

Eight Report of The Liquidator of

**LEADENHALL BANK & TRUST COMPANY  
LIMITED**

(In Voluntary Liquidation under the Supervision of the Court)

For the period from July 16, 2008 to November 30, 2008

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# **Leadenhall Bank and Trust Company Limited**

*(In Voluntary Liquidation under the Supervision of the Court)*

**Seventh Report of the Liquidator** (From July 16, 2008 to November 30, 2008)

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## **INTRODUCTION**

The Eight Report of the Liquidator of Leadenhall Bank & Trust Company Limited (“the Bank”) is intended for use by the Central Bank of The Bahamas, The Bahamas Registrar General and the Supreme Court of the Commonwealth of The Bahamas and other concerned parties. This report sets out the steps taken by the Liquidator during the period from July 16, 2008 to November 30, 2008. The Liquidator had previously acted as the Receiver of the Bank for the period from July 18, 2005 to October 3, 2005. On October 3, 2005 the Bank was placed into voluntary liquidation.

## **BACKGROUND AND BASIS OF APPOINTMENT**

Leadenhall Bank & Trust Company Limited is a Bahamian incorporated Company and was licensed under the provisions of the Banks and Trust Companies Regulation Act, 1965, as amended.

In 2000, Leadenhall was granted a license to provide services in Bahamian dollars. This license gave the Bank the authority to service the domestic market. However, that service never materialized.

The Bank’s revenue was generated primarily from the following:

- Trust services
- Managed companies (e.g. IBC, property management, etc.)
- Banking and investment services

Until July 29, 2003, the Bank also generated revenue from its MasterCard (credit card) franchise, which was operated by Axxess International Bahamas Limited. MasterCard suspended the license issued to the Bank and was claiming a termination fee of \$1.7 million.

As a result of the loss of its credit card business and the ongoing litigation with respect to same, along with litigation involving the Cash 4 Titles class action suit and shareholder fallout, the Bank had consequently experienced recurring losses from its operations in recent years.

I was appointed Receiver of the Bank with effect from July 18, 2005. The Bank’s licence was suspended for the period from July 18, 2005 to October 3, 2005. My appointment was made pursuant to Section 18 (1) (f) of the Banks and Trust Companies Regulation Act 2000.

On October 3, 2005, by a resolution of the shareholders, the Bank was placed into voluntary liquidation and I was appointed the Liquidator.

A Notice of said Resolution was subsequently published in the Nassau Guardian on October 12, 2005.

Simultaneously, with the members’ resolution to voluntarily wind up the Bank, The Central Bank of The Bahamas revoked the Bank’s licence on October 12, 2005.

On November 11, 2005 an Order was granted by the Supreme Court granting leave for a further application to be made for an Order that the liquidation be Court supervised. The Supreme Court on November 25, 2005 granted an Order for the liquidation to be Court supervised.

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## DEFINITIONS

In this report, the words and expressions hereunder shall mean, as follows:

"The Liquidator" means Craig A. (Tony) Gomez or any member of his team.

"I" means Craig A. (Tony) Gomez or any member of his (the Liquidator's) team.

"The Bank" means Leadenhall Bank & Trust Company Limited.

"Counsel" means Callenders & Co., the Liquidator's General Counsel.

"Court" means the Supreme Court of the Commonwealth of The Bahamas.

"Receiver" means Craig A. (Tony) Gomez acting as Receiver of the Bank during the period July 18, 2005 to October 3, 2005.

"MBH" means McKinney Bancroft & Hughes, the Liquidator's Counsel in the Axxess International litigation with First Financial Caribbean Trust Company.

## STEPS TAKEN BY THE LIQUIDATOR (for the period from July 16, 2008 to November 30, 2008)

1. Attended court with Counsel for the granting of the Order to approve the Seventh Report of the Liquidator.
2. Placed the Seventh Report of the Liquidator on the Bank's website.
3. Attended various Court hearings with MBH regarding FFCTC matter.
4. Continued with out-off-court talks with the Plaintiff in the FFCTC matter.
5. Continued to facilitate clients' requests to transfer "off-balance sheet" accounts, companies and trusts to new service providers.
6. Reviewed Affidavit to support the Court Order to conclude the FFCTC matter and commence the first distribution of the credit card asset.
7. Continued to receive various communications from clients requesting updates on the status of the Bank and the status of the Axxess litigation.
8. Met with several clients of the Bank and provided updates on the liquidation.
9. Attended court on the C4T matter.
10. Attended Court on a client matter.

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**STEPS TAKEN BY THE LIQUIDATOR** (for the period from July 16, 2008 to November 30, 2008)  
(continued)

11. Completed the Eighth Report of the Liquidator.
12. Forwarded Eighth Report of the Liquidator to General Counsel to be filed with the liquidation Judge for approval.

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## CONCERNS

- **Axxess International Bahamas Limited**

The Bank is currently engaged in litigation with Axxess International Bahamas Limited ("Axxess"), and its principals as Defendants and First Financial Caribbean Trust Company ("FFCTC") as the Plaintiff. FFCTC is claiming insufficiency of the Trust assets transferred to them based on the asset schedule in the Deed of Retirement and Appointment that was executed by the Bank on March 15, 2002.

The hearing date of July 25, 2008 was postponed to perfect the draft Order to commence the first distribution of the credit card assets.

I attended Court on July 31, 2008 with MBH and the Plaintiff's Attorney, and presented Justice Mohammed with a status report, which contained details concluding all outstanding matters in the litigation.

The summons of the Order to commence the first distribution of the credit card assets was filed on August 15, 2008.

I attended Court on August 20, 2008 with MBH and the Plaintiff's Attorney, and presented Justice Mohammed with a final update on the resolution of all matters in the litigation. The Plaintiff's Attorney informed the Judge that he will have the perfected distribution Order delivered to the Court on August 21, 2008.

The Order was granted by His Lordship the Honourable Mr. Justice Faisool Mohammed on August 25, 2008. The Order granted a first distribution of \$9.8M of the total asset pool of approximately \$14M in credit card assets. See Appendix 3.

- **Cash 4 Titles**

The U.S. District Court Judge, Adalberto Jordan issued an Order on September 7, 2007 allowing the victims in the Cash 4 Titles ("C4T") matter to be certified as a class.

On September 10, 2007, Judge, Adalberto Jordan, handed down his final ruling in favor of the Plaintiffs in the C4T litigation in the amount of \$110,076,111.46, which under the RICO (Racketeer Influenced and Corrupt Organizations) statute, resulted in treble damages in the amount of \$330,228,331.07 against Axxess and the Bank.

The Plaintiffs are alleging "that the Defendants were part of a common scheme of fraudulent conduct, specifically a scheme to misappropriate the funds invested by the Class members in the C4T enterprises".

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## CONCERNS

- **Cash 4 Titles** (continued)

In June, 2008, I received a bundle of documents from a local attorney ("the Attorney") containing the written submissions of the C4T Class in support of their proof of debt from the Bank. The documents further presented information as to the reason why the Judgment by the Florida Court should be accepted in The Bahamas.

On October 2, 2008, I sent the Attorney representing the C4T Class a letter rejecting all claims received from the C4T Class. See Appendix 4.

On October 29, 2008, the Attorney for the C4T Class filed a summons to appeal my rejection of their claims.

On November 4, 2008, I was served with another bundle of documents from the Attorney representing the C4T Class.

On November 12, 2008, I received a letter from the Attorney representing the C4T claimants, notifying me that the clerk of Justice Lyons Court telephoned him advising that I should appear before His Lordship on Friday, November 12, 2008, at 9:30am to hear the Summons of his client and to agree dates for the exchange of written submissions.

I appeared with Counsel in Court on November 21, 2008, and the matter was adjourned to allow the Plaintiff to perfect the original bundle filed with the Court Registrar.

- **Generali International – Policy no. PF32322**

The portfolio totaled \$15,808,702 as at September 30, 2008. The investment is comprised of the following:

	<b>September 30, 2008</b>
	<b>Market Value</b>
Cash	\$15,807,069
Caledonia Corporate Group Limited/Caledonia Guaranteed Investment Fund	0
Structured Asset Investment Loan T-Bill	1,633
<b>Total</b>	<b>\$15,808,702</b>

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## CONCERNS

- **Generali International – Policy no. PF32322 (continued)**

Below is the fee charged by Generali for the quarter ending September 30, 2008.

	<b>Amount</b>
3 <sup>rd</sup> Qtr. 2008	\$2,483
<b>Total</b>	<b>\$2,483</b>

Based on the rules of Generali's policy in relation to charging periods, the Bank has now exceeded the five (5) year period from the time of its tranches of investments, which represents the time period for Generali's quarterly fee assessment.

Below is an analysis of the interest earned by the Bank versus the charges incurred on the Bank's portfolio held at Generali for the period from July 1, 2008 to September 30, 2008.

	<b>September 30, 2008</b>
Interest earned on investment	\$98,836
Fees paid to Generali (as per above)	(2,483)
<b>Direct net gain for 3<sup>rd</sup> qtr. of 2008</b>	<b>\$96,353</b>

Generali's Early Discontinuance Charge ("EDC") should the Bank apply for a withdrawal before the agreed time as defined in the contract is as follows:

<b>Description of charges</b>	<b>Amount</b>
Early Discontinuance Charge	\$ 4,896
Administrative charge	0
Service charge	0
Trading charge	53
<b>Total charges</b>	<b>\$ 4,949</b>

- **Caledonia Guaranteed Investment Fund Ltd.**

The Bank presently holds an investment in Caledonia Fund Investments Limited ("the Fund") in the amount of approximately US\$3,000,000.00. The Net Asset Value of the Fund was US\$3,846,942, as per the 2006 audited financial statements and the Fund is managed by Caledonia Corporate Management Group Limited ("Caledonia").

By a resolution passed by the Board, it was resolved that the Fund be liquidated and that Mr. James B. Gomez, C.A. be appointed the liquidator of the Fund.

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## CONCERNS

- **Caledonia Guaranteed Investment Fund Ltd. (continued)**

The directors of the Fund are Mr. Matthew McNeilly and I. I replaced Mr. William Jennings by resolution of the Board of Directors of the Fund on December 15, 2005. My appointment as a Director of the Fund was due to the Bank holding a 78% equity interest in the Fund. I did not accept any Director's fee in relation to this appointment.

The investment was liquidated on July 7, 2008 and the balance is now included in the cash balance at Generali. The lost from the liquidation of the investment is US\$36,743.14

- **Unsecured Credit Cards**

The accounts receivable in the amount of \$1.3M, owed by the former unsecured credit card holders was ordered to be transferred to First Financial Trust Company Limited, Turks & Caicos Islands. This amount represents a part of the credit card trust assets. See Appendix 3.

- **Loan receivables**

The Bank's loan receivables, inclusive of principal and interest, are represented by seven debtors, with outstanding balances totaling \$3,458,486.

The principal activities during the reporting period are as follows:

**A) Dimethaid Research Inc. ("Dimethaid")**

Subject to Court approval, I agreed for Nuvo, formerly known as Dimethaid, to pay the proceeds from the sale of their property located at 1405 Denison Street, Markham, Ontario, against their outstanding loan balance. Even after the application of this payment there will be a shortfall which the Bank may be forced to write-off.

Nuvo alleges that the interest calculation on the loan violated the Canadian Interest Act and consequently, the loan should attract a 5% default interest rate. At all material times the Bank accounted for the loan at the loan specified rate of 2% per month.

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## CONCERNS

- **Loan receivables** (continued)

**A) Dimethaid Research Inc. ("Dimethaid")**

Shortly after the First Report of the Liquidator, former officers of the Bank queried the accounting for the interest under the proposed settlement. Subsequently, Counsel sought the advice of Canadian attorneys regarding the application of the Canadian Interest Act.

Canadian Counsel opined that the loan was fully enforceable at the expressed rate of 2% per month. Based upon the Canadian attorney's opinion, I instructed Counsel to apply to the Court for release of these funds to the general asset pool. Nuvo has instructed local counsel to challenge this position.

A summons from Nuvo's local counsel was served on General Counsel on June 20, 2007, seeking the return of the funds held by me in escrow pending Court approval. I am still waiting to hear from Nuvo's Counsel and to determine a Court date to hear and conclude this matter.

**B) Other loans**

These loans are being pursued, however, I am considering whether it is feasible to further deplete the assets of the Bank to recover the remaining loans, which in my assessment would be difficult as many of the borrowers reside in foreign countries.

- **Forged check**

This matter is being pursued, however, I am also considering whether it is feasible to further deplete the assets of the Bank to recover the forged check in the amount of CAD\$125,937.00, which in my estimation could be difficult as the individual in question resides in a foreign country.

- **Transfer of accounts**

It is now determined by me that the former clients of the Bank have no further interest of the remaining companies not transferred to other service providers.

I received one request to transfer a trust to a new trustee, which is currently in progress.

Below is a summary of requests to either:

- I. transfer account to a new service provider.
- II. liquidate the company.
- III. terminate the trust/company:

Transfer company to new service provider	-	44
Transfer trust to new Trustee	-	23
Close company/trust	-	18

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## CONCERNS

- **Transfer of accounts** (continued)

There still remain 41 accounts that have not been transferred to new service provider.

- **Off Balance Sheet Assets held in the name of the Bank**

I received one (1) request to transfer client's off-balance sheet assets to a new service provider.

There still remains accounts with off-balance sheet assets that have not been transferred as per client's instructions.

I am still in discussion with the remaining clients regarding the transfer of their "off-balance sheet" assets to other service providers.

- **Statement of affairs**

See Appendix 1 for the unaudited statement showing assets at estimated realizable values and liabilities as they are expected to rank, as at November 30, 2008.

- **Receipts and disbursements**

Receipts and disbursements made during the period from July 16, 2008 to November 30, 2008 are shown at Appendix 2.

- **Reproduction of Information Request**

I have received a request during this reporting period from the Secretary of Revenue at the Ministry of Finance Office, requesting the reproduction of Axxess International Limited credit cardholder information. Previously, received request made through the Attorney General's Office, the Financial Intelligence Unit and from Axxess credit card holders, are for the following:

- Credit card statements
- Security deposits source of funds
- Details of payments in excess of current charges
- Details of refunded security deposits
- Details of clients identity
- Details of related account

Once received all requests are acted upon as soon as possible.

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## CONCERNS

- **Customer Communications**

I continue to receive an increase in the amount of emails, telephone calls and correspondence from Axxess cardholders wanting to know the status of their accounts. We have advised them that the Bank is no longer the Trustee and that FFCTC is the Successor Trustee.. Their main concern appears to be the response to the Court Order issued by His Lordship the Honourable Mr. Justice Faisool Mohammed on August 25, 2008. See Appendix 3.

We have placed on the Bank's website, the contact information for First Financial Caribbean Trust Company Limited. At the conclusion of the FFCTC matter the Bank has now been discharged from all matters in reference to the credit card assets of Axxess International Limited.

- **Record storage**

I have relocated and secured a permanent storage site for the records of the Bank as the current square footage of rental space is no longer needed.

This relocation of records also included the credit card records. I am currently in negotiations with the Successor Trustee, FFCTC, to transfer the credit card records to them. These records also represents a part of the credit card assets.

## CONCLUSION

I will continue to take customers' calls and move the liquidation forward. The primary challenges facing the liquidation are:

- A determination of the Cash 4 Titles proof of claim;
- Resolution of the Nuvo/formerly Dimethaid loan matter;
- How to proceed with the remaining outstanding loans;
- How to proceed with the forged check matter;
- Transfer of the credit card records to FFCTC;
- Re-direction of future request from regulators for reproduction of credit card records

I will continue to have the client records made current, to facilitate the various transfer requests and to assist clients in making their claims with the Bank.

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Very truly yours

Craig A. (Tony) Gomez  
Liquidator  
Leadenhall Bank & Trust Company Limited  
(In Voluntary Liquidation under the Supervision of the Court)  
Nassau, Bahamas  
November 30, 2008

**LEADENHALL BANK & TRUST COMPANY LIMITED**  
**(In Voluntary Liquidation under the Supervision of the Court)**  
Statement of Assets at Estimated Realizable Values  
And Liabilities As Expected to Rank

As at November 30, 2008  
(Expressed in Bahamian dollars)

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**ASSETS**

Cash due from Banks	\$ 20,062,654
Investment in securities	425,963
Loans receivable, net	3,458,486
Accounts receivable	336,148
Fixed assets, net	10,670
Deposit - utilities	9,556
	<hr/>
	<b>\$ 24,303,477.00</b>

**LIABILITIES**

Amount due to Creditors	26,774,483
	<hr/>

<b>ESTIMATED LOSS AS REGARDS MEMBERS</b>	<b>(\$ 2,471,006)</b>
	<hr/>

**Leadenhall Bank & Trust Company Limited**  
**(In Voluntary Liquidation under the Supervision of the Court)**

Cash and Due from Banks

As of November 30, 2008  
 (Expressed in Bahamian dollars)

<b>Cash and due from Banks (BSD)</b>	<b>A/C Type</b>	<b>Fcy Amount</b>	<b>X-Rate</b>	<b>BSD Eqv.</b>
Cash on hand				
Royal Bank of Canada	C/A	191,168	1.0000	\$ 191,168
First Caribbean International	C/A	388	1.0000	388
<b>Total BSD Cash</b>		<b>191,561</b>		<b>191,561</b>
<b>Cash and due from Banks (CAD)</b>				
Generali International	F/D	1,415,144	.8091	1,144,992
First Caribbean International	F/D	817,307	.8091	662,870
First Caribbean International	F/D	21,569	.8091	17,452
Generali International	Call	37	.8091	34
<b>Total CAD Cash</b>		<b>2,254,057</b>		<b>1,825,348</b>
<b>Cash and due from Banks (GBP)</b>				
Generali International	F/D	1,680,616	1.5348	2,579,408
HSBC Bank	F/D	746,594	1.5348	1,145,871
First Caribbean International	F/D	463,677	1.5348	711,651
HSBC Bank	C/A	115,146	1.5348	176,726
First Caribbean	F/D	79,409	1.5348	121,876
Generali International	C/A	712	1.5348	1,093
<b>Total GBP Cash</b>		<b>3,086,154</b>		<b>4,736,625</b>
<b>Cash and due from Banks (USD)</b>				
Generali International	F/D	5,850,675	1.0000	5,850,675
Generali International	Call	5,628,451	1.0000	5,628,451
Royal Bank of Canada	C/A	1,830,022	1.0000	1,830,022
MasterCard	C/A	0	1.0000	0
Canaccord Capital Corp	C/A	(29)	1.0000	(29)
<b>Total USD Cash</b>		<b>13,309,120</b>		<b>13,309,120</b>
<b>CLOSING CASH POSITION</b>				<b>\$ 20,062,654</b>

**Leadenhall Bank & Trust Company Limited**  
**(In Voluntary Liquidation under the Supervision of the Court)**

Statement of Receipts & Disbursements

For the period from July 16, 2008 to November 30, 2008  
 (Expressed in Bahamian dollars)

<b>OPENING CASH POSITION</b>	<b>\$20,977,415</b>
<b>Receipts</b>	
Sale of The Caledonia Fund Investments Limited	2,963,257
Interest earned on Generali deposits	98,836
Interest earned on First Caribbean deposits	20,965
Research charges	750
Sale of Asset	300
	<b>3,084,108</b>
<b>Disbursements</b>	
Court settlement of credit card assets	1,897,551
Liquidator's remuneration	125,092
Legal fees	70,542
Rent	10,000
Offsite storage – rent	7,000
Petty cash – office expense	5,956
Salaries	4,598
Fees paid to Generali International	2,483
Bank charges	1,662
Telephone	1,391
Internet	816
	<b>2,127,091</b>
<b>Deduct mark to market unrealized forex difference on CAD\$ and GBP *</b>	<b>(1,871,778)</b>
<b>CLOSING CASH POSITION</b>	<b>\$20,062,654</b>

**\* Foreign currency loss due to the strengthening of the US\$ against CAD\$ and GBP**

**LEADENHALL**  
BANK & TRUST  
**(In Voluntary Liquidation)**

APPENDIX 3

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I Cumberland Hill Street  
P.O. Box N-1965, Nassau, Bahamas  
Telephone (242) 323-0640/8/9    Telefax (242) 323-0641

October 2, 2008

Mr. Jason Maynard  
Chambers  
Peter D. Maynard  
Bay & Deveaux Streets  
P.O. Box N-1000  
Nassau, Bahamas

Dear Mr. Maynard,

**Re: Cash 4 Titles Class' Proof of Debt against Leadenhall Bank & Trust  
Company Limited (In Liquidation)**

I have completed my review of the claim you submitted to me on behalf of the C4T Claimants, attempting to have the Default Judgment by the Florida Court recognized in the Bahamian Liquidation proceedings.

I take this opportunity to advise you, that after my review of the information sent to me, the claim is entirely rejected and shall not be considered in our pro-rata distribution of the assets of the Bank.

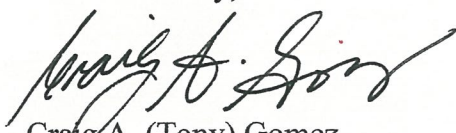
My rejection of the claim is based on the following:

- The Default Judgment in Florida is not recognized by The Bahamas Supreme Court.
- The allegation that the Bank aided and abetted the C4T principals is absolutely denied. I contend that at all material times the Bank simply conducted normal banking business, as any other Bank in The Bahamas would have.
- All actions against the Bank both local and abroad ceased, or ought to have ceased, by virtue of the Order of The Bahamas Court placing the Bank into liquidation.

Please acknowledge receipt of this letter by signing and returning the attached copy to me.

Should you have any further questions, please contact Mr. Edward R. Rolle or myself.

Yours sincerely,

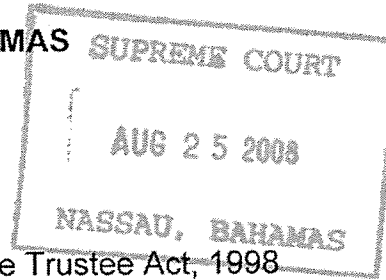
  
Craig A. (Tony) Gomez  
Liquidator

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PETER D. MAYNARD  
COUNSEL & ATTORNEY

COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
EQUITY SIDE



2002

No. 1758

IN THE MATTER of the Trustee Act, 1998

AND IN THE MATTER of the numerous Trust Agreements made between Leadenhall Trust Company as Trustee and the individual and respective Cardholders of Axxess International as Trust Holders

BETWEEN

FIRST FINANCIAL CARIBBEAN TRUST COMPANY LIMITED

Plaintiff

AND

LEADENHALL BANK & TRUST COMPANY LIMITED

Defendant

**ORDER**

DATED this 20<sup>th</sup> day of August, A.D., 2008

BEFORE His Lordship the Honourable Mr. Justice Mohammed, Justice of the Supreme Court of The Commonwealth of The Bahamas

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BY ORIGINATING SUMMONS filed herein on the 28<sup>th</sup> August, 2002

BY SUMMONS filed herein on the 15<sup>th</sup> August, 2008

UPON READING the Affidavits of Delroy Howell filed on the 3<sup>rd</sup> October, 2003, 18<sup>th</sup> May, 2004, 1<sup>st</sup> December, 2004 and the 23<sup>rd</sup> December, 2004

AND UPON READING the Affidavits of William Jennings filed on the 17<sup>th</sup> October, 2003, 8<sup>th</sup> March, 2004, 13<sup>th</sup> December, 2004 and 13<sup>th</sup> April, 2005

AND UPON READING the Affidavit of Craig Gomez filed herein on the 8<sup>th</sup> May 2005

**AND UPON READING** the Affidavit of Melissa Selver-Rolle filed on the 15<sup>th</sup> August, 2008

**AND UPON HEARING** Raynard Rigby of Counsel for the Plaintiff and Brian Moree and with him Nicole Sutherland-King of Counsel for the Defendant

**AND** the parties having agreed that:

- (1) The Defendant was the trustee of a number of trusts created by trust deeds as more particularly set out in the First Schedule attached hereto ("**the Trusts**").
- (2) Under the terms of a Deed of Retirement, Appointment and Indemnity dated the 15<sup>th</sup> March, 2002 ("**the Deed**"), the Defendant retired as the trustee of the Trusts.
- (3) Under the terms of the Deed, the Plaintiff was appointed the Successor Trustee of the Trusts.
- (4) The trust assets of each of the Trusts were co-mingled and the total combined pool of assets of the Trusts is currently comprised of cash deposits at various banks located within and outside of the Commonwealth of The Bahamas ("**the Cash Deposits**") together with a portfolio of receivables from cardholders in the approximate amount of US\$1.3 million ("**the Receivables**") and funds currently held by MasterCard which are due to be returned to the Successor Trustee totaling US\$1,897,551.00 of which MasterCard is prepared to pay the sum of US\$284,551.00 representing the balance of the termination fee ("**the MasterCard Funds**").
- (5) The aggregate amount of the Cash Deposits is approximately US\$14 Million which was transferred by the Defendant to the Plaintiff as trustee for and on behalf of the Beneficiaries of the Trusts.

- (6) The total amount due to the Beneficiaries is approximately US\$17 million.
- (7) The Beneficiaries as appear on the Schedule of Distribution exhibited to the Affidavit of Melissa Selver-Rolle filed herein on the 15<sup>th</sup> August, 2008 are entitled to the trust assets comprising the Cash Deposits, the Receivables and the MasterCard Funds (as appears on the First Schedule hereto).
- (8) The trust assets were not segregated but were treated as a blended trust and that the parties are unable to identify each segregated fund in respect of each and every trust.

**AND** the Court being satisfied as to the matters noted above in light of the Affidavits filed in this matter

**IT IS HEREBY ORDERED:**

- (i) That the Defendant do transfer the assets set out in the First Schedule attached hereto (hereinafter referred to as "**the Assets**") to the Plaintiff in its capacity as the duly appointed Successor Trustee of the various trusts created by the trust agreements made between the Defendant (as Trustee) and the respective holders of credit cards issued by Axxess International (hereinafter referred to as "**the Trusts**") under the terms of the Deed of Retirement, Appointment and Indemnity made on the 15<sup>th</sup> March, 2002, between the Plaintiff and the Defendant.
- (ii) That upon complying with the terms of paragraph (i) above the Defendant, as the original Trustee of each of the Trusts shall not be liable for any actions, proceedings, claims, expenses and demands, whatsoever arising from or directly or indirectly in connection with the setting up of the Trusts or the management and/or

administration of the trust property of each of the Trusts or in any way relating thereto.

- (iii) That based on the evidence set out in the Affidavit of Melissa Selver-Rolle filed herein on the 15<sup>th</sup> August, 2008 the Plaintiff as the Successor Trustee of the Trusts be entitled to treat those separate trusts as a single blended trust thereby treating the Assets as a single trust fund for the benefit of all the beneficiaries under the individual Trusts (hereinafter referred to collectively as "**the Beneficiaries**").
- (iv) That having received from the Defendant the amount of approximately \$14 million dollars comprising a part of the Assets, the Plaintiff in its capacity as the Successor Trustee of the Trusts is authorized to make a first distribution on a pro rata basis to all Beneficiaries in the amount of \$9.8 million, representing 70% of the sum of approximately \$14 million held by the Plaintiff as Trustee in accordance with the Schedule of Distribution exhibited to the Affidavit of Melissa Selver-Rolle filed herein on the 15<sup>th</sup> August, 2008.
- (v) That the Plaintiff as Successor Trustee and the Defendant as the original Trustee each recover its full costs, expenses and disbursements incurred in the conduct of this action from the trust assets on an indemnity basis subject to the Court approving the amount of such costs and expenses in the case of both the Plaintiff and the Defendant;
- (vi) That the Order of Mr. Justice John Lyons dated the 9<sup>th</sup> July 2008 be varied to authorize BNP Paribas Bank (formerly United European Bank) to pay to the order of Gibson, Rigby & Co., the Plaintiff's Attorneys, the sum of US\$253,000.00 or any other sum standing in the account numbered 954700 in the name of Axxess Investments Funds Ltd.;

- (vii) That all further proceedings in this action be stayed except for the purposes of the Plaintiff seeking further directions or orders in connection with the recovery or collection of assets belonging to the Trusts and subsequent distributions to the Beneficiaries;
- (viii) That upon the final distribution of all the Assets to the Beneficiaries this action shall stand dismissed;
- (ix) Any consequential orders that may be deemed just and necessary;
- (x) That the parties have liberty to apply.

**AND UPON** the Plaintiff being satisfied that all amounts due and owing to the Beneficiaries have been paid in compliance with this Order **IT IS FURTHER ORDERED** that the Plaintiff as Successor Trustee do file an Affidavit of Compliance within fourteen (14) days of the date of the last distribution to the Beneficiaries hereunder.

**AND IT IS FURTHER ORDERED** that the Plaintiff be wholly relieved from personal liability in respect of all distributions made pursuant to this Order.

**DATED** the 20<sup>th</sup> day of August, 2008

**BY ORDER OF THE COURT**

**REGISTRAR**

**The First Schedule**

(as referred to in this Order)

1. The Cash Deposits amounting to the approximate sum of \$14 million dollars in the currency of the United States of America
2. The Receivables in the approximate sum of \$1.3 million dollars in the currency of the United States of America
3. The funds currently held by MasterCard representing the sum of US\$1,897,551 of which MasterCard is prepared to pay the sum of US\$284,551

COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
EQUITY SIDE

IN THE MATTER of the Trustee Act, 1998

AND IN THE MATTER of the numerous Trust  
Agreements made between Leadenhall Trust  
Company as Trustee and the individual and respective  
Cardholders

BETWEEN

FIRST FINANCIAL CARIBBEAN TRUST COMPANY  
LIMITED

Plaintiff

AND

LEADENHALL BANK & TRUST COMPANY LIMITED  
Defendant

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**ORDER**

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2002

No. 1758

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