IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. HCV 1267 OF 2005

IN THE MATTER OF DYOLL INSURANCE COMPANY LIMITED (IN LIQUIDATION)

AND

IN THE MATTER OF SECTIONS 206 AND 241 OF THE COMPANIES ACT, 2004

AND

IN THE MATTER OF THE COMPANIES ACT

IN CHAMBERS

Mr. R.N.A. Henriques Q.C. and Mr. David Batts instructed by Livingston Alexander and Levy for the Joint Liquidators

Mrs. Nicole Foster Pusey and Mrs. Symone Mayhew instructed by the Director of State Proceedings for the Financial Services Commission

Miss Ingrid Pusey for the Financial Services Commission

JULY 27 and AUGUST 3, 2006

APPLICATION FOR APPROVAL OF COMPROMISE

SYKES J.

1. The Joint Liquidators ("JLs") have applied to the court for approval of a compromise which, if approved would bring to an end the challenge, by way of judicial review, to the decision by the Financial Services Commission ("FSC") to increase Dyoll Insurance Company Limited's ("Dyoll") deposit. The challenge was brought by the JLs and the committee of inspection. The prescribed deposit is a sum required, under section 21 of the Insurance Act, to be deposited by any insurance company registered under the Insurance Act to sell insurance in Jamaica. The FSC has the power to increase the size of the prescribed deposit. When this deposit is made it is sterilized and cannot be used by the insurance company except in well defined circumstances. When there is an insolvency the significance and

importance of the prescribed deposit comes into focus. In the event of insolvency, section 59 of the Insurance Act states explicitly that the FSC is to hand over the deposit to the liquidator who must use it first to satisfy the claims of local policy holders.

2. The application for judicial review, however, was precipitated by a decision of the FSC to ask Dyoll to increase its deposit held with the FSC. In this insolvency, the judicial review proceedings have assumed greater significance because the Supreme Court, on November 24, 2005, decided that under section 59 of the Insurance Act, whenever there is an insolvency, the prescribed deposit had to be first used to meet the claims of the *local policy holders* (an expression used in section 2 of the Insurance Act). The phrase *local policy holders* was defined, in the November 24 2005 judgment to mean, those policy holders who submitted applications for insurance policies within the geographical boundaries of Jamaica. The court also held that it was only after the local policy holders were paid out of the prescribed deposit, the remainder, if any, could then be applied to the other unsecured creditors. At the time of the November 24 decision, it was common ground that the prescribed deposit was at least JA$48,300,000.00.

3. The liquidators have put before me a letter dated July 26, 2006, addressed to Mr. Kenneth Krys from Mrs. Cindy Scotland. The letter is from the Cayman Islands Monetary Authority. The letter says that the Authority approves in principle of the proposal put forward by the committee of inspection and if this proposal goes through then the Authority would make available the moneys it has. This would increase the size of Dyoll's estate. The Cayman Islands authorities have no objection to the proposed compromise.

4. The history of the matter needs to be briefly outlined so that it can be appreciated why the deposit was increased. Let me make it clear that I am not commenting on the lawfulness or otherwise of the decision taken by the FSC. It is well known that unless the decision of a functionary is set aside or reversed by the functionary himself such a decision is prima facie valid and effective. Before relating the history of the matter I need to refer to a letter that the JLs have put before the court.

The history

5. The account I now give comes substantially from the affidavit of Mr. Bryan Wynter, Executive Director of the FSC, sworn on December 10, 2005 and to a lesser extent from other documents in the judicial review proceedings. Dyoll is an insurance company licensed

under the Insurance Act to sell insurance directly to the public. It also operated in the Cayman Islands. In September 2004, Hurricane Ivan left a swath of destruction in Jamaica and the Cayman Islands.

6. In December of 2004 Dyoll brought to the FSC the alarming news that it was experiencing a capital shortfall arising from losses brought about by Hurricane Ivan. At that time Dyoll told the FSC that in respect of its Cayman Islands operations the claims exceeded Dyoll's reinsurance cover by approximately US$4,000,000.00. The FSC launched a Mother Theresa mission, that is, to save, restore and increase Dyoll's capital.

7. By February 2005 Dyoll reported that the net claims were between US$7,000,000.00 and US$8,000,000.00 more than previously indicated, that is to say, US$12,000,000.00 more than its reinsurance coverage. The FSC engaged in more dialogue with Dyoll which led the FSC to conclude that estimated capital needed to meet the minimum asset test ratio was JA$375,000,000.00.

8. On February 2, 2005, the FSC sent in a team of examiners to examine the documents relating to the insurance and reinsurance claims. A further meeting was held with Dyoll on February 4, 2005, and Dyoll was presented with a formidable list of directions which included a capital injection of JA$375,000,000.00. The deadline for this capital injection was February 18, 2005. A great deal of perspicuity is not needed to appreciate that such a significant capital injection was going to be a tall order for Dyoll. It is not clear what was the response of Dyoll to the February 18, 2005, deadline to find JA$375,000,000.00.

9. Between February 6 – 8, 2005, an examination team was sent to scrutinize Dyoll's Cayman Islands operations. By February 14, 2005, after the return of the FSC's examination team from the Cayman Islands and after Dyoll's Jamaican operations were examined, the FSC was greeted with even more depressing news – the excess of claims over reinsurance limits now ranged from a low of US$18,000,000.00 (Dyoll's estimate) to a possible high of US$24,000,000.00 (the FSC's estimate).

10. It dawned upon the FSC that the once hefty sum of JA$375,000,000.00 was now but an insignificant drop of what would be needed to restore Dyoll's capital base. On March 4, 2005, the FSC informed Dyoll that the new capital injection needed was JA$1,000,000,000.00. At 8:30 am on March 7, 2005, the FSC appointed a temporary manager. His first interim report of March 24, 2005, brought no joy. On receipt of his report

it was no longer a question of saving Dyoll but there was now a desperate scramble for the life boats – Dyoll was going down and would soon be covered by the waves of insolvency.

11. In response to the one billion dollar capital injection demand by the FSC Dyoll produced the following which apparently were accepted by the FSC:

- **a.** Securities denominated in Jamaican currency with a face value of JA$327,180,000;
- **b.** Securities denominated in United States of America currency with a face value of US$600,000;
- **c.** Euro letter with a face value of US$100,000;
- **d.** Debentures totalling JA$575,260.

12. It appears that it is now agreed (I do not make any finding of fact here) that Dyoll handed over assets valued at JA$330,000,000.00 to the FSC. In the context of one billion dollars required to increase the capital base this figure was not even close to what was needed. If the exercise of the FSC's powers is valid then the local policy holders would have JA$378,300,000 from which their claims would be met. I should point out that there is no evidence that this enhanced figure for the deposit would be enough to satisfy the local policy holders in full. I now turn to the compromise.

The compromise

13. The proposed terms of the compromise are:

- **a.** The original deposit, that is the JA$48,300,000.00, be treated as a deposit within the meaning of section 21 of the Insurance Act and be distributed among the local policy holders only.
- **b.** The additional deposit, that is JA$330,000,000.00, be treated as falling among the general assets of the Company and be distributed amongst all creditors generally.
- **c.** A consent order of this honourable court be entered between the Committee of Inspection and the liquidators approving this compromise and thereafter accordingly, Suit HCV 5223 of 2005, the application for judicial review will be mutually withdrawn.

d. That all the costs, charges and expenses of and incidental to the negotiations for and preparations of this compromise or scheme and of carrying the same into effect shall be borne by the company.

e. The liquidators and the Committee of Inspection may consent to any modification or addition to this compromise which the court may think fit to approve or impose.

14. The effect of this compromise would be that the November 24, 2005, judgment would not be challenged since on the face of it the parties would have accepted it as correct. The judicial review challenge would be dropped. It is obvious that the persons who stood the most to lose from this arrangement would be the local policy holders who, based on the decision of the FSC, have a pool of JA$378,300,000.00 from which to satisfy their claims. The group that would benefit most from this would be those unsecured creditors who do not fall with the definition of local policy holders.

The affidavit evidence in support of the application to approve the compromise

15. Mr. John Lee, a chartered accountant and partner in the firm of PriceWaterhouseCoopers, one of the joint liquidators, appointed by the Supreme Court on August 18, 2005, along with Mr. Kenneth Krys from the Cayman Islands, swore an affidavit in support of the application. The liquidators say that the compromise will result in earlier distribution, reduction or avoidance of legal costs, time and expense. The compromise, it is said, will bring into account the money held by the authorities in the Cayman Islands. The liquidators also say that the cost of having a meeting is estimated at approximately JA$2,000,000.00 and the costs of the meeting may be higher than the costs of proceeding with the judicial review application.

16. I find it odd that the joint liquidators are able to give the costs of holding meeting but have not stated the approximate costs of judicial review proceedings so that there a proper comparison of both sets of costs could be done. It is true to say that the costs of litigation may be higher. That does not require the skills of accounting but simply rationation. Merely to state a possibility is not helpful. I would also add that the JLs did not indicate the extent to which either the JA$378,300,000.00 or the JA$48,300,000.00 would meet the obligations owed to the local policy holders. There was no information about the size of the estate left

for the other unsecured creditors if the JA$378,300,000.00 were taken out and to what extent the claims of these creditors could be met. In short the information before the court was not sufficient for rational and reasoned decision to be made. As will be made clear there was a more fundamental reason for declining to approve the compromise. This will be made clear in the discussion to follow.

17. The costs of having a meeting of 7,500 creditors is said to be approximately JA$2,000,000.00. Again this is not necessarily so because it may well be that not all 7,500 creditors will have to be called to a meeting. This will be explained further when dealing with the procedure under section 206 of the Companies Act 2004 (Jam). The cost may be more or less depending on whether more than one meeting is necessary and the composition of the meeting.

18. The affidavit goes on to state that the Cayman Islands creditors have shown more interest than local policy holders. Mr. Lee also points out that the meeting may end in a "dead lock" because the local policy holders have more in number but the Cayman Islands creditors are more in value. Again there is no inevitability about this conclusion if the meeting or meetings are held in accordance with the provisions of section 206 of the Companies Act 2004 (Jam).

The relevant statutory provisions

19. Section 206 which states so far as is material:

> *(1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or with creditors between the company and its members or any class of them, the Court may, on the application ... in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, ... as the case may be, to be summoned in such manner as the Court directs.*
>
> *(2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all creditors or class of creditors, ... and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.*

20. Section 207 states:

> *(1) Where a meeting of creditors or any class of creditors or of members or any class of members is summoned under section 206 there shall be –*

a. *with every notice summoning the meeting which is sent to a creditor .. be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors of the company, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon, of the compromise or arrangement, in so far as it is different from the effect on the like interest of other persons; and*

b. *in every notice summoning the meeting is given by advertisement, be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid.*

21. Section 241 of the Companies Act, 2004, authorises the liquidator in a winding up by the Court to exercise the powers set out in the section either with the sanction of the court or the committee of inspection. The relevant powers for the purposes of this application are those found at section 241 (1) (d) and (e) which state that the liquidator has the power

d. *to pay any class of creditors in full;*

e. *to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;*

22. Section 241 (3) of the Act provides that:

The exercise by the liquidator in a winding up by the Court of the powers conferred by this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

23. Section 242 of the Act states:

(1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by the Court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories, at any general meeting, or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The liquidator may summon general meeting of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories as the case may be.

(3) The liquidator may apply to the Court in manner (sic) prescribed for directions in relations to any particular matter arising under the winding up.

(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) Any person aggrieved by any act or decision of the liquidator, may apply to the Court, and the Court may confirm, reverse, or modify the act or decision complained of and make such orders in the premises as it thinks just.

24. Mrs. Foster-Pusey correctly pointed out that under section 241 there is a world of difference between being authorised to do an act and sanctioning an act. This distinction is well founded and well supported by logic and authority (see ***In the Matter of Green Haven Motors Ltd, Mayers v BG Funding Ltd*** per Lord Justice Chadwick). In that case Lord Justice Chadwick was dealing with section 167 of the Insolvency Act 1986 (UK) which is worded similarly to section 241 of the Companies Act 2004 (Jam). The consequence of this distinction is that in Jamaica, by virtue of section 241, the only person empowered to make any compromises or arrangement with creditors is the liquidator. The committee of inspection has only sanctioning power but no power to conclude any compromise or arrangement with any creditor.

25. The purpose of making this distinction from Mrs. Foster-Pusey's point of view was to submit that whereas the committee of inspection and the liquidator can properly decide to withdraw the judicial review application, the liquidator has no power to enter any compromise or arrangement without a meeting or meetings held under section 206 of the Companies Act. I do not agree with Mrs. Foster-Pusey that the distinction made leads to the conclusion that the liquidator has no power to enter into a compromise or arrangement under section 241.

26. Section 242 of the Companies Act 2004 (Jam) has provision for the wishes of the creditors in general meeting to be considered. There is no evidence that the wishes of the creditors in general meeting have been obtained to say nothing of being considered. Mr. Henriques Q.C. submitted that the creditors are represented by the committee of inspection and to that extent their views have been taken into account. This is true but it doubtful whether a far reaching decision of this nature, in the absence of some very compelling reason, should be taken and sanctioned by the court without hearing from the creditor or such of them as necessary.

27. In looking at the provisions of the Companies Act 2004 (Jam), although section 206 appears in part four and sections 241 and 242 appear in part five, they complement each

other and are expected to be utilized as appropriate to ensure that decisions made take account of the wishes of the creditors. Sections 241 and 242 proceed on the basis that any person dissatisfied with the liquidator's decision can apply to the Court to have the matter examined. The submissions of the liquidators in this case are based on this understanding. In other words, they say that even if I were to approve the compromise, the door is not irrevocably closed to creditors who wish to question the compromise. They can apply to the court to have the matter reviewed or set aside. In my view the disadvantage of this approach is that it places the burden on the creditors or a particular creditor to move the court. This might impose considerable costs on a creditor if he is not able to coalesce a critical number of creditors who would share the costs of the court challenge.

28. Mrs. Foster-Pusey made the further submission that, based on the existing cases, while it is true under section 206 a discretion is vested in the court whether or not to summon a meeting, prudence would suggest that a court would lean in favour of a meeting unless there is good reason not to hold a meeting. She pointed to the dictum of Plowman J. in ***In re Trix Ltd v In re Ewart Holding Ltd*** [1970] 1 W.L.R. 1421. In that case the liquidator applied to the court to have a compromise approved which would have resulted in a distribution other than in accordance with the strict rights of the creditors. There was no evidence that the creditors had been summoned to a meeting. Plowman J. declined to exercise his discretion in favour of the proposed course of action. His Lordship had these words of wisdom at pages 1423 - 1424:

I am, therefore, confronted with an important question of principle, namely whether it is right to authorise such a distribution, as I am asked to do, without either the consent of every creditor or a scheme of arrangement under section 206 which would bind apathetic creditors (of whom there are apparently a very large number here), and the dissentient minority, which in this case appears to be one.

In my judgment, it is not right. The matter is one which the creditors should decide for themselves and on which they are entitled to express their views at a meeting or in court.

However convenient it may be for the liquidators to have a compromise sanctioned by the court, it is in my judgment wrong in principle to allow that course to be taken, for none of the persons affected has had any opportunity of being heard to challenge it -- indeed the whole object is to preclude such a challenge.

On the other hand, if a scheme were brought in, every creditor would have an opportunity of voting for or against it and, if he thought fit, of challenging it before the court when the petition to sanction it was heard. Furthermore, the creditors would have the protection of the court at an earlier stage in relation to proper notice of the meetings to consider the scheme and the circular explaining it. Last and not least, the court would not have to be involved in the merits of the scheme unless some creditor thought fit to appear and oppose it, in which case the court would have the benefit of argument and evidence on

both sides.

The method which has been adopted here puts the burden on the court of deciding whether a particular method of distribution is fair in all the circumstances and should be accepted. In my judgment, this is an unjustifiable burden, first because, under the machinery provided by section 206, the creditors alone ought to be asked to decide it, and secondly because I have not had the benefit of hearing any alternative point of view.

In my judgment, it would be unfair to non-assenting creditors to deal with the matter in the way proposed, since it deprives them of the opportunity of airing their views and of the protection of the court's control over meetings, advertisement and circular under section 206.

29. The sections under which Plowman J. was asked to act were sections 206 and 245 of the Companies Act (UK) 1948 which were the same as sections 206 and 241 of the Companies Act (Jam) 2004. In the case before me I am being asked to approve a compromise that would result in a distribution that would not be in accordance with the rights of the local policy holders as declared in the November 24, 2005 judgment.

30. From the passage and the learning in this area I have extracted the following considerations that ought to be taken into account when deciding whether to approve the compromise under section 241 of the Companies Act 2004. They are:

(1) it is important that the persons most directly affected, the creditors, be the ones who decide issue relating to their entitlements;

(2) the default position should be in favour of having a meeting to discuss the far reaching nature of the compromise unless there are some overriding factors pointing to the contrary;

(3) the creditors should be presented with an opportunity to express their view and hear other view on the matter so that they can make a truly informed decision;

(4) if the court were to approve the plan none of the persons affected would be heard before the plan is approved by the court. In the event of a disagreement the persons who object would have to undertake the expense of litigation. The liquidators could respond in the virtual certain knowledge that they would have the liquidation estate to fund their costs while there is no guarantee that the challenger's costs would come out of the liquidation estate. This possibility might in practical terms, emasculate the right to object;

(5) the committee of inspection on such a vital issue should not wish to decide the matter without the protection of hearing from the other creditors;

(6) where there are different classes of creditors with consequential differences in their legal entitlements it would not be prudent, unless there is some compelling reason indicating otherwise, to make a decision that deprives some classes of possible substantial benefits and augmenting the rights of other classes.

31. Mr. R.N.A. Henriques submitted that Plowman J. was dealing with a case in which the committee of inspection was ignored and the liquidators went straight to court and that fact might have accounted for the dismissal of the summons. However as Mrs. Foster-Pusey rightly demonstrated, learned Queen's Counsel was guilty of eisegesis. There is nothing to indicate from the reports of the case whether or not the committee was in place.

32. The liquidators sought to say that section 206 of the Companies Act 2004 (Jam) is not applicable to their proposal. The argument put forward in support of this is that section 206 applies to situations where there is an attempt to re-organise the company, adjust shareholding, to keep the company going by writing off or reducing debt. This contention is not supportable because section 206 (1) refers to both compromise and arrangement in the context of the company continuing and also in the context of a liquidation. The term *arrangement* is wide enough to cover schemes varying from debt to equity schemes to conversion of secured claims to unsecured ones. The word *compromise* covers any agreement by which a creditor and the company settle because the company's insolvency makes it unable to pay the debt in full. I am therefore satisfied that what is being proposed comes within the meaning of the word compromise and therefore falls squarely within section 206 (1) of the Companies Act of 2004. I have concluded that it would not be prudent to approve the compromise under section 241 of the Companies Act 2004. This matter should be dealt with under section 206. I now turn to how the section 206 application should be dealt with.

Section 206 of the Companies Act

33. I have already pointed out that under section 206 (1) of the Companies Act 2004, there is a discretion vested in the court to direct that a meeting be held. It is my view that the court should be loathe to make decision for and on behalf of creditors who know better than any court could, what is in their best interest. I appreciate that there may be compelling circumstances that dictate that the court should act in a summary manner but none has been indicated to me from the affidavit evidence presented in this case.

34. What then is the procedure under section 206 of the Companies Act 2004 (Jam)? The English Court of Appeal has delivered a judgment which accords with my own views on the matter and I shall adopt the reasoning and conclusion of that court in this matter. This is the matter of ***In the Matter of the Hawk Insurance Company*** [2001] 2 BCLC 480. In that case the Court had to consider section 425 (1) of the Companies Act 1985 (UK) which is virtually identical to section 206 (1) of the Companies Act 2004 (Jam). I should point out that section 425 (1) was amended by the Enterprise Act 2002 (UK). This amendment does not affect my analysis. The ***Hawk*** judgment led to the issuing of a Practice Statement by Sir Andrew Morritt V.C. found at [2002] 3 All ER 96. I need not set out the facts of ***Hawk Insurance*** save to note that the issue there was whether in light of the proposed scheme of arrangement there should be a single meeting of all the creditors or should there be several meetings. Chadwick L.J. in his judgment laid down the applicable considerations.

35. The Lord Justice said that in order to determine whether separate meetings are required the matter should be considered in this way:

(1) the primary question is, with whom is the compromise or arrangement to be made?

(2) the second question is, are the rights of those who are to be affected by the proposed compromise or arrangement sufficiently similar that the compromise or arrangement can properly be said to be a single compromise or arrangement?

(3) whether the compromise or arrangement is a single one is determining by asking, are the rights of the creditors so dissimilar that it would be impossible for them to consider at the same meeting the proposed compromise or arrangement?

(4) the focus then is on the rights of the creditors under the proposed compromise or arrangement;

(5) if the rights of the various creditors are so different that it could not be said that they could properly consider the matter together in a single meeting then the compromise or arrangement is not to be considered a single compromise or arrangement but rather as a number (meaning that there are as many compromises or arrangements as there are classes) of compromises or arrangements;

(6) Lord Justice Chadwick also indicated that in the same way that it was important to ensure the creditors with dissimilar rights should not be part of the same meeting it was just as important to ensure that those whose rights are sufficiently similar so that they can consult together should do so lest by ordering separate meetings the court gives a veto to a minority. What the Lord Justice was getting at here was that if there was over refinement on this matter of the rights of the different creditors it might be that a small group of creditors in their meeting might be able to exercise veto power over the will of the majority;

36. Lord Justice Pill in ***Hawk Insurance*** said that a broad view should be taken of what constitutes a class of creditors. This was concurred in by Wright J., the third member of the court. Pill L.J. added that there should be close scrutiny of the facts to determine whether there is one class or several classes.

37. Lord Justice Chadwick indicated that under the relevant section there is a three stage procedure that must be met before the compromise or arrangement becomes binding. The first stage is that there must be an application to have such a meeting. It is at this first stage that the considerations in paragraph 35 are applied in order to determine whether more than one meeting should be summoned and who should be summoned to the particular meeting. The purpose of this first stage procedure is to ensure that those who are affected by the proposed compromise or arrangement have an opportunity to be heard and then to vote on the proposals.

38. The second stage is at the meeting or meetings which are held. At the meeting the proposals have to be properly presented to the meeting in accordance with the order made by the court. The proposal has to be approved by a majority in number **and** value of those present and voting either in person or by proxy. It is because of this voting procedure why I said that there is no inevitability that a deadlock would be produced as suggested by the JLs.

39. Stage three requires a further application to the court to approve the compromise voted on. It is only if the court gives its approval that the compromise or arrangement becomes binding on the whole class of creditors, including those who did not participate in the meeting, who fall within the particular class that voted. At this third stage the object of judicial scrutiny is (a) guarantee that the meeting was held according to the terms of the

order previously made; (b) make sure that the compromise or arrangement was approved by the required majority of those present at the meeting and (c) make certain that the dissentient voices were heard and their views impartially considered. This means that the mere fact that the meeting was held and the votes taken do not mean that the court must approve the compromise or arrangement. The court may find, for example, that the meeting was unrepresentative.

40. All three stages are important but stage one is perhaps the corner stone. Great care must be exercised in determining whether there should be one meeting or several meetings, determined in accordance with what I have said in paragraph 34, so that time and money is not wasted because a court finds, at stage three, that at the meeting two disparate groups of creditors sat in one meeting.

41. This now brings me to the Practice Statement of the Vice Chancellor Morritt. In his Practice Statement, at paragraph 5, the Vice Chancellor advised that the court should consider whether more than one meeting of creditors is required and if so what is the appropriate composition of those meetings. This is designed to ensure that decision at stage one is correctly made. The court does not play a passive role. It is actively involved at stage one. This does not mean that there can be no problems at stage three but the involvement of the court at stage one reduces this risk considerably.

42. The question that arises is, where does the information come from in making the decision on the number and composition of the meeting or meetings? Paragraph four of the Practice Statement recommends that the applicant for the meeting should draw the attention of the court to any issues concerning the constitution of the meeting of creditors and of any issue which may affect the conduct of the meetings. What this means, according to paragraph four of the Statement, is that unless there is some reason for not doing so, all persons affected by the compromise or arrangement should be notified of the compromise or arrangement proposed, the purpose of the compromise or arrangement, the meeting to be held and their composition. The Statement goes on in paragraphs six and seven to outline practical measures to reduce the possibility that at stage three a court holds that there was a flaw in the meeting stages of the process. The Vice Chancellor's Statement wisely recognised that it may be prudent to deal with creditor issues before the meeting or meetings are held. He suggested in the Statement that after the proposal is circulated to all the creditors a time may be set within which creditor issues can be dealt with before the

meeting is held. The aim of this guideline is to provide an opportunity for creditors to raise concerns and have then addressed before the meeting is held. This would mean that when the third stage is reached, any creditor informed of the meetings and the time within which to raise his objections and concerns who then tries to block the court's approval of the scheme would need to present good reasons for his prior inactivity.

43. From what has been said, it is obvious that while the courts are not micromanagers of the liquidation it is expected that they keep a firm hand on the tiller. Where creditors' rights are involved, it is expected, unless there are some compelling reasons to the contrary, that at the very least, the affected creditors should have the opportunity of voicing his concern on the issue.

Conclusion

44. I have already indicated that the prescribed deposit is at least JS$48,300,000.00. The size was increased by JA$330,000,000.00. Under section 59 of the Insurance Act the prescribed deposit is to be used first for settling the claims of the holders of local policies. What the liquidators are asking me to do is sanction an agreement whereby the local policy holders would be deprived of an additional JA$330,000,000.00 from which they could be paid. I agree with Mrs. Foster-Pusey that the application has raised important considerations which I have sought to address.

45. It would not be prudent for me to approve this compromise without hearing from the creditors. There is no compelling reason for the matter to be dealt with summarily by me at this stage.

46. The directions are:

> The Liquidators are to submit further information in accordance with the authorities cited in this judgment so that a proper determination as to class or classes of creditors to be summoned to a meeting or meetings to be held under section 206(1) of the Companies Act 2004 can be made.