

UPDATE

Court-Appointed Receivers' Remuneration: In the matter of the Receivership of Port Link GP Ltd.

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The recent Grand Court decision of *In the matter of the Receivership of Port Link GP Ltd.* (Unreported, 19 June 2024, Kawaley J) has reiterated and further clarified the principles to be applied to the remuneration of court-appointed receivers. Given the limited Cayman case law on the topic, the decision provides useful guidance and certainty to Receivers, and to those advising them.

What is a court-appointed 'Receiver', and what is 'remuneration'?

A court-appointed receiver is an individual – almost always a professional insolvency practitioner¹ – appointed in any case where it appears to the Court to be '*just and convenient to do so*'.² This includes court-appointed receivers in support of a freezing injunction, or to aid in the enforcement of a foreign judgment.

The receiver's '*remuneration*' (their fees, costs and expenses) is subject to the approval of the Grand Court.³ A receiver must submit accounts to the Grand Court as the Court may direct,⁴ covering the receipts and disbursements of the receivership. In considering any remuneration application, the Court may have reference to scales or rates of professional charges as it thinks fit.⁵

The Receivers in Port Link GP Ltd.

On 1 June 2023, Gordon MacRae and Elizabeth Mackay of Interpath (Cayman) Limited were appointed as Joint Receivers of Port Link GP Ltd. (the GP) in respect of the GP's own assets and the assets of The Port Fund L.P. (the Fund).

The order appointing the Joint Receivers confirmed that the Joint Receivers would be indemnified for all '*remuneration, costs, fees, charges, expenses, disbursements, claims, demands and liabilities which they may reasonably incur or for which they may become liable arising out of or in connection with or in relation to the proper performance of their duties pursuant to this Order.*' It also provided that the Joint Receivers were '*authorised to be reimbursed for their reasonably incurred expenses and to charge remuneration by reference to time spent at their ordinary hourly rates from time to time in amounts to be approved periodically by the Court.*'

On 5 December 2023, the Joint Receivers filed a confidential report, detailing the various workstreams that had been progressed.

¹ Though there is not a statutory requirement for the appointed Receiver to be a professional insolvency practitioner

² Senior Courts Act 1981, s. 37(1), as applied by the Grand Court Act (2015 Revision), s. 11(1)

³ Grand Court Rules (GCR), Order 30, rule 3

⁴ GCR Order 30, rule 5

⁵ GCR, Order 30, rule 3

On 11 December 2023, the Court ordered that the Joint Receivers should make a remuneration application at six monthly intervals.

On 19 February 2024, in line with the Court's direction, the Joint Receivers filed their first remuneration application.

Governing principles

In the Court's judgment dated 19 June 2024, Kawaley J outlined the key reasons for the Court's decision ultimately to grant the Joint Receivers' remuneration application.

As a starting point, Kawaley J had regard to the prior (and only) Cayman authority on the principles applicable to approving receivership fees: the judgment of Segal J in *Perry v Lopag*.⁶ Kawaley J noted that the following principles, outlined by Segal J in *Perry v Lopag*,⁷ provided 'valuable guidance':⁸

- The amount of remuneration and disbursements of court-appointed receivers is directly and exclusively within the court's discretion to fix and approve;
- The Court will have regard to, and generally apply the principles and approach developed in the review of the remuneration and disbursements of insolvency officeholders in this jurisdiction and other relevant jurisdictions (particularly England and Wales);
- Whilst the Insolvency Practitioners' Regulations⁹ do not apply to court-appointed receivers, to the extent that they establish rules governing the remuneration of official liquidators, they provide an important basis for the review of receivers' remuneration (including applicable rates).
- The Cayman Court had previously approved a statement of principle, made by the Ontario Court of Appeal, that a receiver's compensation '*should be measured by the fair and reasonable value of his services and while sufficient fees should be paid to induce competent persons to serve as receivers, receiverships should be administered as economically as reasonably possible. Thus, allowances for services performed must be just, but nevertheless moderate rather than generous*'.¹⁰
- Whilst not directly applicable, the UK's Practice Direction: Insolvency Proceedings (the UKPD)¹¹ sets out a helpful statement of the objective which the Court should seek to achieve in any remuneration application: '*...to ensure that the amount and/or basis of any remuneration fixed by the Court is fair, reasonable and commensurate with the nature and extent of the work properly undertaken or to be undertaken by the office-holder in any given case and is fixed and approved by a process which is consistent and predictable.*'
- Paragraph 21.2.3 of the UKPD also sets out several guiding principles '*by reference to which remuneration applications should be considered by the court*'. These include:
 - '*Justification*' - it is for the appointee to justify his claim and be prepared to provide full particulars of it;
 - '*Benefit of the doubt*' - if the court is left in any doubt as to the appropriateness, fairness or reasonableness of the remuneration, it should be resolved **against** the appointee; and
 - '*Proportionality of remuneration*' - the amount of remuneration should be proportionate to the nature, complexity and extent of the work done by the appointee, and to the value and nature of the assets and liabilities.

Kawaley J endorsed Segal J's judgment as, '*a helpful articulation of principles suitably supported by sources to which one can conveniently turn if a particular issue requires further analysis.*' He did not depart from that

⁶ *Perry v Lopag* (Unreported, 20 April 2020, Segal J)

⁷ *Ibid.* para [23]

⁸ *In the matter of the Receivership of Port Link GP Ltd.* (Unreported, 19 June 2024, Kawaley J), para 8

⁹ (2023 Consolidation)

¹⁰ *In the matters of Liberty Capital Limited, Integrity Limited Holdings Limited and Waterford Insurance Limited* [2002 CILR 606], approving *Belyea v. Federal Business Dev. Bank* (1983), (44 N.B.R. (2d) 248 at 250 per Stratton J.A.)

¹¹ [2018] BCC 421

at all, stating, 'I did not find any further analysis was required in all the circumstances of the present case.' He then attempted to distil and summarise the same principles in the following way:¹²

- the rules and practice relating to approving liquidators' remuneration should generally be followed in relation to receivers as they will generally serve as a useful guide;
- the approach to what is fair and reasonable should balance the need to attract competent persons to professional receivership work with the need to ensure efficiency and economy in receiverships;
- what is fair and reasonable remuneration will be informed by, *inter alia*, the level of complexity of the work performed, the appropriate assignment of tasks to staff of different seniority levels and the proportionality of the fees relative to the value of the assets under management; and
- it is for the appointee to demonstrate an entitlement to the remuneration in relation to which approval is sought.

Comment

Once a relatively rare form of relief, the use of court-appointed receivers has become more common in recent years. The helpful guidance from Segal J and more recently Kawaley J provides some certainty, to both receivers and their advisors alike on the Court's approach to receivers' remuneration.

Mourant acts for the Joint Receivers in *Perry v Lopag*.

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¹² *In the matter of the Receivership of Port Link GP Ltd.* (Unreported, 19 June 2024, Kawaley J), para 9

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