FIRST REPORT OF THE OFFICIAL LIQUIDATOR
OF
SUISSE SECURITY BANK & TRUST LIMITED
(In Liquidation)

TO

THE SUPREME COURT OF THE COMMONWEALTH OF THE BAHAMAS

Dated December 15, 2006

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SUISSE SECURITY BANK & TRUST LIMITED (IN LIQUIDATION) FIRST REPORT OF THE OFFICIAL LIQUIDATOR

1. INTRODUCTION

1.1 On March 5, 2001, by Notice of Suspension issued by The Central Bank of The Bahamas ("The Central Bank"), the banking and trust licence of Suisse Security Bank & Trust Limited (the "Bank") was suspended. Further, by a Notice of Appointment issued by the Governor of The Central Bank on March 5, 2001, I, Raymond Winder, Certified Public Accountant and partner in Deloitte & Touche Bahamas was appointed Receiver of the Bank, with all of the powers of a Receiver under the Companies Act, 1992.

1.2 On March 5, 2001, after the Notice of Suspension and Notice of Appointment of Receiver were served on Chief Executive Officer of the Bank, Mr. Christopher Lunn, by The Central Bank, I assumed control of the Bank. I sought the assistance and cooperation of the management and staff of the Bank. They all refused and/or withheld their cooperation.

1.3 By a letter from The Central Bank dated March 8, 2001, the terms of reference according to which I was to function as Receiver were set out. The letter stated that during the period of the suspension of the Bank's license, the affairs of the Bank were to be frozen and no client or creditor balances were to be paid and therefore I, as Receiver, was to seek to identify all assets of the Bank and maintain those assets for the benefit of the Bank's depositors, creditors and owners.

1.4 The Central Bank, on April 2, 2001, by virtue of The Banks and Trust Companies Regulation (Revocation of Licence) Order and pursuant to paragraph (i) of subsection (1) (a) of section 14 of the Banks and Trust Companies Regulation Act, 2000, revoked the Bank's banking and trust licence which had been granted on the 20th July, 1993.

1.5 On April 5, 2001, Julian Francis, in his capacity as Governor of The Central Bank, pursuant to section 14 (5) of the Banks and Trust Companies Regulations Act, 2000, filed a winding up petition with the Supreme Court of The Commonwealth of The Bahamas ("The Supreme Court") for winding up of the Bank and for the appointment of myself as official liquidator. On application of the Governor of the Central Bank, dated April 5, 2001, and by an Exparte Order of the Supreme Court, on April 9, 2001, I was appointed Provisional Liquidator of the Bank.

1.6 My duties, as Provisional Liquidator, as set out in the said Order of my appointment, have been as follows:

- *To take possession of, collect, and protect the assets of the Bank, but not to distribute or part with the same until further order.*

- *To discharge rents, salaries, and other current expenses.*

- *To require any person who has possession of documents or information in relation to the accounts, assets and securities or affairs of the Bank and its clients, to produce the same.*

- *To require any person who has information in relation to the accounts, assets, securities or affairs of the Bank, to meet with me at such time and place as I determine and to provide me with information that may be required in the exercise of my duties.*

- *To do all other things necessary to preserve the assets and estate of the Bank.*

1.7 On November 13, 2006, the Supreme Court of The Bahamas Ordered that Suisse Security Bank & Trust Limited (the "Bank") be wound up by the Court, and that I, Raymond Livingston Winder, be appointed Official Liquidator ("the Official Liquidator") of the Bank.

1.8 The Supreme Court also Ordered that I, the Official Liquidator, shall have the powers set out in section 202 of the Companies Act, 1992, and that I, the Official Liquidator, shall be at liberty to exercise the said powers without any further leave of this Court. The powers conferred upon me include any or all of the following:

a. bring or defend any action, suit, or prosecution, or other legal proceedings, civil or criminal, in the name and on behalf of the Company (i.e. the Bank);

b. carry on the business of the Company, so far as may be necessary for the beneficial winding up of the same;

c. sell the real and personal property, effects, and things in action of the Company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;

d. do all acts and execute, in the name and on behalf of the Company, all deeds, receipts, and other documents, and for that purpose use, when necessary, the company's seal;

e. prove, rank, claim, and draw a dividend, in the matter of the bankruptcy or insolvency of any contributory, for any balance against the estate of such contributory, and take and receive dividends in respect of such balance, in the matter of bankruptcy or insolvency as a separate debt due from such bankrupt or insolvent, and rateably with the other separate creditors;

f. draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, also to raise upon the security of the assets of the company from time to time any requisite sum or sums of money; and drawings, accepting, making or endorsing of every such bill of exchange or promissory note on behalf of the company shall have the same effect with respect to the liability of such company as if such bill or note had been drawn, accepted, made, or endorsed by or on behalf of such company in the course of carrying on the business thereof;

g. take out, if necessary, in my official name, letters or administration to any deceased contributory, and do in my official name any other act that may be necessary for obtaining payment of any monies due from a contributory or from his estate, and which act cannot be conveniently done in the name of the company; and in all cases where I take out letters of administration, or otherwise use my official name for obtaining payment of any monies due from a contributory, such monies shall for the purposes of enabling me to take out such letters or recover such monies, be deemed to be due to myself, the official liquidator; and

h. do and execute all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

1.9 Having only recently been appointed the Official Liquidator, I have functioned in the capacity of Provisional Liquidator for the period covered by this report.

2. OBJECTIVE OF THE REPORT

2.1 The objective of this report is to provide The Supreme Court with an update on the status of this liquidation, including information relative to my attempts to take possession of, collect and protect the assets of the Bank and to obtain the cooperation of the Bank's shareholders, directors, attorneys, management and employees in order to assist me in the performance of my duties as Provisional Liquidator, as set out in the Order of my appointment.

2.2 Further, details are given relative to the status of the legal actions before the court and the steps that I have taken as a result of the status of these actions.

2.3 This, my fifth report, covers the period August 1, 2005 to October 31, 2006. Reference should be made to my first, second, third, and fourth reports dated August 24, 2001, February 4, 2002, August 4, 2002, and December 20, 2005 respectively, which were filed in The Supreme Court.

3. LEGAL ACTIONS INITIATED BY THE SHAREHOLDERS AND BOARD OF DIRECTORS OF THE BANK

To date, the shareholders and Board of Directors (the "Board") of the Bank, have, of their own volition, initiated a number of Legal Actions in the name of the Bank. I have neither authorized, nor ratified the commencement or continuation of these actions. As detailed in my fourth report, I, as Provisional Liquidator, along with my attorney, have had the need to attend numerous court hearings and meetings with respect to these Actions. Updates on these actions, where applicable, are as follows:

3.1 <u>PRIVY COUNCIL APPEAL No. 66 of 2004.</u> On July 9, 2004 Counsel for the board of the bank filed a Notice of Intended Application for conditional leave to appeal to the Privy Council against the decision of the Court of Appeal given on June 29, 2004.

a. On July 14, 2004 Counsel for the board of the bank filed a Notice of Motion for an order for conditional leave to appeal to the Privy Council from the decision of the Court of Appeal given on June 29, 2004 and for a stay of the Winding-up Petition in Action No. 436 of 2001, pending the hearing of the appeal before the Privy Council.

b. On July 29, 2004 the application for conditional leave, by the Board of the Bank, to appeal to the Privy Council and to stay the winding-up Petition in Action No. 436 of 2001 was heard. **The board of the bank was granted conditional leave to appeal on condition that they lodged security for the prosecution of the appeal by** way of a bond in the sum of $2,861.00 and prepared the Record within 90 days of the hearing. The Court of Appeal made no order on the stay application on the grounds that no proceedings were brought before them in relation to that matter.

c. On October 20, 2004 Counsel for the board of the bank filed a Notice of Motion and an Affidavit in Support for an order for final leave to appeal to the Privy Council from the decision of the Court of Appeal given on June 29, 2004.

d. **On November 4, 2004 the Court of Appeal granted final leave to the Board of the Bank to appeal to the Privy Council subject to its written decision in instant appeal nos 26 and 35 being handed down.**

e. On February 8th and 9th, 2006 the Appeal of the Board of the Bank to the Privy Council was heard.

f. **On March 13, 2006 the Privy Council handed down their written Judgment whereby they dismissed this Appeal.**

g. The Judgment of The Judicial Committee of The Privy Council, addressing the first of three submissions by the Board of the Bank before the Privy Council, stated the following:

> **"31. their Lordships turn to address the appellant's three submissions. The first is that the suspension, followed by the revocation, took place in breach of an interlocutory injunction granted by Longley J on 2nd March 2001. The Board has no hesitation in rejecting this submission. Mr. Pannick submitted that any concern which the Central Bank had regarding the sums frozen in the Florida and New York proceedings necessarily involved concern that SSBT was not maintaining or would not maintain a ratio of 5 to 1 between third party deposits and capital. The Board observes that the freezing of assets in the two law suits would not of itself affect that ratio. Capital remains capital, even if frozen. SSBT's accounts had disclosed the freezing of the $1.6 million as at 30th September in 1999 and 2000, without anyone suggesting that this affected the ratio. The dispute about the ratio to which the injunction related solely to SSBT's tendency and wish to expand its deposit business above the ceiling of around $30 million which existed because its capital was around $6 million. When referring to the ratio, the affidavits and Statement were directed only to that issue. The freezing in the United States of assets totaling $4.6 million had arisen and been addressed as a distinct topic between the Central Bank and SSBT. The Central Bank's concern, once it learned that $4.6 million was frozen, was not about the risks inherent in over-exposure of SSBT's existing capital, but about the risks of loss of SSBT's existing capital.**

This was a different and more fundamental concern, in origin and nature, even though of course, if SSBT's existing capital were to be substantially lost, then the ratio would necessarily also be exceeded, unless deposits were drastically reduced. A bank with a capital of only $1.6 million (only just in excess of SSBT's initial capital of $1.5 million) is a quite different creature from a bank with $6 million. The difference between the Central Bank's concerns about the ratio and about the frozen assets is also apparent in the differences in its requirements. It merely required compliance with the ratio. But it required collateral and sought information to reassure itself about the frozen assets.

32. The injunction granted must be read in the context of the supporting affidavits, and it was expressly limited to suspension and revocation "for the reasons set out in the Statement". It is, in their Lordships' view, clear that the injunction was simply addressing the issue raised by SSBT as to whether it was obliged to keep its deposits within a limit of five times capital (put at that time at around $6 million) in accordance with a prudential norm set at the start of SSBT's licence.

33. Although the Bank had made clear its concern about the frozen assets, it may be that as at 23rd February 2001 SSBT did not perceive that concern as giving rise to any immediate threat of suspension. But there may be other reasons why SSBT did not seek any injunction in that respect; and there is certainly every indication that SSBT realised that the injunction did not cover it. Even after 1st March 2001, when it was apparent that the Central Bank wanted immediate progress to resolve the concern, the judicial review proceedings were pursued in the same terms as issued. Nothing was said or done to expand their ambit. The injunction granted on 2nd March was limited by reference to the original Statement. Mr. Lunn in his letter dated 2nd March 2001 continued to treat the Central Bank's concerns and directions relating to the frozen assets as a separate issue. No case was made in the period between 5th March and 2nd April 2001 that the suspension involved any breach of the injunction. The most that was said (in a skeleton argument of 14th March 2001 in answer to an application by the Central Bank to set aside the injunction) was that "either the suspension was for one of the reasons set out in the Statement or it was for some independent reason". The appeal lodged on 20th April 2001 against the revocation of SSBT's licence did not allege any breach of the injunction. Only in grounds lodged on 4th February 2002 was this first formally asserted. Their Lordships note in passing that they have been told that, for some unexplained and on its face inexplicable reason, no judicial decision was ever given after the hearing of the application to discharge the injunction. But that is presently irrelevant, if, as their Lordships conclude, the injunction never precluded suspension or revocation on the grounds of which the Central Bank gave notice on 5th March 2001."

h. The Judgment of The Judicial Committee of The Privy Council, addressing the second of three submissions by the Board of the Bank before the Privy Council, stated the following:

> **"34. Their Lordships turn to the appellant's second submission, that the Governor failed in breach of principles of procedural fairness to give notice to SSBT prior to or on 5th March 2001 that he was minded to suspend its licence on the grounds on which he actually suspended it, together with an opportunity to respond before any such step was taken. Mr. Pannick accepts that there is no obligation expressed or implied in the language of s.14(2) to give any such notice. The words "before taking such action" refer not to suspension, but to "any action under subsection (1)(a)(i) and (b)". He also accepts that procedural fairness could not require a notice in every case. But, he submits, that does not mean that there may not, as a matter of procedural fairness in particular circumstances, be a duty to give notice of an intention to suspend and an opportunity to respond before any suspension.**
>
> **36. Their Lordships consider that similar considerations govern the present case. The wording of the present statutory power is even clearer than in Century National Bank Ltd. v. Davies. It is also significant that the present statutory provision does not permit any appeal against a decision to suspend. The Governor must be able to act quickly, in view of the various risks that may materialise in a situation where, before he can act at all, he must already be of the opinion that the bank's business is being carried on in a manner detrimental to the interests of the public or of depositors or other creditors or in a situation like that under s.14(1)(b) where he must be of the opinion that the bank is contravening one of his directions or the Act itself. To**

require notice and an opportunity for objections in such a situation would be bound in almost every case to lead to arguments and delay. Meanwhile the bank's existing management would be in charge and have the continued opportunity - indeed what the less scrupulous might see as a last chance - to act to its detriment. In the present case, the Governor had, in their Lordships' view, ample justification for considering that he had to act at once. Further, the prevarication and non-cooperation that the Central Bank and Mr. Winder as receiver experienced after the suspension confirm the delay that would probably have followed if prior notice had been given. As it is, the suspension and receivership meant that there was at least the possibility that Mr. Winder could locate and lay hands on SSBT's assets. Unfortunately, both the Barclays Bank and the UBS assets appear in the event to have eluded him - the former being transferred out of The Bahamas on instructions unknown to a destination unknown in late April 2001.

It follows from what has already been said that, in the Board's view, the Governor was entitled to suspend SSBT's licence, as he did, forthwith on 5th March 2001. But their Lordships would add this. The matter comes before the courts on a statutory appeal against the revocation of SSBT's licence as provided by s.22(1). On such an appeal, it is open to the court under s.22(6) to "confirm, reverse or modify the decision of the Governor or remit the matter with the opinion of the court thereon to the Governor". In the Century National Bank case, the provision for appeal against to the minister's decision allowed the court on such an appeal to "make such order as it thinks fit". The Board said that it was "plainly competent for a bank to contend on such an appeal that the notice [in that case, appointing a temporary manager]

was invalid for procedural or substantive reasons" (p.637A). It does not follow that every procedural defect has to be treated as invalidating such a notice. First, there may be cases where it is clear that, though there was some procedural unfairness, the same outcome would have been inevitable, even if there had not been. Such cases are likely to be rare, but the history, before and after the actual suspension, means in their Lordships' view that this would have been one, even if they had concluded that there was some procedural unfairness. Second, the appeal provided by s.22 is against the decision to revoke the licence, although (as the Board has already observed) the issue of the validity of the suspension has been argued before the Board without objection. It remains the position that s.14(2) did not oblige the Governor to suspend SSBT's licence when he gave notice of his intention to revoke it. Even if the suspension was itself in breach of procedural fairness and falls as a result to be treated as invalid, their Lordships cannot see any basis on which that would or should affect the subsequent revocation of SSBT's licence on 2nd April 2001."

i. The Judgment of The Judicial Committee of The Privy Council, addressing the third of three submissions by the board of the bank before the Privy Council, stated the following:

"38. Their Lordships turn to the third submission on which Mr. Pannick spent most time and placed most emphasis. This is that the Governor, in breach of principles of procedural fairness and/or of the terms of s.14(2), decided to revoke SSBT's licence on grounds different from, or additional to, those of which he had given notice on 5th March 2001, without giving SSBT an opportunity to respond to such new grounds, and/or in circumstances in which he did not regard the grounds of which he had given notice on

5th March 2001 as justifying such revocation. This submission arises from the terms of the petition for winding up set out in paragraph 29 above and on the terms of the Governor's affidavit sworn on 21st February 2002.

39. Mr. Pannick submits that the petition and affidavit show that the Governor, when revoking the licence on 2nd April 2001, relied on significant matters additional to those of which notice had been given by his letters of 2nd and 5th March 2001, and that his decision to revoke was in such circumstances in breach of, and outside the scope of the power conferred by, s.14(2) and so invalid. S.14(2) requires notice of the grounds on which the Governor proposes to act, and an opportunity to object in their light. It is, Mr. Pannick submits, implicit that the Governor cannot act on grounds in respect of which he has not given such a notice and such an opportunity.

41. Here the only considerations of which the Governor in his letter of 5th March 2001 gave such notice related to the two amounts frozen in the United States. They were directed to SSBT's failure to meet or to respond to the Central Bank's two requirements, about which SSBT had been informed by the meeting on 1st March and the Central Bank's letter dated 2nd March 2001. In Mr. Pannick's submission the Governor's actual decision on 2nd April 2001 was based not on those considerations alone, but on those and other significant considerations of which no notice had been given. Mr. Pannick accepts that the Governor could legitimately take into account any continuing failure or obstruction by SSBT in relation to the two requirements, of which the notice was given. But he relies on the fact that the petition for winding up and the Governor's affidavit identify other considerations,

of which there had been no prior notice. They relate to the more general non-cooperation by SSBT management and staff which meant that the receiver could not provide a financial statement, and the receiver's letter dated 30th March 2001 reporting that he could only locate cash and investment assets totaling $5,835,000 compared with cash and investment assets reportedly totaling $34,820,000 as at 30th December 2000.

42. The petition in paragraph 18 says that it was "for the reasons set out in paragraph 15" - which included all these considerations - that the Governor revoked SSBT's licence on 2nd April 2001. The Governor in paragraph 47 of his affidavit says that it was "the Receiver's inability to locate more than a small amount of SSBT's assets, coming on top of the other matters referred to above, led me to conclude" that such revocation was required" and that such revocation had been" a very real prospect at the time of suspension in early March, but the events of that month underlined the problems that had earlier emerged". In paragraph 48 the Governor also confirms that his reasons for revocation were summarized in paragraph 15 of the petition; which, he says, accurately summarized his reasoning.

43. In relation to this submission, their Lordships would observe, first, that the Governor could not, under s.14(2), have given the notice of 5th March 2001 unless he was then already "of the opinion that action should be taken" under s.14(1)(a)(i) or (b). In this case, the Governor had s.14(1)(a)(i) in mind, since his notice stated his opinion that SSBT was "carrying on its business in a manner detrimental to the public interest and the interests of its depositors and other creditors". In paragraph 39 of his affidavit the Governor

added that he was as at 5th March 2001 of the opinion that the situation "could not go on". He said that he "would have been prepared to reconsider" his view following suspension "had our concerns as regards the frozen money been addressed but they were not. Instead the Receiver was continuously obstructed in carrying out his duties". Their Lordships are satisfied that that represents the reality of the situation. Even if there had not been the receiver's reports of more general non-cooperation by SSBT management and employees and of inability to locate assets, nothing occurring after 5th March 2001 could possibly have satisfied the two urgent requirements which had led to the Central Bank's notice and the suspension of SSBT's licence on that date. Rather, the continuing non-cooperation and obstruction by SSBT's management and staff in relation to those two requirements could only have confirmed the Governor's opinion that SSBT's licence must be revoked. Any suspension could under s.14(4) only last for a maximum of 90 days, so that the Governor had within that period either to lift the suspension or to take action under s.14(1)(a)(i). Even if the receiver's reports of the problem in locating assets and of general non-cooperation were instrumental in the precise timing of the actual decision of 2nd April 2001, it appears clear that nothing had happened or would conceivably have happened to do anything other than confirm the Governor's opinion that SSBT's licence should be revoked on the basis alone of the two considerations identified in the Central Bank's letter dated 5th March 2001. In reading paragraph 47 of the Governor's affidavit, their Lordships also note that it was sworn nearly a year after the relevant events, and that some of "the other matters referred to above" (included in the preceding paragraph 46) are matters which had not occurred and could not have influenced the Governor's thinking as at 2nd April 2001.

44. Their Lordships consider that the present situation is a fortiori. First, the Governor had already to be of the relevant opinion on the basis of the two notified considerations as at 5th March 2001, in order to issue the notice he then did. There is no reason to question his statement in the notice that he was of that opinion, and it is supported by paragraph 39 of his affidavit. The additional considerations which had come to light by 2nd April 2001 can only have confirmed his opinion, but that does not mean that they were critical to it.

46. But, in the present case it can in their Lordships' view safely be concluded that, even if additional considerations had never arisen before his decision had to be taken, the Governor would have maintained and acted on the opinion that he had already formed as at 5th March 2001 that SSBT's licence should be revoked.

47. Their Lordships would make some further observations. To this day, there has been no explanation for or attempt to justify the situation which began to emerge in March 2001 and which further information after 2nd April 2001 has shown to be extraordinary. The two similarly named companies into whose accounts SSBT, in the course of its business, arranged for its assets to be deposited, were owned and controlled not by SSBT, but by its principal shareholder, Mr. Harajchi. Neither of them was itself a bank. SSBT was, as Davis J rightly said, "clearly in breach of section 3(1) of the Banks and Trust Companies Regulation Act 2000 and put those deposits beyond the reach of the regulatory authorities". SSBT's audited accounts and its most recent quarterly reports

to the Central Bank were evidently erroneous. SSBT did not have "cash on hand and in banks" in the sums stated. Its deposits into similarly named companies owned by its controlling shareholder were not disclosed as related party transactions. The disappearance in April 2001 from The Bahamas of the funds with Barclays Bank and the inability to confirm the existence or location of the funds deposited with UBS in Switzerland are astonishing. It is wholly unconvincing for the appellant to submit that, if an additional notice had been given under s.14(2) relying on problems relating to the location of SSBT's cash and investment assets, then "much could have been said in response". Mr. Harajchi's silence and non-cooperation speak volumes already. Whatever the appellant may say regarding prior events, Mr. Winder was on 9th April 2001 appointed as provisional liquidator by Allen J by an order which has never been set aside and continues in force. There can be no real doubt that, however many notices under s.14(2) might be given, the outcome would have been and be the same – a decision by the Governor to revoke SSBT's licence. The state of affairs disclosed by the evidence before their Lordships makes it inconceivable that SSBT could be allowed to continue as an operating bank.

48. In consequence, their Lordships see no basis on which to set aside or remit the Governor's decision to revoke SSBT's licence, and reject the appellant's third submission."

j. An application was made by the Governor of The Central Bank of The Bahamas, to the Privy Council, to have the costs of the appeal borne by Mr. Mohammed Harajchi, the Bank's principal shareholder and chairman of its board, rather than by the Bank itself.

k. **On July 27, 2006 The Privy Council handed down its Decision that an order for costs in respect of the appeal to their Lordships should be made against Mr. Harajchi personally, and that the $2,861 paid by Mr. Harajchi into court in the name of the Bank, together with any interest earned thereon, should forthwith be paid out to The Central Bank of The Bahamas in partial satisfaction of the order for costs, which should in all other respects be enforceable against Mr. Harajchi personally in the ordinary course.**

l. The **Decision** of The Judicial Committee of The Privy Council, regarding costs, stated the following:

> **"4. Their Lordships further recorded in paragraph 5 of their judgment that, following the revocation on 2nd April 2001 of SSBT's licence, a provisional liquidator (Mr. Winder) was on 9th April 2001 appointed in respect of SSBT by order of Allen J. Their Lordships also noted that "no-one other than Mr. Winder can on the face of it have authority to act on SSBT's behalf". On the present application, it is pointed out on behalf of Mr. Harajchi that, despite the appointment of a provisional liquidator, SSBT's board retained residuary powers, such as the power to instruct lawyers to oppose any petition and, on the making of a winding up order, the power to appeal against that order.**
>
> **8. Contrary to Mr. Harajchi's submission, their Lordships cannot regard this as a case where Mr. Harajchi was acting in the interests of SSBT or more especially its general body of creditors, as opposed to his own interests. The inference - from the way he was running SSBT before its licence was revoked and from his "silence and non-cooperation" after such revocation (cf their Lordships' previous judgment, paragraph 47) - is that he was treating SSBT as his creature and preferring his own interests to its. SSBT's major assets did not consist of "cash on hand and in banks" (as stated in its**

audited accounts and most recent quarterly reports) but of deposits with two companies given similar names to SSBT but owned and controlled by Mr. Harajchi. The assets held with one of these companies were removed from The Bahamas after the revocation of SSBT's licence and the appointment of its provisional liquidator; and it has been impossible to confirm the existence or the location of the funds held with the other company. The appeal was, nonetheless, pursued at Mr. Harajchi's instance, although it was in these circumstances "inconceivable that SSBT could be allowed to continue as an operating bank" (paragraph 47).

9. The excuse is made on Mr. Harajchi's behalf for not giving any explanation or assistance regarding any of these matters that "rightly or wrongly" he believed that "any substantive responses were a matter for the Governor (on any reconsideration) rather than for the courts of appeal". Their Lordships are also told that he "strongly denies that the 'missing funds' allegation has any substance whatsoever" and, since their Lordships' decision "has already met with and commenced co-operation with the Provisional Liquidator in relation to the outstanding matters". Their Lordships concluded in paragraph 47 of their previous judgment that it was "wholly unconvincing" for Mr. Harajchi to submit that, if an additional notice had been given under s.14(2) of the Act relying on problems relating to the location of SSBT's cash and investment assets, then "much could have been said in response" and that Mr. Harajchi's silence and non-cooperation spoke volumes already at the date of the hearing before their Lordships. The further general excuses now presented on Mr. Harajchi's

behalf are in their Lordships' view as unconvincing in this regard as the previous submissions. Mr. Harajchi has still not attempted to dispel the obvious prima facie inferences from what occurred and transpired."

m. Please refer to section 5 of this report for details with regards to Mr. Harajchi's cooperation subsequent to the Privy Council's Judgment on the Appeal, and Decision on costs.

4. LEGAL ACTIONS INITIATED BY THE CENTRAL BANK OF THE BAHAMAS

As detailed in my fourth report, I, as Provisional Liquidator, along with my attorney, have had the need to attend numerous court hearings and meetings with respect to legal actions initiated by the Central Bank of The Bahamas. I have neither authorized nor ratified the commencement or continuation of these actions. Updates on these actions, where applicable, are as follows:

4.1 <u>WINDING UP PETITION IN EQUITY ACTION NO. 436 OF 2001</u> filed by the Central Bank on April 5, 2001.

a. On August 11, 2005 the adjourned Summons for Directions by the Central Bank (filed on March 4, 2005) came on for hearing before Madam Justice Vera Watkins. The matter was adjourned "sine die" as Ryan & Co., counsel for the Board of the Bank, made an application that the hearing of the Summons be stayed pending the outcome of the appeal by the Board of the Bank which was slated to be heard by the Privy Council on the 8th and 9th of February, 2006.

i. Mrs. Claire Hepburn, Counsel for the Central Bank, did not oppose the application for a stay as the general opinion is that the appeal should be heard and concluded on the dates noted above. Mrs. Hepburn did however ask the Court for the stay to be granted upon the condition that the shareholders/directors do either or both of the following:

(1) advise the Court where the $20+ million dollars belonging to the creditors/depositors is located; and/or

(2) bring the $20+ million dollars of the Bank's which Suisse Security Holdings Limited and Suisse Security Investments Inc. are holding back into the jurisdiction and place these funds under the supervision of the Provisional Liquidator and/or the Court.

ii. Mrs. Hepburn's position was supported by all Counsel acting for creditors and by Counsel for the Provisional Liquidator. As expected, it was opposed by Mr. Ryan.

iii. The Court indicated that it thought that the Counsel to the Provisional Liquidator could make application to achieve the objectives canvassed by Mrs. Hepburn. Counsel for the Provisional Liquidator advised the Court that this had already been canvassed and that the Order made in favour of the Provisional Liquidator was subsequently dismissed.

iv. Having been made aware of the complexity of the several avenues that the proceedings has taken to date, the judge decided to reserve her ruling and adjourned the matter "sine die". She noted that her clerk will advise when she is about to make her ruling on the stay and the applications for the stay application to be allowed upon specified conditions as set out by Claire Hepburn (see above).

b. **On October 18, 2005 the Honourable Madam Justice Vera Watkins handed down her written ruling.** In part, this ruling stated the following:

> **"...21. As I indicated at the outset I am not at this time considering the Summons for directions which was filed by the Applicants on 4th March, 2005. What I am concerned with is the Summons filed by SSBT on 5th April, 2005. It will however be necessary for me to make references to the Summons of 4th March, 2005 since this is the basis of the application contained in the Summons of 5th April, 2005.**
>
> **22. While much has been said about the whereabouts of money which is allegedly owned by various Depositors, the issues to be considered by the Court are simple. They are:**
>
> **Should the Applicants be allowed to proceed with their application to wind up SSBT under the current state of affairs**

What effect, if any, would an order to proceed with the winding up of SSBT have on the appeal before the Privy Council

Should the Court accede to the application of SSBT for a stay of the winding up proceedings having regard to all of the circumstances

What effect, if any would a stay of proceedings have on the appeal before the Privy Council

In the event that a stay of proceedings is granted what conditions, if any, ought to be attached to the order

23. There is one fundamental issue that is not in dispute and that is the fact that it is unfortunate that there are Depositors who are being adversely affected by the length of time that has passed since this matter commenced in the year 2001 and the uncertainty of when this matter will be concluded. It is particularly unfortunate that all of the Depositors have had to suffer the consequences of circumstances entirely beyond their control.

24. What is also not in dispute is the fact that SSBT has a right to pursue an appeal against the decision of the Governor of the Central Bank at the highest level and that this right has been reinforced and facilitated by the leave granted by the Court of Appeal to file an appeal at the Privy Council.

25. It should be noted that the process of winding up a company is a final step that provides for dissolution and distribution of the assets of the company. The end result of the winding up process is that the operations of the company come to an end and the company ceases to exist. In the present action, the Governor of the Central Bank of the Bahamas ordered that the affairs of SSBT be wound up. This order is being challenged by the Directors and Officers of SSBT. It is reasonable to conclude therefore that the Directors and Officers of SSBT are not desirous of winding up the affairs of their company and would like to continue with its operations.

26. In the event that SSBT is successful at the Privy Council in reversing the Order of the Governor of the Central Bank, it would, no doubt, expect to be in a position to resume its operations from the point where its business was suspended in 2001. The important issue in this regard is whether this Court ought to place SSBT in a position where they would lose their advantage of seeking redress from the Privy Council.

27. In this regard, should the application to set the Petition down for hearing be favourable, and a ruling in favour of SSBT be handed down by the Privy Council, there would be no affairs of SSBT to manage. The ultimate effect of this would be that this Court would strip SSBT of its ability to implement a favourable ruling from the Council and thus render the Privy Council's ruling nugatory.

28. Moreover, this Court may be considered in contempt of the ruling of the Court of Appeal if it were to undermine its decision to grant leave to appeal. SSBT ought to be allowed to pursue the terms of the Order without interference. I am of the view that SSBT ought to be allowed due process since there is no evidence of any deliberate acts on the part of SSBT, to delay the hearing of the Petition before the Privy Council or evidence of non-compliance with the conditions of the Court of Appeal.

29. As I stated earlier, there is no doubt that the main victims in this exercise are the creditors of SSBT. They are caught in the middle of a state of affairs which was brought about by the decision of the Governor of the Central Bank and a stay of proceedings would further prolong their desire to bring this matter to a close. The decision of the Governor was upheld by Davis J. in his ruling of 25th April, 2003. Having regard to the fact that the judgment of Davis J. which approved the decision of the Governor of the Central Bank is the subject matter of the appeal before the Privy Council, I make no further comments.

30. I have considered the submissions made by Counsel and have concluded that the imposition of conditions as suggested by Counsel, on an Order staying proceedings may be a futile exercise. In the event that a Conditional Order is granted and SSBT fails to comply with the conditions imposed, the Applicant would automatically be placed in a position to proceed with the Petition to wind up SSBT. Should SSBT be wound up and a decision in its favour is handed down by the Privy, SSBT

would not be in a position to implement the Council's ruling. Under these circumstances this Court ought not to place itself in a position that would cause a reasonable inference that it is pre-empting the Privy Council.

31. I note that Counsel for SSBT has given an undertaking to cooperate with the Provisional Liquidator to ensure that the Depositors are in a position to retrieve their funds. The fact that the Registrar of the Privy Council has set the Appeal down for hearing in February, 2006, is an indication that SSBT and its Attorneys in England are actively pursuing the Petition in London.

32. With regards to the suggestions by Counsel that conditions be attached to any order granting a stay of proceedings, I agree with the submissions of Mr. Gomez that there are ample remedies available to the Provisional Liquidator with regard to any obstructions encountered by him in his quest to take control of the assets of SSBT. As Mr. Ryan rightly pointed out, there is no application before the Court for assistance to be granted to the Provisional Liquidator and as such, this is not the appropriate time for any orders to be made in this regard.

33. No doubt, the purported problems faced by the Provisional Liquidator can be properly addressed after all parties concerned have been given sufficient notice to prepare an appropriate response and address the Court. The present applications before the Court are those made by the Applicants to proceed with the winding up process and by SSBT for a stay of the winding up process.

> **34. Having regard to all of the circumstances of this case and the reasons mentioned above, I order that the presentation of the Petition herein be stayed until the hearing and determination by the Judicial Committee of the Privy Council on an appeal from the decision of the Court of Appeal on Thursday, 29th June, 2004. I further order that the Summons for Directions which was filed by the Applicants on 4th March, 2005 be adjourned sine die, pending the outcome of the ruling of the Privy Council."**

c. On November 8, 2006, as a result of the March 13th 2006 Judgment by The Privy Council dismissing the Appeal, the Supreme Court Registrar certified that the Winding-up rules had been complied with and the Central Bank's petition to Wind up the Bank was ready for hearing.

d. **On November 17, 2006, Mr. Justice Stephen Isaacs Ordered that Suisse Security Bank & Trust Limited (the "Bank") be wound up by the Court, and that I, Raymond Winder, be appointed Official Liquidator.**

5. STEPS TAKEN BY THE PROVISIONAL LIQUIDATOR

5.1 As noted in my previous reports, I encountered, formidable obstruction and interference from the Bank's management, employees, shareholders, directors and attorney. This, along with the length of time that has passed and the present position of the matters before the Court has resulted in much loss to the Bank, its depositors, and creditors.

5.2 In her ruling on October 18, 2005, Madam Justice Vera Watkins stated that Counsel for SSBT (i.e the Board of the Bank), Derek Ryan, Esq., of Ryan & Co., has given an undertaking before the Court to cooperate with me, the Provisional Liquidator, to ensure that the Depositors are in a position to retrieve their funds.

5.3 In this regard, on November 10, 2005, in an effort to take possession of, collect, and protect the assets of the Bank, but not to distribute or part with the same until further order, and to require any person who has possession of documents or information in relation to the accounts, assets and securities or affairs of the Bank and its clients, to produce the same, I had McKinney Turner & Co., Counsel for myself, the Provisional Liquidator, write a letter to Derek Ryan, Esq., of Ryan & Co., Counsel for the Board of the Bank. This letter stated the following:

> **"As you know, we act for Mr. Raymond Winder who was appointed Provisional Liquidator of Suisse Security Bank & Trust Ltd ("SSBT") by an order made by Allen J in the Supreme Court, Equity Side, on 9 April 2001.**
>
> **We refer to the summons filed by the Central Bank of the Bahamas on 4 March 2005 seeking to set down the winding up petition for hearing, and the summons filed on 5 April 2005 by your clients (the directors and officers of SSBT) seeking a stay until after the determination of their appeal by the Privy Council.**

A key issue was as to the whereabouts of the funds of the depositors in SSBT. In your skeleton argument dated 4 April 2005 you stated that, "The question as to the assets of the Petition on behalf of the depositors are relied on to show that same will be diminished over time, is not supported by any evidence to show that there has been diminution in the assets between making of the revocation order and the present time. Certainly, if the Respondent is unsuccessful and the Bank wound-up then the Liquidator will be entitled to have the assets, to also trace and recover the funds for distribution to the depositors".

In her ruling dated 18 October 2005 granting your clients' application to stay the petition pending the appeal, Watkins J records you as undertaking to the Court on behalf of your clients, "to cooperate with the Attorney for the Provisional Liquidator to ensure that the Depositors are in a position to retrieve their funds" (paragraph 10), and "to cooperate with the Provisional Liquidator to ensure that the Depositors are in a position to retrieve their funds" (paragraph 31).

We now write to you with a view to you implementing that undertaking.

As you know, towards the latter period of your clients' management of SSBT, depositors with the bank were directed to place their funds in accounts held in the name of Suisse Security entities. The accounts were held by companies which, albeit including the words "Suisse Security" in their names, were not in fact part of Suisse Security Bank & Trust Ltd, but were owned or controlled by your clients. As at the date of the suspension of SSBT's banking license, the amount concerned was approximately $21 million.

The two companies are:

1. Suisse Security Holdings Ltd, the relevant accounts being at UBS in Geneva; and

2. Suisse Security Investments Inc, the relevant accounts being at Barclays Bank in Nassau.

As regards the account of Suisse Security Holdings Ltd at UBS, the Provisional Liquidator has been unable to obtain any information.

On May 18, 2001 UBS Geneva explained to the Provisional Liquidator that his appointment needs to be recognised by a Swiss Court due to banking secrecy. On December 6, 2001 UBS Geneva informed the Provisional Liquidator's Swiss Attorney that there had been no banking relationship between Swiss Security Bank and UBS Geneva for the past 10 years and that therefore, no information was available in this respect. With regard to Suisse Security Investment and Suisse Security Holdings they were not in liquidation and they are not subsidiaries of Suisse Security Bank but were mere vehicles used by clients of the Bank to transfer funds for further deposit to their accounts at the Bank.

As regards the account of Suisse Security Investments Inc at Barclays, the Provisional Liquidator has ascertained that.

Barclays Bank PLC received a letter dated March 13, 200[1] from Ryan & Co., requesting that all funds in the accounts of Suisse Security Investments Ltd. be made payable in the form of a cashiers cheque. Barclays Bank also received a letter from Suisse Security Investments Ltd. Letterhead dated April 11, 2001 signed by Christopher E. Lunn and Tara Butler authorizing Barclays to close the following accounts:

Date	Account Number	Currency	Amount of Draft Issued	Status
April 24, 2001	1973538	US$	4,951,627.01	Account closed
April 24, 2001	3375662	DM	219,736.01	Account closed
April 24, 2001	3375697	SFR	465,415.98	-
April 24, 2001	3375638	CAN	30,877.49	-
April 24, 2001	3375654	EUR	1,062,873.03	-
April 24, 2001	3375646	STG	153,210.58	-

Drafts were subsequently issued for this account.

The Provisional Liquidator does not therefore have these funds under his control, does not know where the funds are presently held, does not know whether the funds are intact, nor the amounts currently being held.

Evidence filed on behalf of the depositors on 19 January 2004 shows that they do not have this information either.

The first step therefore to ensuring that the depositors are in a position to retrieve their funds, whatever the outcome of the appeal to the Privy Council, is to establish exactly what the position is as regards the depositors' funds.

To that end:

1. **As regards funds previously held in accounts in the name of Suisse Security Holdings Ltd, please state:**

   a. **Whether such accounts are still held at UBS in Geneva;**

   b. **If so, the balances in the accounts;**

   c. **The dates and amounts of all transfers out of the accounts, and the identity of the transferees;**

   d. **The names and addresses of the institutions to which the transfers were made;**

   e. **If the funds are now held at a different institution or institutions, the date and amount of the transfers, the names and addresses of the institutions concerned, the account numbers concerned, the balances in such accounts, the dates and amounts of all transfers out of such accounts, and the identity of the transferees.**

2. **As regards funds previously held in accounts in the name of Suisse Security Investments Inc, please state:**

   a. **The dates and amounts of the transfers of the funds out of the accounts held with Barclays in or about April 2001;**

   b. **The names and addresses of the institutions to which such funds were transferred;**

   c. **The account numbers of the accounts with these institutions;**

   d. **The balances in such accounts, the dates and amounts of all transfers out of the accounts, the identity of the transferees, and the names and addresses of the institutions to which the funds were transferred.**

It is clearly essential that this information is independently verified. Please let us have therefore (1) the supporting documentation in relation to the above, and (2) letters signed by Suisse Security Holdings Ltd and Suisse Security Investments Inc authorizing UBS, Barclays Bank, or any other institution to which the funds in the bank accounts at DBS Geneva and Barclays Bank have been transferred, to provide the Provisional Liquidator with information relative to the accounts maintained at UBS Geneva, Barclays Bank, PLC and elsewhere in the name of the two companies or their successors.

It is important that we place on record once again the constant efforts of your clients to frustrate the Provisional Liquidator in safeguarding the depositors' position. He has met with total non-cooperation whilst acting as Receiver of SSBT, and subsequently as Provisional Liquidator-indeed your clients specifically told the institutions concerned not to accept his instructions. He obtained a freezing order on 13 July 2001 against the two companies, but the funds had already been transferred. On 2 August 2001 he met with Mr. Mohammed Harajchi and Mr. Michel Harajchi who agreed to assist him in carrying out his duties, but that assistance was never provided. On 11 October 2001 he brought contempt proceedings against your clients for their obstruction to, and interfering with, the performance of his duties, but could not obtain a hearing of the application which is required under RSC 0.52, rule 2, before contempt proceedings can be commenced.

By Summons dated 8 August 2002 the Provisional Liquidator applied to the Court for further directions as to his powers, and sought specific powers in respect of the money missing from SSBT. By Order made on 23 October 2002, Davis J made extensive orders that would have enabled effective steps to be taken to ensure that the depositors were in a position to retrieve their funds. We append a copy of that Order. However, instead of complying with the Order and providing the cooperation and information which was needed, your clients succeeded in having it set aside on technical grounds on 11 December 2002. Thereafter your clients' position, as it was in respect of the Central Bank's summons filed in March this year, was that all steps as regards the liquidation should be stayed pending their appeal first to the Court of Appeal, and now to the Privy Council.

As the Court of Appeal in its Judgment dated 8 November 2004 stated at paragraph 14:

"Furthermore the directors and principal officers of SSBT became obstructive and uncooperative in their dealings with the receiver. The latter had been unable/ after more than three weeks/ to confirm the cash and investment balances supposedly held with various banks and brokers, though he did discover accounts in the names of International Business Companies controlled by the principal of SSBT. These were not licenced banks and the accounts appeared to hold the funds of SSBT's clients. It was these transgressions which led in our view justifiably, to the revocation of SSBT's licence."

Notwithstanding your persistent failure in the past, you have now given an undertaking to the Court and must comply with it. Please provide the information required above within seven days."

5.4 On November 15, 2005, in response to the letter of November 10, 2005 from McKinney Turner & Co., Counsel for myself, the Provisional Liquidator, Derek Ryan, Esq., of Ryan & Co., Counsel for the board of the bank, advised that the undertaking given before the Court shall be implemented on completion of the Court proceedings in the United Kingdom. Notwithstanding this, he strongly advised my Counsel to retrieve a copy of the stenographer's report which, according to him, will no doubt represent the precise terms of the undertaking given before the Honourable Judge Vera Watkins.

5.5 In a letter dated December 2, 2005, Counsel for myself, the Provisional Liquidator, responded to Derek Ryan, Esq., of Ryan & Co., Counsel for the Board of the Bank, as follows:

"We acknowledge receipt of your letter dated November 15, 2005 which was received on November 21, 2005, in which you state that "the undertaking given before the Court shall be implemented on completion of the Court proceedings in the United Kingdom."

Your undertaking to the Court was an undertaking to cooperate with the Attorney for the Provisional Liquidator now to ensure that the Defendants are in a position to retrieve their funds, and in any case that is your duty quite apart from any undertaking. It is in no way dependent on the outcome of the appeal to the Privy Council. Your response goes to underline the fact that your clients have no intention of revealing what has happened to the depositors' money.

On behalf of the Provisional Liquidator, we hereby renew our request that you provide him with the information requested in our letter of November 10, 2005 forthwith."

5.6 On March 14, 2006, my attorneys received a letter from Derek Ryan, Esq., of Ryan & Co., Counsel for the Board of the Bank, dated March 9, 2006, whereby Mr. Ryan advised that his client, Mr. Mohammed Harajchi, has "engaged the services of forensic accountants in Europe to undertake the tracing of certain funds what have been alleged by your client (the Provisional Liquidator) as being deemed missing or unable to account for." Mr. Ryan wrote that "with a view to cooperating fully and pursuant to my undertaking given to the Supreme Court, we are requesting your client's permission to allow the forensic accountants to audit Suisse Security Bank & Trust accounts at Tucker Anthony, New York, which no doubt would assist to ascertaining where those funds are presently being held."

5.7 On March 14, 2006, my attorneys received another letter from Derek Ryan, Esq., of Ryan & Co., which stated that "in keeping with our promise to you to co-operate fully and with a view to resolving the same, we enclose herewith for the Provisional Liquidator's perusal, a copy of the bank statements from United Bank of Switzerland (UBS) for Suisse Security Holdings Ltd. in this regard."

5.8 In a letter dated March 15, 2006, my attorneys responded to Mr. Ryan's letter dated March 9, 2006. In it, my attorneys reminded Mr. Ryan of the telephone conversation of March 7, 2006 whereby Mr. Ryan had indicated that he would send my attorney a copy of a letter that he (Ryan) had sent to Tucker Anthony, New York, directing them to cooperate with me, the Provisional Liquidator, thereby countermanding his (Ryan's) earlier letter to Tucker Anthony wherein he had directed them not to cooperate with me. My attorneys indicated to Mr. Ryan that as of the date of their letter, they had not received the aforementioned letter, and they asked Mr. Ryan to fax a copy to them.

5.9 Continuing in their response to Mr. Ryan's letter dated March 9, 2006, my attorneys reminded Mr. Ryan of the aforementioned conversation in which Mr. Ryan stated that his client, Mr. Mohammed Harajchi, had instructed UBS Switzerland to wire between US$22M - US$23M to Tucker Anthony, New York, for the account of the Bank. Mr. Ryan had also indicated that his client was unable to give any specific information as to the whereabouts of these funds and in this regard, his client had engaged the services of forensic accountants to conduct a search so as to determine what became of the funds.

5.10 My attorneys also reminded Mr. Ryan that he had confirmed that it is his client's avowed intention to assist me, the Provisional Liquidator, to the best of his ability in tracing all funds that should properly be held by the Bank (via myself, the Provisional Liquidator).

5.11 In response to Mr. Ryan's letter of March 14, 2006, my attorneys acknowledged receiving enclosures in that letter of 13 copies of Debit Advices dated between 27th July, 2000 through 28th November, 2000 indicating instructions from Harajchi/Broughton to UBS Switzerland for the transfer to SSBT via Wexford Clearing Services Corp. via the Bank of New York of varying sums of monies totaling US $26M.

5.12 My attorneys reminded Mr. Ryan that Mr. Harajchi had assured us that his only interest at this time was to ensure that his name is not besmirched and to this end he had said he would cooperate fully with me. Mr. Harajchi indicated that he would send me copies of bank confirmations and statements which Mr. Ryan held so that all questions with respect to monies due to the Bank could be cleared up and efforts made to determine where these funds are presently located.

5.13 My attorneys told Mr. Ryan frankly that the Debit Advices enclosed in his letter of March 14, 2006 fall far short of the information that I, the Provisional Liquidator, would need at this time. Accordingly, my attorneys requested Mr. Ryan's immediate cooperation in providing the following:

i. Bank Statements for SSBT at UBS Switzerland prior to and after the bank was placed in Provisional Liquidation.

ii. Bank Statements related to all funds held by and passing through SSI and SSH at Barclays Bank, PLC, Nassau Bahamas.

iii. An accounting of all funds transferred from Barclays Bank PLC Nassau, to UBS Switzerland and any other banks related to funds held for SSBT / SSI / SSH.

iv. Statements related to SSBT in New York for funds sent to the accounts mentioned in the Debit Advices sent to my attorneys as mentioned above. Additionally any information that Mr. Harajchi has with respect to Wexford Clearing Services Corp. as it relates to SSBT / SSI / SSH.

5.14 In addition, my attorneys reminded Mr. Ryan of the following assurances made to us by himself and/or Mr. Harajchi:

i. No additional assets were being held by either SSI or SSH at Barclays Bank PLC

ii. Ryan/Harajchi would advise whether there are any other assets held by SSI or SSH other than those that were held at Barclays Bank PLC

iii. An audit was carried out at the Bank in Geneva Switzerland and this information would be forwarded to Derek Ryan for further submission to Raymond Winder/Anthony McKinney

iv. That the audit report (at iii. Above) would be supplied by the end of that week.

5.15 On April 3, 2006 my attorneys received via fax a letter from Mr. Ryan stating that "enclosed herewith for your records the Auditors Report carried out by Synergie & Partenaires Societe Fiduciare SA for and on behalf of our client." The report enclosed with that letter was dated March 23, 2006, and was comprised of a list indicating dates and amounts of 15 debit advices which were dated between July and November 2000. The report read "We checked the following documents received from the UBS regarding Swiss Security Holding (Bahamas). We confirm that the money is transferred from Swiss Security Holding to Suisse Security Bank & Trust." The report also stated that "this account was used from Mr. Harajchi for different private businesses." The report included copies of bank debit advices.

5.16 The debit advices listed in the report, from the account of SSH at UBS Geneva, are all dated prior to the dates of my appointment as Receiver or Provisional Liquidator of the Bank – and therefore prior to the suspension and revocation of the Bank's license. Any number of transactions that occurred at any dates prior to the dates of my appointment would have already been included in the bank and broker balances as at the date of my appointment. Wherever such balances are under my control, they have been reported in all of my reports to the Court, and do not include the assets that remain under the control of management, directors and shareholders of the Bank. Please refer to my previous reports and section 6 of this report.

5.17 On April 24, 2006 my Bahamian attorneys received a letter from Mr. Harajchi's Swiss attorneys. Reference was made to various correspondence between my Bahamian attorneys and themselves and/or Mr. Derek Ryan. Mr. Harajchi's Swiss attorneys stated that Mr. Harajchi's position is that he is unable to provide me with the documents and data processing information which I requested simply because all of the documents are in my care.

5.18 With regards to SSI, Mr. Harajchi's Swiss attorneys stated that Mr. Harajchi has no objections to me going to Barclays Bank in Nassau to check into the movements of the account.

5.19 As regards SSH, Mr. Harajchi's Swiss attorneys stated that Mr. Harajchi's position is that he transferred the sum of USD 29,799,000 to the account of the Bank in New York at Tucker Anthony. He added that out of that sum transferred, USD 2,700,000 belonged to Mr. Harajchi personally. He also stated that an audit was carried out on all the amounts exiting from the UBS Geneva account.

5.20 If it is indeed the case, the co-mingling of Mr. Harajchi's personal funds, along with the funds of the Bank and other private businesses, into the same SSH account at UBS Geneva speaks volumes as to the management of the accounts by Mr. Harajchi and his management team.

5.21 Moreover, it is abundantly clear that in the same way that Mr. Harajchi has authorized UBS Geneva to permit his auditors to have access to SSH's account information, he could authorize UBS Geneva to cooperate with me in the execution of my duties as the Official Liquidator, for the benefit of the depositors, creditors and shareholders of the Bank.

5.22 Since the completion of the Appeal before the Privy Council, I have met with Mr. Derek Ryan, the attorney for Mr. Harajchi, as well as with Mr. Christopher Lunn, the former Managing Director of the Bank, with a view to obtaining the assistance of Mr. Harajchi in locating the funds that were transferred to accounts outside of The Bahamas. I have also had a brief teleconference with Mr. Harajchi while in conference with Mr. Ryan and Mr. Lunn. Mr. Harajchi had promised that he would assist me in my efforts to track down these funds, however the letter and report referred to in paragraph 5.15 above, along with other correspondence (mentioned above) sent to me by Mr. Ryan and Mr. Harajchi's Swiss attorneys have served no useful purpose, as I am still unable to locate the funds.

6. ASSETS THAT REMAIN UNDER THE CONTROL OF MANAGEMENT, DIRECTORS AND SHAREHOLDERS OF THE BANK

- **SSI US$5,540,631[1]**
- **SSH US$12,001,291**
  CHF300,627 (US$175,145)

6.1 On July 13, 2001, I was granted an Order restraining Suisse Security Holdings Ltd. ("SSH") and Suisse Security Investments Inc. ("SSI") from disposing of the assets of the Bank and its customers held in the accounts at Barclays Bank PLC, Nassau, Bahamas, UBS Geneva, Switzerland and/or any other account until further notice. A copy of this Order was sent to Barclays, UBS Geneva and Ryan & Co., the registered offices of SSH and SSI. On July 31, 2001 the Compliance Officer and Money Laundering Reporting Officer of Barclays confirmed that the accounts were blocked in accordance with the Restraining Order. Further, by letter dated December 12, 2001 my attorney requested assurance from Barclays that the funds of SSI were still being restrained. **By letter dated January 4, 2002 McKinney Bancroft & Hughes, acting on behalf of Barclays, confirmed that Barclays, was not holding any funds in the name of SSI as the account was closed on April 24, 2001.**

[1]This includes deposits totaling $953,591.84 that I am advised were made after March 5, 2001.

6.2 Despite my numerous requests for cooperation, the Bank's employees, management, shareholders, attorney and directors have refused to comply. **To date this lack of cooperation and the blatant disregard for the Orders of the Court namely the Order of my appointment and the Restraining Order has resulted in my not being able to obtain information on the SSH and SSI accounts and more importantly to gain control of the cash balances once held at Barclays and UBS Geneva in the name of SSI and SSH, respectively. Further, as long as these funds remain under the control of management this Bank is rendered insolvent, as the assets presently available to me are insufficient to cover the Bank's liabilities to depositors and creditors.** In this regard, I hereby request that this Honourable Court require management, staff, directors and attorney of the Bank and the shareholders and Directors of SSH and SSI to file with the Court an accounting of the funds once held on accounts at Barclays and UBS Geneva in the name of SSI and SSH respectively. As of today's date, I have not been able to obtain access to these funds.

6.3 As Provisional Liquidator I continued to receive an abundance of telephone calls from depositors and creditors of the Bank relative to funds transferred to accounts in the name of SSH and SSI at UBS Geneva and Barclays Bank, PLC, respectively, both prior and subsequent to March 5, 2001 for further credit to their accounts at the Bank. The depositors and creditors were concerned that as long as these funds remain under the control of management, there may be insufficient funds left to cover depositor balances.

6.4 In spite of the above, the matter of gravest concern to me is that a large part of the Bank's assets remain under the control of the management, directors and shareholders of the Bank. Although I have sought to protect these assets, it is clear that further steps must be taken to trace, safeguard and recover them.

7. EFFORTS BY THE PROVISIONAL LIQUIDATOR TO PROCURE FUNDS AT UBS GENEVA, SWITZERLAND

7.1 After the Notice of Suspension and Notice of my Appointment by the Central Bank of The Bahamas, by which the banking and trust license of the Bank was suspended, I wrote to UBS Geneva, Switzerland on March 5, 2001 and requested that no further payments be made on any accounts of the Bank and that all existing mandates with UBS be cancelled. Moreover, I requested statements showing balances on all accounts of the Bank at the date of my appointment as receiver, i.e. on March 5, 2001, as well as copies of statements on all accounts for a certain period of time and other details such as securities, guarantees, standing orders, etc.

7.2 UBS Geneva answered my request by fax dated March 16, 2001 and explained that my appointment as receiver of the Bank needed to be recognized by a Swiss court, as Swiss banking secrecy did not allow UBS to provide me with the requested information.

7.3 I informed UBS by letter dated April 10, 2001 of my recent appointment as provisional liquidator of the Bank. In particular, I requested that UBS transfer all funds on the Bank's accounts with UBS Geneva to the account of the Bank "in provisional liquidation". However, UBS Geneva explained to me on May 18, 2001 that such appointment also needed to be recognized by a Swiss court due to banking secrecy.

7.4 As a consequence of the Order of July 13, 2001 (see paragraph 6.1), I again wrote to UBS Geneva on July 17, 2001 and then on August 5, 2001 requesting that they block any accounts held with them in the name of SSH, SSI and others and requested some information regarding such accounts (statements; date of opening).

7.5 On August 2, 2001, I contacted a law firm in Geneva, Switzerland to represent me in Switzerland with respect to the liquidation of the Bank, and in particular with the collection of assets with UBS Geneva, Switzerland.

7.6 On August 24, 2001 my Swiss attorneys provided UBS Geneva with evidence that I was entitled, as Provisional Liquidator, to represent the Bank, in liquidation. UBS Geneva did not give any information in compliance with the Bahamian Court Order. On the contrary, UBS Geneva stated that such Court Order needed to be recognized and enforced in Switzerland by a competent judge, and that enforcement before a Swiss court could be refused due to the Swiss banking secrecy, and Swiss Public Order.

7.7 On December 6, 2001, UBS Geneva informed my Swiss attorneys that there had been no banking relationship between the Bank and UBS Geneva for the past 10 years and that, therefore, no information was available in this respect. UBS Geneva has not provided me with any information regarding SSH and SSI since they were not in liquidation, and therefore neither was I liquidator of them, but they were mere vehicles used by clients of the Bank to transfer funds for further deposit to their accounts at the Bank.

7.8 A new order was rendered by the Supreme Court of The Bahamas on October 23, 2002 (filed November 4, 2002) according to which Barclay's Bank PLC, its employees, servants and agents, UBS Geneva, its employees, servants and agents, and SSI and SSH, their employees, servants and agents, were required to provide me with all relevant account information and documents relating to SSI and SSH, including but not limited to bank advices, written instructions, names and addresses of all shareholders, officers and directors of SSH and SSI, etc. However, according to Swiss law, the Order could not be enforced in Switzerland due to banking secrecy, i.e. since it would infringe the Swiss Public Order.

7.9 I have been advised by my Swiss attorneys that it is unlikely that a Swiss judge will ever allow the enforcement of a foreign court order infringing the Swiss banking secrecy and Swiss Public Order, however a request for recognition and enforcement of the relevant Bahamian Court Orders could be filed.

7.10 My Swiss attorneys have provided me with legal advice regarding information on and collection of the assets with UBS Geneva.

7.11 With respect to a possible attachment of SSI's and SSH's assets located in Switzerland, My Swiss attorneys have explained that the Bank in liquidation, as a possible creditor, needs to evidence it's claim by providing, for instance, a written contract with SSH or SSI and that such contract needs to be performed, even partially, in Switzerland. Should the Bank in liquidation file with success a freezing request, the proceedings will lead only to the freezing of the assets, but not to any remittal of the funds to the Bank in liquidation. A claim on the merits would need to be filed in this respect.

7.12 My Swiss attorneys have pointed out that a question which arises is whether the Bank in liquidation would be entitled to lodge a criminal complaint against SSI/SSH, respectively their corporate individual bodies or managers, for embezzlement and/or another criminal infringement. Should it be the case, such action would allow the Bank in liquidation, as a plaintiff and party to the criminal proceedings, to be granted access to the file should an indictment occur.

7.13 However, they further advise that such a criminal complaint needs to be justified or else it might be conceived as a means of eluding the Swiss banking secrecy and could even give rise to a counter-complaint of the acquitted party on grounds of slander or calumny. In order to determine whether there could be a criminal case, more information on the relevant facts would need to be provided.

7.14 My Swiss attorneys have informed me that it appears that a criminal procedure which relates "*indirectly*" to the Bank in liquidation is pending. At the beginning of 2005 a criminal procedure was initiated, after the severance of another criminal procedure which started in 2000/2001 on the grounds of money laundering. The investigating police discovered during the investigation of the first criminal case that some of the funds of the Bank in liquidation were misappropriated. Indeed, the police officer found on the Internet my second report, as the provisional liquidator, in which reference was made to the embezzlement of a certain amount of money. This amount corresponded to another amount under investigation. The bank at stake is UBS Geneva.

7.15 The police officer stated that the criminal procedure was in favour of the Bank in liquidation and that the latter could eventually, should the requirements be met, become a civil party to the procedure. The police officer could not give my Swiss attorneys more information on the criminal procedure without the approval of the Investigating Magistrate. The police officer therefore recommended that my Swiss attorneys contact the Investigating Magistrate directly in order to try to obtain more information on the criminal procedure at stake and determine whether the Bank in liquidation could become a civil party. Should it be the case, the Bank in liquidation would have access to the criminal file, in particular to the bank statements contained therein.

7.16 Should however the Investigating Magistrate come to the conclusion that the Bank in liquidation does not qualify as a civil party, my Swiss attorneys could nevertheless try to have access to the file. Such access might of course depend on whether I, the Official Liquidator of the Bank in liquidation, agree to provide the Investigating Magistrate with all the correspondence with UBS Geneva and even our whole file. My Swiss attorneys have pointed out that it should be stressed that the access to a criminal file on an unofficial basis is usually very limited and rare, and most of the time even prohibited.

7.17 As the Official Liquidator of the Bank in liquidation, I can proceed by lifting the professional secrecy of my Swiss attorneys, in this respect, and authorize them to contact the said Magistrate and provide him with any information and/or documents he may request. In addition, I can proceed by providing my Swiss attorneys with any and all information on the possible embezzlement in order that they would have a clear picture of the case and eventually draft a criminal complaint or request for civil party.

7.18 The fact that the Geneva police were investigating on the accounts held by SSH/SSI at UBS Geneva may imply that either (i) a criminal complaint was lodged in Geneva against probably SSH/SSI, namely any of their directors or officers or managers, or (ii) UBS Geneva suspected SSH/SSI to be guilty of money laundering and are therefore liable to be prosecuted by the competent criminal authority or (iii) that a foreign country, i.e. a foreign criminal authority, requested from Switzerland, i.e. Geneva, legal assistance in criminal matters, or, finally that (iv) another Swiss canton requested Geneva to help it in its criminal investigations.

7.19 According to Article 25 of the Geneva Code on criminal proceedings ("CCP"), a plaintiff as well as any other person which/who has been the victim of a criminal offence, for which prosecution a complaint is not mandatory, may become a "civil party" until the opening of the hearings before the competent judgment authority. According to the terms of such provision, it is sufficient to allege to be a victim of a criminal offence - prosecuted without complaint - to become a civil party. In order to apply to become a civil party, it is necessary to set out a precise and detailed summary of facts and evidence thereof according to which it is possible to become a civil party, i.e. which demonstrate the reasons why the applicant might have been prejudiced by the alleged criminal offence(s). The application for civil party - and the grant of such a status - is possible within ordinary criminal proceedings, i.e. before the usual judgment authorities, as well as before the investigating magistrate or the general prosecutor (attorney general). The form of the application for civil party is usually in writing, although such declaration may sometimes occur orally during a hearing appointed by the investigating magistrate and appear on the minutes of such hearing. A written declaration must be addressed to the competent judgment authority, the investigating magistrate or the general prosecutor as the case may be according to the stage of the proceedings. Such a declaration can also be contained in a criminal complaint at an early stage.

7.20 Once the declaration is made, the competent authority shall examine whether the applicant may have been a victim of criminal offence(s). Should the competent authority arrive to the conclusion that there is sufficient evidence of the alleged prejudice, it will grant to the applicant the status of civil party. The consequences of such granting are mainly that the civil party, as its name indicates, becomes a party with all rights and obligations arising out of such status (Art. 23 CCP). For instance, as soon as an indictment occurs, the civil party should in particular be entitled to (i) access the entire file held by the competent criminal authority, which usually is the investigating magistrate (Art. 142 CCP) and (ii) be summoned to every procedural act and assisted/represented thereto by a lawyer (Art. 138, 143 and 28 CCP).

7.21 According to the above, the Bank in liquidation could be entitled to designate itself as a civil party by letter – or eventually by a formal criminal complaint, if need be – to the competent criminal authority should it be able to demonstrate that it has been the victim of a criminal offence and, in particular, the offence(s) currently suspected by the investigating police.

7.22 Overall, my Swiss attorneys advise that although it is unlikely that a Swiss judge will ever allow the enforcement of a foreign court order infringing the Swiss banking secrecy and hence the Swiss Public Order, a request for recognition and enforcement of the relevant Bahamian Court Orders could be filed. The advice that despite the fact that such an action would most probably be vain, it might be worth taking the chance to file such a request due to its relatively low cost and the impact of a positive outcome. Moreover, any evidence that the assets on the accounts with UBS Geneva belong to the Bank in liquidation should be helpful, since in such a case the enforcement of the court orders mentioned above should be granted.

7.23 The ultimate question which has to be answered is whether a criminal procedure regarding the accounts at stake is ongoing or if SSBT could lodge a complaint to access the information contained in the criminal file. On a pragmatic level, there could be an opportunity to join an already ongoing criminal proceeding by a written declaration to the competent authority should the facts and criminal offence(s) under investigation concern the Bank in liquidation, as a potential plaintiff as well. On the other hand, should the alleged criminal offence(s) not be covered by an already initiated criminal proceeding, the Bank in liquidation will have to lodge a separate and new criminal complaint. However, my Swiss attorneys have not been provided with the relevant information and supporting documents which would entitle them to determine whether SSH/SSI have committed a criminal offence towards the Bank in liquidation. A possible criminal offence(s) at stake and the identity of the perpetrator(s) remain therefore uncertain. These elements would need to be evidenced should the Bank in liquidation decide to participate in a criminal procedure.

8. LEGAL ACTIONS, CONCLUDED

Edwin Cowan et al v. K.D. Trinh Investments, Inc. et al Case No. 95-414-Civ-FTM-210 United States District Court, Middle District of Florida, Fort Myers Division

8.1 On August 6, 2001 the appellate Court issued an Order affirming the decision of the District Court on this matter. The Bank has lost $1,599,284.40.

8.2 Because of the obstruction and interference of Derek Ryan, I was unable to give instructions in this matter; had I been able to instruct the attorneys who represented the Bank in this matter at the commencement of my term, this loss may have been prevented.

8.3 This action was addressed in the financial statements as a contingency in which it is indicated that the principal shareholder of the Bank had committed to issue a letter of comfort on the $1.6 million.

9. LEGAL ACTIONS, PENDING IN THE BAHAMAS

SONJA HARAJCHI V. RAYMOND WINDER et al 2005/CLE/gen 00958, Supreme Court, Common Law & Equity Division

9.1 On August 25, 2005 this action commenced in the Supreme Court of the Bahamas, by Sonja Harajchi, the wife of Mohammad Harajchi (one of the shareholders of Suisse Security Bank & Trust Limited (In Liquidation)). By a specially endorsed Writ, Mrs. Harajchi claims that I, the Provisional Liquidator, and other named parties, are liable for the unlawful and unconstitutional conversion of chattels. The gravamen of Mrs. Harajchi's claim being that I, the Provisional Liquidator, and other named parties, have retained or converted property that was in the bank on or about March 5, 2001 which was at all material times the property of Mrs. Harajchi.

9.2 Mrs. Harajchi claims that I, the Provisional Liquidator, and other named parties, continue in the unconstitutional conversion of specific named and listed antique chattels (hereinafter referred to as "the said chattels") and the breach of her property rights as protected by Article 27 of the Constitution of The Bahamas, 1973.

9.3 Mrs. Harajchi claims that she purchased the said chattels from her husband, Mohammad Harajchi, which consisted of family heirlooms which were of tremendous sentimental value to her.

9.4 Mrs. Harajchi claims that she, at all material times, kept the said chattels at the premises of Suisse Security Bank and Trust Limited situated on East Bay Street in the City of Nassau, The Bahamas, and that I, the Provisional Liquidator, along with others, unlawfully seized and detained or otherwise converted the said chattels.

9.5 Mrs. Harajchi has stated that she and her agents have made numerous attempts to persuade myself, the Provisional Liquidator, and the other named parties, to return the said chattels to her, but that I, the Provisional Liquidator, and the other named parties, have unlawfully failed and/or refused to return the same to her.

9.6 Mrs. Harajchi claims that by reason of the matters set out above, she has suffered loss and damage including aggravated damages.

9.7 Mrs. Harajchi claims that by reason of the matters set out above, she has been deprived of her right not be deprived of her property as protected by Article 27 of the Constitution of The Bahamas, 1973, with the consequence that she is entitled to constitutional redress under Article 28 of the Constitution of The Bahamas, 1973.

9.8 Mrs. Harajchi claims that during the whole time, I, the Provisional Liquidator, and the other named parties, have acted in a deliberate and high handed manner with full knowledge that we were each acting in violation of the Constitution of The Bahamas in so far as the same applied to Mrs. Harajchi's property rights, and consequently Mrs. Harajchi is entitled to exemplary damages from myself, the Provisional Liquidator, and each of the other named parties.

9.9 Mrs. Harajchi claims interest on such sums as she purports may be found due and owing to her pursuant to the Civil Procedure (Award of Interest) Act, Chapter 80.

9.10 Mrs. Harajchi claims that I, the Provisional Liquidator, have admitted that I have no claim or entitlement to the said chattels.

9.11 Mrs. Harajchi claims as against myself, the Provisional Liquidator, and each of the other named parties in the suit, for the following reliefs, namely:-

a. Damages (including aggravated and exemplary damages);

b. Compensation pursuant to Article 28 of the Constitution of The Bahamas, including aggravated and exemplary damages;

c. Interest pursuant to the Civil Procedure (Award of Interest) Act, Chapter 80;

d. An Order that the Defendants and each of them do return the said chattels to her;

b. Costs;

c. Further and other relief.

9.12 On October 4, 2005, in my defence to the claims of Mrs. Harajchi, I, the Provisional Liquidator, stated that I deny that Mrs. Harajchi is the owner of the above-referenced specific named and listed antique chattels (hereinbefore and inclusively referred to as "the said chattels").

9.13 In my defence, I, the Provisional Liquidator, stated that I deny that I have, at any time, had proof or compelling evidence that would support the claim by Mrs. Harajchi that she is the owner of the said chattels. Accordingly, I stated that I deny Mrs. Harajchi's claim that she purchased the said chattels from her husband, Mohammad Harajchi, which consisted of family heirlooms which were of tremendous sentimental value to her.

9.14 In my defence, I, the Provisional Liquidator, stated that I admit that the said chattels were on the premises of Suisse Security Bank and Trust Limited at all material times and that the said chattels are being held and kept in storage by myself in my capacity as Provisional Liquidator pursuant to an Order of the Supreme Court made on the 9th of April, 2001. Which said Order, inter alia charged myself, the Provisional Liquidator, to take into possession and hold all assets belonging to Suisse Security Bank and Trust Limited, which institution is in liquidation.

9.15 In my defence, I, the Provisional Liquidator, stated that I deny Mrs. Harajchi's claim That I, the Provisional Liquidator, along with others, unlawfully seized and detained or otherwise converted the said chattels.

9.16 In my defence, I, the Provisional Liquidator, stated that I admit that requests have been made by Mrs. Harajchi for the release of the said chattels, however Mrs. Harajchi and/or persons claiming the release of the items have failed to conclusively provide me with any sufficient proof of ownership of the said chattels.

9.17 In my defence, I, the Provisional Liquidator, stated that I deny Mrs. Harajchi's claims that by reason of her claims set out above, she has suffered loss and damage including aggravated damages, and I would put Mrs. Harajchi to strict proof of any and all such claims.

9.18 In my defence, I, the Provisional Liquidator, stated that I deny Mrs. Harajchi's claims that by reason of her claims set out above, she has been deprived of her right not be deprived of her property as protected by Article 27 of the Constitution of The Bahamas, 1973, with the consequence that she is entitled to constitutional redress under Article 28 of the Constitution of The Bahamas, 1973, and I would put Mrs. Harajchi to strict proof of any and all such claims.

9.19 In my defence, I, the Provisional Liquidator, stated that I deny Mrs. Harajchi's claims that during the whole time, I, the Provisional Liquidator, and the other named parties, have acted in a deliberate and high handed manner with full knowledge that we were each acting in violation of the Constitution of The Bahamas in so far as the same applied to Mrs. Harajchi's property rights, and consequently Mrs. Harajchi is entitled to exemplary damages from myself, the Provisional Liquidator, and each of the other named parties and, and I would put Mrs. Harajchi to strict proof of any and all such claims.

9.20 In my defence, I, the Provisional Liquidator, stated that I deny Mrs. Harajchi's claims to interest on such sums as she purports may be found due and owing to her pursuant to the Civil Procedure (Award of Interest) Act, Chapter 80, and I would put Mrs. Harajchi to strict proof of any and all such claims.

9.21 In my defence, I, the Provisional Liquidator, stated that I deny having made any admission, as purported by Mrs. Harajchi, that I have no claim or entitlement to the said chattels, and I would put Mrs. Harajchi to strict proof.

10. LEGAL ACTIONS, PENDING IN THE UNITED STATES OF AMERICA

- **Correspondent Services Corp. v. JVW Investments Ltd., First Equities Corp of Florida, JV Waggoner, and Donal Kelleher v. Suisse Security Bank and Trust Ltd., No. 99 Civ. 8934 (RWS) United States District, Southern District of New York**

10.1 On August 3, 2001 I sought and obtained leave from this Honourable Court to defend this action. The potential loss to the Bank in this action is US$3,000,000.

10.2 FEDERAL ACTION: Summary of Events August 1, 2005 - October 31, 2006

a. Following the September 2004 Decision, the Waggoner Parties filed yet another appeal to the United States Court of Appeals for the Second Circuit (the "Second Federal Appeal"). On June 10, 2005, my US attorneys filed a brief in opposition to the Waggoner Parties' Second Federal Appeal. Oral argument for the Second Federal Appeal was held by the Court of Appeals on October 18, 2005.

b. **Second Circuit March 10, 2006 Decision: Affirming District Court's Dismissal of CSC's DJ Claim**

i. On March 10, 2006, the Court of Appeals affirmed the District Court's decision. The Court once again ruled in favor of myself, the Liquidator, concluding that "[i]n actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation." Correspondent Servs. Corp. v. First Equities Corp. of Florida, No. 04-5561-CV(L), 2006 WL 721849, *2-3 (2d Cir. March 10, 2006). The Court noted that "based on its review of the relevant allegations in the complaint, the District Court concluded that the object of the litigation in this case was the worthless CD and therefore determined that the…[jurisdictional] amount had not been satisfied."

ii. The Court of Appeals therefore found that the District Court had appropriately rejected the Waggoner Parties' argument that the amount in controversy was some $10 million -- concluding that "[w]e agree with and adopt the above-reasoning of the district court, and therefore affirm its holding that diversity jurisdiction was lacking over CSC's declaratory judgment claim."

c. **The Court of Appeals Denial of the Waggoner Parties Petition for Rehearing En Banc**

i. On March 23, 2006, the Waggoner Parties filed a Petition for a rehearing of their Second Federal Appeal. The Waggoner Parties claimed that their appeal "involve[d] a question of exceptional importance," and argued that the Court of Appeals should "change the law" for calculating the amount in controversy that has been in place in the Second Circuit for the past sixty-five years. The Waggoner Parties' petition sought either a panel rehearing -- i.e. a rehearing before the Judges that rendered the March, 2006 opinion, or a rehearing en banc -- i.e. a rehearing before all judges sitting in the Court of Appeals for the Second Circuit.

ii. In an Order dated September 15, 2006, the Court of Appeals denied the Waggoner Parties' petition for either a panel or en banc rehearing. The Order "noted that the petition for rehearing en banc has been transmitted to the judges for the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon."

d. The Court of Appeals Did Not Address the Bank's Entitlement To Damages Pursuant To CPLR 6212(e)

i. On March 31, 2006, I made an application in the Court of Appeals pursuant to CPLR 6212(e) for the damages incurred defending against the Waggoner Parties' repeated appeals. I submitted a memorandum of law detailing the precedent entitling the Bank to its appellate damages and a Declaration detailing the $715,385.96 in fees and costs incurred defending against the two federal appeals. On May 4, 2006, the Court of Appeals (as was expected) issued an Order remanding my application for my appellate damages to the District Court for a determination in the first instance.

ii. The Court of Appeals similarly did not address the District Court's award of damages pursuant to CPLR 6212(e), because the District Court has not yet determined the quantum of damages to which the Bank is entitled.

e. The Bank's Application for Damages Pursuant to CPLR 6212(e)

i. The District Court previously has ruled that the Bank is entitled to damages pursuant to CPLR 6212(e) upon the vacation of the Federal Attachment. Specifically, the District Court has ruled that both JVW and Waggoner are liable for the damages incurred by the Bank, including reasonable attorneys' fees, since the Waggoner Parties obtained the Federal Attachment on November 17, 2000.

ii. I originally filed an application for the assessment of the Bank's damages pursuant to CPLR 6212(e) in September 2002. Specifically, I submitted Declarations from counsel on September 20, 2002 and November 27, 2002 detailing the extensive work that was performed in the District Court as a result of the Waggoner Parties' attachment and litigation tactics. As detailed in the November 27, 2002 Declaration, I incurred $906,223.95 in costs and attorneys' fees in the District Court from the entry of the attachment of the Bank's assets through November 22, 2002.

iii. Thus, on November 30, 2006, I submitted proof of $2,102,870.48 in attorneys' fees and costs incurred in both the District Court and the Court of Appeals for the Second Circuit from November 17, 2000 through October 31, 2006.

iv. In addition, my application for damages included a demand for more than $1,620,000, representing the statutory rate of interest, of nine (9) percent per annum, for the loss of use of the attached $3,000,000 since November 17, 2000.

v. Finally, my attorneys have advised the Court that I reserve the right to seek additional fees, expenses, and related damages incurred defending the Bank's entitlement to damages pursuant to CPLR 6212 (e).

10.3 STATE ACTION: Summary of Events August 1, 2005 - October 31, 2006

a. Following the March, 2006 Opinion from the Court of Appeals dismissing the Federal Action, my U.S. attorneys filed an Updated Brief dated June 29, 2006 to the New York Supreme Court, Appellate Division, First Department (the "Appellate Division"). In challenging the propriety of the State Attachment, I submitted the following two "Questions Presented" for the Appellate Division:

i. Whether the State Attachment of the Bank's assets constituted a "continuation" of the Federal Attachment, previously entered (and subsequently vacated) in the Federal Action. The lower court erroneously answered this question yes.

ii. Whether the State Attachment of the Bank's assets is appropriate absent any evidence of my intent to defraud the plaintiffs or to frustrate enforcement of a judgment. The lower court erroneously failed to address this question.

b. My US attorneys argued that there was no basis under New York law for a State Court to "continue" an attachment from a Federal Court in any circumstance -- let alone an attachment that had been vacated for lack of jurisdiction. My attorneys further argued that the State Court had erred by failing to address the fundamental statutory requirements for the award of an attachment. On July 18, 2006, counsel for the Waggoner Parties filed a Brief opposing my State Appeal. The Waggoner Parties submitted that the State Court had authority to backdate an attachment in the "interest of justice" pursuant to its "nunc pro tunc" powers.

c. On August 18, 2006, my attorneys submitted a Reply Brief to the Appellate Division detailing the fundamental defects in the Waggoner Parties' legal positions. My attorneys argued that the Appellate Division should reverse the lower court's backdating of the State Attachment, which was in clear derogation of New York law, and which subverted my efforts to equitably conduct the Bahamian liquidation proceeding and to marshal the Bank's assets for the benefit of all its creditors. My attorneys argued that in comity to the Bahamian courts and in fairness to all of the Bank's creditors, the Appellate Division should order the vacation of the State Attachment and thereby spurn the Waggoner Parties' attempt to appropriate the Bank's assets to the detriment of all other creditors of the Bank.

d. In support of their position, my attorneys supplied the Appellate Division with the fundamental New York precedent that a state court may not resort to the "nunc pro tunc" doctrine to deprive a party of substantive rights or to grant a litigant a security interest that is foreclosed by statute. See Mansfield State Bank v. Cohn, 58 N.Y.2d 179, 182-83 (1983).

e. Oral argument was held by the Appellate Division on October 24, 2006. No decision has yet been issued by the Court.

10.4 BANKRUPTCY ACTION: Summary of Events August 1, 2005 - October 31, 2006

a. There have been no proceedings in the Bankruptcy Court for the period between August 1, 2005 and October 31, 2006. Depending on the outcome of the State Appeal, I will - if necessary - be able to renew my application for turnover of the assets. However, if the Appellate Division vacates the State Attachment, there will be no need to return to the Bankruptcy Court to obtain the turnover of the attached funds.

10.5 RESOLUTION OF PROCEEDINGS, THE BANK'S RECOVERY OF DAMAGES, AND RETURN OF ATTACHED ASSETS TO THE BAHAMAS

a. **The Bank's Recovery of Damages in the Federal Action, Including Attorneys' Fees, Costs, and Interest.**

i. The March 2006 decision by the Court of Appeals affirming the dismissal of the Federal Action for lack of subject matter jurisdiction has greatly enhanced the likelihood of the Bank's recovery of substantial damages in the Federal Action, including attorneys' fees, costs and interest. Although the Bank's entitlement to damages pursuant to CPLR 6212(e) has not yet been addressed by the Court of Appeals, the District Court has extensively addressed this issue, and ruled (on multiple occasions) that the Bank is entitled to damages pursuant to CPLR 6212(e) upon the dismissal of the action.

ii. Moreover, there is strong precedent that in addition to the fees and costs expended in the District Court, the Bank also will be entitled to damages for the fees and costs sustained defending the Federal Appeals. Finally, there is strong precedent that the Bank is entitled to statutory interest of nine (9) percent per annum for the loss of the use of the $3 million since November 2000. As detailed above, my application was filed on November 30, 2006.

iii. Although the Waggoner Parties have indicated that they will challenge the reasonableness of the Bank's attorneys' fees and costs, any such review will be performed by Judge Sweet, who has presided over the matter from inception and who (as set forth above) has previously recognized that the Bank incurred these substantial expenses as a result of the Waggoner Parties' wrongful actions and scorched earth litigation tactics.

b. Return of the $3 Million and Recovery of State Court Damages

i. The return of the attached assets has been complicated by the Waggoner Parties' attachment in the State Action of the same funds previously attached by the District Court. Because the State Attachment arguably comes into effect upon the vacation of the Federal Attachment, the Bank could prevail on the Second Federal Appeal and recover damages as detailed above, but not secure the vacation of the State Attachment, and therefore, not have the $3 million returned to The Bahamas.

ii. However, the Bank has multiple potential avenues to secure the return of the $3 million after the dismissal of the Federal Action:

1. First, as detailed above, the Bank has a strong position in the State Appeal. In the event that the Bank prevails on its State Appeal and the State Attachment is vacated, the Bank will be able to secure the return of the attached funds. Additionally, the vacation of the State Attachment would entitle the Bank to recover the damages that it has incurred defending against the State Attachment (including fees and costs on appeal).

2. Second, if the State Appellate Court upholds the entry of the State Attachment, but rules that the attachment is not a "continuation" of the Federal Attachment, the Bank will petition the State Court and/or the Bankruptcy Court to Order the vacation of the attachment and the turnover of the attached funds.

10.6 UNITED STATES ATTORNEYS' RECOMMENDATION

a. The Bank's application for damages in the Federal Action was filed on November 30, 2006. I have been advised by the Court that the motion for the assessment of damages will be held by Judge Sweet on February 21, 2006. Ultimately, Judge Sweet will issue a decision determining the damages to which The Bank is entitled, which will be appealable to the United States Court of Appeals for the Second Circuit. My U.S. attorneys had strongly recommended that The Bank continue to pursue its substantial claim for damages in the Federal Action pursuant to CPLR 6212(e).

b. With respect to the State Action, my attorneys have requested that the underlying action remain stayed pending the decision from the Appellate Division on my appeal. While there are risks inherent in any litigation, my attorneys believe that The Bank has a strong likelihood of success in the State Appeal. As previously detailed, a decision from the Appellate Division vacating the attachment will result in the return of the $3 million to the Bahamas. Moreover, in the event the State Attachment is vacated, the Bank has a strong likelihood of success in its claim against the Waggoner Parties for the damages incurred defending against the State Action, including the attorneys' fees and costs expended in the State Appeal.

c. Although my attorneys have attempted to engage the Waggoner Parties in a meaningful settlement dialogue, the Waggoner Parties remain unwilling to negotiate a settlement that addresses (i) the Bank's ability to secure the return to the Bahamas of the $3 million attached by the Waggoner Parties and (ii) the Bank's substantial entitlement to damages pursuant to CPLR 6212(e). Given the success that I have achieved in the United States proceeding, my attorneys do not recommend negotiating any settlement that fails to address my likelihood of success with respect to both issues.

d. Accordingly, my U.S. attorneys had strongly recommended that the Bank pursue its claim for damages in the Federal Action and await the decision from the First Department, which will significantly impact the Bank's next steps in the State Action and its ability to secure the return of the attached $3 million.

11. REQUESTS MADE OF THE PROVISIONAL LIQUIDATOR

11.1 I have received and responded to a directive served on me by the Central Bank of The Bahamas, Pursuant to section 35(5) of the Central Bank of The Bahamas Act, 2000, requesting information relative to accounts held, or purportedly held, at the Bank. Since my last report, I have responded as indicated below:

a. **The Central Bank of The Bahamas**

I was requested to provide copies of the records below, for a specified period, for the indicated account names and/or account numbers. The records requested included, but were not limited to:

i. copies of account opening documents

ii. copies of all monthly accounts statements for the life of the accounts

iii. for all withdrawals, copies of all checks, drafts, wire transfers, or other debt instruments and any accompanying documents

iv. for all deposits, copies of all checks, drafts, wire transfers or other debt instruments and any accompanying documentation

12. COMMUNICATIONS WITH AND ON BEHALF OF CLIENTS

12.1 I, along with my agents, continue to respond to an abundance of queries from concerned depositors and creditors of the Bank relative to:

a. my duties as the Provisional Liquidator, and subsequently the Official Liquidator

b. the effects of the revocation of the Bank's bank and trust licence, and my appointment, on them as depositors, creditors, and International Business Company ("IBC") Holders. Specifically they are concerned about their inability to have access to their accounts and wish to determine the ability of the Bank to fulfill its obligations to them, and the implications of IBCs being struck off the register.

c. explanations regarding the ruling on the appeal before the Privy Council, the Winding-up proceedings, and my appointment as the Official Liquidator.

12.2 In a very time-consuming effort, my agents have assisted hundreds of clients by liaising with the Registrar General's Office for the payment of IBC fees, collecting payments, submitting payments to the Registrar General's Office, obtaining and forwarding receipts to the clients, fielding hundreds of phone calls and queries, and more.

12.3 I continue to receive requests from clients that maintained trading accounts to sell their securities. To date, as noted in my previous report, without access to the Bank's records and the cooperation of the employees, I am still unable to determine how the investments held by the Bank for its clients are allocated to such clients.

12.4 In addition, on October 23, 2002 the Court had granted me permission to, among other things, liquidate the securities of the Bank's clients upon the request of the client, and to liquidate the securities holdings of the Bank at such time as I may determine will be beneficial to the estate. The Court subsequently ordered that the Order of October 23, 2002 be set aside. I was therefore restrained by the Court from selling securities. (See Section 5 for further details).

13. CASH AND SECURITIES ACCOUNTS BALANCES

I have set out in appendices III and IV schedules of the cash and securities balances of the Bank, respectively. I have set out in appendix V the securities holdings for the account of the Bank itself. As noted in this schedule, I have made the assumption that the current securities holdings for the account of the Bank have not changed since March 5, 2001, except as noted on the schedule, and that there were no internal trades between the Bank and its clients from August 1, 2005 to October 31, 2006. Please refer to the aforementioned appendices.

14. CONCLUSION

14.1 Throughout this report, I have given information relative to matters that are being dealt with, such as legal matters, and steps taken by myself in the performance of my duties as provisional liquidator. Now that I have only very recently been appointed the Official Liquidator, a number of these matters can be pursued.

14.2 SSH and SSI - Funds once held on these accounts in the name of SSI and SSH in the amount of US$17,541,922.09 and CHF 300,627.31 (US$175,145.47) remain unaccounted for and under the control of management, shareholders and directors of the Bank. The funds at Barclays Bank, Nassau, Bahamas may have been taken out of this jurisdiction.

14.3 *Computer system* - I had gained access to the Bank's system and retrieved a limited number of data files. I am still unable to confirm that I have gained control of all the Bank's assets. Further, I am unable to determine the total liability of the Bank nor am I able to determine with certainty the allocation of the securities held between the Bank and its clients.

14.4 *Legal actions* - To date I have not been able to obtain information on two pending legal actions and therefore I am unable to defend or give instructions for the benefit of the Bank. In the case of K.D. Trinh, the Bank lost its appeal. The attorneys dealing with this matter refused to cooperate with me and continued to obtain instructions from D. Ryan on this matter for which the Bank has suffered a loss of $1,599,824.

14.5 As a result of the above I set out below the steps that are required to be taken in order for me to perform my duties for the benefit of the Bank's depositors, creditors and shareholders. In this regard, and as set out in section 5 of this report, I have sought this Honourable Court for further specific directions.

a. With the Court's assistance, the Bank's directors, shareholders, employees, management and attorney must be compelled to give an accounting of the Bank's funds once on the accounts of SSI and SSH, including the provision of bank statements, and more importantly to turn these funds over to me immediately.

b. The Management of the Bank or Derek Ryan should be compelled to immediately issue a letter to UBS Geneva and William Cagney directing them to cooperate with me and that in so doing they will not be subject to any litigation by the directors and shareholders of the Bank. I request that the Court require that management, staff, directors and shareholders, within a set time frame, respond to my letters requesting assistance.

c. I had sought the leave of the Court to commence committal proceedings against the Bank's management, staff, shareholders, directors and attorney. A date for the hearing was granted, however before the hearing the date was vacated by the Court.

d. I will continue my efforts relative to the JVW matter. With respect to the other legal matters I will continue my efforts relative to having the attorneys provide me with information.

e. I will continue to communicate with clients of the Bank to determine the total liability of the Bank and to ensure that clients with IBCs are in compliance with the requirements under the IBC Act, 2000 and the Financial Transactions Reporting Act, 2000.

I hereby submit to The Supreme Court of the Commonwealth of The Bahamas this, my first report as Official Liquidator of Suisse Security Bank & Trust Limited (In Liquidation).

Respectfully submitted this 15th day of December 2006.

Raymond Winder

Raymond L. Winder
Official Liquidator

SUISSE SECURITY BANK & TRUST LIMITED (IN LIQUIDATION)

STATEMENT OF FINANCIAL POSITION
OCTOBER 31, 2006
(Expressed in Bahamian dollars)
(Unaudited)

ASSETS	
Cash and cash equivalents **(1)**	$ 6,896,717
Investment in securities **(2)**	6,225,670
Total assets	$ 13,122,387
LIABILITIES AND NET ASSETS	
Customer deposits **(3)**	28,485,000
Total liabilities **(4)**	28,485,000
Deficiency of assets over liabilities	(15,362,613)
Total net assets and liabilities	$ 13,122,387

1. Refer to Appendix III for details.

2. Refer to Appendix V for details.

3. Customer deposits is the balance reported to The Central Bank of The Bahamas, by the Bank's management, as at December 30, 2000. In January 2007, I will advertise for claims against the bank to be submitted. Unrecorded claims could have a material impact on the financial position.

4. No estimates for accrued or future administrative expenses are included in the liabilities. These could have a material impact on the financial position.

SUISSE SECURITY BANK & TRUST LIMITED (IN LIQUIDATION)

SCHEDULE OF INCOME AND DISBURSEMENTS
FOR THE PERIOD AUGUST 1, 2005 - OCTOBER 31, 2006
(Expressed in Bahamian dollars)
(Unaudited)

OPENING BANK BALANCE		$ 6,490,034 (1)
INCOME:		
Foreign Exchange Gain	593,120	
Sentinel Bank & Trust	194,651	
Lehman Brothers Investment	128,072	
Interest income CDN$	75,667	
Interest income US$	6,795	
ACM US Growth Strategies Fund	4,741	
Total income		1,003,045
		7,493,079
DISBURSEMENTS:		
Attorneys' fees - United States	403,126	
Agent Fees	128,096	
Liquidator's Fees	79,650	
Attorneys' fees - Bahamas	53,233	
Storage	57,854	
Insurance	7,436	
Bank Charges	4,813	
Utilities	2,307	
Wealth Management Services	1,286	
Office Expenses	940	
Total disbursements		738,741
ENDING BANK BALANCE		$ 6,754,338 (1)

1. This represents the cash balance at Bank of The Bahamas. See Appendix III for all cash balances.

SUISSE SECURITY BANK & TRUST LIMITED (IN LIQUIDATION)

SCHEDULE OF CASH BALANCES
(Expressed in Bahamian dollars)
(Unaudited)

		Balances at July 31, 2003	Balances at July 31, 2004	Balances at July 31, 2005	Balances at Oct 31, 2006
(1)	Lehman Brothers	$ 5,441	$ 11,772	$ 112,377	$ 1,002
(2)	Bank of The Bahamas	7,472,340	6,269,872	6,490,034	6,754,338
(3)	RBC Dominion Securities	42,998	21,349	-	-
(4)	RBC Dain Rauscher	(13,913)	(512)	5,901	6,050
(5)	Sentinel Bank & Trust Limited	-	24,490	76,243	135,326
	Total cash	$ 7,506,866	$ 6,326,971	$ 6,684,555	$ 6,896,717

1. *Lehman Brothers* - This amount represents investment income on US money market funds.

2. *Bank of The Bahamas* - This amount represents the balance for the noted period. For further details refer to the Schedule of Income and Disbursements (Appendix II).

3. *RBC Dominion Securities* - This amount represents cash dividends on securities; balance transferred to Sentinel Bank & Trust Limited in September 2004.

4. *RBC Dain Rauscher (formerly Tucker Anthony)* - This amount represents the current position on investment funds as at September 30, 2006, (reports are issued quarterly).

5. *Sentinel Bank & Trust Limited* - This account was opened in June of 2004. This amount represents dividend and interest on securities.

SUISSE SECURITY BANK & TRUST LIMITED (IN LIQUIDATION)

SCHEDULE OF SECURITIES VALUATION

(Expressed in Bahamian dollars)
(Unaudited)

		Balances at March 5, 2001	Balances at July 31, 2003	Balances at July 31, 2004	Balances at July 31, 2005	Balances at Oct. 31, 2006
	BROKER/CUSTODIAN:					
(1)	RBC Dain Rauscher (formerly Tucker Anthony)	$ 14,484,337	$ 206,104	$ 249,376	$ 354,514	$ 687,803
	UBS Painewebber	530,067	-	-	-	-
(2)	RBC Dominion Securities	-	8,183,429	80	-	-
	Lehman Brothers	560,872	454,024	469,738	449,085	494,984
	Fidelity Investments	169,007	126,143	129,916	160,933	162,669
	ACM Funds	-	13,916	14,122	11,341	11,756
	Pilgrim Funds (ING)		159,057	192,387	273,458	530,545
(2)	Sentinel Bank & Trust	-	-	9,034,904	9,593,797	11,036,019
	Total Securities	15,744,283	9,142,673	10,090,523	10,843,128	12,923,776
	Less value of the Bank's investments (See appendix V)	5,858,612	4,601,949	5,024,037	5,497,423	6,225,670
	Assets held for clients in a fiduciary capacity	$ 9,885,671	$ 4,540,724	$ 5,066,486	$ 5,345,705	$ 6,698,105

1. This balance is shown net of the market value of the 72,000 Nasdaq 100 Trust Securities which were sold, the proceeds of which were transferred to the United States Marshall to secure a $3 million surety bond, and to the account of the provisional Liquidator ($537,047.10).

2. Securities once held by RBC Dominion Securities were transferred to Sentinel Bank & Trust Limited, in June 2004.

Appendix V

SUISSE SECURITY BANK & TRUST LIMITED (IN LIQUIDATION)

SCHEDULE OF THE BANK'S INVESTMENT IN SECURITIES

(Expressed in Bahamian dollars)
(Unaudited)

	Number Of Shares	Description	March 5, 2001 Market Value	July 31, 2003 Market Value	July 31, 2004 Market Value	July 31, 2005 Market Value	Oct 31, 2006 Market Value
	12,339.49	Pilgrim Troika Dialog Russia Fund Class A	$ 105,257	$ 206,104	$ 249,376	$ 354,514	$ 687,803
	9,131.00	Pilgrim Troika Dialog Russia Fund Class A	69,480	152,583	184,556	262,328	508,962
	8,500	Templeton Russia Fund Inc.	144,700	228,225	287,810	357,000	576,300
(1)	86,825	Nasdaq 100 shares Unit Ser 1	5,081,300	3,300,771	3,618,093	3,758,088	3,697,009
			5,400,737	3,887,683	4,339,835	4,731,930	5,470,074
(2)	18	Ponderosa Lumber Inc, formerly Jawz Technology Inc.	$ 25	$ 5	$ 8	$ 5	$ 22
	210,000	Safe Technologies International Inc.	4,725	1,680	1,260	210	273
	423	Viragen Inc.	6,000	1,099	473	241	118
			$ 10,750	$ 2,784	$ 1,741	$ 456	$ 413
(3)	200,000	Russian Federation Bond, 12.75% due 6/24/2028	$ 180,500	$ 299,121	$ 291,750	$ 354,626	$ 357,214
(3)	250,000	Russian Federation Bond, 10.00%, due 6/26/2007	200,625	297,431	281,290	277,188	259,320
(3)	75,000	Ministry of Russia Finance, Euro issue 12.75%, due 6/24/2028	66,000	114,930	109,421	133,223	138,650
			447,125	711,482	682,461	765,037	755,184
		TOTAL	$ 5,858,612	$ 4,601,949	$ 5,024,037	$ 5,497,423	$ 6,225,670

(Continued)

SUISSE SECURITY BANK & TRUST LIMITED (IN LIQUIDATION)

SCHEDULE OF THE BANK'S INVESTMENT IN SECURITIES
(Expressed in Bahamian dollars)
(Unaudited)

Assumption:
With reference to appendices IV and V, the number of shares held by the Bank itself at March 5, 2001 and maintained through October 31, 2006, is based upon unaudited evidence gathered from limited data files retrieved from the Bank's computer system. Assuming that there were no internal sales between the Bank and its clients I have used the information relative to the Bank's holdings at March 5, 2001, to estimate the value of its investments at March 5, 2001, July 31, 2003, July 31, 2004, July 31, 2005 and October 31, 2006. These market values have not been reduced by the estimated costs for liquidating these securities.

1. This balance is shown net of the market value of the 72,000 Nasdaq 100 Trust Securities which were sold, the proceeds of which were transferred to the United States Marshall to secure a $3 million surety bond, and to the account of the Provisional Liquidator ($537,047.10).

2. On July 26, 2006, Jawz Technology Inc., changed its name to Ponderosa Lumber Inc. Additionally, there was a 1:100 reverse stock split on that date.

3. The balance for these securities represents the market value as of October 31, 2006, in addition to the accrued interest at that date.

(Concluded)

SCHEDULE OF ASSETS TO BE RECOVERED AND POTENTIAL LOSSES

(Expressed in Bahamian dollars)
(Unaudited)

Cash transferred to the United States Marshall relative to JVW legal action	1	$ 3,000,000
Case lost in the KD Trinh legal action	2	1,599,824
SSI's account at Barclays Bank	3	5,540,631
SSH's account at UBS Geneva	4	12,176,436
Total assets to be recovered		$ 22,316,891

1. Pursuant to an Order of Attachment funds were transferred from the Bank's account at Tucker Anthony (now RBC Dain Rauscher) to the United States Marshall on April 19, 2001. See Section 10 of this report for further details.

2. Funds were transferred to the trust account of the plaintiff's attorney on February 29, 2000. The Bank has lost the appeal of this case. It is indicated in the Bank's financial statements that Mohammed Harajchi has undertaken to cover this amount. See Section 8 of this report.

3. This amount represents the balance on accounts at Barclays Bank on March 1, 2001, in the name of Suisse Security Investments Inc. ("SSI"). I determined that these accounts held the funds of the Bank and its clients and as such I obtained a Restraining Order over these balances. Barclays has indicated that the accounts of SSI were closed on April 24, 2001. SSI is a Bahamian IBC and its sole shareholder is Michel Harajchi. For further details see Section 6 of this report.

4. This amount represents the balance on accounts in the name of Suisse Security Holdings Ltd. ("SSH"). These accounts were closed between February 2 and 5, 2001. I determined that these accounts held balances of the Bank and its clients and as such I obtained a Restraining Order over these balances. SSH is an IBC, and Ryan & Co. is its Registered Office. To date, I have not been able to obtain details of these accounts nor have I been able to determine where these funds have been moved to. For further details see Section 6 of this report.

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