

## Status of the file as of October 18, 2010

Since reaching the settlement referred to in the previous posting the Liquidator has been looking at other opportunities for improving recoveries for depositors and creditors of the bank. These had been considered on a preliminary basis earlier and the parties put on notice of the potential for claims to be submitted by the estate. However while the principle dispute over entitlement to the funds in Bermuda was on-going, with a prospect that a win would recover sufficient to pay a very substantial dividend, it was not feasible to determine if these other claims, which would be based on the loss to depositors after other recoveries were final, represented a worthwhile opportunity. That is to say if the recoveries in the principle action were substantial, the loss in the estate to which we could look for compensation from those whose actions gave rise to that loss would be small, and potentially not worth the cost, risk and delay.

With the settlement there is clearly a large shortfall to depositors and we have taken the time to properly review our rights and remedies, and as importantly the prospects of being able to recover any judgement that we were successful in winning.

The first opportunity was a claim against the Directors, as identified in the filings with the St Vincent regulatory authority. It is our position that they failed in their duties as Directors to properly oversee the operations of the bank, allowed other transactions not directly related to the bank to give rise to actions against the bank and therefore contributed to the loss experienced by depositors. On review we were satisfied that we had a good cause of action, however the prospects of recovering anything on a successful action was remote. Both Directors were embroiled in other litigation with respect to the sale of their business to a Bermuda bank who was asserting substantial claims, they appeared to have limited assets, and one Director died during the course of our investigations. Therefore while our chances of success were high, the reality was that we would be sharing the limited assets available with at least one other very substantial creditor. After consultation with the Creditor Committee it was decided that the estate should not invest in this claim.

The second opportunity was to bring an action against those that were believed to have controlled the actual activities of the bank, whose other dealings gave rise the claims against the funds held in Bermuda, and whose conduct was therefore thought to have been an underlying cause of the loss to depositors. Again an investigation into the persons against whom we had potential recovery rights did not suggest that there was a significant probability for financial recovery if the estate were successful. And again, the litigants we faced over the Bermuda monies have an outstanding action against the same parties, which would likely dilute anything that could be recovered. After consultation with the Creditor Committee it was decided that the estate would not pursue this claim.

The entitlement dispute over the Bermuda funds was based on the assertion by two parties that funds in a unrelated offshore investment scheme had been co-mingled with the affairs of the bank, and that they could trace and therefore recover their money to the extent it existed in the Bermuda funds, and further that the bank knew this had happened had consequently caused them damage for which they were entitled to be compensated as an "ordinary" creditor on a par with the depositors. The law and the facts were both complicated which resulted in the protracted litigation. There was a third party in that offshore investment scheme who chose not to participate in the claim to the Bermuda funds, but who then filed a proof of debt that claimed in essence whatever the other two parties obtained should also apply to him. That claim has been examined by our legal team who advised that this claim fails on a number of grounds. Consequently a notice of disallowance was filed by the estate. The claimant, within the statutorily permitted time frame has asked the Court in St Vincent for a judicial determination of its claim in the face of this disallowance. The matter is now in the hands of the Court for determination. We do not as yet have a timetable within which the Court will hear the matter.

The claim is significant, and seeks a declaration that part of the Bermuda funds liberated by the settlement, is in fact the property of the claimant, and also seeking substantial damages with respect to the balance of its claim, as a result of the conduct of the bank. It was hoped that the claim could be

resolved quickly and the estate brought to a conclusion with a one-time distribution to creditors. However as litigation will be required it is clear the estate cannot be wound up quickly.

Therefore, after consultation with the Creditor Committee, the estate has resolved that it should set aside funds sufficient to meet this claim if successful and sufficient funds to conduct the litigation and the costs of finally winding up the estate once this claim is resolved. On this basis the estate can use payout \$3,253,000 as an interim dividend to those with accepted claims. This amounts to approximately 20% and should be paid within 45 days.

Future dividends, both as to timing and amount, will depend on the outcome of the disputed claim. It is not presently possible to make an informed estimate of either.