In accordance with our telephone conversation of earlier this week, the following are summaries of several opinions involving the UNCITRAL Model Law on Cross Border Insolvency and Africa. The relevant opinions have been attached as Exhibits. Given the expressed interests in these opinions raised at the last day of this year’s ART Conference in Accra, Ghana, please distribute this memorandum and the attachments to the attendees of the ART Conference at your earliest possible convenience. It should be noted that Judge Stong contributed the In re Stephen Anthony Botes opinion noted below.

**In the matter of Tannenbaum v. Tannenbaum (2012) FCA 904 [CLOUT Case No. 1214]**

The debtor, a citizen of South Africa, moved to Australia. The joint trustees of the debtor’s insolvent estate in South Africa applied to the Federal Court of Australia (the “Australian Court”) for recognition of the South African bankruptcy proceeding. The trustees also sought to compel information regarding the finances of the debtor, who allegedly misappropriated loaned funds as part of a fraudulent business scheme. In a decision dated August 24, 2012 (annexed hereto as EXHIBIT I), the Australian Court considered whether under the Model Law, made applicable by Australia’s Cross-Border Insolvency Act, the South African proceeding met the criteria for recognition as either a foreign main proceeding or a foreign non-main proceeding. It found that South Africa was not the centre of the debtor’s main interests, because he did not habitually reside in South Africa or maintain any place of operations there. Therefore, the Australian Court dismissed the application to the extent it sought recognition of the South African proceeding as either a main on non-main proceeding.

The Australian Court did, however, grant the trustee applicants’ alternative claim for relief, “based upon a Letter of Request from the SA High Court dated 26 March 2012 and the jurisdiction conferred on [the Australian] Court by § 29 of the Bankruptcy Act [1966].”
Tannenbaum, ¶ 55. The Australian Court noted that “[i]t is a feature of the Model Law as adopted for Australia by the Cross-Border Insolvency Act that it is expressly not intended to limit such jurisdiction as this Court otherwise has to extend assistance to courts of other nations exercising an insolvency jurisdiction.” Tannenbaum, ¶ 55. Although “South Africa is not a ‘prescribed country’ for the purposes of § 29 . . . the Bankruptcy Act allows the extending of assistance to courts which exercise a bankruptcy jurisdiction. The extending of any such assistance calls for the exercise of judicial discretion in light of the object of the section.” Tannenbaum, ¶ 56. Specifically, the South African Court made a request “directed to the provision by [the debtor] of a statement of affairs and to the conduct of examinations and production of documents by him and others.” Tannenbaum, ¶ 57. Accordingly, the Australian Court determined it would issue “orders directed to these ends by way of assistance to the SA High Court and that court’s appointees, the applicants in respect of the administration of [the debtor’s] insolvent estate.” Tannenbaum, ¶ 57.

In re Overseas Shipholding Group, Inc., Case No. 12-20000 (Bankr. D. Del.)

On November 14, 2012, the debtors, Overseas Shipholding Group, et al., filed petitions for relief under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware (the “Delaware Court”). On December 6, 2012, the debtors filed an application in the High Court of South Africa (the “South African Court”) for an order recognizing and enforcing the automatic stay provisions of Section 362 of the United States Bankruptcy Code. See Docket No. 145, page 2 (annexed hereto as EXHIBIT II). On December 7, 2012, the South African Court issued an order granting that application as to shipping vessels and entities located in South Africa (the “South African Order”). See Docket No. 145, Ex. A. Specifically, the South African Order recognized and adopted the Delaware Court’s “Order (I) Confirming the Enforcement and Applicability of Section 362 of the Bankruptcy Code and (II) Confirming the Debtors’ Authority with Respect to Post-Petition Operations” dated November 15, 2012. See Docket No. 145, Exhibit A ¶ 2. Moreover, the South African Court specifically acknowledged the “full force and effect” of the Section 362 stay in South Africa as “to the [debtors] and any assets of the [debtors] situated in the Republic and/or in its territorial waters at any time.” Docket No. 145, Ex. A ¶ 3.

In re Stephen Anthony Botes, Case No. 05-87098 (Bankr. N.D. Tex.)

On December 7, 2005, Anton Lohse (the “Trustee”), as foreign representative, filed a petition under Chapter 15 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Northern District of Texas (the “Texas Court”) for recognition of a foreign main proceeding pending in the South African Court. Docket No. 1 (annexed hereto as EXHIBIT III-a). According to the petition, the debtor fraudulently obtained funds from his creditors in South Africa and Namibia by misrepresenting that he was an agent of a U.S. company soliciting investments. On November 28, 2003, the South African Court issued an “order for the sequestration of the estate of Stephen Anthony Botes,” thereby initiating a foreign main proceeding in South Africa. Petition 1 ¶ 1, Docket No. 1; Docket No. 1-6. At some point thereafter, the debtor relocated to Dallas, Texas, and on June 8, 2004, the Trustee filed a motion in the South African Court “seeking permission to seek aid from a court of competent jurisdiction in the United States of America to act in aid of the High Court of South Africa.” Petition 2 ¶ 2, Docket No. 1; Docket

On March 17, 2006, the Texas Court issued an Order Granting Relief under 11 U.S.C. §§ 1519 and 1521. Docket No. 10 (annexed hereto as EXHIBIT III-b). No further activity is noted on the docket of the Texas Court until June 18, 2007, when counsel for the Trustee filed an Application for Payment of Attorney’s Fees and Expenses. Docket No. 12 (annexed hereto as EXHIBIT III-c). According to that application, the Trustee recovered certain funds held by the debtor in accounts with Bank of America, but had not been able to find any additional assets. The Trustee also could not locate the debtor, who had apparently returned to South Africa. After another lengthy period of inactivity, the Texas Court scheduled a status conference. At that point, the Trustee did not oppose dismissal, and an order dismissing the Chapter 15 case issued March 8, 2011. Docket No. 25 (annexed hereto as EXHIBIT III-d).
EXHIBIT I
FEDERAL COURT OF AUSTRALIA

Gainsford, in the matter of Tannenbaum v Tannenbaum [2012] FCA 904

Citation: Gainsford, in the matter of Tannenbaum v Tannenbaum [2012] FCA 904

Parties: GAVIN CECIL GAINSFORD, SHIRISHKUMAR JIVAN KALIANJEE AND VINCENT TSIU MATSEPE AS JOINT TRUSTEES IN THE INSOLVENT ESTATE OF BARRY DEON TANNENBAUM v BARRY DEON TANNENBAUM

File number: QUD 216 of 2012

Judge: LOGAN J

Date of judgment: 24 August 2012


BANKRUPTCY AND INSOLVENCY – jurisdiction and powers of courts in bankruptcy – assistance to courts of other nations exercising an insolvency jurisdiction – bankrupt resident in Australia – letter of request from foreign court not a “prescribed country” for the purposes of s 29(2)(a) of the Bankruptcy Act 1966 (Cth) – judicial
discretion per s 29(2)(b) Bankruptcy Act 1966 (Cth) - provision of assistance granted

Legislation:
Bankruptcy Act 1924 (Cth) s 22
Bankruptcy Act 1966 (Cth) ss 29, 81
Corporations Act 2001 (Cth) ss 9, 416, 601CL
Cross-Border Insolvency Act 2008 (Cth) ss 6, 10, 13
Federal Court (Bankruptcy) Rules 2005 r 14.03
Insolvency Act 1936 (South Africa) ss 16, 20, 23, 152

Cases cited:
Akers v Saad Investments Company Ltd (in liq) (2010) 190 FCR 285 considered
Ayres v Evans (1981) 56 FLR 235 cited
Basingstoke v Groot [2007] NZFLR 363 cited
Cambridge Gas Transport Corporation v Official Committee of Unsecured Creditors of Navigator Holdings plc [2006] 3 WLR 689 cited
LK v Director-General, Department of Community Services (2009) 237 CLR 582 applied
Minister for Immigration and Multicultural and Indigenous Affairs v QAAH of 2004 (2006) 231 CLR 1 cited
NBGM v Minister for Immigration and Multicultural Affairs (2006) 231 CLR 52 cited
Re Ayres; Ex parte Evans (1981) 51 FLR 395 applied
Re Loy 380 BR 154 (Bkrtcy ED Va 2007) considered
Re Stanford International Bank [2011] Ch 33 not followed
Russell v Federal Commissioner of Taxation (2011) 190 FCR 449 considered
Williams v Simpson [2011] 2 NZLR 380 followed

Ho, LC (General Editor), Cross-Border Insolvency A Commentary on the UNCITRAL Model Law (3rd ed, Globe Law and Business, 2012)

Date of hearing: 8 May 2012
14 May 2012

Place: Brisbane

Division: GENERAL DIVISION

Category: Catchwords

Number of paragraphs: 57

Counsel for the Applicants: Mr P McQuade
Solicitor for the Applicants: Minter Ellison

Counsel for the Respondent: The Respondent appeared in person
IN THE FEDERAL COURT OF AUSTRALIA
QUEENSLAND DISTRICT REGISTRY
GENERAL DIVISION
QUD 216 of 2012

IN THE MATTER OF INSOLVENT ESTATE OF BARRY DEON TANNENBAUM
AND THE CROSS-BORDER INSOLVENCY ACT 2008

BETWEEN: GAVIN CECIL GAINSFORD, SHIRISHKUMAR JIVAN
KALIANJEE AND VINCENT TSIU MATSEPE AS JOINT
TRUSTEES IN THE INSOLVENT ESTATE OF BARRY
DEON TANNENBAUM
Applicants

AND: BARRY DEON TANNENBAUM
Respondent

JUDGE: LOGAN J
DATE OF ORDER: 24 AUGUST 2012
WHERE MADE: BRISBANE

THE COURT ORDERS THAT:

1. To the extent that the amended application claims relief:
   (a) under the Cross-Border Insolvency Act 2008 (Cth), the application is
dismissed; and
   (b) under s 29 of the Bankruptcy Act 1966 (Cth), the Court provide aid in a matter
of bankruptcy in respect of the respondent at the request of the South Gauteng
High Court at Johannesburg in South Africa in the terms set out in this order.

2. The respondent is to file and serve on the solicitors for the applicants a statement of
his affairs of the kind for which s 54 of the Bankruptcy Act 1966 (Cth) provides
within 14 days of the making of this order or within such further time as the Registrar
may in writing allow upon application made by the respondent on notice to the
applicants within that 14 day period.

3. The Registrar, pursuant to s 81 of the Bankruptcy Act 1966 (Cth), summon Barry
Deon Tannenbaum to attend for examination on oath under s 81 of the Bankruptcy Act
1966 (Cth) before the Registrar or a Deputy Registrar about his examinable affairs (as
defined in s 5 of the said Act) and that he bring with him to such examination for
production thereat such books as are within his possession which relate to his said examinable affairs.

4. The Registrar of the District Registry of Queensland of the Court pursuant to s 81 of the Bankruptcy Act 1966 (Cth) summon Deborah Tannenbaum to attend for examination on oath under s 81 of the Bankruptcy Act 1966 (Cth) before the Registrar or a Deputy Registrar about the examinable affairs (as defined in s 5 of the said Act) of Barry Deon Tannenbaum and that she bring with her to such examination for production thereat such books as are within her possession which relate to the examinable affairs (as defined in s 5 of the said Act) of Barry Deon Tannenbaum.

5. The Registrar, pursuant to s 81 of the Bankruptcy Act 1966 (Cth), summon the examinees listed below (examinees) to attend for examination on oath under s 81 of the Bankruptcy Act 1966 (Cth) before the Registrar about the examinable affairs (as defined in s 5 of the said Act) of Barry Deon Tannenbaum and that the examinees bring with them to such an examination for production thereat such books as are within the possession of the examinees which relate to the examinable affairs (as defined in s 5 of the said Act) of Barry Deon Tannenbaum.

Examinees

1. Australia and New Zealand Banking Group Limited, by its proper officer

2. Bartan Group Pty Ltd (in Liquidation) ACN 123 301 397, by the liquidator Trevor Mark Pogroske

6. For the purposes of this order, the term “Registrar” includes a Deputy Registrar, a District Registrar and a Deputy District Registrar.

7. The applicants may be represented at such examination of the examinable affairs of the respondent by counsel and/or by solicitor, and subject to s 81(10) and s 81(11) of the Bankruptcy Act 1966 (Cth), the applicants, by counsel and/or solicitor, conduct the examination.

8. Each of the respondent and the other examinees summoned to appear in accordance with this order is to attend for examination from time to time as required by the Registrar.

9. There be liberty to apply to the applicants with respect to the orders as to the examinations, including the examination of other examinees.
10. The costs of the applicants of and incidental to this application and of the examinations be taxed as between solicitor and client and that when so taxed the applicants be at liberty to pay the same out of any moneys or property of the respondent received by the applicants.

11. Liberty to apply.

Note: Entry of orders is dealt with in Rule 39.32 of the Federal Court Rules 2011
IN THE FEDERAL COURT OF AUSTRALIA  
QUEENSLAND DISTRICT REGISTRY  
GENERAL DIVISION  
QUD 216 of 2012

IN THE MATTER OF INSOLVENT ESTATE OF BARRY DEON TANNENBAUM  
AND THE CROSS-BORDER INSOLVENCY ACT 2008

BETWEEN: GAVIN CECIL GAINSFORD, SHIRISHKUMAR JIVAN KALIANJEE AND VINCENT TSIU MATSEPE AS JOINT TRUSTEES IN THE INSOLVENT ESTATE OF BARRY DEON TANNENBAUM  
Applicants  

AND: BARRY DEON TANNENBAUM  
Respondent

JUDGE: LOGAN J  
DATE: 24 AUGUST 2012  
PLACE: BRISBANE

REASONS FOR JUDGMENT

Under the insolvency law of the Republic of South Africa, the respondent, Barry Deon Tannenbaum, is a bankrupt. He was made bankrupt by an order of the South Gauteng High Court at Johannesburg in South Africa (SA High Court) on 18 August 2009 pursuant to the Insolvency Act 1936 (South Africa) (Insolvency Act) (the South African proceeding). Earlier, on 8 June 2009, that court had made an order for what is known as the provisional sequestration of his estate. The date of the final sequestration order was 18 August 2009. The applicants, Messrs Gavin Cecil Gainsford, Shirishkumar Jivan Kalianjee and Vincent Tsiu Matsepe were appointed by the SA High Court as the joint trustees of his insolvent estate.

The applicants seek the following relief in these proceedings:

(a) pursuant to the Cross-Border Insolvency Act 2008 (Cth) (Cross-Border Insolvency Act) and the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law (Model Law) as given force of law in Australia by s 6 of that Act:
(i) pursuant to Art 17, cl 2 of the Model Law, that the South African proceeding be recognised as a foreign main proceeding or, in the alternative, a foreign non-main proceeding;

(ii) pursuant to Art 21 of the Model Law:

A. the staying of execution against Mr Tannenbaum's assets, except with the leave of the court or the applicants' permission;

B. the entrusting to them of the administration or realisation of all of Mr Tannenbaum's assets in Australia;

C. orders permitting them as foreign representatives to examine witnesses, take evidence and obtain delivery of information concerning Mr Tannenbaum's assets, rights, obligations or liabilities;

D. related to that, an order that s 81 of the Bankruptcy Act 1966 (Cth) (Bankruptcy Act) apply to any such examination as if the applicants were his trustees in bankruptcy and the applicants were the trustees of his bankrupt estate under that Act;

E. orders permitting them to exercise all powers available to a trustee in bankruptcy under the Bankruptcy Act;

F. an order that Mr Tannenbaum has all of the obligations that a bankrupt has under the Bankruptcy Act as if he were a bankrupt under that Act and as if the applicants were the trustees of his bankrupt estate under that Act;

G. various forms of ancillary relief directed to the stay of enforcement or execution proceedings in Australia against Mr Tannenbaum or his assets and the continuation of interim orders made with respect to the preservation of his assets; and, further or alternatively,

(b) pursuant to s 29 of the Bankruptcy Act and a related letter of request from the SA High Court to this Court, that:

(i) an examination be conducted by the District Registrar under s 81 of the Bankruptcy Act of Mr Tannenbaum, his wife, Mrs Deborah Tannenbaum, the Australia and New Zealand Banking Group Limited (ANZ Bank) in respect of Mr Tannenbaum's examinable affairs;
(ii) related orders for the production of documents by an examinee at any such examination;

(c) Mr Tannenbaum be ordered to furnish them with a statement of his affairs.

Mr Tannenbaum represented himself in the proceeding. In so doing, he displayed considerable insight into the issues at large. Those issues were the subject of detailed and helpful submissions by Mr McQuade of counsel who appeared for the applicants. Mr Tannenbaum opposed the making of any of the orders sought by the applicants.

BACKGROUND IN SOUTH AFRICA

The following facts are, save where another source is indicated, established by the evidence relied upon by the applicants.

Mr Tannenbaum was born in South Africa on 23 January 1966. He is a citizen of that country and has been issued with a South African passport. His evidence is that he cannot now locate that passport.

Between 2004 and 2009, Mr Tannenbaum raised funds in South Africa for the nominal purpose of their being invested in the local pharmaceutical industry. More particularly, investors made short term (8 to 12 weeks) advances to him for the purpose of enabling the purchase and importation into South Africa of pharmaceutical ingredients.

Mr Tannenbaum was the trustee of a trust named the Frankel Trust and in that capacity owned the issued capital of a South African incorporated company Eurochemicals (Pty) Ltd, which traded under the name Frankel Pty Ltd (Frankel). The Frankel Trust was settled in South Africa. Mr Tannenbaum was and remains its sole trustee. He was also the last active director of Frankel.

The funds were raised via a scheme which entailed the following, purported bases:

(a) Frankel conducted a business of the bulk importing of ingredients pre-ordered by South African pharmaceutical manufacturers;

(b) funds advanced to Mr Tannenbaum would, in turn, be advanced by him to Frankel; and
each importation would yield a substantial profit to Frankel, thereby enabling it to repay Mr Tannenbaum and, in turn, him to be able to repay each advance and, as well, to pay a high return on it.

In total, Mr Tannenbaum received ZAR 3,298,924,803 (AUD 390,036,037) via this scheme between 2004 and 2009.

Contrary to these purported bases and, in fact:

(a) less than 0.05% of the funds advanced to Mr Tannenbaum were on loaned by him and used for the purpose of acquiring pharmaceutical ingredients;

(b) of the funds received by Mr Tannenbaum:
   (i) some ZAR 44,822,098 was used by him for personal transactions with a substantial portion being spent on gambling;
   (ii) he transferred some USD 31.7 million into an account held by Bartan Group Pty Ltd (Bartan), an Australian incorporated company, with the ANZ Bank (Bartan account);
   (iii) he transferred some USD 14 million from the Bartan account to other entities controlled by him or to persons associated with him.

The sole shareholder of Bartan is another Australian incorporated company, Bardeb Nominees Pty Ltd (Bardeb). In turn, the shares in Bardeb are held solely by Mr Tannenbaum and his wife, Deborah.

Mr Tannenbaum was a director of Bartan from 3 January 2007 until 26 August 2009. He held the office of director in Bardeb from 22 December 2006 also until 26 August 2009.

Bartan was wound up by an order of the Supreme Court of New South Wales on 9 March 2010. The resultant report of 6 April 2010 as to Bartan’s affairs is noteworthy for its paucity of information concerning the affairs of that company. It does though disclose the following:

(a) assets of AUD 586,523 (made up of AUD 150 in cash with the balance being investments in two other entities);
(b) contingent assets of some AUD 21 million.

Mr Tannenbaum left South Africa for Australia in mid-2007 with his wife and family. Initially after their arrival, they lived in New South Wales. They presently live in Queensland where he works as what he describes as an “insurance advisor”. He states that he hold a licence issued by the Australian Securities and Investments Commission (ASIC) for this purpose.

According to Mr Tannenbaum, his assets presently comprise the following (in AUD amounts):

- Cash at Bank: 1,700.00
- Funds in a Savings Account: 113.00
- Rental Bond: 4,000.00
- A Citizen Watch: 300.00
- Clothing: 800.00
- Computers: 500.00

Again according to him, his liabilities comprise (also in AUD amounts):

- Credit Cards Debt: 90,000.00
- Vehicle Finance: 185,000.00
- Rental Lease: 3,150.00
- “Family Loan”: 60,000.00
- “Friends’ loans”: 85,000.00
- Electricity: 853.00
- Telephone: 3,636.00
- Tax (inferentially, personal Australian Tax): “to be confirmed”
- Car Rental: 1,350.00

The “vehicle finance” item is described by Mr Tannenbaum as a “short fall” on a finance lease. He states that the vehicles concerned were returned within the past 24 months.

From this brief recitation of events in South Africa, transfer of funds to and within Australia and Mr Tannenbaum’s claimed present financial position, it is not hard to see how many interrogative notes might sound in the minds of the applicants and those advising them in respect of the administration his South African insolvent estate. Without intending to be exhaustive, these interrogative notes include the conception and implementation of the scheme, related cash flows and resultant disposition of funds, including to entities in Australia controlled by him. Mr Tannenbaum’s assertion in his submission that there are “glaring errors” in the creditors listed in the applicants’ supporting material with most being
unknown to him served only to add yet further interrogative notes in relation to his insolvency. The applicants’ interest in securing answers from him in relation to such matters is reflected in the relief sought, which includes seeking the conferral of authority to examine him, his wife Deborah, officials of the ANZ Bank and the liquidator of Bartan in Australia and to obtain the production of documents relevant to their administration from them.

Under the Insolvency Act and in South Africa:

(a) by s 20 and subject to exceptions for which that Act provides, Mr Tannenbaum’s property as at the date of sequestration and such as may be acquired by or accrue to him during the period of his insolvent administration, vested in the applicants, upon their appointment in the South African proceedings;

(b) by s 23, Mr Tannenbaum is required:

(i) to keep a detailed record of all assets acquired by him from whatever source and, if required by the applicants, to remit in the last week of every month a statement verified by affidavit of the assets which he has acquired and the disbursements which he has made during the preceding month;

(ii) to assist the applicants in collecting, taking charge of or realising the assets which comprise his insolvent estate; and

(iii) to keep the trustee informed of his residential and postal address.

(c) by s 16, Mr Tannenbaum is required to complete a report as to his financial affairs.

According to the applicants, Mr Tannenbaum has failed to co-operate with them in their administration by disclosing details of his assets and liabilities. More particularly, he has failed to complete the required report as to his financial affairs. Neither has he kept the applicants informed of his residential and postal addresses.

Mr Tannenbaum disputes the allegation of non-co-operation. On closer examination, this dispute is not so much a denial of the applicants’ allegation of non-co-operation as an assertion that he has not been permitted to co-operate on his own terms. Thus, he states that he has always co-operated with “the South African Authorities” and “with the lawyer allegedly acting for the trustees”, “providing I have legal representation and costs paid for”. He further states that he has received advice from his “Australian lawyer” (whose identity or
source of paid retainer is not specified) that an estimate of these costs is AUD 200,000.00. Somewhat incongruously with his assertion of co-operation, Mr Tannenbaum further maintains that he has never been officially notified either of his being made bankrupt in South Africa or of the applicants’ appointment there as the trustees of his estate.

22 In South Africa, the applicants have to date made extensive investigations into Mr Tannenbaum’s financial affairs, including the scheme described above. These investigations have included the examination, pursuant to s 152 of the Insolvency Act, of some 200 witnesses over 37 days. The applicants’ investigations, including such examinations, are continuing. They assert, and the evidence before me gives ample basis for that assertion in terms of the interrogative notes which I have mentioned, that Mr Tannenbaum’s failure to co-operate with them is hampering their administration of his insolvent estate and is not in the interests of the creditors of that estate.

The applicants’ administration of Mr Tannenbaum’s insolvent estate has included the institution of some 90 High Court proceedings in South Africa under the voidable disposition provisions of the Insolvency Act. In these proceedings the applicants seek the recovery of dispositions alleged to have been made without value or in ways that constitute voidable preferences. Thirteen of these proceedings are listed for trial. The earliest such trial listing is not until 24 July 2017. While, without any disrespect to South Africa, such a listing serves as a reminder that challenges for government in the provision of sufficient judicial resources for timely civil justice are not confined to Australia, the lead time entailed also underscores that there is utility in the applicants’ desire to examine Mr Tannenbaum and to otherwise gather evidence beyond matters of public record in Australia.

CROSS-BORDER INSOLVENCY ACT

24 Subject to the Act, the Cross-Border Insolvency Act gives the Model Law the force of law in Australia (which is defined for the purposes of the Act to exclude the external territories of the Cocos Islands Territory and the Christmas Island Territory).

25 Before consideration can be given to whether the South African proceeding meets one or more of the substantive criteria specified in the Model Law to allow its recognition as either a foreign main proceeding or, alternatively, a foreign non-main proceeding a number of
conditions precedent must be satisfied. These conditions precedent fall into two broad categories:

(a) status based criteria; and
(b) procedural criteria.

The criteria which comprise the status based conditions precedent are specified in Art 17, para 1 of the Model Law. As they relate to the present application, they are:

(a) the South African proceeding must be a “foreign proceeding” within the meaning of Art 2(a) by virtue of Art 17, para 1(a);
(b) the applicants must be a “foreign representative” within the meaning of Art 2(d) by virtue of Art 17, para 1(b); and
(c) this Court, as the court to which the application has been “submitted”, must be one to which Art 4 of the Model Law refers by virtue of Art 17, para 1(d).

As to these conditions precedent:

(a) The South African proceeding is a “foreign proceeding” within the meaning of Art 2(a) of the Model Law. That is because it is a judicial proceeding in respect of a debtor, Mr Tannenbaum in which, pursuant to a law relating to insolvency, the Insolvency Act, his estate and affairs are subject to the control and supervision of a foreign court, the SA High Court. The nature of that proceeding is “collective” in the sense that it deals with and adjusts the claims in that jurisdiction of all of his creditors. Its existence and the orders made in it in relation to Mr Tannenbaum are presumptively proved, as Art 16 of the Model Law permits, by certificates given for the purposes of Art 15, para 2 of that Model Law. This presumption constitutes prima facie evidence: Ackers v Saad Investments Company Ltd (in lig) (2010) 190 FCR 285 at [56] (Ackers v Saad Investments). That presumptive proof is not contradicted by any other evidence. Mr Tannenbaum asserted that there is a proceeding in South Africa to set aside his bankruptcy. He offered no evidence to support this assertion, much less proof that his bankruptcy there had been set aside.

(b) The applicants are “foreign representatives”. Their appointment in the SA proceeding is also presumptively proved (Art 15, para 3) by certificate. Mr Tannenbaum’s claim
not to have been officially told of their appointment does not constitute a rebuttal of this presumption.

(c) In respect of individuals and for the purposes of Art 4 and Art 17, para 1(d) of the Model Law, this Court is designated as the court of competent jurisdiction by s 10(a) of the Cross-Border Insolvency Act.

In short then, the applicants have satisfied each of the status based conditions precedent.

The procedural conditions precedent are found in Art 17, para 1(c) of the Model Law and in s 13 of the Cross-Border Insolvency Act and r 14.03 of the Federal Court (Bankruptcy) Rules 2005 (Bankruptcy Rules).

Article 17, para 1(c) of the Model Law provides that the application for recognition must be accompanied by the certificates mentioned in or otherwise meet the evidentiary requirements of Art 15, para 2 with respect to proof of a “foreign proceeding” and the appointment of a “foreign representative”. The application is accompanied by the requisite certificates, which constitute the presumptive proofs mentioned above. The application is also accompanied by the requisite (Art 15, para 3) statement from the applicants identifying all foreign proceedings in respect of Mr Tannenbaum of which they are aware. They are not aware of any other proceedings. There is no evidence of any insolvency proceeding in any other foreign country in respect of Mr Tannenbaum.

Collectively, s 13 of the Cross-Border Insolvency Act and r 14.03 of the Bankruptcy Rules require that, in addition to the certificates and statement mentioned in Art 15 of the Model Law, the material supporting the application must include a statement identifying such of the following as are known to the applicant foreign representative:

(a) all proceedings under the Bankruptcy Act in respect of the debtor;

(b) any appointment of a receiver (within the meaning of s 416 of the Corporations Act 2001 (Cth) (Corporations Act)), or a controller or a managing controller (both within the meaning of s 9 of that Act), in relation to the property of the debtor; and

(c) all proceedings under Ch 5, or s 601CL, of the Corporations Act in respect of the debtor.
Rule 14.03 further requires that the parties to the application be the foreign representative as applicant and the debtor as respondent. Yet further, this rule requires that the application be accompanied by an interim application seeking directions as to service. Each of these procedural conditions precedent has been satisfied and the application has been served as required. In particular, Mr Tannenbaum has neither been made a bankrupt under the Bankruptcy Act nor are there proceedings pending in Australia directed to that end.

The substantive criteria which must be satisfied for a foreign proceeding to be recognised are set out in Art 17, para 2 of the Model Law. It is there provided:

2. The foreign proceeding shall be recognized:

   (a) As a foreign main proceeding if it is taking place in the State where the debtor has the centre of its main interests; or
   (b) As a foreign non-main proceeding if the debtor has an establishment within the meaning of subparagraph (f) of article 2 in the foreign State.

In turn, Art 16, para 3 of the Model Law provides:

3. In the absence of proof to the contrary, the debtor’s registered office, or habitual residence in the case of an individual, is presumed to be the centre of the debtor’s main interests.

In the circumstances of this case, the question becomes whether, in respect of Mr Tannenbaum, South Africa is, in terms of the Model Law, the “centre of the debtor’s main interests” (COMI)? One basis upon which the applicants seek to demonstrate that it is South Africa is via reliance upon the presumption found in Art 16, para 3 of the Model Law. The presumptions found in that paragraph of the Model Law are not exhaustive of the manner in which COMI may be proved but their very presence indicates that they are intended to represent a convenient, common readily ascertainable touchstone. Thus the Model Law proceeds on the basis that, in the absence of proof to the contrary, in the case of corporate debtors their COMI will be their registered office and in the case of individual debtors, their place of habitual residence will be presumed to be their COMI. Necessarily, the further questions which arise are where is Mr Tannenbaum’s place of habitual residence and is there proof that that his COMI is other than at this place?

The expression “centre of the debtor’s main interests” (COMI) is not defined in the Cross-Border Insolvency Act, which, as Rares J notes in Ackers v Saad Investments at [30], is
a matter of deliberate legislative choice. Neither is COMI defined within the Model Law itself. That our Parliament has chosen to adopt for Australia a model developed under United Nations auspices for the purpose of multilateral adoption suggests and regard to the Explanatory Memorandum confirms that Parliament's intention both with respect to the interpretation of the expression COMI and of the Model Law generally was that they would be interpreted in harmony with international legal norms and with meanings given to that expression and that law in other adopting countries.

Reaching that conclusion in that way gives due recognition to the reminder offered by Dowsett J (Edmonds J agreeing in this regard) in *Russell v Federal Commissioner of Taxation* (2011) 190 FCR 449 at [26] to [30], by reference to *Minister for Immigration and Multicultural and Indigenous Affairs v OAAH of 2004* (2006) 231 CLR 1 and *NBGM v Minister for Immigration and Multicultural Affairs* (2006) 231 CLR 52, that, even where an international convention or model law is adopted by Parliament in an Australian enactment, that enactment and the adopted convention or model law must be interpreted in accordance with Australian principles of statutory construction. It is via the application of those principles that the end of harmonious interpretation emerges. It is likewise via those principles that it would be permissible to have regard to general principles for the interpretation of such international instruments set out in the *Vienna Convention on the Law of Treaties* 1969 [1974] ATS 2 and, via Art 32 of that convention, to *United Nations Commission on International Trade Law* (UNICTRAL) preparatory work in respect of the Model Law.

Unlike the present case, *Ackers v Saad Investments* was a case where the debtor concerned was a corporation. So far as corporations are concerned, the authorities discussed by Rares J in *Ackers v Saad Investments* provide ample authority for his Honour's observation (at [32]) that, "the question as to what is a COMI is by no means settled". That observation was made in 2010 but, as the more recent discussion in Ho, LC (General Editor), *Cross-Border Insolvency A Commentary on the UNCITRAL Model Law*, (3rd ed, Globe Law and Business, 2012) at p 452 to p 459 (Ho's Model Law Commentary Text), of later authority in relation to corporate debtors in the United States (where the Model Law has been transposed into their Bankruptcy Code and which has thus far proved to be the busiest Model Law jurisdiction) reveals, the observation remains true of the position in relation to corporate debtors. The following are, by reference to pertinent US authority, identified in Ho's Model Law
Commentary Text (at p 456 to p457) as “evolving issues” in United States corporate debtor Model Law jurisprudence:

(a) At what time along the continuum should/must COMI be determined?

- At the time the chapter 15 petition is filed seeking recognition?
- At the time the court determines the petition for recognition?
- At the time the foreign proceeding is commenced?
- May/must the debtor’s activities at an earlier time be considered?

(b) Can a debtor’s COMI shift?

(c) May the situs of the foreign representative be considered in determining COMI and, if so, under what circumstances?

(d) Where does the COMI lie of a debtor whose assets, operations and parties in interest are truly internationally dispersed?

(e) Is the debtor’s COMI its “nerve centre” and what constitutes the same?

Fortunately, it is not necessary to answer all of these questions to resolve this case.

The opportunity thus far for the judicial consideration of the application of the Model Law to individual debtors has been less frequent than in respect of corporate debtors. There is though a valuable exposition concerning the application of the Model Law to individuals in the judgement of Heath J in *Williams v Simpson* [2011] 2 NZLR 380 (*Williams v Simpson*).

The facts of that case were these. Mr Simpson was a Lloyd’s Name who had the misfortune to encounter the liability which that underwriting investment can entail. He was made bankrupt in England. Long before then and on retirement from practice in England as a psychiatrist, he had moved to New Zealand. He considered himself a New Zealand resident although he spent a lesser part of each year in England to enjoy the cricket and to visit more distant relations. He had a school-aged daughter in New Zealand. The English trustee of his insolvent estate believed that he had secreted assets in New Zealand. He made application to New Zealand’s High Court under that country’s legislation adopting the Model Law for the recognition in New Zealand of the English bankruptcy proceeding either as a foreign main proceeding or as a foreign non-main proceeding.
In *Williams v Simpson*, at [42], Heath J commenced his analysis of the term “habitual residence” by noting that the term was well known in international law. By way of example, His Lordship looked to New Zealand authority which had considered the term as it appeared in the context of the locally adopted *Hague Convention on the Civil Aspects of Child Abduction* (Abduction Convention). Heath J saw no reason why the statement made by the New Zealand Court of Appeal concerning that term in the Abduction Convention in *Basingstoke v Groot* [2007] NZFLR 363 (CA) should not be applied. In that case the New Zealand Court of Appeal had stated that the inquiry as to “habitual residence” was a “broad factual one, taking into account such factors as settled purpose, the actual and intended length of stay in a state, the purpose of the stay, the strength of ties to the State and to any other state (both in the past and currently), the degree of assimilation into the State (including living and schooling arrangements), and cultural, social and economic integration”.

The like conclusion is open by reference to Australian authority. Here, too, it has been recognised that the term “habitual residence” has a long history of usage in international conventions over which time a settled body of law internationally has developed concerning its meaning. So much is clear from the leading Australian authority concerning the term “habitual residence” as it appears in the Abduction Convention as legislatively adopted for Australia, *LK v Director-General, Department of Community Services* (2009) 237 CLR 582 (*LK v Director-General, Department of Community Services*). In that case, the High Court observed (at [21] to [25]):

21 The expression “habitual residence”, and its cognate forms, have long been used in international conventions, particularly conventions associated with the work of the Hague Conference on Private International Law. Although the concept of habitual residence was used in a Hague Convention (on civil procedure) as long ago as 1896, and has since been frequently used in other Hague Conventions, none of those instruments has sought to define the term. Rather, as one author has put it, the expression has “repeatedly been presented as a notion of fact rather than law, as something to which no technical legal definition is attached so that judges from any legal system can address themselves directly to the facts”. Thus the Explanatory Report commenting on the Abduction Convention said that “the notion of habitual residence [is] a well-established concept in the Hague Conference, which regards it as a question of pure fact, differing in that respect from domicile”.

22 To approach the term only from a standpoint which describes it as presenting a question of fact has evident limitations. The identification of what is or may be relevant to the inquiry is not to be masked by stopping at the point of describing the inquiry as one of fact. If the term “habitual residence” is to be given meaning, some criteria must be engaged at some point in the inquiry and they are to be found in the ordinary meaning of the composite
expression. The search must be for where a person resides and whether residence at that place can be described as habitual.

23 Having regard, however, to the stated determination to eschew definition of the expression in its use in the Abduction Convention, and other instruments derived from the work of the Hague Conference, it would be wrong to attempt in these reasons to devise some further definition of the term intended to be capable of universal application. Rather, it is sufficient for present purposes to make two points. First, application of the expression “habitual residence” permits consideration of a wide variety of circumstances that bear upon where a person is said to reside and whether that residence is to be described as habitual. Secondly, the past and present intentions of the person under consideration will often bear upon the significance that is to be attached to particular circumstances like the duration of a person’s connections with a particular place of residence.

24 Use of the term “habitual residence” to identify the required connection between a person and a particular municipal system of law amounts to a rejection of other possible connecting factors such as domicile or nationality. In particular, it may be accepted that “habitual residence” has been used in the Abduction Convention (as it has been used in other instruments) “[t]o avoid the distasteful problems of the English concept [of domicile] and the uncertainties of meaning and proof of subjective intent”. It was said in the nineteenth century that the notion that lies at the root of the English concept of domicile is that of permanent home. But it was soon recognised that domicile, in English law, is “an idea of law”. Thus, in considering acquisition of a domicile of choice, questions of intention loomed large, and the relevant intention had to have a particular temporal quality (an intention to reside permanently or at least indefinitely). Use of “habitual residence” in the Abduction Convention rather than domicile as the relevant connecting factor entails discarding notions like the revival of domicile of origin and the dependent domicile of a married woman which marked the English law of domicile. More importantly for present purposes, use of “habitual residence” in preference to domicile entails discarding the approach of the English law of domicile which gave questions of intention a decisive importance in determining whether a new domicile of choice had been acquired.

25 It may well be said of the term “habitual residence”, as it was of the expression “domicile”, that “if you do not understand your permanent home ... no illustration drawn from foreign writers or foreign languages will very much help you to it”. Yet it may be accepted that “[h]abitual residence, consistent with the purpose of its use, identifies the center of a person’s personal and family life as disclosed by the facts of the individual’s activities”. Accordingly, it is unlikely, although it is not necessary to exclude the possibility, that a person will be found to be habitually resident in more than one place at the one time. But even if place of habitual residence is necessarily singular, that does not entail that a person must always be so connected with one place that it is to be identified as that person’s place of habitual residence. So, for example, a person may abandon a place as the place of that person’s habitual residence without at once becoming habitually resident in some other place; a person may lead such a nomadic life as not to have a place of habitual residence.

[emphasis added] [Footnote references omitted]
Like Heath J in *Williams v Simpson*, I see no reason why, in respect of individual debtors, the ascertainment of "habitual residence" should be ascertained in any way different to the way it is approached here in respect of other international instruments in which the expression is used such as the Abduction Convention.

Adopting this approach, Mr Tannenbaum is not habitually resident in South Africa. That country was once his place of habitual residence but it is no longer. Neither he nor his family has lived in that country since 2007. That was well before he was made bankrupt in that jurisdiction. On the evidence, it may reasonably be inferred and I do infer that he made a deliberate decision to quit that country in 2007. He and his family have lived in Australia ever since. It may very well be that his decision to quit South Africa was inherently bound up with a desire not in the future to be dealt with under the law of that country in respect of his involvement in the scheme described and a related desire to enjoy the benefits of proceeds repatriated to Australia. It is not necessary in this proceeding conclusively to determine whether or not or to what extent he has enjoyed the proceeds but there is no doubt on the evidence that substantial funds sourced from South Africa were transferred to Australian entities controlled by he and his wife. It is no coincidence that his and his wife's association with these Australian entities commenced at about the same time as they quit South Africa. The result is that it is no longer and was not when this application was filed in April this year Mr Tannenbaum's habit to reside in South Africa. Though he seems to have had a residual association with the scheme until 2009, that association was from Australia, not as a resident of South Africa.

Mr Tannenbaum attributes a telephone response by him to a commercial agent making inquiries on the applicants' behalf that he did not have a permanent address and requesting that all communications be directed to his Sydney solicitor to deceit (of an unspecified nature) on the part of the agent. On the evidence, Mr Tannenbaum has been less than candid with the applicants and those making inquiries here on their behalf with precisely where in Australia he and his family have lived from time to time. That particular absence of candour is not though to be equated with continuing habitual residence in South Africa; rather it suggests an intention to the contrary. Further, in his oral evidence, Mr Tannenbaum also attributed a secretiveness concerning his whereabouts to his receipt of death threats. Having regard to the nature of the scheme with which he was involved, I did not find this incredible and I accept it. His statement to the commercial agent that he did not have a permanent
address in Australia needs to be viewed in light of his receipt of such threats and his disposition not readily to co-operate with the applicants. An inference arising from the ASIC and other evidence concerning Bartan is that Mr Tannenbaum initially lived and worked in New South Wales and, having regard to Australian Business Name and his own affidavit evidence now he lives with his family in and works from Queensland. Without revealing his current, Queensland address, it is not possible to be more precise than that. He and his family have not though, as in the example given in the passage quoted from LK v Director-General, Department of Community Services, abandoned South Africa, only to lead an existence so nomadic as not to be habitually resident in Australia by the time when the present application was filed. That he has chosen to retain his South African citizenship and not to seek enrolment on an Australian electoral roll is relevant but by no means determinative. There is nothing to suggest that he is not and has not since 2007 been lawfully resident in Australia. He continues to hold the office of trustee of the Frankel Trust and has South African issued life and endowment policies. Neither the holding of that office nor those assets make him an habitual resident of South Africa. On the whole of the evidence, the conclusion which I reach is that, at the very latest, if not already by 2009, he was habitually resident in Australia as at the time this application was filed and remains so.

I have focussed upon the position as at the time when the application to this Court, was filed, rather than some anterior time, first and foremost because Art 16, para 3 of the Model Law uses the present tense. It also coincides with the focal point adopted by Heath J in Williams v Simpson for determining habitual residence. That is not to exclude reference to an individual debtor’s historical position. Indeed, reference to that may be critical in determining whether the present residential position is “habitual”. The scope for factual inquiry is broad and, though a debtor’s subjective intention is not irrelevant, the conclusion as to habitual residence must be reached after an objective examination of the whole of the evidence.

As had their counterparts in Williams v Simpson, the applicants relied upon a decision of a United States Bankruptcy Court, Re Loy 380 BR 154 (Bkrtcy ED Va 2007) to, as I understood the submission, to rebut the presumption as to habitual residence or at least to indicate the evidence upon which a conclusion as to habitual residence might permissibly be based. In that case and on the basis that a debtor’s COMI should be readily be ascertainable by third parties, the court looked to factors such as the location of the debtor’s primary assets, the location of the majority of his creditors and the jurisdiction whose law would apply to
most disputes concerning his debts. The difficulty about this is that it looks to a past with which Mr Tannenbaum seems to me to have done his level best to sever connection. Objectively, he did this not for the purpose artificially of creating the façade of a COMI other than South Africa but for the purpose of indefinitely living and working in Australia. His presence in Australia is neither transient nor contrived for the purpose of avoiding the consequence of his COMI being found to be South Africa. The presumption is not rebutted.

As for the proposition that a debtor’s COMI must be readily ascertainable by third parties, the authorities in relation to which are collected and discussed by Rares J in Ackers v Saad Investments at [34] to [49], it is important to recall that the only criterion readily ascertainable by a third party which is specified in the Model Law is the registered office of a corporate debtor. The equivalent in respect of an individual debtor is habitual residence. An alternative equivalent which might perhaps have been chosen in respect of individuals would have been citizenship or nationality but, even with this, dual nationality would for individuals have presented problems of COMI identification akin to a corporate debtor which has a registered office in one jurisdiction but its “nerve centre” in another. That is to say nothing of problems which would arise in respect of those who are citizens of one country but choose quite lawfully, to reside in another. Further and more fundamentally, to treat criteria which go to how a debtor presents its/him/her self to the outside world as a factor carrying determinative weight, as opposed to being relevant, in the determination of COMI would be to violate the principles of interpretation which I have set out above. The Model Law does not, in terms, make criteria readily ascertainable by third parties determinative in the objective test for the identification of COMI which it posits. At most and then only in respect of corporations, it creates a presumption based on the debtor’s registered office. Axiomatically, ascertainment “habitual residence” may entail the reception of facts which, though relevant, are not readily ascertainable by third parties. In Williams v Simpson a third party might perhaps readily have been able to ascertain that Mr Simpson had a school aged daughter by a search at the Registrar-General’s office. However, had that daughter not been living with him, as opposed to with a wife from whom he was estranged and had he little or no contact with each of them, such facts might also be relevant but they would not be readily ascertainable by a third party. In this case, ownership of property is readily ascertainable by a search at the Titles Office but rental of residential property is not. For individuals, and, in the final analysis for corporations, the inquiry as to COMI must remain a broad, factual one.
It follows from this that I must dismiss so much of the applicants' application as seeks the recognition of the South African proceeding as a foreign main proceeding.

The applicants' alternative, Model Law based application was that the South African proceeding should be recognised as a foreign non-main proceeding. For this purpose, it was submitted that Mr Tannenbaum had an "establishment" in South Africa. Having regard to Art 17, para 2(b) and Art 2(f) of the Model Law, for the proceeding to be so recognised he must prove that Mr Tannenbaum:

(a) has a "place of operations" in South Africa;
(b) there carries out a non-transitory economic activity; and
(c) does so with human means or goods or services.

On this subject also, I have the benefit of a survey of overseas authority, the same authorities as were relied upon by the applicants, by Heath J in *Williams v Simpson* at [51] to [61]. Because I agree with that survey, I propose to set out the passage concerned in full:

[51] In *Shierson v Vlieland-Boddy* the English Court of Appeal considered whether the debtor had his centre of main interests or an establishment in the United Kingdom.

[52] The EC Regulation defines the term "establishment" in the same terms as it is defined in New Zealand. The EC Regulation is interpreted in light of a report prepared for the purpose of the earlier European Convention, known as the Virgos-Schmit Report. This report was available to those who prepared the Model Law and is a document that I consider I am entitled to take into account in determining the meaning of the term "establishment", for the purposes of the Act.

[53] The Virgos-Schmit report describes a "place of operations" as one from which "economic activities are exercised on the market (that is, externally), whether the said activities are commercial, industrial or professional". The authors added that the emphasis on economic activity using human resources demonstrated a need "for a minimum level of organization". A "certain stability" is required.

[54] In *Shierson v Vlieland-Boddy*, Chadwick LJ was prepared to uphold the first instance Judge's conclusion that the letting and managing of a single unit in England as "a multi-let business premises" was sufficient to bring Mr Vlieland-Boddy within the definition of "establishment". Longmore LJ agreed with Chadwick L.J's conclusion, as did Sir Martin Nourse. All three Judges took the view that while the premises appeared to be in the name of another entity, they were satisfied, on the evidence, it was possible to infer that other entity was acting as "a front or nominee" for the debtor.
In Re Ran, the question was whether an Israeli bankruptcy should be recognised as either the main or non-main proceeding, under ch 15 of the US Bankruptcy Code. In doing so, the Fifth Circuit of the US Court of Appeals considered whether Mr Ran had an "establishment" in the United States under the equivalent definition of that term in ch 15 of the US Bankruptcy Code.

In considering the meaning of the term "establishment" the Fifth Circuit said:

Our conclusion is ... supported by a plain language reading of Ch 15, which notes that a foreign nonmain proceeding can exist where a debtor "'has an establishment'. 11 USC s 1502(2) (emphasis added). Likewise, s 1502(2) refers to an establishment as "any place of operations where the debtor carries out a nontransitory activity". Id. s 1502(2) (emphasis added). The use of the present tense implies that the court's establishment analysis should focus on whether the debtor has an establishment in the foreign country where the bankruptcy is pending at the time the foreign representative files the petition for recognition under Ch 15. See Mark Lightner, Determining the Center of Main Interest Under Ch 15, 17 J. Bankr L & Prac 5, Art 2 (2009).

So in order for Ran to have an establishment in Israel, Ran must have (1) had a place of operations in Israel and (2) been carrying on nontransitory economic activity in Israel at the time that [the Israeli bankruptcy receiver] brought the petition for recognition in the United States. Neither Ch 15 nor its legislative history explain what it means for a debtor to have "any place of operations" or to have "been carrying on nontransitory economic activity" in a location. See H R Rep No 109 31 (1), at 107, reprinted in 2005 USCCAN at 170 (mentioning only that the definition was taken from Model Law for Cross-Border Insolvency Article 2). However, the Model Law for Cross-Border Insolvency and the sources from which it emanates provide guidance concerning what it means for a debtor to have an establishment in a location.

In Ran, the possibility of some lesser test being required in respect of a human debtor, as opposed to a corporate one was considered. After referring to the UNCITRAL Guide to Enactment of the Model Law (the Guide) and the thrust of the Virgos-Schmit Report, the Court said:

... The mere presence of assets in a given location does not, by itself, constitute a place of operation. ... In the context of corporate debtors, there must be a place of business for there to be an establishment. Re Bear Stearns, 374 BR at 131; see also Daniel M Glosband, SPHinX Ch 15 Opinion Misses the Mark, 25 Am, Bankr Inst J 44, 45 (Dec /Jan 2007). Equating a corporation's principal place of business to an individual debtor's primary or habitual residence, a place of business could conceivably align with the debtor having a secondary residence or possibly a place of employment in the country where the receiver claims that he has an establishment. See 11 USC s 1516(c) (equating a corporate debtor's registered office with the habitual residence in the case of an individual). At the time [the Israeli bankruptcy receiver] filed his petition for recognition, Ran possessed neither a secondary residence nor place of employment in Israel.
The provision of the US Bankruptcy Code that equates a corporate debtor's registered office with the habitual residence of a human debtor is replicated in art 16(3) of the New Zealand legislation.

[58] In this context, two decisions in the Bear Stearns litigation are instructive. At first instance, Judge Lifland, in the Bankruptcy Court of the Southern District of New York, declined to recognise a provisional liquidation in the Cayman Islands as either a main or non-main proceeding. In discussing the meaning of the term "establishment", the Judge equated it with "a local place of business", holding that the purely administrative functions of the hedge fund that took place in the Cayman Islands were insufficient to constitute "an establishment" in that jurisdiction. Interestingly, despite making it clear that "the discretionary and flexibility attributes of case law under [the now repealed] s 304 of the Bankruptcy Code [was] misplaced", the Judge held that the provisional liquidators were not without remedy because there was an ability to seek some relief from US Courts. Judge Lifland referred specifically to the ability to commence an "involuntary case" under either ch 7 or ch 11 of the US Bankruptcy Code. The Judge referred to s 303(b)(4) of the Bankruptcy Code, in saying that the foreign representative was "not left remediless upon nonrecognition".

[59] Judge Lifland's views were upheld on appeal by the District Court, in which Judge Sweet found that [auditing] activities and preparation of incorporation papers performed by a third party did not, in plain language terms, constitute "operations" or "economic activity" by those responsible for managing the Funds. To similar effect, the District Court relied on the fact that the hedge funds "had no assets in the Cayman Islands at the time of filing", to support the conclusion that non-main recognition was inappropriate.

[60] In referring to those authorities, I make it clear that neither they nor I are attempting to define the scope of possible activities that would suffice to demonstrate the existence of an individual debtor's establishment in a particular location. For example, in Ran, the Court of Appeals made it clear, in its conclusion, that it was not attempting to define the scope of possible activities that would suffice to demonstrate either the existence of an individual debtor's centre of main interests or an establishment in a particular location.

[61] The difficulties inherent in identifying an "establishment" for an individual debtor were recognised in the Guide. That publication suggested that enacting States might wish to exclude from the scope of application of the Model Law insolvencies that related to natural persons residing in an enacting State, whose debts had been incurred predominantly for personal or household purposes (as opposed to commercial or business purposes) or those that related to non-traders. Those observations reflect the fact that UNCITRAL is primarily concerned with trade and the need, for economic reasons, to provide workable mechanisms to resolve cross-border insolvencies involving trading entities with assets or liabilities in different states.

[Footnote references omitted]
Though in *Williams v Simpson* Heath J took into account the background to the
development of the European Community Insolvency Regulation, in which the concepts of
COMI and "establishment" are also found, he was conscious (at [32]), as I am, that COMI is
employed in that regulation for a different purpose than in the Model Law. In the former it is
employed for the purpose of determining in which European Community jurisdiction an
insolvency proceeding which will control a debtor's assets throughout the European
Community may be commenced whereas in the latter all that COMI does is govern whether a
foreign insolvency proceeding may be recognised. This distinction is not, with respect,
evident in *Re Stanford International Bank* [2011] Ch 33 at [54], a case relied upon by the
applicants (and note the trenchant criticism of that case in Ho’s Model Law Commentary
Text at p 200 to p 204).

As with Art 16, para 3 in relation to “habitual residence”, Art 17, para 2(b) and
Art 2(f) in their respective references to and definitions of “establishment” use the present
tense. It is quite possible that an individual debtor might have a present habitual residence in
one jurisdiction and an “establishment” in another. The two need not coincide. This case may
well offer an example of that so far as the past is concerned. Though Mr Tannenbaum quit
South Africa in 2007 to reside in Australia, as trustee of the Frankel Trust he continued from
here his involvement with the scheme in South Africa until 2009. After that year though, his
business operations in South Africa ceased. Though assets remain there, now subject to
insolvency administration, and though, as mentioned, he also holds life insurance and
endowment policies there, these are residual, passive investments. He does also seem to have
South African based legal advisers but these seem to be concerned with the winding up in
insolvency of his former activities rather than with the continuing conduct of business there.
Mr Tannenbaum no longer has a place of operations in South Africa. In short, there is no
present “establishment” in South Africa.

It follows from this that it is not possible for the South African proceeding to be
recognised as a “foreign non-main proceeding”.

The circumstances of the present case may well highlight a deficiency or at least a gap
in the Model Law in relation to individual debtors. Particularly in a case where large amounts
have been raised from creditors and retained by the borrower rather than deployed as the
lender expected, the incentive for a debtor to quit the jurisdiction where those funds have
been raised removing some or all of those funds in so doing may be a strong one. A lag might then occur between when the absence of the debtor and the funds is detected and when proceedings for insolvency are taken and a sequestration order is made. Never in history has there been facility for rapid international travel and even more rapid transfer of funds between jurisdictions. By the time that a debtor is made insolvent in one jurisdiction and Model Law recognition proceedings commenced in another, the debtor may have established habitual residence in that other jurisdiction. Yet further, the same imperative that occasioned the departure of debtor and funds from the former jurisdiction may have lead to the termination by that debtor of any establishment in the former jurisdiction. As the Model Law stands and as this case and Williams v Simpson highlight, it may not then be possible for the foreign insolvency proceeding to be recognised in the jurisdiction where the debtor is now resident, no matter how spectacular may be the insolvency in the other jurisdiction.

Be this as it may, it does not at all follow from the conclusion that the South African proceeding cannot be recognised under the Model Law as adopted by the Cross-Border Insolvency Act that the applicants and their appointer, the SA High Court are left without the prospect of any Australian assistance in respect of the insolvency administration. So much was recognised by the applicants in their alternative claim for relief.

ASSISTANCE ON REQUEST?

The applicants' alternative claim for relief is based upon a Letter of Request from the SA High Court dated 26 March 2012 and the jurisdiction conferred on this Court by s 29 of the Bankruptcy Act. It is a feature of the Model Law as adopted for Australia by the Cross-Border Insolvency Act that it is expressly not intended to limit such jurisdiction as this Court otherwise has to extend assistance to courts of other nations exercising an insolvency jurisdiction: see Art 8 and also Art 25 and Art 26.

In Re Ayres; Ex parte Evans (1981) 51 FLR 393 at 405 (Re Ayres), Lockhart J described the jurisdiction conferred by s 29 of the Bankruptcy Act as having the object of courts exercising jurisdiction in bankruptcy acting in aid of and being auxiliary to one another. South Africa is not a "prescribed country" for the purposes of s 29 but s 29(2)(b) of the Bankruptcy Act allows the extending of assistance to courts which exercise a bankruptcy jurisdiction. The extending of any such assistance calls for the exercise of a judicial discretion in light of the object of the section. Section 29 of the Bankruptcy Act has a lengthy
provenance in the insolvency law of Australia and the United Kingdom: see, for example, s 22(1) of the Bankruptcy Act 1924 (Cth) (repealed) and Ayres v Evans (1981) 56 FLR 235 at 239-240 per Fox J; at 244-247 per Northrop J and at 254-255 per McGregor J. In turn, s 29 and its cognates have, in part, a declaratory quality in that, at common law, there is an ideal of universality of application with respect to bankruptcy proceedings: Cambridge Gas Transport Corporation v Official Committee of Unsecured Creditors of Navigator Holdings plc [2006] 3 WLR 689 at [14] to [20] (Cambridge Gas). In Williams v Simpson at [82], Heath J opined that the common law position as described for the Judicial Committee by Lord Hoffman in Cambridge Gas should inform the exercise of the discretion under the New Zealand equivalent of s 29 of the Bankruptcy Act. I respectfully agree with this approach to the exercise of such a discretion.

The request made of this Court by the SA High Court is directed to the provision by Mr Tannenbaum of a statement of affairs and to the conduct of examinations and production of documents by him and others. The provision of assistance of this kind will not embarrass any Australian bankruptcy administration with respect to Mr Tannenbaum. There is none. His disposition not to co-operate with the applicants is manifest. Also manifest are the interrogative notes which I have described above. In my opinion, the case for the provision by the Court of assistance of the kind sought is compelling. There is ample power under s 29(3) of the Bankruptcy Act to grant that assistance. The Bankruptcy Act makes provision for the provision of a statement of affairs by a bankrupt and for just this kind of examination and production of documents. I propose therefore to make orders directed to these ends by way of assistance to the SA High Court and that court’s appointees, the applicants in respect of the administration of Mr Tannenbaum’s insolvent estate.

I certify that the preceding fifty-seven (57) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Logan.

Associate:

Dated: 24 August 2012
EXHIBIT II
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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NOTICE OF FILING OF CERTIFIED COPY OF ORDER IN THE HIGH COURT OF
SOUTH AFRICA RECOGNIZING AND ENFORCING
THE AUTOMATIC STAY UNDER SECTION 362 OF THE BANKRUPTCY CODE

PLEASE TAKE NOTICE that Overseas Shipholding Group, Inc. and certain of its
affiliates, as debtors and debtors-in-possession (collectively, the “Debtors”), filed an application

1 The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor’s tax identification
number, are: Overseas Shipholding Group, Inc. (7623); OSG International, Inc. (7117); OSG Bulk Ships, Inc.
(2600); 1372 Tanker Corporation (4526); Africa Tanker Corporation (9119); Almacen Limited (5306); Almar
Limited (5307); Alpha Suezmax Corporation (1684); Alpha Tanker Corporation (6063); Amalit Product
Corporation (3808); Ambarner Product Carrier Corporation (8898); Ambarner Tanker Corporation (7100);
Andromar Limited (5312); Antigmar Limited (5303); Aqua Tanker Corporation (7408); Aquarius Tanker
Corporation (9161); Ariadmar Limited (5301); Aspro Tanker Corporation (4152); Atalmar Limited (5314); Athens
Product Tanker Corporation (9565); Atlas Chartering Corporation (8720); Aurora Shipping Corporation
(5649); Avila Tanker Corporation (4155); Batangas Tanker Corporation (8208); Beta Aframax Corporation (9893);
Brooklyn Product Tanker Corporation (2097); Cabo Hellas Limited (5299); Cabo Sounion Limited (5296);
Caribbean Tanker Corporation (6614); Carina Tanker Corporation (9568); Carl Product Corporation (3807);
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Aframax Corporation (9892); DHT Ania Aframax Corp. (9134); DHT Ann VLCC Corp. (9120); DHT Cathy
Aframax Corp. (9142); DHT Chris VLCC Corp. (9122); DHT Rebecca Aframax Corp. (9142); DHT Regal Unity
VLCC Corp. (9127); DHT Sophie Aframax Corp. (9138); Dignity Chartering Corporation (6961); Edindun
Shipping Corporation (6142); Eighth Aframax Tanker Corporation (8100); Epsilon Aframax Corporation (9895);
First Chemical Carrier Corporation (2955); First LPG Tanker Corporation (9757); First Union Tanker Corporation
(4555); Fourth Aframax Tanker Corporation (3887); Front President Inc. (1687); Goldman Limited (0772); GPC
Aframax Corporation (6064); Grace Chartering Corporation (2876); International Seaways, Inc. (5624); Jademar
Limited (7939); Joyce Car Carrier Corporation (1737); Juneau Tanker Corporation (2863); Kimoles Tanker
Corporation (3005); Kytinos Chartering Corporation (3263); Leo Tanker Corporation (9159); Leyte Product Tanker
Corporation (9564); Limar Charter Corporation (9567); Luxmar Product Tanker Corporation (3136); Luxmar
Tanker LLC (4675); Majestic Tankers Corporation (6615); Maple Tanker Corporation (5229); Maremar Product
Tanker Corporation (3097); Maremar Tanker LLC (4702); Marilyn Vessel Corporation (9927); Maritrans General
Partner Inc. (8169); Maritrans Operating Company L.P. (0496); Milos Product Tanker Corporation (9563);
Mindanao Tanker Corporation (8192); Mykonos tanker LLC (8649); Nedilmar Charter Corporation (9566); Oak
Tanker Corporation (2534); Ocean Bulk Ships, Inc. (6064); Oceania Tanker Corporation (9164); OSG 192 LLC
(7638); OSG 209 LLC (7521); OSG 214 LLC (7645); OSG 215 Corporation (7807); OSG 242 LLC (8002); OSG
243 LLC (7647); OSG 244 LLC (3601); OSG 252 LLC (7501); OSG 254 LLC (7495); OSG 300 LLC (3602); OSG
400 LLC (7499); OSG America LLC (2935); OSG America L.P. (2936); OSG America Operating Company LLC
(5493); OSG Car Carriers, Inc. (1608); OSG Clean Products International, Inc. (6056); OSG Columbia LLC (7528);
on December 6, 2012 in the High Court of South Africa (Kwazu-Natal High Court, Durban) (the “South African Court”) requesting an order, inter alia, (i) recognizing and enforcing the automatic stay provisions of Section 362 of the United States Bankruptcy Code and (ii) applying and adopting the provisions of the United States Bankruptcy Court for the District of Delaware’s Order (I) Confirming the Enforcement and Applicability of Section 362 of the Bankruptcy Code and (II) Confirming the Debtors’ Authority with Respect to Post-Petition Operations (D.I. 46) with full force and effect in the Republic of South Africa and its territorial waters (the “Application”).

PLEASE TAKE FURTHER NOTICE that on December 7, 2012, the South African Court entered an order (the “Order”) granting the Application as to the vessels and entities in Annexure A to the Order.

PLEASE TAKE FURTHER NOTICE that a certified copy of the Order is attached hereto as Exhibit A.

OSG Constitution LLC (8003); OSG Courageous LLC (2871); OSG Delaware Bay Lightering LLC (4998); OSG Discovery LLC (8902); OSG Endeavor LLC (5138); OSG Endurance LLC (2876); OSG Enterprise LLC (3604); OSG Financial Corp. (8639); OSG Freedom LLC (3599); OSG Honour LLC (7641); OSG Independence LLC (7296); OSG Intrepid LLC (7294); OSG Liberty LLC (7530); OSG Lightering Acquisition Corporation (N A); OSG Lightering LLC (0553); OSG Lightering Solutions LLC (5698); OSG Mariner LLC (0509); OSG Maritrans Parent LLC (3903); OSG Navigator LLC (7524); OSG New York, Inc. (4493); OSG Product Tankers AVTC, LLC (0001); OSG Product Tankers I, LLC (8236); OSG Product Tankers II, LLC (8114); OSG Product Tankers, LLC (8347); OSG Product Tankers Member LLC (4765); OSG Quest LLC (1964); OSG Seafarer LLC (7498); OSG Ship Management, Inc. (9004); OSG Valour Inc. (7765); Overseas Allegiance Corporation (7820); Overseas Anacortes LLC (5515); Overseas Boston LLC (3665); Overseas Diligence LLC (6681); Overseas Galena Bay LLC (6676); Overseas Houston LLC (3662); Overseas Integrity LLC (6682); Overseas Long Beach LLC (0724); Overseas Los Angeles LLC (5448); Overseas Martinez LLC (0729); Overseas New Orleans LLC (6680); Overseas New York LLC (0728); Overseas Nikiski LLC (5519); Overseas Perseverance Corporation (7817); Overseas Philadelphia LLC (7993); Overseas Puget Sound LLC (7998); Overseas Sea Swift Corporation (2868); Overseas Shipping (GR) Ltd. (5454); Overseas ST Holding LLC (0011); Overseas Tampa LLC (3656); Overseas Texas City LLC (5520); Pearlmar Limited (7140); Petromar Limited (7138); Pisces Tanker Corporation (6060); Polaris Tanker Corporation (6062); Queens Product Tanker Corporation (2093); Reynar Limited (7131); Rich Tanker Corporation (9147); Rimar Chartering Corporation (9346); Rosalyn Tanker Corporation (4557); Rosemar Limited (7974); Rubymar Limited (0767); Sakura Transport Corp. (5625); Samar Product Tanker Corporation (9570); Santorini Tanker LLC (0791); Sifnos Tanker Corporation (3004); Seventh Aframax Tanker Corporation (4558); Shirley Tanker SRL (3551); Sifnos Tanker Corporation (3006); Silvermar Limited (0766); Sixth Aframax Tanker Corporation (4523); Skopelos Product Tanker Corporation (9762); Star Chartering Corporation (2877); Suezmax International Agencies, Inc. (4053); Talara Chartering Corporation (3744); Third United Shipping Corporation (5622); Tokyo Transport Corp. (5626); Transbulk Carriers, Inc. (6070); Troy Chartering Corporation (3742); Troy Product Corporation (9699); Urban Tanker Corporation (9153); Vega Tanker Corporation (3860); View Tanker Corporation (9156); Vivian Tankships Corporation (7542); Volpechta Chartering Corporation (8778); Wind Aframax Tanker Corporation (9562). The mailing address of the Debtors is: 666 3RD Avenue, New York, NY 10017.
Dated: December 7, 2012
Wilmington, DE

CLEARY GOTTLIEB STEEN &
HAMILTON LLP

James L. Bromley (admitted pro hac vice)
Luke A. Barefoot (admitted pro hac vice)
One Liberty Plaza
New York, New York 10006
Telephone: (212) 225-2000
Facsimile: (212) 225-3999

- and -

MORRIS, NICHOLS, ARSHT & TUNNELL
LLP

/s/ William M. Alleman, Jr.
Derek C. Abbott (No. 3376)
Daniel B. Butz (No. 4227)
William M. Alleman, Jr. (No. 5449)
1201 North Market Street
P.O. Box 1347
Wilmington, Delaware 19801-1347
Telephone: (302) 658-9200
Facsimile: (302) 658-3989

*Proposed Counsel for the Debtors
and Debtors in Possession*
IN THE HIGH COURT OF SOUTH AFRICA
(KWAZULU-NATAL HIGH COURT, DURBAN)

BEFORE THE HONOURABLE MADAM JUSTICE MOKGOHLOA

ON THE 7TH OF DECEMBER 2012

CASE NO: 12827/12

Ex parte:

OVERSEAS SHIPHOLDING GROUP, INC AND 180 OTHERS
(AS LISTED ON ANNEXURE “A” HERETO)  

(Applicants)

DRAFT ORDER

Having read the papers filed of record, and having heard counsel for Applicants:

IT IS ORDERED THAT:

1. This application shall be heard as a matter of urgency in terms of Rule 6(12);

2. The order ("the Order") granted at the Instance of the Applicants by the US Bankruptcy Court, Delaware, under case number 12-20000 (PJW) on 15 November 2012, a copy of which is annexed marked annexure “B”, is recognised;

3. The provisions of the Order, and in particular the automatic stay and related provisions contained in Section 362 of the US Bankruptcy Code ("the Code"), shall apply and be
of full force and effect in the Republic in regard to the Applicants and any assets of any of the Applicants situated in the Republic and/or in its territorial waters at any time;

4. A stay against the commencement or continuation, including the issuance or employment of process, of judicial, administrative or other action or proceeding against the Applicants and/or against their assets (in particular in regard to any vessels owned, operated and/or chartered by or on behalf of any of the Applicants) that was or could have been commenced before the commencement of the Applicants' Chapter 11 cases or recovering a claim against the Applicants that arose before the commencement of the Applicants' Chapter 11 cases whether by way of an action in rem, an action in personam and/or in terms of section 3(6) read with section 3(7), and/or section 5(3), of the Admiralty Jurisdiction Regulation Act No. 105 of 1983, or otherwise, is granted.

5.

5.1. Applicants are directed forthwith to notify in writing the Registrar of this Honourable Court and of the High Courts of Port Elizabeth, East London and Cape Town ("the Registrars") when the automatic stay, incorporated in the Order, ceases to be effective against creditors of the Applicants generally.

5.2. Upon such notification the stay referred to in 3 and 4 shall ipso facto lapse.

6. Service of this Order shall be effected:

6.1. by delivery to each of the Registrars; and
6.2. by way of publication of this order together only with annexure "A" hereto, in one edition each of the Business Day, the Cape Times and the Natal Mercury newspapers.

7. Leave is granted to any interested party to apply to set aside this Order upon not less than 48 hours notice to the Applicants' attorneys, which notice may be given telephonically and by email to Bowman Gilfillan Inc, C M Cunningham +2782 806 6001 and c.cunningham@bowman.co.za.

BY ORDER OF COURT

Bowman Gilfillan
CAPE TOWN
CO/ Van Velden Pike

COURT REGISTRAR

2012-12-07
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OSG Endeavor LLC
OSG Endurance LLC
OSG Enterprise LLC
OSG Financial Corp.
OSG Freedom LLC
OSG Honour LLC
OSG Independence LLC
OSG International, Inc.
OSG Intrepid LLC
OSG Liberty LLC
OSG Lightering Acquisition Corporation
OSG Lightering LLC
OSG Lightering Solutions LLC
OSG Mariner LLC
OSG Maritrans Parent LLC
OSG Navigator LLC
OSG New York, Inc.
OSG Product Tankers AVTC, LLC
OSG Product Tankers Member LLC
OSG Product Tankers II, LLC
OSG Product Tankers I, LLC
OSG Product Tankers, LLC
OSG Quest LLC
OSG Seafarer LLC
OSG Ship Management, Inc.
OSG Valour LLC
Overseas Allegiance Corporation
Overseas Anacortes LLC
Overseas Boston LLC
Overseas Diligence LLC
Overseas Galena Bay LLC
Overseas Houston LLC
Overseas Integrity LLC
Overseas Long Beach LLC
Overseas Los Angeles LLC
Overseas Martinez LLC
Overseas New Orleans LLC
Overseas New York LLC
Overseas Nikiski LLC
Overseas Perseverance Corporation
Overseas Philadelphia LLC
Overseas Puget Sound LLC
Overseas Sea Swift Corporation
Overseas Shipholding Group, Inc.
Overseas Shipping (GR) Ltd.
Overseas ST Holding LLC
Overseas Tampa LLC
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Petromar Limited
Pisces Tanker Corporation
Polaris Tanker Corporation
Queens Product Tanker Corporation
Reymar Limited
Rich Tanker Corporation
Rimar Chartering Corporation
Rosalyn Tanker Corporation
Rosemar Limited
Rubymar Limited
Sakura Transport Corp.
Samar Product Tanker Corporation
Santorini Tanker LLC
Serifos Tanker Corporation
Seventh Aframax Tanker Corporation
Shirley Tanker SRL
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Skopelos Product Tanker Corporation
Star Chartering Corporation
Suezmax International Agencies, Inc.
Talara Chartering Corporation
Third United Shipping Corporation
Tokyo Transport Corp.
Transbulk Carriers, Inc.
Troy Chartering Corporation
Troy Product Corporation
Urban Tanker Corporation
Vega Tanker Corporation
Vivian Tankships Corporation
Vulpecula Chartering Corporation
Wind Aframax Tanker Corporation
ORDER (I) CONFIRMING THE ENFORCEMENT AND APPLICABILITY OF SECTION 362 OF THE BANKRUPTCY CODE AND (II) CONFIRMING THE DEBTORS AUTHORITY WITH RESPECT TO POST-PETITION OPERATIONS

Upon the motion (the “Motion”)^2 of Overseas Shipholding Group, Inc. and certain of its affiliates, as debtors and debtors in possession in the above-captioned cases (collectively, the

---

1 The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor’s tax identification number, are: Overseas Shipholding Group, Inc. (7623); OSG International, Inc. (7117); OSB Bulk Ships, Inc. (2600); 1372 Tanker Corporation (4526); Africa Tanker Corporation (9119); Alcesmar Limited (5306); Almacan Limited (3307); Alpha Suezmax Corporation (1684); Alpha Tanker Corporation (6063); Almas Product Corporation (3808); Andonasar Product Carrier Corporation (8998); Andonasar Tanker Corporation (7100); Andonasar Limited (5312); Antigmar Limited (5303); Aquas Tanker Corporation (7408); Aquarius Tanker Corporation (9161); Athena Limited (3301); Aspro Tanker Corporation (4152); Atlamar Limited (5314); Athens Product Tanker Corporation (9565); Atlas Chartering Corporation (8720); Aurora Shipping Corporation (5649); Avita Tanker Corporation (4155); Batangas Tanker Corporation (8208); L&N Aframax Corporation (9893); Brooklyn Product Tanker Corporation (2097); Cabo Hellas Limited (5299); Cabo Soudion Limited (5298); Caribbean Tanker Corporation (6614); Carina Tanker Corporation (9566); Carl Product Corporation (3807); Concept Tanker Corporation (9150); Crown Tanker Corporation (6059); Delphina Tanker Corporation (3895); Delta Aframax Corporation (9892); DHT Ann Aframax Corp. (9134); DHT Ann VLCC Corp. (9120); DHT Cathy Aframax Corp. (9142); DHT Chris VLCC Corp. (9122); DHT Rebeca Aframax Corp. (9143); DHT Regal Unity VLCC Corp. (9127); DHT Sophie Aframax Corp. (9138); Dignity Chartering Corporation (6901); Edinburg Shipping Corporation (6412); Eight Aframax Tanker Corporation (8100); Epsilon Aframax Corporation (9895); First Chemical Carrier Corporation (2955); First LPG Tanker Corporation (9757); First Union Tanker Corporation (4555); Fourth Aframax Corporation (3807); Front President Inc. (1687); Fullmar Limited (7072); GPC Aframax Corporation (6064); Grace Chartering Corporation (2876); International Seaways, Inc. (5804); Jadamar Limited (7939); Joyce Car Carrier Corporation (1737); Janesu Tanker Corporation (2863); Kinosos Tanker Corporation (3005); Kythnos Chartering Corporation (3263); Leo Tanker Corporation (9159); Levy Product Tanker Corporation (9567); Limar Charter Corporation (9567); Limar Product Tanker Corporation (3136); Luxmar Tanker LLC (4675); Majestic Tankers Corporation (5653); Maple Tanker Corporation (5229); Marmar Product Tanker Corporation (5907); Maremar Tanker LLC (4702); Marilyn Vessel Corporation (9527); Maritran General Partner Inc. (8169); Marine Operating Company L.P. (0496); Millos Product Tanker Corporation (9563); Mindanao Tanker Corporation (8192); Mykonos Tanker LLC (8649); Nedmar Charter Corporation (9560); Oak Tanker Corporation (5234); Ocean Bulk Ships, Inc. (6064); Ocenasia Tanker Corporation (9164); OSG 192 LLC (7638); OSG 209 LLC (7521); OSG 214 LLC (7645); OSG 215 Corporation (7807); OSG 242 LLC (8002); OSG
"Debtors"), for entry of an order, as more fully described in the Motion, enforcing and restating the automatic stay provision of the Bankruptcy Code, the rights of the Debtors to continue business operations, and the status and authority of certain non-Debtor affiliates; and the Court having reviewed the Motion and First Day Declaration; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and it appearing that adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and good and sufficient cause appearing therefore, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.

2. The addressing of the Debtors is: 666 3rd Avenue, New York, NY 10017.

2 Capitalized terms used but not defined in this Order shall have the meaning ascribed to them in the Motion.
2. Subject to the exceptions to the automatic stay provided in Section 362(b) of the Bankruptcy Code and the right of any party in interest to seek relief from the automatic stay under Section 362(d) of the Bankruptcy Code, effective as of the Petition Date, all persons (including individuals, partnerships, corporations, and other entities and all those acting on their behalf) and governmental units, whether of the United States, any state or locality therein or any territory or possession thereof, are stayed, restrained, and enjoined from:

(a) commencing or continuing (including the issuance or employment of process) any judicial, administrative, or other action or proceeding against the Debtors that was or could have been commenced before the commencement of the Debtors' Chapter 11 cases or recovering a claim against the Debtors that arose before the commencement of the Debtors' Chapter 11 cases;

(b) enforcing, against the Debtors or against any vessels or other property of their estates, a judgment or order obtained before the commencement of the Debtors' Chapter 11 cases;

(c) taking any action to obtain possession of vessels or other property of the Debtors' estates or to exercise control over property of the estate or interfere in any way with the conduct by the Debtors of their businesses, including, without limitation, attempts to interfere with deliveries or events or attempts to seize or reclaim any vessels, equipment, supplies, or other assets the Debtors use in their businesses (whether such vessels, equipment, supplies or other assets are owned, leased or otherwise held by the Debtors);

(d) taking any action to create, perfect, or enforce any lien against vessels or other property of the Debtors' estates;
(e) taking any action to create, perfect, or enforce against vessels or other property of
the Debtors any lien to the extent that such lien secures a claim that arose prior to
the commencement of the Debtors' Chapter 11 cases;

(f) taking any action to collect, assess, or recover a claim against the Debtors that
arose prior to the commencement of the Debtors' Chapter 11 cases;

(g) offsetting any debt owing to the Debtors that arose before the commencement of
the Debtors' Chapter 11 cases against any claim against the Debtors; and

(h) commencing or continuing any proceeding before the United States Tax Court
concerning the Debtors, subject to the provisions of 11 U.S.C. § 362(b).

3. Pursuant to Section 362 of the Bankruptcy Code, effective as of the Petition Date,
all persons and domestic governmental units, and all those acting on their behalf, are stayed,
restrained, and enjoined from in any way seizing, attaching, foreclosing upon, levying against, or
in any other way interfering with any and all property of the Debtor or the Debtors' estates,
wherever located.

4. In accordance with Section 362 of the Bankruptcy Code and principles of
international comity and respect for the laws of the United States, foreign governments
(including any division, department, agency, instrumentality or service thereof and all those
acting on their behalf) are requested to refrain from any act specified in paragraph 2 hereof.

5. Effective as of the Petition Date, by operation of law as provided by Section 1107
of the Bankruptcy Code, each Debtor is, and has the legal status, of a debtor in possession.

6. Effective as of the Petition Date, by operation of law as provided by Section 1108
of the Bankruptcy Code, as a debtor in possession each Debtor is authorized to operate its
business in the ordinary course, including, without limitation, negotiating and entering into
business transactions, performing obligations, incurring liabilities and paying amounts in respect of such transactions as of the Petition Date as they become due and payable.

7. All ordinary course business obligations incurred by the Debtors after the Petition Date shall be entitled to administrative expense priority under Sections 503 and 507(a)(2) of the Bankruptcy Code and the Debtors are authorized to satisfy such obligations in the ordinary course of their business.

8. Those direct and indirect subsidiaries of OSG, OIN and OBS that have not sought relief under Chapter 11, including without limitation, OSG Ship Management (UK) Ltd., OSG Ship Management (GR) Ltd., Overseas Ship Management Manila Inc., and Overseas Ship Management Asia Pacific Pte. Ltd., are not part of the Chapter 11 proceedings before this Court and the ability of the OSG non-debtors to negotiate, enter into and perform ordinary course business transactions is not limited by any order of this Court or by the Bankruptcy Code.

9. This Order is declarative and is intended to be coterminous with Sections 362, 363, 541, 1107, and 1108 of the Bankruptcy Code. Nothing herein shall abridge, enlarge, nor modify the rights and obligations of any party.

10. Notwithstanding any provision of the Federal Rules of Bankruptcy Procedure to the contrary, (i) the terms of this Order shall be immediately effective and enforceable upon its entry, (ii) the Debtors are not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order, and (iii) the Debtors may, in their discretion and without further delay, take any action and perform any act authorized under this Order.

11. The requirements set forth in Rule 6003(b) of the Federal Rules of Bankruptcy Procedure are satisfied by the contents of the Motion or otherwise deemed waived.
12. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: Mar. 15, 2012
Wilmington, Delaware

THE HONORABLE PETER J. WALSH
UNITED STATES BANKRUPTCY JUDGE
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
(FORT WORTH DIVISION)

IN RE: §
§
STEPHEN ANTHONY BOTES, §
§ CAUSE NO. __________
Debtor. §
§

PETITION FOR RECOGNITION OF A FOREIGN MAIN
PROCEEDING UNDER TITLE 11 U.S.C. § 1515, AND SUBJECT THERETO
REQUEST FOR RELIEF UNDER TITLE 11 U.S.C. §§1519, 1520, AND 1521

TO THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF
TEXAS, DALLAS DIVISION:

COMES NOW Trustee ANTON LOHSE N.O., as appointed by order of the a Master of the
High Court of South Africa, Transvaal Provincial Division, (the “Trustee”), who files this his
Petition for Recognition of a Foreign Proceeding pursuant to Title 11 U.S.C. § 1515, and subject
thereunto Request for Relief pursuant to Title 11 U.S.C. §§1519, 1520, and 1521 (the “Petition”), and
in support of said Petition would show this Court the following:

I. JURISDICTION; VENUE; PARTIES

1. On November 28, 2003, the High Court of South Africa, Transvaal Provincial
Division issued an order for the sequestration of the estate of Stephen Anthony Botes (hereinafter
referred to as "Debtor Botes"), which initiated a foreign main proceeding in South Africa as defined by Title 11 U.S.C. § 1502(4) (the "Foreign Proceeding").

2. On or about June 8, 2004, the Trustee filed a motion supported by affidavit with the High Court of South Africa, Transvaal Provincial Division seeking permission to seek aid from a court of competent jurisdiction in the United States of America to act in aid of the High Court of South Africa, Transvaal Provincial Division (the "Motion"). On or about June 17, 2004, the High Court of South Africa, Transvaal Provincial Division issued an order granting the Motion (the "Order"), and issued a Letter of Request (the "Letter") requesting that a court of competent jurisdiction in the United States of America, inter alia, recognize the Foreign Proceeding and recognize the Trustee as the duly appointed provisional trustee of the estate of Stephen Anthony Botes. A true and correct copy of said Motion, Order, and Letter are attached hereto as "Exhibit A," and are incorporated by reference as if fully set forth herein.

3. At some point at or around the time of the initiation of the Foreign Proceeding, Debtor Botes fled from South Africa and it is believed that he took up residence at 18725 Dallas Parkway, Apartment 821, Dallas, Texas 75287, and then at a later date moved to 3701 Grapevine Parkway, Apartment or Suite 1927, Grapevine, Texas 76051. Further, upon information and belief, Debtor Botes has an ownership interest and/or acts as the Vice President of Webforex USA, Inc., an entity affiliated with Webforex, Ltd. (SA), an entity earlier made the subject of an ancillary proceeding recognized in the United States Bankruptcy Court for the Northern District of Texas, and has an ownership interest in and/or acts as the Secretary of Filgrais USA, Inc.

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*In the South African case, Debtor's family members have declined to state his whereabouts.*
4. This court has jurisdiction over this proceeding pursuant to Title 28 U.S.C. §§157, and 1334; Title 11 U.S.C. §1501(b); and Miscellaneous Rule 33 of the United States District Court for the Northern District of Texas.

5. Because there are no proceedings currently commenced against Debtor Botes in this district and because Debtor Botes resides in Dallas County, Texas, venue is proper in this district by virtue of 28 U.S.C. §1409(c) and the Texas Civil Practices Code §15.002.

II. BACKGROUND FACTS

6. The Trustee hereby reincorporates and alleges the factual allegations set forth in paragraphs 1-6, as if fully set forth herein.

7. While investigating the whereabouts of Debtor Botes’ assets in the Foreign Proceeding, the Trustee discovered that Debtor Botes and an individual named Leon Lourens Wolmarans (“Wolmarans”), also an individual subject to an ancillary foreign proceeding in the United States Bankruptcy Court for the Northern District of Texas, canvassed investments from unsuspecting and innocent members of the public in South Africa and Namibia by making the representation that Webforex, Ltd. acted as an agent and in concert with a company registered in the United States of America, being Webforex USA, Inc. It was further represented that money invested with Webforex, Ltd. would be transferred to Webforex USA, Inc., and that Webforex USA, Inc. would then trade the money on the international monetary market. Contrary to these representations by Debtor Botes and Wolmarans, the money invested by members of the public in South Africa and Namibia was funneled back to South Africa to finance the opulent lifestyle of, amongst others, Debtor Botes.
8. The Trustee estimates that the total amount collected from the South African and Nambian public was 80,000,000.00 South African Rand or approximately $12,500,000.00 United States Dollars. Upon information and belief, the Trustee believes that Debtor Botes transferred some or all of his assets (both those assets obtained from defrauding members of the public in South Africa and Namibia, and assets obtained through other means) to financial institutions within the territorial jurisdiction of the United States of America. These institutions include, but are not limited to, Forex Capital Markets ("FXCM") and the Bank of America, N.A. ("Bank of America").

9. The Trustee contacted FXCM and Bank of America in an attempt to ascertain whether the assets held under Debtor Botes’ name by FXCM and/or Bank of America were assets transferred by Debtor Botes to the United States of America after the initiation of the Foreign Proceeding and/or obtained through Debtor Botes’ fraud on members of the public of South Africa and Namibia. Representatives of FXCM and Bank of America responded that the information requested by the Trustee would not be provided without a court order issued from a court in the United States of America.

10. Based upon Debtor Botes’ participation in a fraud against members of the public in Namibia and South Africa, coupled with Debtor Botes’ flight to the United States of America in an attempt to avoid the jurisdiction of the courts in South Africa, the Trustee believes that Debtor Botes will attempt to conceal, hide, transfer, or otherwise attempt to obstruct the Trustee’s access to Debtor Botes’ assets. Further, without cooperation of this Court, the Trustee will not be able to obtain information held by Debtor Botes and/or financial institutions regarding Debtor Botes’ assets within the jurisdiction of the United States of America.
III. REQUEST FOR RELIEF

11. The Trustee requests that this court enter an order giving recognition to the Foreign Proceeding, and recognize the Trustee’s appointment in the Foreign Proceeding as the provisional trustee of Debtor Botes’ estate in accordance with Title 11 U.S.C. §1517. In support of this Petition, the Trustee submits his affidavit (the “Affidavit”) verifying the factual statements made herein, and includes, within the Affidavit, a statement of foreign proceedings as required by Title 11 U.S.C. §1515(c). A true and correct copy of said Affidavit is attached hereto as “Exhibit B,” and is incorporated by reference as if fully set forth herein.

12. In order to protect and preserve the value of the assets that Debtor Botes transferred from South Africa to the United States of America or that were obtained by Debtor Botes through the fraud he committed against members of the public of Nambia and South Africa (the “S.A. Assets”), the Trustee requests that this Court immediately enter the following orders until the Court determines whether this Petition satisfies the requirements of Title 11 U.S.C. §1515:

a. a stay of executions of Debtor Botes’ assets in accordance with Title 11 U.S.C. §1519(1);

b. the entrustment of all of Debtor Botes’ S.A. Assets in the United States of America to the Trustee in accordance with Title 11 U.S.C. §1519(2);

c. suspension of Debtor Botes’ rights to transfer, encumber, or otherwise deposite assets in accordance with Title 11 U.S.C. §1519(3);

d. the production of documents, papers or records related to the assets and/or liabilities of Debtor Botes’; institute proceedings against third parties to enjoin or restrain the transfer or disposition of assets of Debtor Botes; and commence discovery of, from or against third parties to obtain information regarding assets and liabilities of assets, affairs, rights, obligations or liabilities in accordance with Title 11 U.S.C. §1519(3); and,
e. any other relief available to a Trustee of the United States of America under Title 11 U.S.C., except those prohibited by Title 11 U.S.C. § 1519(3).

13. The Trustee requests this Court make such other and additional orders pursuant to Title 11 §1507 that the Court deems reasonable and/or necessary to assure a consistent resolution of this matter according to the principles of comity with the Foreign Proceeding.

14. In addition to the relief requested above, the Trustee respectfully requests that upon entry of an order by this Court granting recognition of the Foreign Proceeding that the Court contemporaneously enter an order granting an extension of any relief the Court entered above in accordance with Title 11 U.S.C. § 1521(a)(6).

15. The Trustee also respectfully requests that upon recognition of the Foreign Proceeding, the Court also enter an order granting the following relief as authorized by Title 11 U.S.C. § 1520(a):

   a. that Title 11 U.S.C. §§ 361, and 362 apply with respect to Debtor Botes and the property of Debtor Botes;

   b. that Title 11 U.S.C. §§ 363, 549, and 552 apply to the transfer of the property of Debtor Botes’ estate; and,

   c. that the Trustee be entitled to operate Debtor Botes’ businesses and exercise the rights and powers of a trustee under Title 11 U.S.C. §§ 363, and 552 of assets identified as S.A. Assets.

Further, the Trustee requests that this Court enter an order grant the following relief as authorized by Title 11 U.S.C. § 1521(a)(1-7):

   a. a stay of any commencement of an individual action concerning Debtor Botes' assets;

   b. a stay of the execution of Debtor Botes’ assets;
c. suspend or continue the suspension of Debtor Botes' right to transfer, encumber, or otherwise dispose of any assets belonging to Debtor Botes;

d. authorize the examination of witnesses and/or the taking of evidence and/or delivery of information regarding Debtor Botes' assets, affairs, rights, obligations, or liabilities;

e. authorize the Trustee to administer assets identified as S.A. Assets, to protect the interests of the South African estate and its creditors consistent with South African law, to exercise the rights and duties of the Trustee under South African law, and to prosecute and pursue any and all causes of action available under applicable law for recovery of S.A. Assets or their proceeds and/or for avoidance of avoidable or fraudulent transfers;

f. and for any such other and further powers, rights or relief available to a trustee under Title 11 of the United States Code over assets identified as S.A. Assets, including, without limitation, the appointment of professionals and the appointment of local representatives to act under color of the Trustee's authority as may be required or expedient in lieu of his personal attendance from overseas unless otherwise ordered by this Court.

WHEREFORE, PREMISES CONSIDERED, Provisional Trustee ANTON LOHSE N.O. as appointed by order of the a Master of the High Court of South Africa, Transvaal Provincial Division, respectfully requests that this Court enter an order recognizing the foreign proceeding before the High Court of South Africa, Transvaal Provincial Division, Case Number 15003/2004 before The Honorable Mr. Justice Seriti, and enter the relief requested herein, and such further and other relief, whether at law or in equity, to which ANTON LOHSE N.O. may be justly entitled.

P peti t i on for Recognition of a Foreign Main Proceeding under Title 11 U.S.C. §§ 1519, 1520, AND 1521, and Subject Thereto Request for Relief under Title 11 U.S.C. §§ 1519, 1520, and 1521
Respectfully submitted,
STROMBERG & ASSOCIATES, P. C.

By:  
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MICHAEL H. MYERS
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IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

CASE NO: /2004

In the ex parte application of:

ANTON LOHSE N.O.
(in his capacity as Provisional Trustee of
Stephen Anthony Botes, id: 660929 5060 083)

LETTER OF REQUEST

1. The Registrar of the High Court of South Africa (Transvaal Provincial Division) hereby requests a court of competent jurisdiction in the United States of America to act in aid of the High Court of South Africa (Transvaal Provincial Division) for the purposes of recognising the appointment of the applicant as the duly appointed provisional trustee of Stephen Anthony Botes;

2. That the applicant is authorised to institute and proceed to the final determination of such proceedings as may be required to be instituted in any court of competent jurisdiction in the United States of America to obtain recognition of the appointment of the applicant as the provisional trustee of Stephen Anthony Botes.
3. That the applicant is authorised to institute and proceed to the final determination of such proceedings as may be necessary in any court of competent jurisdiction for the recovery of all immovable and moveable property situated in the United States of America which belongs to Stephen Anthony Bates;

4. That the applicant is authorised to institute and proceed to the final determination of such proceedings as may be necessary in any court of competent jurisdiction in the United States of America in achieving the proper and effective finalisation at the sequestration of the estate of Stephen Anthony Bates;

5. That the applicant, without limiting the generality of the aforesaid, is authorised to institute and proceed to the final determination thereof in any other court of competent jurisdiction in the United States of America:

5.1 Proceedings of injunctive or interdictory relief against any party, including, but not limited to, the Bank of America, Fingrate USA Inc., Forex Capital Markets LLC, Anthony C Elliot, Webforex USA Incorporated and/or Global Capital Investment LLC and Stephen Anthony Bates;

5.2 Proceedings for an order that any party, including, but not limited to, the Bank of America, Fingrate USA Incorporated, Forex Capital Markets LLC, Anthony C Elliot, Webforex USA Incorporated produce to the applicant all documents, papers or other records relating to or having any connection with Stephen Anthony Bates;
5.3 Proceedings against any party, including, but not limited to, the Bank of America, Fingrate USA Incorporated, Forex Capital Markets LLC, Anthony C Elliot, Webforex USA Incorporated and/or Global Capital Investment LLC, restraining them from making any payments or transferring money out of any account in the name of Webforex USA Incorporated, Fingrate USA Incorporated or Stephen Anthony Botes and/or any person or any person or entity associated with them;

5.4 Proceedings for an order for the examination of any party, including, but not limited to representatives of the Bank of America, Fingrate USA Incorporated, Forex Capital Markets LLC, Anthony C Elliot, Webforex USA Incorporated and/or Global Capital Investment LLC, before a Judge of the Federal Bankruptcy Court or any other competent officer of any competent jurisdiction;

5.5 Proceedings for restraining the disclosure of any other order granted by a competent court in the United States of America and any evidence pursuance thereto.

BY ORDER

[Signature]

THE REGISTRAR
IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

CASE NO: 15003 /2004

PRETORIA 11 JUNE 2004
BEFORE THE HONOURABLE MR JUSTICE SERITI

In the ex parte application of:

ANTON LOHSE N.O.
(in his capacity as Provisional Trustee of
Stephen Anthony Botes, id: 6609296060033)

APPLICANT

Draft Order

After reading the papers and hearing counsel for the Applicant, an order in the following terms is made:

1. That this application be heard as an urgent application and that the rules and time periods prescribed in the Uniform Rules of Court are dispensed with;

2. That letters of request be issued by the Registrar of this Court requesting a court of competent jurisdiction in the United States of America to act in aid of the High Court of South Africa (Transvaal Provincial Division) for the purposes of recognising the appointment of the applicant as the duly appointed provisional trustee of Stephen Anthony Botes;
3. That the applicant’s powers and duties be extended in terms of provisions of Section 18(3) of the Insolvency Act, Act 24 of 1936 to bring this application and to perform any act ancillary to the relief granted.

4. That the applicant is authorised to institute and proceed to the final determination of such proceedings as may be required to be instituted in any court of competent jurisdiction in the United States of America to obtain recognition of the appointment of the applicant as the trustee of Stephen Anthony Bates;

5. That the applicant is authorised to institute and proceed to the final determination of such proceedings as may be necessary in any court of competent jurisdiction for the recovery of all immovable and moveable property situated in the United States of America which belongs to Stephen Anthony Bates;

6. That the applicant is authorised to institute and proceed to the final determination of such proceedings as may be necessary in any court of competent jurisdiction in the United States of America in achieving the proper and effective finalisation at the sequestration of the estate of Stephen Anthony Bates;

7. That the applicant, without limiting the generality of the aforesaid, is authorised to institute and proceed to the final determination thereof in any other court of competent jurisdiction in the United States of America:
7.1 Proceedings of injunctive or interdictory relief against any party, including, but not limited to, the Bank of America, Fingrate USA Inc., Forex Capital Markets LLC, Anthony C Elliot, Webforex USA Incorporated and/or Global Capital Investment LLC and Stephen Anthony Bates;

7.2 Proceedings for an order that any party, including, but not limited to, the Bank of America, Fingrate USA Incorporated, Forex Capital Markets LLC, Anthony C Elliot, Webforex USA Incorporated produce to the applicant all documents, papers or other records relating to or having any connection with Stephen Anthony Bates;

7.3 Proceedings against any party, including, but not limited to, the Bank of America, Fingrate USA Incorporated, Forex Capital Markets LLC, Anthony C Elliot, Webforex USA Incorporated and/or Global Capital Investment LLC, restraining them from making any payments or transferring money out of any account in the name of Webforex USA Incorporated, Fingrate USA Incorporated or Stephen Anthony Bates and/or any person or any person or entity associated with them;

7.4 Proceedings for an order for the examination of any party, including, but not limited to representatives of the Bank of America, Fingrate USA Incorporated, Forex Capital Markets LLC, Anthony C Elliot, Webforex USA Incorporated and/or Global Capital Investment LLC, before a Judge of the Federal Bankruptcy Court or any other competent officer of any competent jurisdiction;
7.5 Proceedings for restraining the disclosure of any other order granted by a competent court in the United States of America and any evidence pursuant thereto.

8. That the costs of this application be costs in sequestration of the estate of Stephen Anthony Botes.

BY ORDER:

THE REGISTRAR
IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

Case number: 15003/04

APPLICANT

In the ex parte application of:

ANTON LOHSE N.O.

(In his capacity as provisional trustee of
Stephen Anthony Botes)

NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE that application will be made on behalf of the abovementioned Applicant on the 6th of June 2004 at 12h30 or as soon thereafter as council may be heard for an order in the following terms:

1. That this application be heard as an urgent application and that the rules and that the time periods prescribed in the Uniform Rules of Court be dispensed with.

2. That the letters of request be issued requesting a court of competent jurisdiction in the United States of America to act in aid of the High Court of South Africa (Transvaal Provincial Division) for the purposes of recognising the appointment of the Applicant as the duly appointed provisional trustee of Stephen Anthony Botes;

3. That the Applicant's power and duties be extended in terms of the provisions of Section 18(3) of the Insolvency Act, Act no 24 of 1936 to bring this application and to perform any act ancillary to the relief granted;
4. That the Applicant be authorised to institute and proceed to the final determination of such proceedings as may be required to be instituted in any court of competent jurisdiction in the United States of America to obtain recognition of the appointment of the Applicant as the trustee of Stephen Anthony Botes;

5. That the Applicant be authorised to institute and proceed to the final determination of such proceedings as may be necessary in any court of competent jurisdiction for the recovery of all immovable and movable property situated in the United States of America which belongs to Stephen Anthony Botes;

6. That the Applicant be authorised to institute and proceed to the final determination of such proceedings as may be necessary in any court of competent jurisdiction in the United States of America in achieving the proper and effective finalisation at the sequestration of the estate of Stephen Anthony Botes;

7. The Applicant, without limiting the generality of the foregoing, be authorised to institute and proceed to the final determination thereof in any other court of competent jurisdiction in the United States of America:

7.1 Proceedings for injunctive or interdictory relief against any party, including, but not limited to, the Bank of America, Fingrate USA Inc., Forex Capital Markets LLC, Anthony C Elliot, Webforex USA Inc and/or Global Capital Investment LLC and Stephen Anthony Botes;

7.2 Proceedings for an order that any party, including, but not limited to, the Bank of America, Fingrate USA Inc, Forex Capital Markets LLC, Anthony C Elliot, Webforex USA Inc to produce to the Applicant all documents, papers and other records relating to or having any connection with Webforex and/or Stephen Anthony Botes;
7.3 Proceedings against any party, including, but not limited to, the Bank of America, Fingrate USA Inc., Forex Capital Markets LLC, Anthony C Elliot, Webforex USA Inc and/or Global Capital Investment LLC, restraining them from making any payments or transferring money out of any account in the name of Webforex, Fingrate USA Inc or Stephen Anthony Botes and/or any person or entity associated with them;

7.4 Proceedings for an order for the examination of any party, including, but not limited to representatives of the Bank of America, Fingrate USA Inc., Forex Capital Markets LLC, Anthony C Elliot, Webforex USA Inc and/or Global Capital Investment LLC, before the Master or any competent officer of any competent jurisdiction;

7.5 Proceedings for restraining the disclosure of any order granted by a competent court in the United States of America and any evidence pursuance thereto.

8. That the costs of this application be costs in the sequestration of the estate of Stephen Anthony Botes;

9. Further and/or alternative relief.

BE PLEASED TO TAKE FURTHER NOTICE that the affidavit of Anton Lohse, annexed hereto, will be used in support of this application.

KINDLY place the matter on the roll for hearing accordingly.

SIGNED AT PRETORIA ON THIS ___ DAY OF JUNE 2004
TO: THE REGISTRAR OF THE HIGH COURT
PRETORIA
IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

CASE NO: /2004

In the ex parte application of:

ANTON LOHSE N.O.  

APPLICANT

(in his capacity as Provisional Trustee of
Stephen Anthony Botes, id: 660929 5060 083

FOUNDING AFFIDAVIT

I, the undersigned,

ANTON LOHSE

do hereby make oath and say that:

1.

1.1 I am an adult male insolvency practitioner employed as a director of the company Macro Trustees (Pty) Ltd with principal place of business at SAAU Building, 25th Floor, Andries- and Schoeman Streets, Pretoria.

1.2 The facts contained herein are within my personal knowledge, except where otherwise stated or where the converse appears from the contents hereof; and
The facts contained herein are also, to the best of my knowledge and belief true and correct.

On the 9th December 2003 it was appointed by the Master of the above Honourable court as the provisional trustee of Stephen Anthony Botes (hereinafter referred to as "Botes") as appears from a copy of the letter of appointment annexed hereto as annexure "AL1".

THE SEQUESTRATION OF THE ESTATE OF STEPHEN ANTHONY BOTES BY THE HIGH COURT OF SOUTH AFRICA (BOPHUTHATSWANA PROVINCIAL DIVISION)

3.1 On 19 June 2003 the final order for the sequestration of the estate of Botes was granted by the High Court of South Africa (Bophuthatswana Provincial Division).

3.2 A copy of the sequestration order is attached hereto as "AL2".

3.3 Subsequent to the granting of the provisional order the Master of the High Court in Mmabatho appointed Mr. Venter of Maurice Schwartz Venter & Associates as Botes' provisional trustee.
3.4 After the first meeting of creditors the Master in Mmabatho appointed me as Botes' trustee. A copy of the Letter of Appointment is attached hereto as "AL3".

3.5 After my appointment I initially had difficulty to trace Botes.

3.6 I eventually traced Botes at 49 Lincoln Avenue, Woodmead, Sandton, Johannesburg. When I attended to the property together with the Sheriff to make an inventory in terms of Section 19 of the Insolvency Act, Botes initially told me that he was a Stephen Cooper and that he did not know Mr. Botes. When I requested him to gain access to the property in order to inspect it, he refused access.

3.7 I had to obtain a Warrant in terms of Section 69(3) of the Insolvency Act to gain access to the property and to secure the assets;

3.8 When I attended to the property and gained access to it in terms of the warrant, Botes confirmed that he was in fact the insolvent. He however advised me that he and his wife were tenants of a flatlet situated on the property and that he did not know who the owner of the property was.

3.9 I gained access to the main building whereafter Botes advised me that the clothing inside belonged to him and his wife, but he still did not know to whom the movable property belonged to.
3.10 This encounter with Botes was my first and my last encounter. I will later deal with his current whereabouts.

3.11 I eventually established that the immovable property was registered in a company Stand One Hundred and Fifty Woodmead (Pty) Ltd. The director of this company is one Mr. David Hugo, an attorney in Johannesburg.

3.12 After a meeting with Hugo I established that the company was initially a close corporation and that Botes was the sole member. During and about 1999 Botes transferred his membership and interest to Hugo and simultaneously had the close corporation converted into a company.

3.13 Hugo also told me that the property was sold and was on the verge of being transferred into the name of the new purchaser. He also told me that he was the sole shareholder of the company, but that he held the shares as a nominee for a trust, The Benton Trust. The insolvent is both a trustee and a beneficiary of this trust. Hugo however failed to explain why The Benton Trust never took transfer and ownership of the shares.

3.14 I requested Hugo to give me an undertaking not to pay out the proceeds of the transfer, which he was seeing to himself, to any third party and to secure it on behalf of the estate. He refused to do so.
3.15 As a result of Hugo's refusal I had to approach the abovementioned Honourable court on an urgent basis to interdict the transfer of the property. Such an order was in deed granted.

3.16 I also established that the insolvent's auditor, a Mr. J H Preller of Potchefstroom, deposited an amount of R460 000.00 into the current account of Botes' wife, held at the Eastgate branch of Standard Bank. I caused the funds to be frozen in terms of Section 21 of the Insolvency Act.

3.17 Shortly after the funds were frozen, Botes' wife requested me in writing to release amongst other things the R460 000.00, stating that it belonged to Mr. Preller. According to Botes' wife her account was merely used as a conduit to facilitate a transaction in terms of which Mr. Preller would pay R460 000.00 into her account, she would, in turn, deduct an amount of R10 000.00 as "agent's commission" and would pay the balance over to her father, who would then invest these funds together with funds of an old age home with Standard Bank.

3.18 I was not satisfied with this explanation and decided to convene an interrogation in terms of Section 152 of the Insolvency Act before the Master in Mmabatho.

3.19 The Master issued subpoenas against amongst others Mr. Preller and Botes' wife.
3.20 When my legal team and I arrived at the office of the Master in Mmabatho we were confronted with an interdict prohibiting us and the Master from proceeding with the interrogation.

3.21 It appeared that Mr. Preller, without notifying me, launched an urgent application in the Bophuthatswana Provincial Division to have the sequestration order set aside on the basis that the court never had jurisdiction to grant a sequestration order.

According to Mr. Preller:

3.21.1 Botes never lived or worked within the jurisdiction area of the Bophuthatswana Provincial Division;

3.21.2 He obtained a judgement against Botes in the Magistrate’s Court of Pretoria;

3.21.3 The sequestration was a so called “friendly” sequestration;

3.21.4 He managed to make telephonic contact with Botes who confirmed that it was a so called “friendly” sequestration;

3.21.5 That the immovable property referred to in the sequestration application in order to show that there was a benefit for creditors, did in fact not belong to the insolvent;
3.21.6 That I, as the trustee of Botes, refused to release the amount of R460,000.00;

3.21.7 That the subpoena served on him in terms of Section 152 of the Insolvency Act was not properly served;

3.21.8 That he found himself in a position to attend an enquiry before the Master in terms of a sequestration order, which was illegally obtained and granted.

3.22 The judge who heard the matter was not prepared to grant such an order, but granted an interdict against myself and the Master to proceed with the enquiry. He also directed Mr. Preller to join both myself and the Master as parties to his initial application.

3.23 Simultaneously with being joined as a party, Mr. Preller attempted to amend his Notice of Motion in order to obtain an order against myself to repay the R460,000.00 and in the alternative thereto, the setting aside of the sequestration order against Mr. Botes. I was obviously compelled to oppose this application.

3.24 The Bophuthatswana Provincial Division set aside the sequestration order on the 3rd June 2004 and in this regard I annex hereto as Annexure "AL4" a copy of the judgement.
SEQUESTRATION OF THE ESTATE OF STEPHEN ANTHONY BOTES BY THE HIGH COURT OF SOUTH AFRICA (TRANSVAAL PROVINCIAL DIVISION):

4.1 After Absa Bank Limited, one of Botes' major creditors, established what had happened in Mmabatho it successfully launched an application for the provisional sequestration of Botes in this Honourable court on the 28th November 2003.

4.2 The Master of this Honourable court appointed me as Botes' provisional trustee as appears from annexure "AL1" hereto.

4.3 On the return date mr. Preller requested an extension, as he wanted to intervene in the proceedings to oppose the granting of a final sequestration order.

4.4 As there is a duty on me to investigate the affairs of Botes and to secure assets for the benefit of creditors I decided to convene an interrogation in terms of Section 152 of the Insolvency Act before the Master in Pretoria.

4.5 The Master in Pretoria also issued a subpoena for mr. Preller to testify. Once again mr. Preller did not want to testify and launched an urgent application against myself, my attorney, mr. Schabort, and the Master in Pretoria to set aside the subpoena. Mr. Preller also requested the court to grant a punitive cost order against attorney Schabort and I de bonis propriis on an attorney and own client scale.
4.6 The court dismissed this application on an attorney and own client cost scale.

4.7 Despite the fact that mr. Preller was unsuccessful with his application he failed to attend the interrogation and a warrant to ensure his presence at the next hearing was issued.

4.8 At the continuation of the interrogation mr. Preller was unable to furnish proof that the funds that he paid into the account of Botes' wife, belonged to him (Preller). The Master instructed mr. Preller to furnish him with documentary proof regarding the ownership of the funds and warned him to be present at the next hearing. Mr. Preller failed to do so.

5.

THE INVOLVEMENT OF ATTORNEY JOHN TRIBELHORN:

5.1 Throughout the proceedings in Mmabatho, mr. Preller was represented by attorney John Tribelhorn of Pretoria.

5.2 Mr. Tribelhorn also acted on behalf of mr. Preller in attempting to intervene as a creditor to stop the confirmation of the final sequestration order by this Honourable court.

5.3 Later on mr. Tribelhorn acted for Botes. While knowing that mr. Schabort was acting on behalf of Absa Bank Limited, mr. Tribelhorn deemed it fit to directly approach Absa Bank Limited and
tried to convince them not to proceed with the confirmation of a final order against Mr. Botes. This was done despite Mr. Schabert having requested Mr. Tribelhorn not to contact his client directly.

5.4 Eventually Mr. Tribelhorn indicated that neither Mr. Preller nor Mr. Botes would attempt to oppose the confirmation of the provisional order. Mr. Tribelhorn also advised Mr. Schabert that Botes “temporary” moved to the United States of America, but would return to South Africa for an interrogation in terms of Section 152. In this regard I annex hereto as annexure “AL5” a copy of attorney John Tribelhorn’s letter of 12 March 2004 addressed to Mr. Schabert.

5.5 I recently interrogated the father-in-law of Botes, who confirmed that Botes and his wife have left the Republic of South Africa with the intention to make Dallas, Texas, the United States of America their permanent residence.

6.

BOTES’ ASSETS IN THE UNITED STATES OF AMERICA:

6.1 According to information in my possession Botes is the vice president of an American company, Webforex USA Incorporated, and in this regard I annex hereto as annexure “AL6” a copy of Webforex USA Incorporated’s application as a trader with Global Capital Markets Investments LLC. This document was signed by Leon Lourens Wolmarans in his capacity as President and Botes in his capacity as Vice President on the 15th August 2001.
6.2 Apart from the above another company, called Fingrate USA Incorporated of which Botes is allegedly the secretary, applied to become a trader with Forex Capital Markets during February 2003. In this regard I annex hereto as annexure "AL7" a copy of this application.

6.3 According to information in my possession Fingrate USA Incorporated traded on a foreign exchange platform in New York (FXCM) as early as March 2003. It seems as if an amount of $70 000.00 was transferred from the Webforex account to the Fingrate USA Incorporated account at FXCM and was later on "wired out" to an unknown destination. I will later on deal with the Webforex aspect.

6.4 I also established that Botes stays or must have stayed at 18725 Dallas Pkwy Apt 821, Dallas, Texas, United States of America and in this regard attach hereto as annexure "AL8" the first and forth pages of a search done by means of computer. It also appears from the search that the State of Texas issued a driver's licence for Botes.

6.5 I believe that Botes has fled the Republic of South Africa and is continuing with his business operations in the United States of America.

WEBFOREX LIMITED (IN LIQUIDATION) AND THE INSOLVENT ESTATE OF LEON LOURENS WOLMARANS:
7.6 In this regard I wish to add that Mr. Triebelhorn now also acts as Mr. Wolmarans' attorney.

8. THE NATURE OF THE BUSINESS OF WEBFOREX LIMITED (IN LIQUIDATION)

8.1 Webforex, Wolmarans and Botes canvassed investments from unsuspecting and innocent members of the public.

8.2 Webforex, Wolmarans and Botes represented to members of the public that Webforex acted as an agent and in co-action with a company registered in the United States of America, being Webforex USA Incorporated. It was represented that money would, with the intervention of Webforex, be transferred to Webforex USA Incorporated and that Webforex USA Incorporated would then trade with the monies so invested on the international monetary market.

8.3 On the strength of the aforesaid representations Webforex, Wolmarans and Botes succeeded in obtaining huge so-called "investments" from members of the South African and Namibian public. Initial calculations indicate that an amount of approximately R80 million was so canvassed and invested.

8.4 Indications at this stage are that all the monies so canvassed and invested was not utilised in the international market. A huge portion of the money was apparently routed to the Republic of South Africa and it was used to finance a luxurious lifestyle amongst others Botes.
8.5 Suffice to say, however at this point in time that I am not in a position to investigate and to obtain all information pertaining to the assets of Botes in the United States of America and all the information pertaining to all the transactions concluded regarding the property of Webforex, Wolmarans and Botes in the United States of America.

8.6 A close inspection of the bank statements from the Bank of America reveal that huge amounts were paid over by members of the public in USA dollar currency and that huge amounts were transferred to unknown destinations and some transferred to the payment of the apparent personal expenses of mr. Wolmarans.

9.

THE ATTITUDE OF THE FINANCIAL INSTITUTIONS IN THE UNITED STATES OF AMERICA:

9.1 Subsequent to my appointment as provisional liquidator of Webforex and the appointment of Andries Petrus Jacobus Els as provisional trustee of Wolmarans, I corresponded telephonically and in writing with FXCM and the Bank of America. Both the Bank of America and FXCM indicated to me that they are not prepared to furnish any information to me, unless they are presented with a court order issued by a competent court in the United States of America.
9.2 In this regard I discussed the furnishing of information to me with David S Sassoon the compliance director of Forex Capital Markets LLC and the managing director of Forex Capital Markets LLC, David Sakhai.

9.3 Forex Capital Markets LLC even forwarded an e-mail to me in which they state the following:

"Please be advised that in the light of the pending provisional liquidation proceedings instituted by the South African Department of Justice against Webforex Limited and Leon Lourens Wolmarans, FXCM has temporarily frozen the accounts of Webforex Limited and Leon Lourens Wolmarans.

I am advised that there is no treaty between S Africa and the United States for the reciprocal enforcement of bankruptcy orders.

Accordingly, at this juncture, FXCM will not release funds, documents or information until these matters are resolved in a court of competent jurisdiction. No! withstanding the above, FXCM will be obliged to do anything required by law and invite you to quote any authority on the basis of which you content that a foreign liquidator is automatically recognised under USA Law, as distinct from being recognised consequently upon an ancillary, winding up / bankruptcy proceeding instituted in the relevant state of the United States".

A copy of this e-mail is annexed hereto as annexure "AL11".
9.4 In view of the aforesaid, I humbly submit that no financial institution in the United States of America will even entertain a request by myself for access to information without being mandated so by a court of competent jurisdiction. In view of the aforesaid, I humbly submit that I am acting in the interest of the creditors in my endeavours to obtain information regarding the assets belonging to Bates.

9.5 I have *prima facie* evidence in my possession that Bates possesses assets in the United States of America and that such assets might be recovered during proceedings in the United States of America.

9.6 I am of the *bona fide* view that proceedings should be taken in the United States of America to recover assets that belong to Bates.

10.

**URGENCY:**

10.1 It is contended that this application is inherently urgent.

10.2 The assets belonging to Bates can be disposed of at any moment by Bates.

10.3 At least some of the assets of Bates are in the form of foreign capital and the monies so traded can be extinguished at any point in time.
10.4 Until recently I was unaware that Botes left the Republic of South Africa. He did so without my permission and has yet to furnish me with a Statement of Affairs, as required in terms of the Insolvency Act.

10.5 I also attempted to obtain all possible information in the Republic of South Africa before proceeding with the current application.

I therefore respectfully request an order as set out in the Notice of Motion.

[Signature]

DEPONENT

I, the undersigned, hereby certify that the Deponent has acknowledged that he knows and understand the contents of this declaration which was sworn to me in terms of the requirements as has been set out in Government Notice R1258 dated 21 July 1972 as amended by Government Notices No's R1648 dated 19 August 1977 and R1428 dated 11 July 1980. The deponent's signature was placed thereon in my presence at PRETORIA this 7th day of JUNE 2004.

[Signature]

COMMISSIONER OF OATHS
Insolvensiewet, No 24 van 1936
(soos gewysig) [Artikel 18 (1) en 56 (2)]

SERTIFIKAAAT VAN AANSTELGING VAN VOORLOPIGE KURATOR(S)/KURATOR(S)

No. T4625/2003

Hierby word gesertifiseer dat

ANTON LOHSE
MACRO TRUSTEES (EDMS) BPK.
POSBUS 276
PRETORIA
0001

aangestel word as Voorlopige Kurator(s)/Kurator(s) van die insolvente boedel van:

STEPHEN ANTHONY BOTES, ID: 660929 5060 083

wat op Bevel van die Hooggeregshof van Suid-Afrika (Transvaalse Provinciale Afdeling) gedateer die 28ste dag van NOVEMBER dag van 2003

*voorlopig gesekwestreer/gesok·Nes&reer is, met die magte en bevoegdhede soos uiteengesit in die Insolvensie-wet, 1936 (Wet 24 van 1936)

Asst. Meester van die Hooggeregshof

(__________________________Afdeling)

*Skrap wat nie van toepassing
IN THE HIGH COURT OF SOUTH AFRICA
(BOPHUTHATSWANA PROVINCIAL DIVISION)
CASE NO. 289/2004

Held at MMABATHO on this the 19th day of JUNE 2004
BEFORE the Honourable Mr Justice MONARE AJ

In the matter between:

SAAYMAN ALICE HARRIET
and
BOJLES, STEPHEN ANTHONY
(IDENTITY NO. 660929 5060 083)(DIVORCE)

HAVING HEARD ADV. ZWIEGELAAR on behalf of the Applicant and having read the Notice of Motion and other documents filed:

IT IS ORDERED

THAT: The Draft Order marked "X" be and is hereby made an Order of Court.

BY THE COURT

AKA

EXHIBIT A-6
DEPARTEMENT VAN JUSTISIE

SERTIFIKAAT VAN AANSTELLING VAN *VOORLORIGE KURATOR(S) / KURATOR(S)
CERTIFICATE OF APPOINTMENT OF *PROVISIONAL TRUSTEE(S) / TRUSTEE(S)

No: M11/2003

Hierby word gesertifiseer dat:
This is to certify that

MR ANTON LOHSE, OF MACRO TRUSTEES (Pty) Ltd

PRETORIA
8001

aangestel word as *Voorlopige Kurator(s) / Kurator(s) van die insolvente boedel van:
is / are appointed *Provisional Trustee(s) / Trustee(s) of the insolvent estate of:

BOTES, STEPHEN ANTHONY

wat op Bevel van die Hooggeregshof van Suid-Afrika ( Afdeling ), gedateer die dag van *voorlopig
gesequestrate / gesequestrate is, met die magte en bevoegdhede soos uiteengesit in die Insolvensiewet, 1936 (Wet 24 van 1936).

which was placed under *provisional sequestration / sequestration by Order of the High Court of South Africa (BOPHUTHATSWANA PROVINCIAL Division), dated the 5TH day of JUNE 2003 with the powers and

Meester van die Hooggeregshof
Master of the High Court

Date Stamp/Datumstempel

*Delete if not applicable / Skrap wat nie van toepassing

JS27/«Tikster»
CASE NO. 943/2003

IN THE HIGH COURT OF SOUTH AFRICA
(BOPHUTHATSWANA PROVINCIAL DIVISION)

In the matter between:

JOHANNES PRELLER
Applicant

and

ALICE HARRIET SAAYMAN
1st Respondent

STEVEN ANTHONY BOTES
2nd Respondent

ANTON LOHSE N.O.
3rd Respondent

MASTER OF THE HIGH COURT, MMABATHO
4th Respondent

APPLICATION

MAFIKENG

HENDRICKS J.

DATE OF HEARING : 27 May 2004
DATE OF JUDGMENT : 03 June 2004

COUNSEL FOR APPLICANT : Adv. C.J. Zwiegelaar
COUNSEL FOR RESPONDENTS : Adv. M.P. van der Merwe
HENDRICKS J:

[1] The applicant in this matter applied, on an urgent basis, for an order setting aside the provisional and final sequestration orders granted in this Court under case number 289/03. At first, Applicant only cited the first Respondent.

[2] When this matter appeared before my brother Landman AJ, an interim order was granted. It was ordered inter-alia that the curator of the insolvent estate of Mr Stephen Antony Botes, Mr Stephen Antony Botes and the Master of the High Court of South Africa (Bophuthatswana Provincial Division) be cited as Respondents. The curator being Mr Anton Lohse. A rule nisi was issued returnable, on 11th December 2003.

[3] The applicant then filed an Amended Notice of Motion dated 03 December 2003. The Amended Notice of Motion differs from the original Notice of Motion in that an additional paragraph is added that reads:-

"2. That the 3rd Respondent be ordered to release to the Applicant the amount of R460 000-00 currently frozen by the 3rd Respondent in terms of the provisions of Section 21 of the Insolvency Act, Act 24 of 1936 (as amended);"

Mr. Anton Lohso, N.Q., was joined as the third Respondent seeing that he is the appointed curator of the second Respondent's estate.

[5] Lever A.J., in that order (11th December 2003) further ordered that:

* the issue or question whether the Applicant was entitled to amend the Notice of Motion, as reflected in the Notice of Amendment dated 3rd December 2003, is reserved*.

[6] The Third Respondent is the only party who opposes the Applicant's application. The Third Respondent does not oppose the setting aside of the sequestration orders granted under case number 289/03, he only opposes the application in terms of paragraph 2 of the amended Notice of Motion, on the basis that this court lacks jurisdiction.

[7] Two issues need to be decided by this court. They are namely:

(a) whether this court can order the release of the money held by Second Respondent's wife in a bank in Gauteng.

and

(b) the issue of costs.

[8] It appears to be common cause between the parties that the Respondent did freeze the bank account in which the wife of Second Respondent namely Samantha Botes deposited an amount of R460 000-00 allegedly belonging to Applicants. It is undisputed that the freezing of the bank account was done in terms of a court order granted by the Transvaal Provincial Division and not in terms of this court orders issued in this court under case number 289/03.
[9] The basis for setting aside the orders under case number 289/03 issued in this court is because this court lacks jurisdiction over the First Respondent and her property. The same also applies to the bank account which is held in Gauteng and which falls outside the area of jurisdiction of this court. This court therefore cannot order the release of that money.

[10] Furthermore, Applicant cannot claim an amendment of the Notice of Motion as of right. An Application for such an amendment must be made to court after due notice that such an amendment will be sought, be given to the other parties.

Leave of the court were not obtained for the amendment of the Notice of Motion. Despite the fact that leave were not obtained from the court Applicant then filed an Amended Notice of Motion. This practice cannot be condoned and this court will not allow it.

Costs

[11] The other issue that need to be decided is the question of costs. In the Notice of Motion as well as the Amended Notice of Motion the Applicant volunteered to pay the costs for the setting aside of the orders granted under case number 289/03. No costs order is sought by the Applicant against the Third Respondent.

[12] It is trite law that costs follow the result unless there are circumstances present in a case which justifies the contrary.

[13] The Third Respondent is seeking a penal costs order against Applicant in the form of costs on an Attorney and own Client scale.
I am unconvinced that for the reasons advanced by Third Respondent, such a cost order would be fair and just under the circumstances of this case. I am however of the view that the Applicant should pay the costs of the Third Respondent which is as a result of the ill-founded Amended Notice of Motion, that Applicant filed.

In the result, I make the following orders:-

(1) The provisional and final sequestration orders granted in this court under case number 289/03 are set aside,

(2) The Applicant is ordered to pay the costs of the Third Respondent, which costs include the costs of 11th December 2003.

R.D. HENDRICKS
JUDGE OF THE HIGH COURT

Applicant's Attorneys: John Tribelhorn Attorneys
C/O Claassen - De Wet Attorneys
Shop No. 5
INDUSTRIAL SITE
Cnr Nelson Mandela Road & First Avenue Mafikeng
Respondent's Attorneys:
Shabbott Attorneys
C/O Panchia
86 Shippard Street
MAFIKENG
INSOLVENTE BOEDELI: SA BOTES : PRELIER / INSOLVENTE BOEDELI S A BOTES

Soos u weet tree ons op namens Mnr Preller, maar het Mnr Botes ons nou ook voorsien van die instruksies hieronder uitsengesit.

U is tans in die proses om 'n Artikel 152 ondervraging te hou en het u reeds begin om Mnr Preller en sekere ander persone te ondervra.

Ons het Mnr Preller aangeraai om aan die ondervraging deel te neem waarna u 'n besluit kan neem aangaande die bedrag van R460 000.00 waarop Mnr Preller aansprael maak. Ons het Mnr Preller geadviseer dat indien hy nie tevrede is met u besluit nie, hy die kurator kan daagbaar vir daardie bedrag.

Ons wil by u uitdaring hê oor waar die bedrag van R460 000.00 tans is. Ons is van mening dat dit die voorwerp van 'n dispuut is en dat u dit moet plaas in 'n rentedraënd spaarrekening vir die voordeel van alle belanghebbende partye. Ons verneem graag van u in hierdie verband aangesien die geld nie vir u administrasiekoste gebruik kan word nie.

Indien u nie bereid is om ons in voormelde verband tegemoet te kom nie sal ons genoodsaak wees om die Hof te nader vir verligting. Ons ontvang dus vanaf 'n spesifieke antwoord in hierdie verband.

Ons het derhalwe by Mnr Preller aanbeveel om nie Mnr Botes se sekwestrasie-aansoek teen te staan nie.

Na aanleiding van ons vorige korrespondensie aan usef rakende ons instruksies vanaf Mnr Botes en nev ons telefoenie gesprek met u op die oggend van 17 desemer teriget het, het ons die aangeleenthed nou weerens met Mnr Botes bespreek en is ons instruksies as volg:

1. wat betref Mnr Botes en die sake van AESA Bank teen hom, het ons nie daarin geslaag om regs te kom by AESA Bank nie en op die AESA Bank as voorspruitende uit Mnr Botes se verhoedersfonds se sake vanaf AESA Bank geneem is.
2. Ons het egter tot die gevolgtrekking geraak dat voormelde aangeleentheid in die beraadsoorgese van die Insolvente boedel van Mnr Bates opgedaard kan word, en ook nie indien ABSA Bank "n es daarvoor sou wou bewys.

3. Die bestaan van ander krediteure in die insolvente boedel van Mnr Bates maak skynbaar 'n dispuut oor hierdie aspekt alleen oorboedig wat betref Mnr Bates se selewestasie, maar sal ons die aangeleentheid in die verband dophou namate die beraadsoorgese vorder. Die ABSA aangeleentheid speel wel 'n rol wat betref Mnr Bates se bates en laste posisie en is van belang in die aksie wat u reeds ingestel het.


5. Ons het Mnr Bates ook aangeraai dat hy hom onderwerp aan die ondervraging ingevolge artikel 152 wat u tans hou om die sake van sy boedel. Hy het aangedui dat hy geneé is om sedantige ondervraging by te woon. Ons het instruksies om Mnr Bates se bywoning van die ondervraging aan u te tender en sal dit nie nodig wees om subjekves op hom daarvoor te laat beteken nie. Ons voorstel is dat die ondervraging Indien daad plaasvind na die middel van April 2004 en dat, indien dit moontlik k: Mnr Bates se ondervraging in een oerso afhandel word

6. Ons bevestig dat ons u op die ooggend van 17 deser meegedeel het dat Mnr Bates tans tydelik in die VSA is.

7. Indien u ondervragingsdatum vir Mnr Bates reël sal ons dit waarder indien u ons met die datums sal ken sodat ons kan bepaal of dit ons pas aangesien ons verwag om instruksies te kry om die ondervragings by te woon.

Ons verneem graag so gou as moontlik van u.

Die nie
JOHN TRIBELHORN
PROKUREURS
GLOBAL CAPITAL INVESTMENT LLC
Primary Market Makers in Spot Foreign Exchange
67 Wall Street, 22nd Floor
New York, New York 10005
www.GlobalCap.com

Trader Information

Trader Information (To be completed for each participant in the account, individually, jointly, by all general partners and by the corporate officers authorized to make trading decisions for the account.) For the purpose of this document, the term "Trader" always refers to the entity, for whom this application has been made regardless of legal description.

Full Name: WEBFOREX USA INC
Street Address: 118 THIRD STREET
City: MIDRAND
State: SOUTH AFRICA
Zip: 8000
Martial Status: __
Telephone (Home): 27 11 315 8434
Telephone (Cell): 27 82 355 3390

Number of Dependents: __
Citizenship, U.S. Citizen: Yes, No. If No, what country?

Employer's Name: __
Years There: __

Nature of Business: FOREX TRADING + ACAD
Position: __
Telephone: __

E-mail Address: keon@webforex.co.za
Online Account Password (4-8 symbols): LEONWOLL

GCI offers two levels of trading sizes. This account is for GCI’s: Standard Contract ___ Mini Contract ___

Where did you hear about GCI? ___

The information below must be filled out in full

1. Do you have experience trading securities? Yes, No. Years: 5
   Experience trading options? Yes, No. Years: 5
2. Do you have experience trading commodities? Yes, No. Years: 6
   Futures? Yes, No. Years: 6
3. Do you have experience trading currencies through interbank foreign exchange? Yes, No. Years: 3

Confidential Financial Information. (Joint or Partnership Traders must provide combined financial information. Corporate and Limited Partnership Traders must attach current financial statement.) For information on completing the following, see Paragraph 17 of the Trader Agreement.

4. What is your total annual income? $1,000,000
5. Risk Capital, including initial deposit in this account (Risk Capital—If lost would not change your lifestyle.) $300,000
6. Will any other person(s) guarantee, or have financial interest in this account? Yes, No. If Yes, please provide Name: ___

7. Will any person other than Trader control, manage, or direct the trading in this account? Yes, No. If Yes, please fill out Power of Attorney, Risk Disclosure (Supplemental Form).
8. Do you have or have you ever had any other account(s) with GCI? Yes, No. If Yes, please provide Account Number: ___

The undersigned hereby attest(s) and certifies to be a sophisticated financial institution and/or sophisticated participant and attest(s) the above information is complete and accurate. The undersigned hereby authorize(s) GCI to verify any or all of the foregoing information.

Trader Signature: ___
Print Name: ___
Date: ___
Disclosure Statement for Non-Cash Margin

This statement is furnished to you because regulatory agencies of leverage transactions such as the Commodity Futures Trading Commission ("CFTC") require such statements. Rule 190.10(e) of the CFTC requires it for reasons of fair notice unrelated to GCI's current financial condition. Even though GCI is not regulated by the CFTC, GCI states the following:

1. In the unlikely event of GCI's bankruptcy, all property, including property specifically traceable to you, will be returned, transferred or distributed to you, or in your behalf, only to the extent of your pro rata share of all property available for distribution to Traders.

2. Notice concerning the terms for the returning of specifically identifiable property will be by publication in a newspaper of general circulation.

3. The Commission's regulations concerning bankruptcies of commodity brokers can be found at 17 Code of Federal Regulations Part 190.

Off-Exchange Transaction Disclosure

The signing of this Agreement gives acknowledgment that Trader has read, understands, and gives authorization to the following disclosure to trade currencies through the OTC foreign exchange market ("OTC-FX"):

GCI may from time to time execute transactions as Trader's agent on OTC-FX market to trade currencies, pursuant to an agreement between the interbank agent and GCI, and that a trade executed between one bank executes a trade on the another banking agent. Traders who trade through this market may not be afforded certainty of the protective measures provided by the Commodity Exchange Act, the CFTC's regulations, and the rules of the NFA, and any domestic futures exchange, including the right to use reparation proceedings before the CFTC and arbitration proceedings provided by the NFA or any domestic futures exchange.

Trader understands that Trader may be giving up the right to have arbitration through the above paragraph on foreign exchanges.

- All customer accounts will have their margin requirements established by the dealing desk at GCI.
- GCI establishes all rules and provisions for customer accounts, including but not limited to minimum account size, investment time period, commissions and incentive fees, or any other financial arrangements.
- It is the customer's responsibility to find out all necessary information about GCI and make sure that all arrangements are discussed and clearly understood prior to any trading activity.
- All customers should be aware that guaranteeing any return is illegal. In addition, GCI is not responsible for any claims or assurances made by GCI, its employees and/or associates.
- Wire Transfers to: Citibank FSB
  Greenwich, CT
  ABA # 221172610
  Account # 47512014
  Beneficiary: Global Capital Investment LLC
  Additional Information: Customer Name

THIS IS A CONTRACTUAL AGREEMENT. YOU WILL BE BOUND HEREBY. DO NOT SIGN UNTIL YOU HAVE READ ALL OF THE FOREGOING CAREFULLY.

The undersigned acknowledges having received, read and understood the foregoing Trader Account Letter and Trader Agreement. The undersigned agrees to be bound by all of the terms and conditions hereof.

Trader Signature ____________________________  Date 15/3/2000

Print Name ____________________________

(Attach a copy of this page for additional signatures.)
Risk Disclosure Statement

This brief statement (even though not required for OTCFX Trading but applicable to currency Forex Trading) does not disclose all of the risks and other significant aspects of trading in leveraged investments. In light of the risks, you should undertake such transactions only if you understand the nature of the contracts (and contractual relationships) into which you are entering and the extent of your exposure to risk. TRADING IN LEVERAGED CONTRACTS SUCH AS FOREX CURRENCY CONTRACTS IS NOT SUITABLE FOR MEMBERS OF THE PUBLIC, ONLY SOPHISTICATED FINANCIAL INSTITUTIONS AND/OR INSTITUTIONAL PARTICIPANTS MAY TRADE CURRENCY FOREX CONTRACTS OFF EXCHANGE according to the “Treasury Amendment” as set forth in section 2(a)(1)(A) of the Commodity Exchange Act (“Act”), 7 U.S.C. 1 (1982). You should carefully consider whether trading is appropriate for you in light of your experience, objectives, financial resources and other circumstances.

1. Effect of ‘Leverage’ or ‘Gearing’

Transactions in OTCFX accounts carry a high degree of risk. The amount of initial margin is small relative to the value of the OTCFX contract so that transactions are ‘leveraged’ or ‘geared’. A relatively small market movement will have a proportionately larger impact on the funds you have deposited or will have to deposit, this may work against you as well as for you. You may sustain a total loss of initial margin funds and any additional funds deposited with the firm to maintain your position. If the market moves against your position or margin levels are increased, you may be called upon to maintain your position. If the market moves against your position or margin levels are increased, you may be called upon to pay substantial additional funds on short notice to maintain your position. If you fail to comply with a request for additional funds within the time prescribed, your position may be liquidated at a loss and you will be liable for any resulting deficit.

2. Risk-reducing orders or strategies

The placing of certain orders (e.g. ‘stop-loss’ order, where permitted under local law, or ‘stop-limit’ orders) which are intended to limit losses to certain amounts may not be effective because market conditions may make it impossible to execute such orders. Strategies using combinations of positions, such as ‘spread’ and ‘straddle’ positions may be as risky as taking simple ‘long’ or ‘short’ positions.

3. Terms and conditions of contracts

You should ask the firm with which you deal about the terms and conditions of the specific currencies which you are trading and associated obligations (e.g. the circumstances under which you may become obligated to make or take delivery of the full currency value).

4. Suspension or restriction of trading and pricing relationships

Market conditions (e.g. illiquidity) and/or the operation of the rules of certain markets (e.g. suspension of trading in any currency because of price limits, government intervention or “circuit breakers”) may increase the risk of loss by making it difficult or impossible to effect transactions or liquidate/offset positions.

5. Deposited cash and property

You should familiarize yourself with the protections accorded money or other property you deposit for domestic and foreign transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which you may recover your money or property may be governed by specific legislation or local rules. In some jurisdictions, property which had been specifically identifiable as your own will be protected in the same manner as cash for purposes of distribution in the event of a shortfall.

6. Commission and other charges

Before you begin to trade, you should obtain a clear explanation of all commission, fees, markups, markdowns, rollovers, interest rate differential and other charges for which you will be liable. These charges will affect your net profit (if any) or increase your loss.

7. Transactions in other jurisdictions

Transactions on currencies of other countries in other jurisdictions, including markets formally linked to a domestic market, may expose you to additional risk. Such markets may be subject to regulation which may offer different or diminished investor protection. Before you trade you should inquire about any rules relevant to your particular transactions. Your local regulatory authority will be unable to compel the enforcement of the rules of regulatory authorities or markets in other jurisdictions where your transactions have been effected. You should ask the firm with which you deal for details about the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade.

8. Currency risks

The contract and its effects on transactions in foreign currency-denominated contracts (whether they are traded on your own or another jurisdiction, will be affected by exchange rate movements. If there is a need to convert from the currency denomination of the contract to another currency.
9. Trading facilities

OTCFX business is not traded on a regulated market and therefore does not require open-outcry. Even though quotations or prices are afforded by many computer-based component systems, the quotations and prices may vary due to market liquidity. Many electronic trading facilities are supported by computer-based component systems for the order-routing, execution or matching of trades. As with all facilities and systems, they are vulnerable to temporary disruption or failure. Your ability to recover certain losses may be subject to limits on liability imposed by the system provider, the market, the bank and/or financial institution. Such limits may vary; you should ask the firm with which you deal for details in this respect.

10. Electronic trading

Trading on an electronic trading system may differ not only from trading in the interbank market but also from trading on other electronic trading systems. If you undertake transactions on an electronic trading system, you will be exposed to risks associated with the system including the failure of hardware and software. The result of any system failure may be that your order is either not executed according to your instructions or is not executed at all.

Disclaimers:

a) Internet failures:
Since GCI does not control signal power, its reception or routing via Internet, configuration of your equipment or reliability of its connection, we cannot be responsible for communication failures, distortions or delays when you trade on-line (via Internet).

b) Market risks and on-line trading:
Trading currencies involves substantial risk that is not suitable for everyone. See Trader Agreement for more detailed description of risks. Trading on-line, no matter how convenient or efficient, does not necessarily reduce risks associated with currency trading.

c) Password protection:
The Trader is obligated to keep passwords secret and ensure that third parties do not obtain access to the trading facilities. The Trader will be liable to GCI for trades executed by means of the Trader’s password even if such use may be wrongful.

d) Quoting errors:
Should quoting errors occur due to a dealer’s mistype of a quote or an erroneous price quote from a Trader, such as but not limited to a wrong big figure quote, GCI will not be liable for the resulting errors in account balances. GCI reserves the right to make the necessary corrections or adjustments on the account involved. Any dispute arising from such quoting errors will be resolved on a basis of a fair market value of a currency at the time such an error occurred.

11. Off-exchange transactions

In OTCFX, firms are not restricted to effect off-exchange transactions. The firm with which you deal may be acting as your counterparty to the transaction. It may be difficult or impossible to liquidate an existing position, to assess the value, to determine a fair price or to assess the exposure to risk. For these reasons, these transactions may involve increased risks. Off-exchange transactions may be less regulated or subject to a separate regulatory regime. Before you undertake such transactions, you should familiarize yourself with applicable rules and attendant risks.

Risk Disclosure Acknowledgment

The undersigned acknowledges having read and understood the foregoing Risk Disclosure statement.

Trader Signature ____________________________ Date 12/5/2005

Print Name ____________________________

(Attach a copy of this page or additional signatures.)
longer such officers) shall continue in full force and effect (irrespective of whether any of them ceases to be officers or employees of the Corporation) until notice of revocation or modification is given in writing to GCI or its successors or assigns.

I further certify that the foregoing resolutions have not been modified or rescinded and are now in full force and effect and that the Corporation has the power under its Charter and By-Laws and applicable laws to take the action set forth in and contemplated by the foregoing resolutions.

I do further certify that each of the following has been duly elected and now legally holding the office set opposite his/her signature.

Signature of President

Signature of Vice-President

Signature of Secretary

Signature of Treasurer

In witness whereof, I have hereunto affixed my hand this 15th day of August 2001

Signature of Secretary

Print Name

Date

Personal Guarantee

In consideration of the opening of a corporate account for _________________, a corporation in the State of ___________________________, GCI, must have a personal guarantee in order to enter into Trader Agreement with Trader. For this account the undersigned agrees to jointly and severally guarantee personally the prompt, full and complete performance of any and all of the duties and obligations of this Trader’s account and the payment of any and all damages, costs and expenses which may become recoverable by GCI from Trader.

This guarantee shall remain in full force and effect until the termination of Trader Agreement, provided that the undersigned shall not be released from their obligations so long as the account and any obligations the account has with GCI last.

Personal Guarantee Acknowledgement

This guarantee shall inure to the benefit of GCI, its successors & assigns, and shall be binding on the undersigned until their heirs.

This assigns

g Guarantor, Individually _______________________________ Date ____________

g Guarantor, Individually _______________________________ Date ____________

g Guarantor, Individually _______________________________ Date ____________
Managed Accounts ONLY
LIMITED POWER OF ATTORNEY

The undersigned Client(s) authorize:
Trading Agent ____________________________, its agents, successors and assigns (the "Trading Agent")
Trading Agent ID: ________________

(Trading Agent should also complete a copy of the Client Agreement, subject to compliance review)

as agent and attorney-in-fact to purchase and sell currencies on the OTCFX market and/or options on OTCFX market contracts on margin or otherwise for the undersigned's account and risk. The undersigned hereby agrees to instruct and hold FXCM harmless for all losses, indebtedness and liabilities arising therefrom.

FOREIGN EXCHANGE ACCOUNTS/ACCOUNTS IN FOREIGN CURRENCIES

FXCM is authorized to know the instructions of the undersigned agent in every respect concerning the undersigned's customer account with FXCM, including the undersigned's prohibition or authorization to withdraw any ordering instructions or other properly written in the name of the undersigned or otherwise. The undersigned's customer account has the right to request from the undersigned the undersigned's trading agent statements on account status, and the undersigned's trading agent is obligated to provide, upon the undersigned's customer's request, such statements on account status using account features as provided by FXCM.

The undersigned agent represents that no tax or any of the applicable required government deductions or expenses including out of pocket expenses will be applicable to any account or accounts the undersigned, including but not limited to a commodity trading advisor ("CTA").

The undersigned agrees to enter into a management agreement ("Percentage Allocation Management Agreement") or a management Agreement ("LAMM") as theUndersigned's account or accounts as a component of the trading agent, Culls on the percentage allocation management module are maintained from moving reports available to some persons as seen on the account.

Select One: 1. Percentage Allocation Management Agreement (PAMA) 2. LAMM

You understand hereunder, our agreements and agreements with FXCM hereunder and transfer other than the undersigned's account or accounts as the undersigned. The undersigned's account is subject to the undersigned's trading agent's trading account on behalf of the undersigned as the undersigned.

Swing Currency Trading Commission $ __________ per lot round turn

Currency Options Trading Commission

The undersigned agrees to the undersigned's trading agent's trading account on behalf of the undersigned.

Because the tax return is filed in the foreign exchange market using the account, only genuine funds should be used in such trading. If the undersigned does not have the funds, the Trading Agent can only be used to instruct the Trading Agent to handle the order for the undersigned account in the foreign exchange market. No tax return is filed, and the undersigned agrees to pay commissions according to the following terms:

The undersigned agrees to the undersigned's trading agent's trading account on behalf of the undersigned.

Even though the Trading Agent received trading authority in another, the Trading Agent is subject to compliance with the laws and regulations in the foreign exchange market. The Trading Agent is subject to the laws and regulations in the foreign exchange market. The Trading Agent is subject to the laws and regulations of the foreign exchange market.

The undersigned agrees to the undersigned's trading agent's trading account on behalf of the undersigned.

For Managed Accounts ONLY
To avoid delays in processing, the Trading Agent should also submit a completed copy of the Client Agreement.

Forex Capital Markets 10/15/02
Managed Accounts ONLY

LIMITED POWER OF ATTORNEY

The undersigned Client(s) authorizes:
Trading Agent, (its agents, successors and assigns (the "Trading Agent")

Trading Agent ID (if any)

(Trading Agent should also complete a copy of the Client Agreement, subject to compliance review)

as agent and attorney-in-fact to purchase and sell securities on the OTCFX market and/or options on OTCFX market contracts on margin or otherwise for the undersigned's account and risk. The undersigned hereby agrees to indemnify and hold FXCM harmless for all losses, indebtedness and liabilities arising therefrom.

MANAGED ACCOUNT AUTHORIZATION AND RISK DISCLOSURE

FXCM is authorized to follow the instructions of the undersigned agent in every respect concerning the undersigned's customer's account with FXCM, except that this agent is not authorized to withdraw any money, securities, or other property held in the name of the undersigned or otherwise. The undersigned customer has the right to request the undersigned Trading Agent to withdraw all money, securities, and other property held in the name of the undersigned customer. The undersigned Trading Agent is obligated to provide, upon the undersigned customer's request, such statements on account status using reports furnished by FXCM.

The undersigned Trading Agent authorizes FXCM to carry out the undersigned customer's orders and instructions. The undersigned Trading Agent is authorized to enter into transactions in any account opened with FXCM at the discretion of the undersigned Trading Agent and on behalf of the undersigned customer.

Select One:

- Percentage Allocation Management Module (PAMM)
- Lot Allocation Management Module (LAMM)

The undersigned hereby authorizes and confirms any and all transactions with FXCM hereinafter and hereafter made by the undersigned, the undersigned Trading Agent, or any other person in the account.

Spot Currency Trading Commission

1.30 per $100,000

Currency Options Trading Commission

The undersigned authorizes FXCM to charge a commission of $1.30 per $100,000 on all transactions executed on FXCM.

Because the rate factor is high in the foreign exchange market trading, only genuine "real" losses should be used in such trading. If the rate factor is not accurately calculated, the Trader could lose the entire account. The "real" losses should not be used in the foreign exchange market. "Net" losses should not be used in the foreign exchange market.

Even though the Trader provides trading authority to another, the Trader should be diligent in carrying out instructions in accordance with the written notice. FXCM will provide the Trader with a statement of all transactions conducted by the Trader at any time using the Internet or an online account. FXCM will also provide the Trader with a statement of all transactions conducted by the Trader at any time using the Internet or an online account. The Trader should carefully review these statements.

The undersigned agrees that the Customer understands the terms of this Agreement and that all trading objectives have been explained. The undersigned hereby authorizes FXCM to carry out any transactions in accordance with the terms of this Agreement.
The information below must be completed in FULL.

Account Type (please check one only):
[ ] Individual Account
[ ] Joint Account
[ ] Corporate Account (Name)

Passport, Driver's License or Social Security no. (Please attach a copy)

Date of Birth (DD-MM-YYYY)

Race

Address (Please attach an address label, C/O may be accepted)

City

State

Zip Code

Country

Name of current employer

Home phone no.

Business phone no.

Unemployed? (Unemployed: please review "High Risk Investment Notice" on back)

Self Employed: Architect

Business address

Business phone no.

Note: The information provided may be used to contact you for additional information or to verify the accuracy of the information provided. Please type or print clearly.
### Public Records Search

#### Personal Information
- **Last Name**: BOTES
- **First Name**: STEPHEN
- **Middle Name**: A
- **Street Address**: 2140 NORTHWICK PASS WAY
- **City**: ALPHARETTA
- **State**: GA
- **Zip**: 30022
- **DOB**: May 95 - Sep 03
- **Phone**: (000) 475-7570

#### Additional Addresses
1. **200 N ASHFORD CTR**: ATLANTA, GA 30336
2. **3 FOX RIVER XING**: MAHWAH, NJ 07430-2707
3. **160 SUMMIT AVE**: MONTVALE, NJ 07645-1750
4. **18725 DALLAS PKWY APT 821**: DALLAS, TX 75287-4241
5. **55 PEACH HILL CT**: RAMSEY, NJ 07446-1231

### Search Results

**Records: 1 to 13 of 13**

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<th>Age/DOB</th>
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<td>2140 NORTHMICK PASS WAY</td>
<td>May 95 - Sep 03</td>
<td>(000) 475-7570</td>
</tr>
</tbody>
</table>

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**Important:** The Public Records and commercially available data sources used in this system have errors. Data is sometimes entered poorly, processed incorrectly and is generally not free from defect. This system should not be relied upon as definitively accurate. Before relying on any data this system supplies, it should be independently verified.

---

**Output Type:**
- Formatted HTML
- Cut and Paste / Printer Friendly Text (No Reports)

---

**Use Nicknames:** ✔️
**Phonetic Search:** ☐
**Include Bankruptcies ($0.25):** ☐
STEPHEN ANTHONY BOTES DOB 09/29/1966
LEON LOURENS WOLMARANS DOB 01/16/1955

Current Driver Licenses at Address:
License:
- Name: STEPHEN ANTHONY BOTES
- DL Number: 01224819
- State: Texas
- DOB: 09/29/1966
- SSN:
- Sex:
- Race:
- Attention Flags:
- Expiration Date:
- Issue Date:
- License Type:

Previous Driver Licenses at Address:
License:
- Name: LEON LOURENS WOLMARANS
- DL Number: 19219733
- State: Texas
- DOB: 01/16/1955
- SSN:
- Sex:
- Race:
- Attention Flags
- Expiration Date:
- Issue Date:
- License Type:

Neighbors of this Address:
19022 DALLAS PKWY, DALLAS TX 75287-6901
Residents:
- LISA THOMAS
Phones:
[None Found]

Possible Current Businesses at Address:
[None Found]

Possible Previous Businesses at Address:
[None Found]

Bankruptcies:
[None Found]
IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

PRETORIA 17 JULY 2003

CASE NO: 10633/2003

BEFORE THE HONOURABLE MR JUSTICE DE VOS

in the matter of:

TOBIAS NICOLAAS VAN ZYL
AUGUST WILHELM FREEMAN &
SIMON NORMAN DAVID NNO
(In their capacities as the joint liquidators
of TWOLINE TRADING 107 (PTY) LTD
(In liquidation)

AND

LEON LOURENS WOLMARANS
ID. 550116 5019 08 6
H/v JOLLYRINGWEG EN JAMAICAN MUSIC
MOOKLOOF

HAVING HEARD counsel for the applicant and having read the rule nisi out of
this court on 17 APRIL 2003 placing the estate of the respondent in provisional
sequestration and no cause being shown to the contrary on the return date

IT IS ORDERED

THAT the estate of LEON LOURENS WOLMARANS be and is hereby
sequestrated for the benefit of the creditors as prayed.

THAT the costs of the intervening creditor are to be included in the costs of
sequestration.

BY THE COURT

REGISTRAR

SCHABORT
5TH FLOOR
PRETORIUM TUSTS BUILDING
PAUL KRUGERSTRAAT 273
PRETORIA

HIGH COURT TYPST: BE GELDENHUIZEN
IN DIE HOOGGEREGSBOF VAN SUID-AFRIKA  
(TRAFSVAALSE PROVINSIALE AFDELING)  
Pretoria 12 Augustus 2003  
SKANKÓMMP: 8741/2003  

VOOR ST EDELE REGTE  
VAN DER MERWE  

In die aanvraag van:  

CONRAD ALEXANDER STARKNUS N.O  
THEINIS JOHANNES KERKUS N.O  

1STE APPLIKANT  
2DE APPLIKANT  

EN  

WEB FORER (EDNS) BEPERK  
REGISTRASIE NÓMER: 2001/00470/06  

LITNWOODWEG 297  
WINDLO PARK  
PRETORIA  

NA AANNOOR van die regtevoorspoediger namens die partye  
ever sonder van die bevel nisi uitgemaak deur hierdie hof  
on 1 APRIL 2003  
behoorlik beteken en gepubliseer soos  
gecoat en aangemoedig geen gronde daarteen aangevoer is op  
de keerdatum nie  

WORZ GELAS  

DAT die voornoemde bevel nisi hierby bekragtig word en dat die  
respondent maatskappy onder finale likwidasie geplaas word.
From: Irene Jansen van Vuuren  
Sent: Tuesday, July 01, 2003 2:07 PM  
To: Anton Lohse  
Subject: FW: Webforex Ltd (In Liquidation) and L L Wolmarans (Insolvent Estate)

---Original Message---
From: FXCM - David Sassoon [SMTP: dsassoon@fxcm.com]  
Sent: Monday, June 30, 2003 6:02 PM  
To: ivuuren@mcorintrustees.co.za  
Subject: Webforex Ltd (In Liquidation) and L L Wolmarans (Insolvent Estate)

Dear Sir/Madam:

Please be advised that in light of the pending provisional liquidation proceedings instituted by the South African Department of Justice against Webforex Ltd and Leon Wolmarans, FXCM has temporarily frozen the accounts of Webforex Ltd and Leon Wolmarans.

I am advised that there is no treaty between S Africa and the United States for the reciprocal enforcement of bankruptcy orders. Accordingly, at this juncture, FXCM will not release funds, documents or information until these matters are resolved in a Court of competent jurisdiction.

Notwithstanding the above, FXCM will be obliged to do anything required by law and invite you to quote any authority on the basis of which you contend that a foreign liquidator is automatically recognized under US law, as distinct from being recognized consequently upon ancillary winding up/bankruptcy proceedings instituted in the relevant State of the United States.

If you have any questions or comments regarding the foregoing, please contact the undersigned.

David S. Sassoon  
Compliance Director  
Forex Capital Markets LLC  
11 Broadway, 13th Floor  
New York, NY 10004  
Tel (212) 897-7650  
Fax (212) 897-7669  
dsassoon@fxcm.com

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AFFIDAVIT OF ANTON LOHSE

STATE OF TEXAS §

COUNTY OF DALLAS §

BEFORE ME personally appeared the undersigned, ANTON LOHSE, who being duly identified to me, upon his oath hereby deposed and testified as follows:

1. My name is ANTON LOHSE. I am over twenty-one (21) years of age, of sound mind, and fully capable of making this Affidavit. All of the facts set forth herein are within my personal knowledge, and are true and correct.

2. I am an adult male insolvency practitioner and I am a consultant of the company Macro Trustees (Pty) Ltd and I conduct business as such at MAC ROBERT BUILDING, CNR. CHARLES AND DUNCAN STREETS, PRETORIA, SOUTH AFRICA.

3. On or about August 26, 2004, I was appointed to act as trustee of Debtor Stephen Anthony Botes' ("Debtor Botes") estate by the Master of the High Court of South Africa, Transvaal Provincial Division. My duties as trustee of Debtor Botes' estate include, but are not limited to, the administration of the estate of Debtor Botes (the "Estate") and to recover all and any assets belonging to the Estate and/or monies owed to the Estate for distribution to the creditors of the Estate. Further, I am authorized to conduct investigations of transactions engaged in by Debtor Botes occurring prior and subsequent to the initiation of the proceedings with the High Court of South Africa, Transvaal Provincial Division (the "Foreign Proceeding").

4. On or about June 8, 2004, a motion was filed on my behalf with the High Court of South Africa, Transvaal Provincial Division seeking permission to seek aid from a court of competent jurisdiction in the United States of America to act in aid of the High Court of South Africa, Transvaal Provincial Division (the "Motion"). On or about June 17, 2004, the High Court of South Africa, Transvaal Provincial Division issued an order granting the Motion (the "Order"), and issued a letter of request (the "Letter") requesting that a court of competent jurisdiction in the United States of America recognize the Foreign Proceeding and recognize me as the duly appointed provisional trustee of the estate of Debtor Botes. A true and correct copy of said Motion, Order, and
Letter are attached to the Petition for Recognition of a Foreign Main Proceeding under Title 11 U.S.C. § 1515, and Subject Thereto Request for Relief under Title 11 U.S.C. §§ 1519, 1520, and 1521 (the “Petition”) as “Exhibit A.”

5. Without prior notice to myself or the court in the Foreign Proceeding, Debtor Botes fled South Africa and took up residence at 18725 Dallas Parkway, Apartment 821, Dallas, Texas 75287, and then later moved to 3701 Grapevine Mills Parkway, Grapevine, Texas 76051. During my investigation I obtained information that Debtor Botes has an ownership interest in and/or acts as the Vice President of Webforex USA, Inc., and has an ownership interest in and/or acts as the Secretary of Fingrate USA, Inc. Based on my five (5) years experience as a liquidating trustee, it is my opinion that Debtor Botes moved to the United States of America in an attempt to avoid the jurisdiction of the Court in the Foreign Proceeding. This opinion is based, in part, upon my discovery of the method Debtor Botes used to accumulate assets in South Africa.

6. While investigating the whereabouts of Debtor Botes’ assets in the Foreign Proceeding, I discovered that Debtor Botes and an individual named Leon Lourens Wolmarans (“Wolmarans”) canvassed investments from unsuspecting and innocent members of the public in South Africa and Namibia by making the representation that Webforex, Ltd. acted as an agent and in coaction with a company registered in the United States of America, being Webforex USA, Inc. It was further represented by Wolmarans and Debtor Botes that money invested with Webforex, Ltd. would be transferred to Webforex USA, Inc., and that Webforex USA, Inc. would then trade the money on the international monetary market. Contrary to these representations by Debtor Botes and Wolmarans, some of the money invested by members of the public in South Africa and Namibia was funneled back to South Africa to finance the opulent lifestyle of, amongst others, Debtor Botes.

8. Based upon information obtained during my investigation in the Foreign Proceeding, it is my estimation that the total amount collected from the South African and Namibian public was 80,000,000.00 South African Rand or approximately $12,500,000.00 United States Dollars. I discovered that Debtor Botes transferred assets (both those assets obtained from defrauding members of the public in South Africa and Namibia, and assets obtained through other means while in South
Africa) from accounts within the territorial jurisdiction of South Africa to financial institutions within the territorial jurisdiction of the United States of America. These institutions include Forex Capital Markets ("FXCM") and the Bank of America, N.A. ("Bank of America").

9. I contacted FXCM and Bank of America in an attempt to ascertain whether the assets held under Debtor Botes's name by FXCM and/or Bank of America were assets transferred by Debtor Botes to the United States of America after the initiation of the Foreign Proceeding and/or obtained through Debtor Botes's fraud on members of the public of South Africa and Namibia. The representatives of FXCM and Bank of America responded that the information I requested would not be provided without a court order issued from a court in the United States of America.

10. Based upon Debtor Botes's participation in a fraud against members of the public in Namibia and South Africa, coupled with Debtor Botes's flight to the United States of America in an attempt to avoid the jurisdiction of the courts in South Africa, it is likely that Debtor Botes will attempt to conceal, hide, transfer, or otherwise attempt to obstruct my access to Debtor Botes' assets and/or financial information within the territorial jurisdiction of the United States of America.

11. In view of the foregoing, I believe that there is prima facie evidence that Debtor Botes possesses assets in the United States of America and that such assets might be recovered during proceedings in the United States of America. I contend that this application is inherently urgent. The assets currently in the care, custody, and/or control of Debtor Botes can be disposed of at any moment, and there is an imminent and immediate risk of the loss of these assets, rendering recovery by the creditors of Debtor Botes remote or impossible, and for which creditors of Debtor Botes would have no adequate remedy at law. The circumstances of Debtor Botes' hasty departure without notification to the Court in the Foreign Proceeding, and his transfer of assets from accounts within the territorial jurisdiction of the courts in South Africa to accounts with institutions within the territorial jurisdiction of the United States of America, strongly suggest that, if given the opportunity, Debtor Botes would again secrete, hide, or otherwise dispose of assets in derogation of the rights of creditors.
12. Due to the seriousness of the nature of the allegations against Debtor Botes, I believe that, if this application is not heard on an emergency or expedited time frame, and that if temporary relief is not granted while this Court decides whether to recognize the Foreign Proceeding, that Debtor Botes would take immediate steps to hide or dispose of assets in the United States of America.

13. To my knowledge there are no other foreign proceedings pending against Debtor Botes other than the Foreign Proceeding pending against Debtor Botes in South Africa.”

Further, Affiant sayeth naught.

ANTON LOHSE, Affiant

SUBSCRIBED AND SWORN to before me on this the ______ day of December, 2005 to certify which witness my hand and official seal.

HEATHER P. LEEPER
Notary Public in and for the State of Texas

Name Printed: Heather P. Leeper
EXHIBIT III-b
The following constitutes the order of the Court.

Signed March 17, 2006
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
(DALLAS DIVISION)

IN RE:

STEPHEN ANTHONY BOTES,
Debtor.

CAUSE NO. 05-87098

ORDER GRANTING RELIEF UNDER TITLE 11 U.S.C. § 1519 and 1521

On March 9, 2006, came on for consideration the Petition for Recognition of a Foreign Main Proceeding under Title 11 U.S.C. § 1515 filed by ANTON LOHSE (the “Liquidator”) seeking the recognition of a foreign main proceeding pending in the High Court of South Africa (Transvaal Provincial Division), and for further relief under Title 11 U.S.C. Chapter 1521 (the “Petition”). The Court finds that the Petition satisfies the requirements of Title 11 U.S.C. § 1515; Liquidator has shown good faith attempts to locate Debtor Stephen Anthony Botes (“Debtor”) but despite these efforts the Liquidator has been unable to locate Debtor; that Liquidator is entitled to relief under §§ 1519, 1521, and/or 1522; and that the following relief shall be granted. It is therefore,

ORDER GRANTING RELIEF UNDER TITLE 11 U.S.C. § 1519 AND 1521

PAGE – 1
ORDERED, ADJUDGED AND DECREED, that Debtor’s right to transfer, encumber, or otherwise dispose of any assets belonging to Debtor is suspended until further order of this Court. It is further,

ORDERED, ADJUDGED AND DECREED, Liquidator is authorized to examine witnesses, take discovery or the delivery of information concerning Debtor’s assets, affairs, rights, obligations, and/or liabilities in accordance with the Federal Rules of Bankruptcy Procedure. It is further,

ORDERED, ADJUDGED AND DECREED, that Liquidator is entitled to exercise the rights and powers of a trustee over any assets identified by Liquidator as assets belonging to the estate created by the initiation of the foreign proceeding (the “South African Estate”) or as a result of the initiation of these proceedings, except for the relief available under §§ 522, 544, 545, 547, 548, 550, and 724(a). It is further,

ORDERED, ADJUDGED AND DECREED, that Liquidator is authorized to administer assets belonging to the South African Estate in order to protect the interests of the South African Estate and its creditors consistent with South African law, to exercise the rights and duties of the trustee under South African law, and to prosecute and pursue any and all causes of action under applicable law for the recovery of assets or their proceeds belonging to the South African Estate and/or for avoidance of avoidable or fraudulent transfers of said assets and/or proceeds. It is further,

ORDERED, ADJUDGED AND DECREED, that any execution against Debtor’s assets are stayed in accordance with §1519(1). It is further,

ORDERED, ADJUDGED AND DECREED, that if Liquidator is unable to effectuate personal service on Debtor via private process server within thirty days of March 9, 2006, Liquidator shall serve Debtor via publication in accordance with Rule 4(e)(1) of the Federal Rules of Civil
Procedure

### End of Order ###
EXHIBIT III-c
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
(DALLAS DIVISION)

IN RE:

STEPHEN ANTHONY BOTES,
Debtor.

CAUSE NO. 05-87098

APPLICATION FOR PAYMENT OF ATTORNEYS FEES
AND EXPENSES AND DECLARATION OF PROPERTY OF THE ESTATE

COMES NOW THE LAW OFFICES OF STROMBERG & ASSOCIATES, P. C.
(hereafter, “Applicant”), Special Litigation Counsel for ANTON LOHSE, (hereafter “Liquidator”) in the above-styled and numbered cause, and pursuant to 11 U.S.C. §330, files this its First Application for Payment of Attorney’s Fees and Expenses pursuant to the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules for the Northern District of Texas, and in support of this application, Applicant would respectfully show unto this Court as follows:

I. SUMMARY OF APPLICATION

NAME OF APPLICANT: Stromberg & Associates, P. C.
ROLE IN THE CASE: Nunc Pro Tunc Special Litigation Counsel to the Liquidator

Fees Requested: $25,777.50
Expenses Requested: $1,015.59
Paid to Applicant: ($25,264.07)
Discount of Fees Applied: ($400.00)
Total Fees and Expenses Requested for Approval: $26,393.09
Applicant also seeks a declaration that the funds obtained from Bank of America from Debtor’s accounts are properly classified as assets of the Debtor’s Estate pursuant to § 541.

II. JURISDICTION


III. BACKGROUND FACTS

2. On or about November 16, 2005, Applicant was retained by Liquidator as Special Litigation Counsel, on an hourly fee basis, to assist Liquidator in filing the Petition for Recognition of a Foreign Main Proceeding Under Title 11 U.S.C. § 1521, and to pursue recovery from and/or file suit against Debtor.

3. On or about December 7, 2005, Applicant filed a Petition for Recognition of a Foreign Main Proceeding Under Title 11 U.S.C. § 1521 on behalf of Liquidator. This was the first case ever presented under Chapter 15 and required significant time in preparation due to the nature and complexity of the issues involved.

4. On or about March 17, 2006, the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, signed an order that granted authority to transfer, encumber or otherwise dispose of assets belonging to Debtor, Stephen Anthony Botes (“the Order”).

5. On or about March 28, 2006, Applicant contacted Forex Capital Markets, L.L.C., a company believed to have been indebted to Mr. Botes. After discussions with Forex, and in particular, David Sassoon and Robert Zach, Applicant learned that there were no accounts in Debtor’s name. At the same time, Applicant contacted Fingrate USA and discovered two accounts in Debtor’s name. One, Account Number 00015669, was closed with a zero balance. The other, Account Number 00015815, was not closed, but also had a zero balance. Finally, Applicant located accounts with positive balances held in Debtor’s name at Bank of America, and sent multiple
communications to Bank of America, including copies of the Order, with notice to freeze those accounts and to turn over any proceeds held in Debtor's name.

6. On or about March 27, 2006, Bank of America was notified that they were to immediately freeze the accounts held by Debtor. To determine the funds available in the accounts, and to compile a record of all transfers in and out of the various accounts, Applicant requested, paid for, and received copies of bank statements for each account dating back to 2002. Bank of America was also informed that any money remaining in the accounts should be turned over to Applicant immediately, as directed by the Order. After several months of discussions, Applicant received three separate checks, one for each of Debtor's accounts with Bank of America, for a total amount of $1,609.90. This amount was roughly $6,000.00 less than the total balance Applicant had identified in these accounts when notice was given to Bank of America to freeze any funds held in Debtor's name.

7. On or about October 26, 2006, Applicant sent a demand letter to Bank of America for the difference between the balance identified by Applicant in the accounts and the sum remitted. On December 5, 2006, after multiple telephone conferences with Bank of America, Applicant received a check in the amount of $6,001.64, representing the balance of the funds Applicant had first identified as held by Debtor in accounts with Bank of America.

8. Applicant's review of the bank statements provided by Bank of America revealed payments made to American Honda Finance, International Aviation Support, and Storage USA. Applicant contacted each of these respective companies, but was unable to locate any further funds or accounts held in the name of Debtor.

9. The review of the bank statements also revealed several physical addresses for Debtor. One was for an apartment complex, but upon investigation, the apartment's management had no record of Debtor living in their complex, and the apartment number listed is currently occupied by a new tenant. Another address was for an executive office suite, but the manager of the
suite indicated that records of previous tenants are only maintained for eighteen months, and therefore, no information remained on file. A third address discovered was for a United Parcel Service Store where Debtor had previously rented a Post Office box, but the store manager indicated that Debtor’s use of the box had ended several months prior. Applicant then contacted the United States Postal Service, only to find that no forwarding address information had been provided for the Post Office Box, and that mail sent to Debtor at that address is simply returned to sender. The best information of Liquidator is that Debtor returned to South Africa (or, at the very least, is no longer in the United States) and is not readily amenable to service of process by conventional or cost-effective means.

10. In the course of this investigation on behalf of Liquidator, Applicant expended more than 132 hours of time and effort providing necessary attorney services with a reasonable value of $23,277.50, and incurred reasonable and necessary out-of-pocket expenses of $1,015.59. Applicant hereby seeks approval and recovery from the Debtor’s share of recovery of reasonable expenses totaling $1,015.59 and reasonable fees totaling $23,277.50, as evidenced by the attached Affidavit of Mark Stromberg (Exhibit “A”), less a $400 discount previously applied. Applicant does also hereby seek recovery of the additional sum of $2,500.00 in attorneys’ fees for the associated fee application and hearing thereon, which application Applicant has been required to file to approve the fees and expenses incurred in connection therewith.

IV. APPLICABLE LEGAL STANDARDS

11. Applying the established standards for allowance of administrative claims and professional fees under §§330(a), 503 and 507 of the Bankruptcy Code, compensation for the actual, necessary services rendered on behalf of the Liquidator during the period covered by this Application, which is November 16, 2006 through December 28, 2006, exclusive of such other efforts, services and expenses rendered or incurred through the date of hearing hereon, will be in the aggregate amount of $23,277.50 for attorneys’ fees, plus $2,500.00 for attorneys’ fees incurred by
Applicant for the filing and prosecution of this application, for a total sum of $25,777.50.

12. As set forth above, Applicant has provided extensive services and general legal advice to and consultation with the Liquidator to assist in obtaining the maximum collection of assets in Debtor's name and control. Further, all services undertaken by Applicant were done under the direction and approval of the Liquidator and resulted in identifiable, tangible and material benefits to the Estate. Finally, in determining the reasonable compensation under §330(a), the Court must consider the nature and extent of the services supplied by the attorneys and the value of those services in relation to the customary fees and the quality of the work performed.

V. SERVICES RENDERED

13. The charges to Debtor's estate and the recoveries received thereby by Applicant were based upon Applicants' normal, standard and reasonable hourly rates then in effect for cases with similar claims. Applicant expended numerous hours in representing the interests of the Liquidator and Debtor during the time covered by this Application. Records of the time expended and expenses incurred in the rendition of professional services for Liquidator and Debtor consist of daily entries which were placed in computer records and retained. This time does not include the time expended by secretaries and other professional support staff for the undersigned, which were not billed to the Liquidator or Debtor.

14. All professionals involved in the rendering of services in this proceeding have made a deliberate effort to avoid any unnecessary duplication of work and/or time expended.

15. In certain limited instances, conferences and collaboration were necessary among and between attorneys. Wherever possible, Applicant relied upon the talents of attorneys billing at lesser hourly rates and/or non-attorneys in order to reduce the overall expenses in this matter without any

1 See Matter of Pro-Snax Distributors, Inc., 157 F.3d 414,426 (5th Cir. 1998).

sacrifice to the quality of services rendered on behalf of the estate.

16. Applicant is applying for compensation for fees that were directly proportional to actual results achieved, and which reflect customary fee rates for bankruptcy cases similar to the case at bar by attorneys in Dallas, Texas. The rates charged by Applicant for Liquidator are well within the range of those customarily charged by other law firms of comparable skill and experience in the Northern District of Texas. Applicant has represented numerous creditors in bankruptcy cases in the State of Texas, and enjoys a good reputation as an experienced and capable creditor bankruptcy counsel. Applicant has appeared in numerous bankruptcy matters in the Bankruptcy Courts for the Northern District of Texas, and is skilled in the area of bankruptcy law.

17. The employment of Applicant on behalf of the Liquidator has required Applicant to devote considerable time, attention and effort to this case, and has benefitted the bankruptcy estate directly and tangibly. All the legal services performed were necessary for the preservation, prosecution and liquidation of the claims of Debtor in the Lawsuit, and were, in counsel's opinion, requisite for the competent representation of the Debtor and Liquidator in this case. Further, Applicant is of the opinion that the fees and expenses applied for herein are in conformity with the fees and expenses allowed in similar proceedings for similar services rendered and the results obtained.

VI. DECLARATION OF PROPERTY OF THE ESTATE

18. Applicant also seeks a declaration by the Court that the funds recovered from the Bank of America bank accounts in Debtor's name in the sum of $7,611.54, which are currently held by Applicant, are properly classified as property of the estate pursuant to § 541.

NOTICE

NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT 1100 COMMERCE STREET, ROOM 12A24, DALLAS, TEXAS 75242-1496, BEFORE 4:30 O'CLOCK P.M. WITHIN TWENTY (20) DAYS FROM THE DATE OF SERVICE HEREOF.
ANY RESPONSE MUST BE IN WRITING AND FILED WITH THE CLERK, AND A COPY MUST BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED, A HEARING WILL BE HELD WITH NOTICE ONLY TO THE OBJECTING PARTY.

IF NO HEARING ON SUCH NOTICE OR MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN.

WHEREFORE, PREMISES CONSIDERED, Applicant respectfully prays that this Court, after considering the time committed to the work, the skill of the attorneys performing the work, the novelty of the issues presented, and the details involved, find that the attorneys' fees of $25,777.50 sought by applicant, inclusive of estimated fees through the hearing on the Application, plus expenses of $1,015.59, are reasonable, that they should be in all things granted, and that the Debtor's estate should pay Applicant in the above amounts, and that the funds collected and retained by Applicant from the Bank of America accounts are properly classified as Property of the Estate and should be paid to the Liquidator, and for such other and further relief to which Applicant may, at law or in equity, be allowed.

Respectfully submitted,

STROMBERG & ASSOCIATES, P. C.

By: [Signature]
Mark Stromberg
State Bar No. 19408830

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 18th day of June, 2007, a true and correct copy of the above and foregoing Application for Payment of Attorneys' Fees and Expenses has been forwarded to the Liquidator, Mr. Anton Lohse.

MARK STROMBERG
EXHIBIT III-d
The following constitutes the ruling of the court and has the force and effect therein described.

Signed March 08, 2011

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:
STEPHEN ANTHONY BOTES,
DEBTOR.

CASE NO. 05-87098-SGJ-15

ORDER DISMISSING CASE

A Petition for Recognition of a Foreign Main Proceeding
Under Title 11 U.S.C. § 1515, and Subject Thereto Request for
Relief Under Title 11 U.S.C. §§ 1519, 1520, and 1521 was filed on
December 7, 2005, by Trustee Anton Lohse, N.O., as appointed by
order of the Master of the High Court of South Africa, Transvaal
Provincial Division. There has been no activity in this case
since November 13, 2007. The court set a status conference for
March 3, 2011. On March 2, 2011, the court received an
announcement from Mark Stromberg, counsel for Anton Lohse, that his client does not oppose dismissal of this case.

Accordingly,

**IT IS ORDERED** that this case be and is hereby **DISMISSED**.

###END OF ORDER###
NOTICE OF DISMISSAL

You are hereby notified that an Order Dismissing the above case was entered on 3/8/11.

Dated: 3/8/11

Tawana C. Marshall
Clerk, U.S. Bankruptcy Court

BY: B Simpson
Deputy Clerk