

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

National Bank of Anguilla (Private Banking
& Trust) Ltd.,

Debtor.

Chapter 11

Case No.: 16-11806 (MG)

**DECLARATION OF WILLIAM TACON IN SUPPORT OF MOTION OF
DEBTOR AND DEBTOR IN POSSESSION FOR AN ORDER ENFORCING
THE AUTOMATIC STAY AND FOR DAMAGES FOR CONTEMPT
PURSUANT TO 11 U.S.C. § 105(a) AND THE COURT'S INHERENT
POWER PURSUANT TO BANKRUPTCY RULES 2014(a) AND 2016(b)**

I, William Tacon, declare as follows:

1. I am the Administrator of the National Bank of Anguilla (Private Banking & Trust) Ltd. ("PBT"), appointed by order dated February 22, 2016, of the Eastern Caribbean Supreme Court in the High Court of Justice Anguilla Circuit.

2. I have personal knowledge of the statements set forth in this Declaration or such statements are based upon my review of PBT's books and records, which books and records were kept in the regular course of PBT's business and relied upon by PBT's employees in conducting PBT's banking business. Those books and records also included data compiled in the ordinary course of PBT's banking business.

3. I am a Chartered Accountant and a Consultant with FTI Consulting (BVI) Limited based in Tortola, British Virgin Islands in its Caribbean Corporate Restructuring and Finance Department.

4. I have over 35 years of experience in restructuring and insolvency, including approximately 12 years in the Caribbean area. Previously, I was an Insolvency and Restructuring Partner at Ernst & Young LLP in the United Kingdom until September 2004, then Managing

Partner of Zolfo Cooper (BVI) Limited from 2004 until 2012 and relocated back to England in July 2012. I have held appointments as liquidator of many companies in the British Virgin Islands and throughout the Caribbean, including several other cases in Anguilla. I also have significant experience in cross-border insolvency matters involving parties in the U.S., U.K., France, Switzerland, Russia, the Commonwealth of Independent States, Hong Kong, People's Republic of China, and Singapore. Until recently, I was a liquidator of two of the largest British Virgin Islands registered feeder funds into Bernard L. Madoff Investment Securities LLC.

1. **Insolvency of NBA**

5. On 12 August 2013, the Eastern Caribbean Central Bank ("ECCB"), pursuant to its powers as regulator of the National Bank of Anguilla Ltd. ("NBA"), intervened (i.e. took control) of the affairs of NBA by appointing a Conservator to it.

6. The intervention came after the ECCB, and other parties, had been closely monitoring the affairs of NBA for a period of two years. As part of this monitoring, a major diagnostic analysis of the Anguillian banking sector, including NBA, was undertaken which gave rise to heightened concerns over the operations of NBA and the other indigenous bank, Caribbean Commercial Bank Limited.

7. The stated aim of the intervention was to stabilize and restructure NBA. The Conservatorship was expected to last for a period of 6 months.

8. The ECCB advanced a number of reasons as to why intervention was necessary, including:

- a) NBA's non-performing loans, the majority of which were secured by real estate in Anguilla, were escalating;
- b) NBA had failed to meet the ECCB's capital requirements; and
- c) NBA was likely to become unable to meet its obligations.

9. The ECCB appointed a Conservator to NBA to prepare a rescue plan. For this to happen, the presumption must be that NBA either could not meet its liabilities, and was therefore insolvent, or was at risk of not being able to meet its obligations, and therefore may become insolvent.

10. On or around 2 September 2013, I understand the Conservator of NBA initiated restrictions on access to funds deposited at NBA at the time of his appointment I do not have a copy of his communication to NBA's depositors in respect of this.

11. These withdrawal restrictions establish that NBA had significant cash flow and liquidity issues and was unable to discharge its current liabilities, all of which point clearly to the insolvency of NBA. The restrictions remained in place until NBA was placed into Receivership on 22 April 2016.

12. In January 2014, the ECCB extended the period of Conservatorship as some of the conditions which caused the intervention continued to exist.

13. NBA's audited accounts for the periods ended 31 March 2013 and 31 October 2013, both of which were issued on 17 November 2014 and were signed off by employees of the ECCB on behalf of NBA, demonstrate that NBA is insolvent on a balance sheet basis. The accounts contain an "*Emphasis of Matter*" in the auditor's report which highlighted that a material uncertainty existed in relation to NBA's ability to continue as a going concern. The material uncertainty was that NBA could only continue as a going concern if it remained liquid and was fully recapitalized. The accounts are attached at Exhibits A and B, and the auditor's report can be found at pages three to four and four to five, respectively. The auditor was KPMG Antigua.

2. **Insolvency of PBT**

14. Immediately following the appointment of the Conservator to NBA, the Conservator removed all of the directors of PBT and took control of its affairs, including day to day and strategic management.

15. The affairs of PBT and NBA were inextricably linked, all of PBT's liquidity was upstreamed (directly or indirectly) to NBA and PBT was entirely reliant upon NBA for day -to-day liquidity. Based on my review of PBT's books and records, I discovered that PBT's liquidity was upstreamed to NBA through one or more accounts (the "Accounts") at Bank of America, N.A. ("BofA"). The upstreaming gave rise to a large receivable from NBA in PBT's accounts; in fact, the deposit was by far the largest asset PBT held. PBT's reserves were minimal. In light of NBA's insolvency and the fact that PBT's largest asset was its account receivable from NBA, PBT, too, was insolvent and unable to repay its depositors.

16. As with NBA, on or around 2 September 2013, the Conservator initiated significant restrictions on access to funds which had been deposited at PBT at the date of the Conservator's appointment to NBA, namely that depositors could only withdraw:

- 10% of deposits \$50,000 to \$100,000;
- 5% of deposits \$100,000 to \$500,000;
- 2.5% of deposits \$500,000 to \$1,000,000; and
- 1.5% of deposits of greater amounts.

17. Such restrictions establish that PBT also was insolvent and unable to discharge its current liabilities.

18. PBT's audited accounts as at 31 March 2013, which were issued on 17 November 2014 and signed by employees of the ECCB on behalf of PBT, demonstrate that PBT was insolvent on a balance sheet basis. The accounts contain an "*Emphasis of Matter*" in the auditor's report which highlighted that a material uncertainty existed in relation to PBT's ability to continue

as a going concern. The material uncertainty is that PBT could only continue as a going concern if it remained liquid and was fully recapitalized. The accounts are attached at Exhibit C. The auditor was KPMG Antigua.

19. PBT's unaudited accounts as at 31 October 2013 and 2014, dated 17 November 2014, also demonstrate PBT was insolvent on a balance sheet basis, these accounts contain the same "*Emphasis of Matter*" referred to above.

3. Attempts to Obtain Information from the ECCB, Conservator, and NBA

20. Following my appointment, and as detailed below, I entered into extensive communications with the ECCB, the Conservator and NBA's management, *inter alia*, to:

- i. obtain assurance that the new funds placed with PBT by depositors from 12 August 2013 onwards, but not yet withdrawn, would remain fully available to those depositors in accordance with assurances given to them by the Conservator or PBT's staff who were under the direct control of the Conservator;
- ii. calculate the quantum of the liability to depositors referenced in (i) above;
- iii. obtain information on the proposed "resolution plan" relating to the resolution (restructuring) of NBA and specifically how the interests of PBT and its depositors would be treated in the resolution; and
- iv. obtain information concerning continued trading of PBT after NBA was placed into Conservatorship, the reason(s) and basis on which PBT's funds continued to be upstreamed to NBA, and why the directors of PBT were removed and placed under the Conservators control of its day to day operations.

A. Repayment of Net New Money Deposits

21. Following his appointment, the Conservator continued to allow PBT's customers to deposit money into their accounts at PBT. As set out above these deposits were upstreamed to NBA.

22. I have been advised by customers and employees of PBT that assurances were given to PBT's customers by both the Conservator and employees of PBT and NBA (who acted

under the direct control of the Conservator) that any new funds deposited with PBT after 12 August 2013 would be fully available for withdrawal by the respective depositor (the “Assurance”). I refer to the liability of new money introduced by depositors after the onset of Conservatorship, but not withdrawn at any time pursuant to the Assurance, as being the “Net New Money.” My colleague Ian Morton met, at PBT’s premises, with a customer of PBT who provided Mr. Morton with a statement confirming that, following the appointment of the Conservator, NBA confirmed that it was “business as usual.” In reliance upon such statements, the customer continued to make deposits into its account based on assurances they received from the staff of NBA and PBT (all of whom were under the control of the Conservator). A reproduction of this statement is attached, I have removed the name of the depositor, which is confidential, as I do not have its consent to publicly disclose such information. A copy of the reproduced statement is attached as Exhibit D.

23. Following my appointment, I sought written confirmation from the ECCB and the Conservator that the Assurance would be honoured and the Net New Money would be available to depositors who had made the deposits. All my communication with the ECCB was through its Deputy Governor who was assisted on calls by colleagues from time to time. Some of the key communications were as follows:

- Shortly after my appointment, my colleague, Matthew Richardson, advised me that the then Conservator (Mr. S. Williams) acknowledged that it would be fraud if money was taken from depositors following the commencement of the Conservatorship and not returned to those depositors.
- On 26 February 2016, during a telephone call with the Deputy Governor of the ECCB and the Conservator, I stated my requirement of a written guarantee that new funds introduced to PBT following my appointment would be available for return to the depositing party in full. The ECCB advised that to date all funds introduced following the commencement of the Conservatorship had been fully available and asked me to submit my request in writing.

- On 26 February 2016, I wrote to the ECCB and the Conservator restating my requirement that all monies introduced to PBT following my appointment would remain fully available to PBT and therefore its depositors and requested that a written undertaking be provided from the ECCB and/or Conservator that all such deposits would be protected and guaranteed to be repayable to PBT by NBA. A copy of this letter is attached as Exhibit E.
- On 8 March 2016, I received a letter from the Deputy Governor of the ECCB which stated it had been the policy and the practice of the ECCB that funds introduced to NBA via PBT since the date of intervention, 12 August 2013, had been available for access and that Net New Money would be fully available. A copy of this letter is attached as Exhibit F.
- On 11 March 2016, I wrote to the ECCB and the Conservator seeking clarity on the statement in relation to “net funds” as referred to in the 8 March letter and also the quantum of money deposited into and withdrawn from PBT by its customers from the date of intervention. A copy of this letter is attached as Exhibit G.
- On 16 March 2016, I had a telephone conversation with the Conservator and the Deputy Governor of the ECCB. During that conversation, the Conservator confirmed that funds deposited since the commencement of the Conservatorship were fully available. I inquired as to the quantum of the liability of the Net New Money and how I could be satisfied that the Net New Money would be returned because I had no visibility on the quantum, the mechanism or the financial ability of NBA to repay it.
- During a subsequent call on 16 March 2016, the Conservator stated that his team was calculating the Net New Money liability but could not make a decision on how repayment would be dealt with by NBA until they knew what the liability was. I was concerned that this calculation had clearly not been prepared until I raised the matter.
- On 17 March 2016, I sent an email to the Conservator which set out a proposed mechanism for repayment of the Net New Money. A copy of the email is attached as Exhibit H.
- During a call on 21 March 2016, the Conservator stated that he did not have an opportunity to review my proposal of 17 March 2016 with the ECCB but that he hoped to do so that day and to be in a position to respond the following day. He further advised that the quantum of the liability would drive what the decision making process for repayment.
- On 22 March 2016, I wrote to the Conservator and the ECCB expressing my disappointment that we had not yet discussed my 17 March 2016 proposal regarding repayment of the Net New Money. I advised the ECCB and the Conservator that I needed written assurances in relation to the repayment of Net

New Money to be provided to me by 8:30 a.m. (Anguilla time) on 23 March 2016. A copy of this letter is attached as Exhibit I.

- During a call on 23 March 2016, the mechanism to safeguard new deposits placed with PBT and to repay the Net New Money was discussed. The Deputy Governor of the ECCB, Mr. Trevor Brathwaite and I agreed that 1) a new account would be set up on 24 March to “ring fence” any money from depositors paid in from that date to be supplemented by new money deposited from 22 February 2016 to 23 March 2016 and 2) a further account would be set up into which funds would be paid by NBA to meet the Net New Money liability from the commencement of the Conservatorship to 21 February 2016. It should be noted that Mr. Gary Moving, the then-CFO of NBA who is now the Receiver of NBA, was present on this call. We further agreed that I would circulate a document which would set out more detail as to the terms of this agreement.
- Later on 23 March I issued a draft Term Sheet agreement recording the principles discussed during the earlier call (the “Term Sheet”). A copy of my covering email and this document are attached as Exhibit J.
- On 24 March the ECCB provided its comments on the Term Sheet. A copy of the ECCB’s covering email and comments on the Term Sheet are attached as Exhibit K. It is clear from this document alone that the ECCB and the Conservator recognized that they accepted the liability to repay the Net New Money in accordance with the Assurance.
- On 27 March 2016, I wrote to the ECCB and the Conservator advising them that the current proposal did not provide the necessary protection and that the agreement and obligation to repay would need to be supported by security, either in the form of an indemnity from the ECCB or cash from NBA. A copy of the letter is attached as Exhibit L.
- On 29 March 2016, the ECCB advised that it was seeking legal advice in relation to my request for security to be provided.
- On 30 March 2016, the ECCB confirmed that a new “ringfenced account” had been set up into which deposits made by PBT’s depositors would be paid, effective from 24 March 2016. It was acknowledged by the ECCB and the Conservator that the money in the ring-fenced account belonged absolutely to the depositors who had placed it.
- On 6 April 2016, the ECCB advised it was unable to support the obligation to repay the Net New Money with an indemnity as I had requested and that the issue of repaying Net New Money would be discussed at its Oversight Committee meeting on 8 April.
- On 11 April 2016, during a call with the Conservator and Mr. Gary Moving (the CFO of NBA and subsequently its Receiver) I was advised that the ECCB could not

provide an indemnity and that NBA had insufficient liquidity to provide any security or immediate repayment. The Conservator suggested however that NBA could recover the Net New Money from NBA's non-performing loan portfolio as and when recoveries were made.

- On 13 April 2016, I wrote to the ECCB and the Conservator seeking more information in relation to NBA's non-performing loans and the priority PBT would be given over them in relation to the Net New Money. A copy of the letter is attached as Exhibit M. This letter was never answered.
- During a call on 14 April 2016, the Conservator advised me that it was difficult for him to formulate a proposal for the return of Net New Money absent agreement on the quantum of the liability.
- On 15 April 2016, following a phone call on 14 April, I wrote to the Conservator and the ECCB in relation to the calculation and return of Net New Money in which I advised that we needed to work together to agree the quantum of the Net New Money liability and to agree a mechanism to return it. A copy of the letter is attached as Exhibit N.
- From 16 April to 21 April, 2016, I had numerous communications with the Conservator and the ECCB in relation to agreeing the quantum of the Net New Money liability, several of which are detailed later in this declaration.
- During a call with the Conservator and the ECCB on 19 April I demanded that any available liquidity to meet the Net New Money liability be transferred to me and I would use this money to repay those entitled to the Net New Money. I was concerned that given the insolvency of PBT, it would be necessary not to give any depositor a preference in respect of a repayment of Net New Money.
- On 19 April my counsel in Anguilla, Ms. Eustella Fontaine of Fontaine & Associates, wrote, at my instruction, to the Conservator asserting that assets held by NBA on behalf of PBT (including the Net New Money) were held subject to a constructive trust and were not assets of NBA and that NBA should not deal with these assets. A copy of this letter is attached as Exhibit O.
- On 21 April 2016, I repeated by e-mail the request made on the call on 19 April, that any available liquidity be transferred to me immediately. A copy of this email is attached as Exhibit P.

24. As the foregoing demonstrates, the Conservator and the ECCB acknowledged and accepted that the Net New Money needed to be available to the relevant depositors in accordance with the Assurance given to them. I attempted to agree with the Conservator the quantum involved and to develop a mechanism to effectuate its return to the relevant depositors. I went to great

lengths to try to ensure that these parties stood by their obligations to PBT and its depositors, which they have failed to do.

B. Calculating the Net New Money Liability

25. As part of my efforts to try to ensure that NBA, the Conservator and the ECCB stood by the commitment to repay the Net New Money, I entered into significant communication with these parties to try reach an agreed upon calculation of the Net New Money liability. Those communications included, without limitation, the following:

- On 17 March 2016 the Conservator advised me, during a telephone call, that the staff at PBT and NBA were undertaking an exercise to determine the quantum of the Net New Money liability. The Conservator advised he expected to have these calculations by 20 March. During this call, I confirmed that my staff was undertaking their own calculations and that these would be shared with the Conservator. My willingness to share my calculations was restated in the attachment to an email dated 17 March, a copy of which is attached as Exhibit Q.
- On 22 March 2016, I wrote to the Conservator expressing my disappointment that he had not yet provided his calculations to me.
- On 30 March 2016, my colleague Ian Morton met with the Conservator to discuss the progress of the calculation of the Net New Money liability, the Conservator advised he understood that the calculation had been completed. A number of high level points surrounding the calculations were discussed, it was noted that the Conservator had adopted an approach different from my calculation and it was agreed that Mr. Morton would meet with Mr. Moving to discuss the methodology. Mr. Morton advised me it was evident that the approach adopted by the Conservator was such that it would minimize the liability.
- During a call with the Conservator and Mr. Moving (and others) I stated that whilst it was agreed that the “last in first out” basis would give an approximate measure of the quantum of the Net New Money, to obtain an accurate number, each depositor’s account would need to be looked at individually and the individual activity on that account considered.
- On 1 April, the Conservator finally provided his preliminary analysis of the PBT Net New Money liability, which provided that the Net New Money liability US\$4.4 million. A copy of this analysis is attached as Exhibit R. (In compliance with Anguillian law, I have deleted the client names and account numbers from this analysis).

- The calculation provided had no detailed underlying supporting calculations and, therefore, I requested that additional information be provided to support the calculation and to enable me to undertake an informed review. Despite follow up requests for this information, it was never provided.
- On 3 April 2016, I wrote to the Conservator and the ECCB and advised them I was reviewing the calculation and noted that I had asked for additional information to be provided in relation to it. I also advised them; i) that the basis on which they appeared to have prepared their calculation, last in first out, would, as previously discussed, result in only an approximate measure of the amount to be repaid; ii) an accurate calculation would require a detailed review of each separate depositor account; and iii) that the analysis, which had been prepared up to the date of my appointment, would need to be extended to take account of transactions occurring after my appointment. A copy of that letter is attached as Exhibit S.
- On 14 April 2016, my colleague Mr. Morton advised the Conservator that he would like to meet with Mr. Moving in Anguilla to agree the quantum of the Net New Money.
- On 17 April Mr. Morton provided the Conservator, the ECCB and Mr. Moving with a copy of my calculation of the Net New Money liability, which amounted to US\$8.77 million as at the date of my appointment. Mr. Morton also provided details of the approach and key assumptions and advised that he looked forward to discussing the calculation on 18 April in order that the quantum of the Net New Money could be agreed.
- On 18 April Mr. Morton appeared at NBA's premises in Anguilla to meet with Mr. Moving as had been agreed, only to be told that Mr. Moving was not on the island and, therefore, was unavailable.
- Mr. Morton subsequently arranged to meet with the Conservator on 19 April 2016, to discuss the calculation. Despite having agreed to the meeting, the Conservator did not attend. Mr. Morton ultimately met the Conservator on 20 April. During this meeting, I have been advised that Mr. Morton explained my calculation to the Conservator. I have been further advised that limited discussion occurred during this meeting as the Conservator was simply listening to Mr. Morton.
- I subsequently received an email from the Deputy Governor of the ECCB on 25 April 2016 advising me that the ECCB was no longer in control of NBA which had been placed into Receivership and that I should contact the Receiver. A copy of that letter is attached as Exhibit T.

26. As the foregoing demonstrates, and notwithstanding the Conservator's delay and erroneous methodology in calculating the Net New Money liability, the NBA, the Conservator and the ECCB acknowledged and accepted that the Net New Money needed to be repaid in accordance

with the Assurance. The Conservator and the ECCB, however, have not diligently or in good faith attempted to liquidate the amount of the Net New Money liability.

27. Based on my calculation, the Net New Money Liability (including the time period after my appointment) totals approximately US\$9.1 million.

28. My calculation of US\$9.1 million is based on a detailed analysis of movement on each individual depositor's account from the period 13 August 2013 to 23 March 2016. In contrast, the Conservator's calculation simply looks at the difference in the opening and closing balance for each depositor and, if the balance increased, that constitutes the individual depositor's net new money claim. However, I do not consider that to be the correct methodology. The Conservator's methodology adopts a "last in, first out" approach and assumes that all withdrawals, in the first instance, came from money deposited following the commencement of the conservatorship. This does not accurately reflect how the depositors actually withdrew funds from their accounts. For example, depositors were allowed to withdraw funds from the pre-conservatorship balance with no restrictions for a period of two weeks following the Conservator's appointment. Thereafter, they were allowed to withdraw funds deposited prior to the Conservator's appointment, subject to the restrictions set out earlier in this declaration. The Conservator also allowed additional withdrawals from funds deposited prior to the onset of Conservatorship where a depositor could show a "hardship need", such as a medical emergency or a schooling needs.

29. To use an example to demonstrate why the Conservator's approach is incorrect, if a depositor had a \$100 balance at the date of conservatorship and then withdrew (before any other funds were deposited) \$20 and then later deposited an additional \$50, the Conservator would calculate Net New Money to be \$30, the difference between the deposit of \$50 and the withdrawal

of \$20. This clearly cannot be correct as the \$20, having been withdrawn before any other funds were deposited, must have been drawn from funds deposited prior to the Conservatorship. In my view, the correct calculation in this example of Net New Money would be \$50, as none of the amount deposited after the Conservatorship (and protected by the Assurance) was withdrawn.

30. The method I employed to calculate Net New Money took into consideration any funds withdrawn from balances existing at the date of the Conservatorship and ensure that these were not considered to be withdrawn from money deposited following the Conservatorship. Therefore, I reviewed each depositor's account and determined the minimum balance on the account following the commencement of the Conservatorship. The difference between the minimum balance and the closing balance must be the Net New Money. To use an example to demonstrate this, if a depositor had \$100 at the commencement of the Conservatorship, a closing balance of \$50 and a minimum balance during this period of \$10, then the Net New Money must be \$40. For the account to drop from \$100 to \$10, \$90 of the balance existing at the date of Conservatorship must have been repaid.

31. Therefore, of the closing balance of \$50, \$10 remains from funds deposited before the date of Conservatorship and the balance of \$40 is the remaining balance of funds deposited after the Conservatorship and protected by the Assurance. Using the Conservator's approach, the Conservator would compare the opening balance of \$100 to the closing balance of \$50 and his position would be that there is no Net New Money as the closing balance is less than the opening balance. As I have demonstrated, this approach is in correct and contrary to the Assurance.

C. Attempts to Obtain the Resolution Plan

32. Since his appointment, the Conservator had been working on a plan to restructure NBA, the "Resolution Plan." Given the fact that the day-to-day operations of PBT and NBA were

inextricably linked and PBT held significant cash at NBA, amounting to some 56% of the book value of PBT's assets, it was of critical importance that I understood how PBT would be treated in the resolution of NBA and the amount of the Net New Money liability (if any) treated in the Resolution Plan.

33. Following my appointment I have repeatedly asked the Conservator, the ECCB, and other parties to provide the Resolution Plan and the P&A to me and to provide details of what they consider the nature of PBT's cash held at NBA to be and how it would be treated in the Resolution Plan.

34. My requests for a copy of the Resolution Plan date back as far as February 2016.

35. During a 14 April 2016 telephone call with the Deputy Governor of the ECCB and the Conservator, the Deputy Governor undertook to send me a copy of the Resolution Plan by the middle of the week commencing 18 April. On 15 April 2016, I issued a letter to the Deputy Governor of the ECCB and the Conservator in which I noted their commitment to provide the resolution plan within the timeframe advised. A copy of this letter is attached as Exhibit U.

36. Notwithstanding my repeated requests and the Deputy Governor's undertaking to send me a copy of the Resolution Plan, neither the Resolution Plan nor the P&A has been provided to me.

37. On 4 May I wrote to NBA, Mr. Gary Moving, the Deputy Governor of the ECCB and to National Commercial Bank of Anguilla Ltd. ("NCBA") requiring them to provide me with the resolution plan, the P&A and any other agreements between the Receiver, NCBA and the Government of Anguilla which relate to the transfer of NBA's business and obligations to NCBA. A copy of these letters are attached at Exhibit V.

38. I received no response to my letters of and 4 May and accordingly, on 13 May 2016, my Anguillian counsel (Eustella Fontaine) sent a written request to counsel for NCBA for a copy of the Resolution Plan and the P&A. A copy of this letter is attached as Exhibit W.

39. On 20 May 2016, NCBA, through their counsel claimed (for the first time) that the Resolution Plan and the P&A were subject to a strict duty of confidentiality that limited their ability to disclose these documents. A copy of this letter is attached as Exhibit X.


40. On 7 June 2016, NCBA, through its counsel, re-stated that the Resolution Plan and the P&A were subject to a strict duty of confidentiality that limited their ability to disclose these documents. Notwithstanding this, they were prepared to disclose the documents, subject to obtaining consent from the Receiver. A copy of this letter is attached as Exhibit Y.

41. On 30 June, NCBA advised that the Receiver was unwilling to release the Resolution Plan and the P&A absent an order of the Court. A copy of this letter is attached as Exhibit Z.

42. In light of the continuing pattern of broken promises and nondisclosure, I pursued discovery from BofA, relating to the Account to which PBT's cash and the proceeds of its assets were upstreamed (directly or indirectly). I further requested that BofA not disburse funds in the Account to preserve PBT's interest in those funds.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: July 28, 2016

By: 

William Tacon, as Administrator of
National Bank of Anguilla (Private Banking &
Trust) Ltd.