

Brief and Appearance Notes John Wright

27 November 2008

With appearance and notes and outcome in red

Today I appear for

Richard Halsall to ask for him to be released from further acting for Leo Keith Hughes Mr Hughes is in Court

I act for the Kaupthing Singer & Friedlander IOM Action Group which has over two thousand members and three hundred subscribers to its legal fund. They have deposits or bonds with the bank totalling up to £40 million

My instructing committee members are

Sieczko Zygmunt

Sarah Chantrey

Tracey Sheila Spuyman

Addresses and account numbers and values redacted for everyone except Deemster

I also represent as counsel only, for today only,

Mr M Moule and PRC MORTGAGES LTD, Mr Roper and Mr Coastal

Appearances were entered as follows

Mr Attorney General and Mr Alan Gough The Treasury

Mr Clucas KSF IOM and Directors as Petitioners

Mr Caine Joint Liquidators provisionally

Mr Wilde FSC Petitioner

Mr Webb Richochet and Falconbridge Limited special leave to appear given

Mr Morris CMI, Royal Skandia, Axa IOM, Norwich Union, from last court, plus special leave given Friends Provident and Prudential total £200million approx

Mrs Suay y Cortes KF fh Iceland

Ms Holt Mr Brake

Mr Wright Siezcko, Chantrey, Spuyman special leave given, Hr Halsall for Mr Hughes and as Counsel only for Mr Moule, PRC Mortgages, Mr Roper and Mr Coastal

There are a number of matters which I wish to raise today

1. I seek special leave for my clients to be treated as parties. I have advised the Court in advance and also the FSC, Petitioning Directors and the Liquidator and the Government Advocate for Treasury. I have not advised or notified any individual parties joined after giving notice on 24th October *Special Leave Granted*

2. I wish to have Mr Halsall released from further acting for Mr Hughes who is here today and will appear in person in future. *Mr Halsall released. Mr Hughes in person JW to act as address for service in IOM*

3. I wish to oppose the application, unseen but existence advised, by Mann Benham on behalf of the parent bank in Iceland to be allowed to withdraw its appearance. It has appeared, it may discharge its Counsel, who may be released but it should not be allowed to withdraw its appearance and submission to the jurisdiction. We are still early days it may be necessary to involve the parent. Having it here and subject to the jurisdiction to which it has voluntarily submitted may be advantageous and save costs of an application and order for service out and a jurisdictional wrangle. Having made its bed it should lie on it.

Mr Clucas and I both opposed. Deemster set it down to be heard on 29 January at 10.00. Ms Suay y Cortes to file and serve affidavit by close business on 18 December and we to file any answer in opposition by 15 January 2009, exchange skeletons 22 if we still oppose. We should oppose Cost estimate to oppose £2,000

4. I wish to raise a metaphorical eyebrow at the FSC being here as Co Petitioner when no grounds are relied upon that would entitle it to apply on its own it appears to be without locus and without grounds. However I am comforted by the affidavit of Ms Dorling which states the FSC will not seek costs. *This point not able to be raised*

5. I wish to welcome Mr Spratt as joint liquidator, he has a in impressive CV, however I have to raise a number of points about the application and notice and the misleading way this appears to have been conducted in court. That is a matter for the court depending on the views it takes of the affidavits and the actions and words of its officers. It appears no advance notice was given to any ordinary creditors, the Petition and affidavit were not, I am advised, posted by Mr Simpson to the KSF web site before 20 November and the persons who had appeared were served after the event with copies of the Petition and affidavit not being sent out by Cains until 24 November. There are technical questions about MR Spratt. My clients welcome his assistance but wonder if sufficient thought has been given about the tax residence of the bank and potential consequences. First if Mr Simpson is run over by the proverbial bus the sole liquidator will be in the UK for tax purposes and control will be exercised from there. Second as the appointment is joint and several, rather than joint Mr Spratt can still fall into the same trap.

This can be cured by a third IOM liquidator, preferably independent and Mr Pratt only having joint powers, a stay of Mr Pratt's appointment or his removal pending resolution, if the latter r Simpson can be empowered to employ him to advise and assist in the interim. What I say is it needs thought, careful thought, and discussion, there will be a way ahead but the present order is a potential recipe for disaster

This point was raised by myself and by Mr Hughes in person. Deemster was unhappy to have been misled on 20th. Mr Caine apologised. Its up to us. If we want we can apply to court to nullify the order. I suggested Mr Caine write explaining their legal research about tax safety. Of course if liquidation goes ahead then you will have a vote by number and value at the first Creditors meeting post order.

6. There is then the second part of the application of Mr Simpson. The secrecy provision, the not being open, and honest, and answering letters

application. That I and my clients oppose. If he wishes to go ahead then we suggest there will have to be directions and a hearing. We say that there is enough paranoia and worry for the creditors at this time, that openness must be fostered, there must be better communications. Since I was instructed I have seen the secrecy machine work to the opposite of interests of the ordinary creditor. If you asked Mr Simpson or his advocates if it was Thursday today the reply would be it was privileged, caught by data protection, that if you became a party they would release the information but only if you signed a thirty page confidentiality agreement. That attitude when taken with the cloak and dagger actions re the 12 November petition and 20 November hearing is counterproductive. He is Chief cook and bottle washer under the order, he has staff. If he cannot stand the heat of the kitchen then he should get out now. He (and others) must remember that if there is a scheme it will have to be voted upon, if there is a liquidation his appointment will have to be confirmed. Why alienate the voters? Many of the questions are pertinent to the creditors making up their minds in an informed manner about extremely important financial matters. They deserve better.

The application was withdrawn. Mr Hughes and I both raised objections I tried to encourage more openness. There is a real fear of giving out information.

I will write to everyone asking the questions. I am not confident, they will hide behind commercial sensitivity.

7. Then there is the strange case of Treasury. Let me say I welcome Mr Gough on board, he will appreciate the need for speed, disclosure and will not allow shillyshallying by his client. They now want an adjournment. They only served the affidavit and skeleton 24 hours ago. I have done my best but I cannot advise my clients on what they should do without more information. I have asked for that information, some of it ten days ago. I have been ignored. I think the Court and all parties need an explanation of what happened to the Treasury following the last adjournment at its request. That was to talk to Iceland. No mention of that now. This is a new departure. What happened with Iceland? Then before advising 60 days in the limbo with no court breathing down backs for answers to be given I am sure there will be another news blackout. That inescapably leads to one conclusion, adjourn for 7 or 14 days and

for the creditors to be provided in the meantime with a great deal more information. I am bemused, all the evidence is that KSF IOM is insolvent, cannot meet its liabilities as and when they fall due and that the big question is the recovery or otherwise of the £500 million in London. With it KSFIOM is potentially long term solvent, without it it is hopelessly compromised. I do not understand what a 60 day adjournment and Alix & Co can do to change that. At present I do not agree to a 60 day adjournment I cannot say if I will in future but to be able to advise and for the court to be able to decide properly, bearing in mind a 60 day delay will mean the DCS is not triggered. Many of those I represent are suffering great financial pressure. I note the oblique reference in Ms Dorling's affidavit, it would help to see and be able to comment upon any scheme. So answers to questions, disclosure of the relief scheme would help me and I say the court in deciding where to go next.

Everyone else wanted to adjourn 60 days, I tried for a fortnight with answers to the questions but was turned down

On 15 January Treasury has to update position

On 22 January we have to set out our response if any and skeletons

29 January matter for further hearing

Questions and information required and views canvassed

From Treasury, FSC and Liquidators (except where otherwise limited)

I will re write to all parties and to Mr Lovett

- a. actions to date and views and proposed actions for future regarding the KSFIOM funds in London.
- b. actions to date and views and proposed actions for future regarding any legislation or procedures used in the UK by HMG against KSFUK
- c. action to date by the liquidator provisionally and views for future regarding the parental guarantee and to obtain a copy of this guarantee and place it in the public domain. I shall read it in open court and file a copy if I have to
- d. actions to date and views and proposed actions regarding the sealed court papers in the UK.

- e. what exactly has gone on in the talks between the IoM and the UK (and possibly Iceland). Views of progress to date and views on future discussions and actions(Treasury only).
- f. In the event a 60 adjournment looks like being granted I am instructed to request that the court agrees to the formation of a 'creditors committee of inspection provisionally' Views and reaction. This could be appointed by Court and could assist in giving the appearance an perception and fact of openness and communication which is sadly currently lacking
- g. There is confusion in the different number of accounts, account holders and creditors being reported, can we have a total number of account holders, single and joint and a total number of accounts and value
- h. Have any of the parties managed to obtain copies of the latest balance sheet for K UK as at date of liquidation, are they willing to share, have they compared with the quarterly figures for the last 12 months, are there any comments
- i. I have raised eyebrows at the joint liquidator appointment and the secretive way it was done. I have pointed out that there was no notice on the web site and the parties were only served on 24 and 25 November after the event. I have suggested matters that need examining sooner or later to avoid UK taxation problems. Will the joint liquidators liaise with me and perhaps others to come up with a practical solution
- j. FSC to consider its locus and its continued appearance as a joint Petitioner without grounds. If it wishes to hold a watching brief, OK
- k. Treasury, I thank for their papers served so late and say that rather than jump I and clients need some answers and information and suggest adjourn for that for 7 or 14 days. I point out this appears not to represent continuity with the original grounds upon which they adjourned in October and ask for a report to the court as to the change in stance
- l. The current estimate of the likely shortfall for unsecured creditors at Kaupthing. In the absence of such an estimate, no plan to reconstruct or run off Kaupthing can have any credibility as those proposing or considering it do not have an estimate of the size of the problem This estimate should include some estimate of the size of the foreign exchange exposure at Kaupthing, as the moving sterling liabilities are volatile in the current foreign exchange markets.
- m. Whether any proposal will trigger the Depositors Compensation Scheme, so that a large number of small depositors can be paid out. This will tend to reduce the 'noise' as larger creditors will be

much readier to understand a work out that will produce a better return. The best solution may be to trigger the Depositors Compensation Scheme now, giving smaller creditors the chance to opt for certainty and the Scheme a big role to play in any reconstruction.

- n. As this is probably unlikely then Treasury as a quid quo pro of any extended adjournment should put forward for advance consideration its life boat for those hardest hit whereby funds can be advanced against eventual DCS or repayment of deposits in a restructure
- o. Whether any proposal will involve a change of control and, if so, whether such a change of control would affect the guarantee given by Kaupthing Bank Hf. A copy of the guarantee is needed now
- p. Whether any scheme to reconstruct or run off Kaupthing would involve the government introducing special reconstruction legislation for Kaupthing. This might be especially valuable in enabling Kaupthing to run off its loan book rather than sell it at a discount.
- q. better dissemination of information and updates, which is why I suggest a committee of inspection, provisionally, appointed by the Court, as at least a quid pro quo, not delayed until a reconstruction meeting.
- r. Appointing a second IOM liquidator from outside the current liquidators firm