

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 20-CIV-21964-CMA**

SECURITIES AND EXCHANGE
COMMISSION,
Plaintiff,

v.

TCA FUND MANAGEMENT GROUP CORP.,
et al.,

Defendants.

**RECEIVER'S MOTION TO APPROVE
COUNSEL IN NEW ZEALAND AND SCOTLAND**

COMES NOW, Jonathan E. Perlman, Esq., Court-Appointed Receiver ("Receiver") of the Receivership Entities,¹ by and through undersigned counsel hereby files this Motion to Approve Counsel in New Zealand and Scotland ("Motion") and accordingly states as follows:

1. On May 11, 2020, the Securities and Exchange Commission ("SEC") filed its Complaint for Injunctive Relief against TCA Fund Management Group, Corp. ("FMGC"), TCA Global Credit Fund GP, LTD. ("GP"), ("Receivership Defendants"), and TCA Global Credit Fund, LP ("Feeder LP"), TCA Global Credit Fund, LTD. ("Feeder Ltd."), and TCA Global Credit Master Fund, LP ("Master Fund") ("Relief Defendants") (collectively, "Defendants"). [ECF No. 1].

2. The SEC also filed an Expedited Motion for Appointment of Receiver. [ECF No. 3].

3. On the same day, the Court granted the motion and appointed Jonathan E. Perlman, Esq., of the law firm Genovese Joblove & Battista, P.A. ("GJB"), as permanent Receiver over the

¹ All terms not specifically defined herein have the meaning ascribed to them in the SEC's Motion for Appointment of Receiver [ECF No. 3] and the Court's Appointment Order [ECF No. 5], and the Court's First Expansion Order [ECF No. 16].

Receivership Entities [ECF No. 5] (“Appointment Order”).

4. Pursuant to the Appointment Order, the Receiver is empowered to, among other things, “engage and employ persons in Receiver’s discretion to assist Receiver in carrying out Receiver’s duties and responsibilities...” *Id.* at § II ¶ 5.F. Specifically, the Receiver may solicit persons and entities (“Retained Personnel”) to assist the Receiver in carrying out his duties under the Appointment Order. *Id.* at § XIV ¶¶ 52–53.

5. As explained in detail in the First and Second Quarterly Status Reports, the Receivership’s operations consist of numerous operating SPVs which are owned and/or controlled by Master Fund [ECF Nos. 48 & 70].

6. These Receivership-owned SPVs include operating businesses and entities that merely own real estate. This Motion seeks approval to retain counsel in New Zealand and Scotland to protect the Receivership’s ownership interests relating to an SPV business operating in New Zealand and an SPV that owns real estate in Scotland.

A. MacRoberts, LLP: Scotland

7. According to the Receiver’s investigations into the ongoing business operations and assets of the Receivership Entities, Master Fund is the 100% owner of Cleland Limited, a UK Registered entity that holds property in the Bellside Brea area of Scotland, U.K. This property was previously turned over to Master Fund after a borrower defaulted under its original loan obligations.

8. Prior to the Receiver’s Appointment, Master Fund’s registration of this entity had lapsed and the property defaulted to ownership of the British Crown.

9. Acting under the express authority of the Appointment Order, the Receiver solicited Scotland counsel, Gillian Campbell of MacRoberts, LLP to restore the entity to the U.K.

Companies' House Register and ownership of the property to Master Fund.

10. The property is 27 acres of vacant land that was going to be the southern half/phase 2 of a residential home development, of which phase 1 has been completed. The 27 acres is apparently raw land that has not yet completed the permitting process for development. This property was last valued in 2019 at approximately 100,000 GBP.²

11. After several weeks of negotiations, MacRoberts has agreed to prepare the application to restore the property register as well as complete all necessary compliance with British Anti-Money Laundering statutes for a fixed fee of 16,050 GBP.³ A copy of the proposed engagement letter is attached hereto as Exhibit A.

12. In the Receiver's best judgment, MacRoberts, LLP is highly experienced in this type of transactional work and would best be able to assist the Receiver in preserving this receivership asset.

B. Bell Gully: New Zealand

13. The Receiver is also seeking to retain counsel in New Zealand to represent the Receiver's interests in JLE, Ltd a New Zealand entity. JLE is an electrical contractor that is wholly owned by a U.S. entity Zeecol Finance, Ltd. JLE is in the early stages of a turn around and represents an asset with value to the receivership estate. Master Fund owns 100% of the voting shares of Zeecol Finance. It has come to the attention of the Receiver that a former TCA borrower is asserting claims against JLE and Zeecol Finance in New Zealand regarding the ownership of Zeecol Finance, Ltd. The Receiver continues to evaluate these claims but believes it is in the best interest of the estate to retain counsel to defend and/or advise him regarding the proceedings pending in New Zealand.

² As of this filing this is approximately \$123,000.

³ As of this filing this is approximately \$21,500.

14. Acting under the express authority of the Appointment Order, the Receiver solicited David McPherson and Tim Fitzgerald of Bell Gully in New Zealand. Bell Gully previously represented TCA in the original transaction involving JLE and has significant institutional knowledge of the entity's affairs.

15. After negotiating with Bell Gully, it agreed to represent the Receiver at a reduced fee. Bell Gully will provide services at a 15% reduced hourly rate ranging from \$167 – \$610 an hour. The proposed engagement is attached as Exhibit B.

16. In the Receiver's best judgment, Bell Gully is highly experienced with this type of engagement and is the best available option to represent the interests of the estate.

17. MacRoberts and Bell Gully have cleared conflict checks and represented that they will abide by the SEC billing guidelines. Accordingly, the Receiver seeks confirmation of approval to enter into the attached engagements and retain Gillian Campbell of the law firm MacRoberts, LLP and David McPherson and Tim Fitzgerald of Bell Gully.

WHEREFORE, Receiver, Jonathan E. Perlman, by and through his undersigned counsel respectfully requests that this Honorable Court grant the Motion. A proposed order for the Court's consideration is attached as Exhibit C.

S.D. Fla. L.R. 7.1(A)(3) CERTIFICATE OF CONFERENCE

I, Irina Sadovnic, Esq., hereby certify that counsel for the Receiver conferred with counsel for the SEC on December 17, 2020, via email regarding the requested relief and they authorized the Receiver to represent that the SEC has no objection to the relief sought.

GENOVESE JOBLOVE & BATTISTA, P.A.
Attorneys for Jonathan E. Perlman, Receiver
100 Southeast 2nd Street, Suite 4400
Miami, Florida 33131
Telephone: (305) 349-2300
Facsimile: (305) 349-2310

By: /s/ Irina R. Sadovnic
Irina R. Sadovnic, Esq., FBN 124502
Isadovnic@gjb-law.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served via CM/ECF Notification and/or U.S. Mail to all parties and notification of such filing to all CM/ECF participants in this case on the 28th day of December, 2020.

By: /s/ Irina R. Sadovnic
Irina R. Sadovnic, Esq.

Monday, December 28, 2020 at 10:30:38 Eastern Standard Time

Subject: RE: Cleland Ltd [IWOV-Active.FID20028038]
Date: Wednesday, November 11, 2020 at 7:58:53 AM Eastern Standard Time
From: Gillian Campbell
To: Sadovnic, Irina, Perlman, Jonathan
CC: Alan Kelly, Garno, Greg, Mike Barlow
Attachments: image703516.png, image921586.png, image388875.png, image553055.png, image726817.png, image627884.png

Hi Irina,

Apologies for the delay in coming back to you.

We would propose the following fixed fees:

In respect of initial advice provided, an application for restoration of the company to companies house (either by an application to companies house or a straightforward court application (assuming there are no objections)) and providing up to a maximum of 2 hours advice in respect of the property, we would propose a fee of £3,150 plus VAT and outlays (court fees if required are approximately £650).

This does not include any legal work to sell the property.

In respect of the compliance aspects, taking into account (a) internal liaison on the content of the DAML SAR and the likely further correspondence with the NCA, plus (b) external liaison with the Receiver's team, including advising on the basics of the process and obtaining the team's input into and approval of the draft DAML SAR, we would propose a fixed fee of £12,250 plus VAT and any disbursements.

NB this figure assumes:

1. that a single DAML SAR will be prepared by MacRoberts LLP in cooperation with the Receiver and submitted by MacRoberts as a joint application by MacRoberts and the Receiver
2. that the National Crime Agency (NCA) will either formally grant the DAML or that there will be a deemed consent of the DAML SAR (i.e. because the NCA does not respond at all) by the expiry of the statutory seven working day period following submission of the SAR; and that accordingly
3. the NCA, whether with or without further correspondence from and/or to the NCA during that seven working day period, will not state that insufficient information has been provided for the NCA to make an informed decision (it being understood that this is effectively a refusal by the NCA which would mean that neither the Receiver nor MacRoberts could proceed any further with the matter)
4. there will be no formal refusal by the NCA that would trigger a moratorium period(s).

I look forward to hearing from you as to whether you wish to proceed on this basis.

Regards

Gillian

Gillian Campbell
Partner
MacRoberts LLP

DD:+44 131 248 2131

M: +44 781 800 2117

Monday, December 28, 2020 at 10:31:16 Eastern Standard Time

Subject: RE: Cleland Ltd [IWOV-Active.FID20028038]
Date: Monday, December 21, 2020 at 6:11:05 PM Eastern Standard Time
From: Gillian Campbell
To: Sadovnic, Irina
CC: Alan Kelly, Garno, Greg, Perlman, Jonathan, Mike Barlow
Attachments: image379883.png, image459160.png, image525141.png, image151528.png, image378996.png, image460870.png

Dear Irina,

Apologies for the delay, this is an extremely busy time of year for us. I confirm that we do not have a conflict of interest in relation to this matter.

The proposed hourly rates are as set out in the terms of engagement letter which I previously issued. The fixed fees are offered on the basis set out in my email to you dated 11th November 2020, which in turn reflects the points set out in my email dated 3rd September 2020.

The proposed fee in respect of the company restoration and property advice of £3,150 comprises:-

Time incurred to date
Gillian Campbell (Real Estate Partner)- £991
Alan Kelly (Corporate Partner) – 1 hr not charged
Mike Barlow (Partner)– 2 hrs not charged

Application to restore company:-

Associate (Bonar Mackenzie Corporate)/ Senior Associate (Lynsay Cargill Dispute Resolution) – 4 hours x £275/285 - £1,100/£1,140
Alan Kelly Corporate Partner – 1hr - £350
Two hours property advice
Gillian Campbell @ £350 p/h - £700

Total £3,150.

The fixed fee in respect of the submission of a DAML SAR on behalf of both the Receiver and MacRoberts LLP:-
Mike Barlow 35 hours @£350 = £12,250.

Mike is the firm's Money Laundering Reporting Officer (MLRO) and is therefore the firm's primary contact for all Anti-Money Laundering (AML) matters, including the drafting and submission of Suspicious Activity Reports to the National Crime Agency (NCA).

The above fees represent a discount in that by providing fixed fees on the basis that we have, we are accepting the risk that the value of our actual work in progress will exceed the fixed fee. In relation to the compliance aspects in particular, this is highly specialised work requiring an in-depth knowledge of the Proceeds of Crime Act 2002 and the practical requirements for a Suspicious Activity Report.

Please see our website for further information at <https://www.macroberts.com/our-people>

I hope that is sufficient for your purposes but please let me know if you require additional information.

Regards



INSOLVENCY CAPABILITY

PREPARED FOR GJB LAW

18 November 2020

BELL GULLY

TO
Irina Sadovnic

ORGANISATION
Genovese Joblove & Battista, P.A.

ADDRESS
100 SE 2nd Street, Suite 4400
Miami, Florida 33131

POSITION
Associate

Dear Irina,

Thank you for the opportunity to provide our credentials to GJB Law, highlighting our insolvency expertise. Being a market leading insolvency team, we believe we are well placed to provide GJB Law with timely and accurate advice, and have the breadth of talent to ensure the highest possible standard is met.

Outlined in this document is a fee proposal and the core team that will ensure the highest quality of work.

We confirm that we have completed conflict checks and are available to act on this matter.

We would be happy to discuss your requirements further.

Yours sincerely



David McPherson

PARTNER

DDI +64 9 916 8988 MOB +64 21 621 623

david.mcpherson@bellgully.com

Pricing

APPROACH TO PRICING

We focus on providing clients value for money and no-surprises in our pricing. We will always use our resources optimally and ensure that work is carried out by a lawyer with the appropriate level of expertise to deliver the best quality work at a minimum cost, under partner supervision.

HOURLY RATES

We will apply a 15% discount from our standard hourly rates, as set out below.

Name	Position	Hourly rates (USD)*	15% discounted rates (USD)*
David McPherson	Partner	\$717	\$610
Tim Fitzgerald	Partner	\$696	\$592
Nick Moffatt	Senior associate	\$527	\$448

* Excluding GST (where applicable) and 2.5% service charge.

More broadly our rates for other experts across the firm are:

Position	Hourly Rates (USD)*	15% discounted rates (USD)*
Partner	\$591-\$717	\$502-\$610
Special Counsel	\$506-\$549	\$430-\$466
Senior Associate	\$443-\$527	\$377-\$448
Senior Solicitor	\$380-\$422	\$323-\$359
Solicitor	\$267-\$401	\$227-\$341
Law Clerk	\$197	\$167

* Excluding GST (where applicable) and 2.5% service charge. The range of rates reflects the level of experience within each band and different rates across different practice areas, and are subject to review annually.

Bell Gully's expertise

Bell Gully has a wealth of expertise and experience in insolvency, corporate restructuring, receiverships and liquidations. Our team is recognised as a leader among New Zealand's restructuring and insolvency legal practices. The practice is built around the multi-disciplinary expertise of experienced and highly regarded finance, litigation and corporate specialists.

Our approach is focused on delivering technical expertise with the pragmatism to achieve our clients' commercial objectives.

Our specialist team is regularly engaged to assist on major cross-border insolvency issues. We advise receivers, liquidators and other insolvency practitioners across the whole range of insolvency and restructuring matters including:

- corporate reconstruction and workouts,
- receiverships,
- liquidations,
- voluntary administrations,
- cross-border insolvency,
- statutory management, and
- debt restructuring.

The leading New Zealand banks – **ASB**, **ANZ** and **BNZ** and accounting firms and receivers – **PwC**, **McGrath Nicol**, **Deloitte**, **BDO**, **Grant Thornton**, **KordaMentha**, and **KPMG** - consistently call on our team's services.



PARTNER, AUCKLAND

DDI +64 9 916 8988

MOB +64 21 621 623

david.mcperson@bellgully.com

QUALIFICATIONS

BA(History), LLB(Hons),
University of Canterbury

ADMITTED

1992, New Zealand

David McPherson

David is a banking partner with particular expertise in acquisition finance, asset finance, insolvency and debt restructurings. He heads the firm's insolvency practice and has worked on a wide variety of debt restructuring, distressed debt acquisitions and receiverships, as well as having a significant role on the leading restructurings undertaken in the New Zealand market in recent years.

EXPERIENCE INCLUDES ADVISING

- **Antares Restaurant Group**, the operator of the Burger King franchise in New Zealand and its directors, on the recently announced receivership of the holding company, and a subsequent creditor compromise.
- **Air New Zealand** on the \$850m government standby facility put in place to assist the national carrier deal with the consequences of Covid 19.
- Brendon Gibson and Neale Jackson of **KordaMentha** as administrators on aspects of the administration of ten New Zealand registered companies in the CBL Group, including the ultimate parent company, CBL Corporation (Administrators Appointed) (CBL Corporation).
- for the receivers of Flotech Holdings.
- for the receivers of GEON, a major New Zealand print business.
- **KordaMentha** on aspects of the receivership of Stonewood Homes.
- **Ironbridge Capital**, a leading independent Australasian private equity group, as owner, on one of New Zealand's most significant private equity deals involving the takeover and delisting of major television and radio organisation MediaWorks.
- as New Zealand counsel for the **purchaser** of a portfolio of institutional loans disposed of by BOSI (the relevant loan book was primarily Australian originated loans but included a number of New Zealand originated loan receivables).

Chambers Asia Pacific 2020

ranks David in the top tier of banking and finance lawyers and as a leading lawyer in restructuring and insolvency.

David is described as "efficient" at sticking to timeframes, adding that "from the start he raises the commercial issues which have an impact on banks."



**PARTNER
AUCKLAND**

DDI +64 9 916 8882
MOB +64 21 770 472
tim.fitzgerald@bellgully.com

QUALIFICATIONS
LLB(Hons), BA
University of Auckland

ADMITTED
2004, New Zealand

The IFLR1000 2020 ranks Tim as a rising star for restructuring and insolvency practice work.

Tim Fitzgerald

Tim is an experienced commercial litigator with particular expertise in insolvency, regulatory, banking law, company law, and insurance disputes. Tim advises lenders and insolvency practitioners on claims against debtors, directors, auditors, and insurers. Tim also acts for corporate clients in the banking, finance, and property sectors, including on investigations and proceedings initiated by the Commerce Commission and Financial Markets Authority.

EXPERIENCE INCLUDES ADVISING

- **Antares Restaurant Group**, the operator of the Burger King franchise in New Zealand and its directors, on the recently announced receivership of the holding company, and a subsequent creditor compromise.
- the receivers of **Kawarau Falls Station** in pursuing claims against more than 100 purchasers of buildings and units within this Queenstown development. This litigation (*Sun v Peninsula Road*) concerned issues arising from the Securities Act 1978, property law, and contract law.
- **ANZ** in its position as lender in a number of high profile insolvencies, including the voluntary administration of construction company Arrow International (NZ) and as facility agent of the lenders to CBL Corporation.
- **Ferrier Hodgson (Australia)** as receivers of DSE (NZ) (In Receivership and Liquidation) (DSE). DSE is the New Zealand arm of the “Dick Smith” group of companies.
- **PwC** as the liquidators of a property development company, Takapuna Procurement (In Liquidation) (TPL).
- **KordaMentha** on aspects of the receivership of Stonewood Homes.
- receivers for **Nathans Finance** in a series of High Court proceedings against the directors, auditors, and insurers of the company.
- receivers of companies alleging negligence against their former auditors. This includes claims on behalf of OPI Pacific Finance, National Finance (2000), and Nathans Finance.
- the receivers and liquidators of various **Bridgecorp** entities in respect of recovery actions in *Bridgecorp (In Receivership) v Certain Lloyd's Underwriters*. This included appearing in the Court of Appeal on claims against its former insurance broker and pursuing claims to recover property for former Bridgecorp directors.
- receivers of **Strategic Finance** on litigation under the Personal Properties Securities Act 1999, including appearing in the Court of Appeal in *Strategic Finance (In Receivership) v Bridgman*.
- on one of the largest debt restructures in New Zealand for **MediaWorks**, which raised complex legal issues for banks and directors. The company went into receivership in June 2013 as part of a structured arrangement to transfer assets to a new group.



SENIOR ASSOCIATE AUCKLAND

DDI +64 9 916 8776

MOB +64 21 950 598

nick.moffatt@bellgully.com

QUALIFICATIONS

LLB(Hons), MA, University of
Auckland

ADMITTED

2008, New Zealand

Nick Moffatt

Nick is a specialist commercial litigator with expertise in insolvency and insurance. Nick provides clear, practical and timely advice to meet his clients' commercial needs. Nick has experience advising banks, liquidators, receivers and creditors on matters relating to insolvency and enforcement including the validity, priority and enforcement of security and taking recovery action in liquidations and receiverships. With a particular interest in voidable transactions and personal property securities issues, Nick navigates his clients confidently through this controversial and complex area.

EXPERIENCE INCLUDES ADVISING

- **PwC**, as liquidators, in an insolvent transaction claim brought against Ebert Construction which led to a landmark decision in the High Court regarding the voidability of payments made under direct payment agreements that are in wide use in the construction industry.
- **KPMG** and **Northside Insolvency** as liquidators of building company Starplus Homes. Starplus ceased trading in April 2013 owing more than 200 creditors approximately NZ\$20 million. Our team is providing ongoing advice to the liquidators on a range of matters including potential claims under the Companies Act 1993 and Property Law Act 2007.
- the Australian receivers of Steelbro on various matters while the company has been first in voluntary administration and then in liquidation.
- Brendon Gibson and Neale Jackson of **Korda Mentha** as administrators of ten New Zealand registered companies in the CBL Group, including the ultimate parent company, CBL Corporation (Administrators Appointed) (CBL Corporation).
- for the syndicate of banks who funded CBL Insurance. CBL collapsed into insolvency in February 2018.
- **PwC** as the liquidators of a property development company, Takapuna Procurement (In Liquidation) (TPL).
- **Ferrier Hodgson** (Australia) as receivers of DSE (NZ) (In Receivership and In Liquidation) (DSE).
- **UCI Holdings** to successfully obtain an order from the High Court under the Insolvency (Cross-Border) Act 2006, recognising the United States chapter 11 bankruptcy process as a foreign main proceeding in New Zealand.

AUCKLAND VERO CENTRE, 48 SHORTLAND STREET
PO BOX 4199, AUCKLAND 1140, NEW ZEALAND, DX CP20509
TEL +64 9 916 8800 FAX +64 9 916 8801

WELLINGTON ANZ CENTRE, 171 FEATHERSTON STREET
PO BOX 1291, WELLINGTON 6140, NEW ZEALAND, DX SX11164
TEL +64 4 915 6800 FAX +64 4 915 6810

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 20-CIV-21964-CMA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

TCA FUND MANAGEMENT GROUP CORP.,
et al.,

Defendants.

**[PROPOSED] ORDER GRANTING RECEIVER, JONATHAN E. PERLMAN'S,
MOTION TO APPROVE COUNSEL IN NEW ZEALAND AND SCOTLAND**

THIS CAUSE, having come before the Court upon Jonathan E. Perlman, as Court-Appointed Receiver's ("Receiver") Motion to Approve Retained Professionals in New Zealand and Scotland ("Motion") [ECF No. __]. The Court having considered the Motion and being duly advised in the premises, it is ORDERED AND ADJUDGED that:

The Motion is GRANTED. The Receiver is authorized to engage the services of the specified professional services entities described in the Motion at the stated hourly rates and fees.

DONE AND ORDERED, in chambers at Miami, Florida, this __ day of December, 2020.

CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF FLORIDA