

Applicant
H J Kahlberg
First

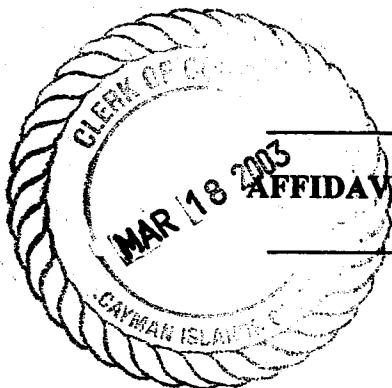
March 2003

IN THE GRAND COURT OF THE CAYMAN ISLANDS

171
CAUSE NO. OF 2003

In the matter of the Companies Law (2002 Revision)

And in the matter of Peabody Ltd (the "Company")



AFFIDAVIT OF H JONATHAN KAHLBERG



I H. JONATHAN KAHLBERG, Chartered Accountant and Director of Forensic Services at E & Y Restructuring Limited of 4th Floor Bermuda House, British American Centre, Dr. Roy's Drive, George Town, Grand Cayman, MAKE OATH and say as follows:

1. I am one of the Joint Official Liquidators of Trade and Commerce Bank ("TCB"). I was appointed along with G James Cleaver on August 29, 2002, having previously been appointed Joint Provisional Liquidators on July 5, 2002. I am duly authorised by Mr Cleaver to make this affidavit and save where otherwise stated, the matters to which I depose are within my own knowledge and I believe them to be true.

2. I make this affidavit in support of the Winding-up Petition issued against Peabody Ltd (the "Company") and also in support of the application being made of the appointment of provisional liquidators.
3. There is now produced and shown to me marked "HJK 1" a copy of statutory demand served on the Company along with a copy of the winding up petition. I confirm that the winding up petition is correct to the best of my knowledge and belief.
4. TCB was a Class B Cayman Islands bank. Its records show money advanced to the Company in the sum demanded. TCB was part of a large group of companies that, until recently, was owned and managed by members of the South American, Peirano family. The Group included a number of banks in South America and interests in supermarket retail chains in South America. As indicated above, TCB is in official liquidation. The interests in the supermarket retail operations effectively no longer comprise part of the Group, as they had been pledged as security for debts due to third parties.
5. The liquidation of TCB is proving difficult and time consuming. Much of the accounting records are having to be re-created and there is serious doubt as to whether the true financial position of TCB was ever made known to the Cayman Islands Monetary Authority or its auditors. Initial investigations carried out by us as the Joint Official Liquidators of TCB indicate that much of its assets were paid out to members of the Peirano family either personally or through corporate vehicles registered in the Cayman Islands and elsewhere.

6. Now produced and shown to me are copies of affidavits sworn by Mr Jorge Peirano Facio in Cause 670 of 2002. The action against Jorge Peirano Facio is brought by Velox International Investments, a Velox Group company of which Mr Cleaver and I are joint official liquidators. In that action the sum of approximately US\$50 million is claimed in an effort to recover a loan to him in that sum as the shareholder of Velox International Investments.
7. In the action mentioned above, a Mareva injunction has been granted against the defendant. Pursuant to that injunction, Jorge Peirano Facio has disclosed various assets. A copy of his affidavit is now produced and shown to me marked "HJK 2". Jorge Peirano Facio confirms in his affidavit that he owns the Company and that it has an account at Brown Brothers Harriman, numbered 6578645 with a cash balance of US\$32,000 and an investment with a face value of US\$2,600,000.
8. Now produced and shown to me marked "HJK 3" are copies of various documents from Brown Brothers Harriman relating, in part to the Company. These documents include a letter from Brown Brothers Harriman dated 4th November 2002. That letter confirms that the Company has an investment in a Delaware limited partnership but that it is in default of an outstanding commitment to provide further capital to the limited partnership in the sum of US\$395,219.50. There is also a reference in to an interest in "PEP II". I believe that interest is in fact, held by another company, Terrace Corporation.
9. I confirm that during the last two weeks, Alistair Walters of Campbells, attorneys for the liquidators of TCB has spoken with Kathryn George, in-house counsel for

Brown Brothers Harriman and subsequently with Walkers, Cayman Islands attorneys instructed by Brown Brothers Harriman in relation to the Company. He has been informed that the Company is in default of its obligations to the limited partnership and that the consequences of such default may well be serious. It has been suggested that as a result of the default, Brown Brothers Harriman as the general partner of the limited partnerships may take steps to dispose or otherwise liquidate the interests of the Company. It has been further suggested that if this happens, the value realised for that interest may be as low as 20% of the value of the initial investment. I do not believe that this would represent fair market value for the interests that the Company holds in the limited partnership.

10. It further appears that Jorge Peirano Facio has sought to use the assets held by the Companies in order to fund their legal expenses in the Cayman Islands.
11. As liquidators of TCB, which if not the only creditor of the Company, is certainly the largest, we are concerned that if steps are not taken quickly to take control of the Company and preserve its assets, what assets there are, are at risk of being lost or seriously compromised in value. For that reasons an Order is sought form this Court appointing provisional liquidators over the Company.
12. At present, Mr Cleaver and I have already been appointed as official liquidators of TCB, Velox International Investments, Velox Real Estate, Velox Venture Capital and Velox Capital Markets and on the basis that ultimately, the Company is also part of the Velox Group, I do not believe that there is any conflict of interest in us also acting as liquidators of the Company. To the extent that any such conflict

does arise, then it will be a matter that will be drawn to the attention of this Court immediately.

Sworn this 18th day of March, 2003)

at George Town, Grand Cayman)

Before me)

Erica Priestly)
NOTARY PUBLIC)

H. Jonathan Kahlberg
H. JONATHAN KAHLBERG

This Affidavit is filed by Campbells, attorneys-at-law for the Applicants, whose address for service is 4th Floor, Scotiabank Building, P.O. Box 884, George Town Grand Cayman (Ref AJW)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. *171* 2003

In the matter of THE COMPANIES LAW (2002 REVISION)

And in the matter of Peabody Ltd

This is the Exhibit marked "*HJK 1*" referred to in the affidavit of H. Jonathan Kahlberg sworn this *18th* day of March, 2003

Sworn this *18th* day of March, 2003)

at George Town, Grand Cayman)

Before me)

Maria Priestly)

NOTARY PUBLIC)

Campbells
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24 February 2003

BY HAND

Peabody Ltd,
Brown Brothers Harriman,
Butterfield House,
P.O. Box 2330GT
Grand Cayman

Dear Sirs,

RE: Trade and Commerce Bank (in Official Liquidation)

We enclose by way of service a statutory demand on behalf of our client. Failure to pay the sum due within 21 days will leave your company liable to be wound up by the Grand Court.

Yours faithfully,


CAMPBELLS

Warning

- * This is an important document. This demand must be dealt with within 21 days after its service upon the company or a winding-up order could be made in respect of the company.
- * Please read the demand notes carefully.

DEMAND

To: Peabody Ltd.

Address: Brown Brothers Harriman Trust Co. P.O. Box 2330GT, Grand Cayman

This demand is served on you by the creditor:

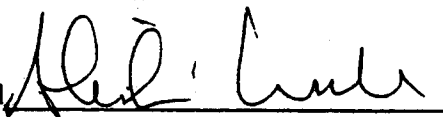
Name: Trade and Commerce Bank

Address: Campbells, P.O. Box 884, George Town, Grand Cayman

The creditor claims that the company owes the sum of US\$4,867,883.82 full particulars of which are set out on page 2.

The creditor demands that the company do pay the above debt or secure or compound for it to the creditor's satisfaction.

Signature of individual



Name: ALISTAIR J. WALTERS

Date: 24th February 2003

Position with or relation to creditor: Attorney

I am authorised to make this demand on the creditors behalf.

Address: Campbells, 4th Floor, Scotiabank Building, George Town, Grand Cayman

Notes for Creditor

- * If the creditor is entitled to the debt by way of assignment, details of the original creditor and any intermediary assignees should be given in part B on page 3.
- * If the amount of debt includes interest not previously notified to the company as included in its liability, details should be given, including the grounds upon which interest is charged. The amount of interest must be shown separately.
- * Any other charge accruing due from time to time may be claimed. The amount or rate of the charge must be identified and the grounds on which it is claimed must be stated.
- * If signatory of the demand is an attorney or other agent of the creditor the name of his/her firm should be given.

Particulars of Debt

(These particulars must include (a) when the debt was incurred, (b) the consideration for the debt (or if there is no consideration the way in which it arose) and (c) the amount due as at the date of this demand).

The Debtor is indebted to the Creditor in the sum of US\$4,867,883.82 being the amount lent or credited to the Debtor by the Creditor, which sum is due and outstanding.

Notes for Creditor

* Please make sure that you have read the notes on page 1 before completing this page.

PART A

The individual or individuals to whom any communication regarding this demand may be addressed is/are:-

Name: ALISTAIR J. WALTERS

Address: Campbells, 4th Floor, Scotiabank Building, George Town, Grand Cayman

Telephone Number: 345-949-2648

Reference: AJW/ble

PART B

For completion if the creditor is entitled to the debt by way of assignment

	Name	Date(s) of Assignment
Original creditor		
Assignees		

How to comply with a statutory demand

If the company wishes to avoid a winding-up petition being presented it must pay the debt shown on page 1, particulars of which are set out on page 2 of this notice, within the period of **21 days after its service** upon the company. Alternatively, the company can attempt to come to a settlement with the creditor. To do this the company should:

- * inform the individual (or one of the individuals) named in part A above immediately that it is willing and able to offer security for the debt to the creditor's satisfaction; or
- * inform the individual (or one of the individuals) named in part A immediately that it is willing and able to compound for the debt to the creditor's satisfaction.

If the company disputes the demand in whole or in part it should:

- * contact the individual (or one of the individuals) named in part A immediately.

REMEMBER! the company has only **21 days after the date of service on it of this document before the creditor may present a winding-up petition.**

In the matter of THE COMPANIES LAW (2002 REVISION)

And in the Matter of Peabody Ltd

PETITION

To: The Grand Court

The Petition of Trade & Commerce Bank shows that:

1. Peabody Ltd (hereinafter called the "Company") was incorporated under the Companies Law.
2. The address of the Company is at P.O. Box 2330, 4th Floor, Butterfield House, Fort Street, George Town, Grand Cayman, Cayman Islands, B.W.I.
3. The grounds upon which the Petitioner seeks to petition for the winding up of the Company are that a statutory demand dated 24th February 2003 was served on the Company at its registered office claiming the sum of US\$4,867,883.82 being monies due and payment by the Company to the Petitioner. No payment has been received from the Company.
4. In the circumstances the Company is insolvent and it is just and equitable that the Company should be wound up.

THE PETITIONER THEREFORE PRAYS THAT:

- (1) The Company may be wound up by the Court under the provisions of the Companies Law (2002 Revision).

- (2) G. James Cleaver and H. Jonathan Kahlberg, of E & Y Restructuring, Ltd., P.O. Box 1102 GT, 4th Floor, Bermuda House, British American Centre, Dr Roy's Drive, George Town, Grand Cayman, be appointed Joint Official Liquidators of the Company with power to act jointly and severally (the "Official Liquidators").
- (3) The Official Liquidators shall not be required to give security for their appointment.
- (4) The Official Liquidators shall have power:
 - (a) to bring or defend any action, suit, prosecution or other legal proceedings, whether criminal or civil, by way of court process or arbitration, in the name and on behalf of the Company.
 - (b) to take possession of, collect and get in all property or assets (of whatever nature) to which the Company is or appears to be entitled;
 - (c) to do all things as may be necessary or expedient for the protection of the Company's assets;
 - (d) to do all things (including the carrying on of the business of the Company) so as may be necessary or expedient for the beneficial realisation of the property or assets of the Company (including power to borrow money);
 - (e) to appoint attorneys, solicitors and other professional qualified persons both in the Cayman Islands and elsewhere to assist them in the performance of their duties;
 - (f) to appoint agents both in the Cayman Islands and elsewhere to do any business which they are unable to do themselves or which can more conveniently be done by an agent and power to employ and dismiss officers and employees of the Company;

- (g) to make any power which is necessary or incidental to the performance of their duties;
- (h) to open and maintain bank accounts in the name of the Company or themselves anywhere in the world as may be necessary for the better performance of their duties;
- (i) to exercise and execute all the powers set out in Section 109 of the Companies Law (2002 Revision) without sanction or intervention of the Court and unprejudiced by the generality hereof;
- (j) to compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the Company and any contributory or alleged contributory or alleged contributory or other debtor or person apprehending liability to the Company, upon receipt of such sums payable at such times and generally on such terms as may be agreed upon, with power to take securities for the discharge of such debts or liabilities and to give complete discharges in respect of all or such calls debts, or liabilities; and
- (k) to do and execute all such other things as may be necessary for winding-up the affairs of the Company and distributing its assets;

and for the avoidance of doubt the powers bestowed on the Official Liquidators may be exercised by them within and outside the Cayman Islands.

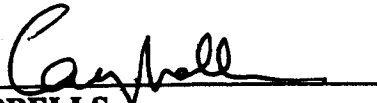
- (5) The Official Liquidators be at liberty to apply for further directions relating to the winding-up of the affairs of the Company and the distribution of its assets.

- (6) The reasonable costs of the Petitioner of and incidental to the Petition be paid forthwith from the assets of the Company to be taxed if not agreed.
- (7) The Official Liquidators be at liberty to and do pay themselves, their agents, employees, attorneys, solicitors and whomsoever else they may employ or instruct, remuneration and costs in priority to all other debts of the Company pursuant to section 123 of the Companies Law (2002 Revision), and:
- (i) the remuneration of the Official Liquidators and their staff instructed in connection with the performance of their duties be paid at such reasonable rates as may be approved by the creditors of the Company or by this Honourable Court from time to time;
 - (ii) the remuneration of any other agents, employed or instructed by or on behalf of the Official Liquidators in connection with the performance of their duties be fixed and approved at the rate or rates in the country in which such person is ordinarily employed or engaged in practice;
 - (iii) the Official Liquidators be at liberty to pay their agents, employees, attorneys, solicitors and whomsoever else they employ or instruct either weekly or monthly or at such other intervals as they consider appropriate;
 - (iv) the Official Liquidators be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties;

and for the avoidance of doubt all payments made pursuant to paragraphs 7(i)-(iv) above shall be made as and when they fall due out of the assets of the Company and shall be expenses in the Liquidation.

(10) Such other orders and directions may be made as the Court thinks fit.

DATED this 18th day of March 2003


CAMPBELLS
Attorneys-at-Law for the Petitioner

Note: It intended to serve this Petition on Peabody Ltd

INDORSEMENT

Notice of Hearing

This Petition having been presented to the Court on
Law Courts, George Town, Grand Cayman on
or as soon thereafter as the Petition can be heard.

will be heard at the
at a.m./p.m.

This Petition is filed by Campbells, Attorneys-at-Law for the Petitioner, whose address for service is that of its Attorneys-at-Law, Fourth Floor, Scotiabank Building, P.O. Box 884, George Town, Grand Cayman, Cayman Islands B.W.I. (Ref: AJW/10147)