

TELECONFERENCE

TERRITORY OF THE VIRGIN ISLANDS

Wednesday, 25th July 2012

APPLICATIONS AND APPEALS

Case Name:

**Kenneth M. Krys and Joanna Lau
(as Joint Liquidators of Fairfield Sentry
Limited, Fairfield Sigma Limited and Fairfield
Lambda Limited)**

[High Court Civil Appeal No. 69 of 2011]

Coram:

**The Hon. Mde. Janice M. Pereira, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**

Appearances:

**Appellants /
Applicants:**

**Mr. Alan Maclean, QC and Mr. Stephen Midwinter and
Mr. William Hare**

Issues:

**Application by Liquidators for order continuing or for
court's sanction to proceed with appeal to Privy
Council and to continue with US Redeemer actions
pending determination of appeals by Privy Council –
Whether this Court can grant extensions of time to
appeal to Privy Council or whether application should
be made directly to Privy Council**

Result / Order:

[Oral delivery]

**1. The Applicant do have sanction, pursuant to the
winding up Orders of each of Fairfield Sentry
Limited (in Liquidation), Fairfield Sigma Limited (in
Liquidation) and Fairfield Lambda Limited (in
Liquidation), (“the Companies”) to pursue appeals
to the Privy Council against the dismissal by this
Court of appeals from:**

a. the Order of the Honourable Justice

Bannister, QC of 16 September 2011 giving Judgment for the Defendants on the 'good consideration' Preliminary Issue in claim number BVIHC (Com) 30/2010 – Fairfield Sentry Limited (in Liquidation) and others v Bank Julius Baer & Co. Ltd. and 33 others and seven other claims; and

b. the Order of the Honourable Justice Bannister, QC of 10 October 2011 granting summary judgment in the said proceedings in favour of defendants thereto.

2. The Applicant do have sanction to resist appeals to the Privy Council brought by any party against the dismissal by this Court of appeals from the Order of the Honourable Justice Bannister, QC of 16 September 2011 giving Judgment for the Claimants on the 'Article 11' Preliminary Issue in claim number BVIHC (Com) 30/2010 – Fairfield Sentry Limited (in Liquidation) and others v Bank Julius Baer & Co. Ltd. and 33 others and seven other claims.

3. Pending the final determination by the Privy Council of the said appeals:

a. The Companies in liquidation have sanction and approval from the Court to take such steps as are necessary or appropriate further to prosecute expeditiously any and all common law claims which they are asserting (or may assert) in the United States and elsewhere (including, for the avoidance of doubt, claims based on mistaken payment, unjust enrichment and other common law causes of action); and

assistance is requested by this Court from the Courts in the United States and elsewhere to enable, facilitate and implement the sanction and approval granted herein; and

- b. The liquidator has sanction and approval from the Court to take such steps as are necessary or appropriate further to prosecute expeditiously in the United States Bankruptcy Court claims brought pursuant to ss. 245 and 246 of the Insolvency Act 2003; and assistance is requested by this Court from the relevant Courts in the United States to enable, facilitate and implement the sanction and approval granted herein.

- 4. In the event that the Applicant does not pursue any appeal to the Privy Council as referred to in paragraph 1 above, the sanction set out in paragraph 3 above shall lapse forthwith.

Reason:

The sanctions which were given by Court of Appeal on 5th December 2011 were limited to the appeals proceeding before the Court of Appeal. However, the Court was persuaded that there should be further sanction to allow the liquidators to appeal to the Privy Council and that during that time and until determination of the appeal to Privy Council, the US Redeemer actions should continue.