their respective Costs incurred and then each of the UK Liquidators, the Receiver and IBT Liquidator shall bear their own outstanding Costs; and
 - 1.11.3 if no funds are recovered, each party shall bear their own Costs.
- 1.12 For the purposes of this Agreement, "**Costs**" shall mean those costs and expenses paid or incurred for legal representation with respect to realising the funds in the Account. The Costs shall include all disbursements incurred through travel, sustenance, copying, expert witness fees and other usual and customary charges and shall include the fees or expenses of the UK Liquidators, the Receiver or the IBT Liquidator incurred specifically in relation to the sums held in the Account. Costs shall not include the fees or expenses of the UK Liquidators, the Receiver or the IBT Liquidator incurred in connection with the general advice and/or assistance in respect of the liquidation of DWC, the receivership of Vavasseur or the liquidation of IBT.

2. THE JOINT ACCOUNT

- 2.1 The UK Liquidators' English solicitors (DLA Piper Rudnick Gray Cary UK LLP), the Receiver's English solicitors (Rooks Rider) and the IBT Liquidator's English solicitors (Edwards Geldard) will jointly arrange for a separately designated deposit account in their joint names ("**Joint Account**") to be opened at a branch of the Clydesdale Bank in London, United Kingdom, into which all sums realised from the Account, net of Costs ("**Realised Funds**") will be paid.
- 2.2 The UK Liquidators, the Receiver and the IBT Liquidator will take all reasonable steps to reach agreement with each other as to their respective entitlements to the Realised Funds. Any dispute arising out of or in connection with this Agreement, including, but not limited to:

- 2.2.1 any dispute regarding entitlement to the Realised Funds; or
 - 2.2.2 any dispute regarding the existence, validity, effect or termination of this Agreement, shall be determined by binding arbitration between the parties, as provided below in clause 3 of this Agreement.
- 2.3 The UK Liquidators, the Receiver and the IBT Liquidator agree that no sums will be distributed out of the Joint Account unless:
- 2.3.1 it is agreed by all parties and court sanction has been obtained from the US Court, the UK Court and the Dominica Court confirming the respective entitlements of the UK Liquidators, the Receiver and the IBT Liquidator. Any such court sanction shall need to authorise DLA Piper Rudnick Gray Cary, Rooks Rider and Edwards Geldard to make the necessary payments out of the Joint Account, and for payments to be made in respect of costs; or
 - 2.3.2 an Arbitrator has made a final determination pursuant to clause 3 below.

3. ARBITRATION

- 3.1 Any dispute between the parties arising under this Agreement, shall be resolved by binding arbitration ("**Arbitration**"). The parties acknowledge that any order made in any other jurisdiction in relation to the division and distribution of the funds in the Account shall be non-binding and the question over entitlement to funds in the Account as between the parties to this Agreement can only be determined by arbitration under this clause. The parties also acknowledge that any party's non-contest of arguments raised in proceedings in Belgium or other jurisdictions shall also be non-binding. The rules of the arbitration shall, subject to clause 3.2, be those of the London Court of International Arbitration ("**LCIA**"), which are incorporated in this Agreement by reference.
- 3.2 Articles 5.5, 6.1 and 11 of the LCIA Rules shall not apply to the Arbitration.
- 3.3 The place of Arbitration shall be London, England.
- 3.4 The governing law of the Arbitration shall be the laws of England and Wales.
- 3.5 The number of arbitrators shall be one. Each of the UK Liquidators, the Receiver and the IBT Liquidator shall nominate one (1) candidate, notify the others in writing and

will then seek to agree upon a single arbitrator who shall have legal and insolvency experience under English law. In the absence of an agreement within 21 days of the first written notification of proposed candidates pursuant to this clause, the President of the Law Society of England and Wales shall be asked by the UK Liquidators to appoint the arbitrator, which shall not be one of the three previously suggested.

- 3.6 The language to be used in the Arbitration shall be English.
- 3.7 Pursuant to Article 14.1 of the LCIA Rules the parties irrevocably agree that the conduct of the Arbitration will include a direction for standard disclosure (as defined in the Civil Procedure Rules), and if any party fails to comply with that disclosure obligation, the Arbitrator may apply such sanction as he in his absolute discretion sees fit.
- 3.8 Any dispute arising between the parties to this Agreement and in connection therewith as to whether a matter or a dispute is subject to Arbitration shall itself be decided by Arbitration.
- 3.9 Nothing in this Agreement shall prevent either party from seeking the entry of a Judgment in any jurisdiction based upon an arbitral award.

4. NO PERSONAL LIABILITY

- 4.1 The UK Liquidators are officers of the UK Court, fulfilling functions set out in the Insolvency Act 1986. The Receiver was appointed by the US Court as an equity receiver under United States Federal Law and has such powers over the entities in his charge as awarded to him by the appointing order of the Court or by law. The IBT Liquidator was appointed by order of the Dominica Court as a liquidator under Dominican law, and has such powers over the entities in his charge as awarded to him by the appointing Order of the Court or by law.
- 4.2 Neither the UK Liquidators, the Receiver nor the IBT Liquidator, their firms, partners, employees, advisors, representatives, legal advisors or agents shall incur any personal liability whatsoever in respect of any of the obligations set out herein or in respect of any failure on the part of their respective estates to observe, perform or comply with any such obligations or under or in relation to any associated arrangements or negotiations or under any document or assurance made pursuant to this Agreement.

4.3 The UK Liquidators, the Receiver and the IBT Liquidator are parties to this Agreement in their personal capacities only for the purpose of receiving the benefit of the exclusions, limitations, undertakings, covenants and indemnities in their favour contained in this Agreement.

5. MISCELLANEOUS

5.1 This Agreement supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing between all parties to this Agreement in relation to the matters dealt with in this Agreement and represents the entire understanding between all parties to this Agreement in relation to them.

5.2 Each party hereby represents and warrants that all representations, warranties, recitals, statements and information provided to each other in this Agreement are true, correct and accurate as of the date of this Agreement to the best of their knowledge.

5.3 Any waiver, alteration, modification, variation or amendment of this Agreement shall be void unless such waiver, alteration, modification, variation or amendment is in writing, referring specifically to this Agreement and signed by the respective parties hereto.

5.4 The headings and captions of this Agreement are inserted for convenience of reference and do not define, limit or describe the scope or intent of this Agreement, or any particular section, paragraph or provision.

5.5 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile of a signature shall constitute an original signature for all purposes under this Agreement.

5.6 All communications hereunder or pursuant to this Agreement shall be in writing and shall be delivered by e-mail, ordinary first class post, or by facsimile or, by hand to the addresses set forth below for each respective party:

Paul Clements
Rooks Rider
Challoner House
19 Clerkenwell Close

London
EC1R 0RR
Tel: 020 7689 7000
Fax: 020 7689 7001

(For the Receiver)

Sally Rich
DLA Piper Rudnick Gray Cary UK LLP
3 Noble Street
London
EC2V 7EE
Tel: 020 7796 6574
Fax: 020 7796 6361

(For the UK Liquidators)

Richard N. Rafuse, QC
Patterson Palmer
PO Box 247
5151 George Street
Suite 1600
Halifax, NS
B3J 2N9
Canada
Tel: 00 1 902 444 8415
Fax: 00 1 902 429 5215

(For the IBT Liquidator)

- 5.7 Any notice served under this Agreement shall be effective upon receipt.
- 5.8 Pronouns shall refer to the masculine, feminine, singular or plural as the context shall require.
- 5.9 This Agreement shall be governed and constituted according to the laws of England and Wales.
- 5.10 No single or partial exercise or failure or delay in exercising, on the part of either party to this Agreement, any right, power or remedy under this Agreement or the granting of time by either party shall prejudice, affect or restrict the rights, powers and remedies of those parties under this Agreement nor shall any waiver by either party of any breach of this Agreement operate as a waiver of or in relation to any subsequent or any continuing breach of this Agreement.

- 5.11 Each of the parties to this Agreement warrants and represents that they have full power and authority to execute this Agreement; the agents, attorneys, offices, employees, directors or representatives who are executing this Agreement have been duly and lawfully authorised to do so by all requisite corporate action; and that, save as set out herein, no promise, agreement or obligation herein contained is constrained, limited, or prohibited under any law, statute, regulation, rule or decision of the United States of America, Canada, Dominica or of England and Wales.
- 5.12 This Agreement shall not be capable of assignment either in whole or in part by either party and shall be binding upon and annure for the benefit of each parties' personal representatives and successors in title.
- 5.13 Any person who is not party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 5.14 Any date or period mentioned in any clause of this Agreement may be extended by mutual agreement between the parties but as regards any date or period (whether or not extended as aforesaid) time shall be of the essence in this Agreement.
- 5.15 If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction neither the legality, validity or enforceability of the remaining provisions hereof nor the legality, validity or enforceability of such provision under the law of any jurisdiction shall in any way be affected or impaired thereby.

IN WITNESS of which the parties have executed this document as follows:

SIGNED by/on behalf of Tracey)
 Callaghan and Ross Connock without)
 personal liability as joint liquidators)
 of Dobb White and Company (a firm))
 (in liquidation):)

SIGNED by/on behalf of Tracey)
 Callaghan in her personal capacity:)

SIGNED by/on behalf of Ross)
Connock in his personal capacity:)

SIGNED by/on behalf of Roy M)
Terry Jr and Durette Bradshaw PLC)
without personal liability as Receiver)
for Terry L Dowdell, Dowdell)
Dutcher and Associates Inc., Emerged)
Markets Securities, DE-LLC,)
Authorised Auto Services Inc., and)
Vavasseur Corporation:)

SIGNED by/on behalf of Durette)
Bradshaw Plc in its personal capacity:)

SIGNED by/on behalf of Roy M)
Terry Jr in his personal capacity:)

SIGNED by/on behalf of Marcus A)
Wide without personal liability as)
liquidator for Investors Bank and)
Trust Limited (in liquidation):)

SIGNED by/on behalf of Marcus A)
Wide in his personal capacity:)