

Tenth Report of The Liquidator of

**LEADENHALL BANK & TRUST COMPANY  
LIMITED**  
(In Liquidation)

For the period from June 1, 2010 to March 31, 2011

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# Leadenhall Bank and Trust Company Limited

*(In Liquidation)*

Tenth Report of the Liquidator (From June 1, 2010 to March 31, 2011)

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## **INTRODUCTION**

The Tenth Report of the Liquidator of Leadenhall Bank & Trust Company Limited (“the Bank”) is intended for use by the Supreme Court of the Commonwealth of The Bahamas. This report sets out the steps taken by the Official Liquidator during the period from June 1, 2010 to March 31, 2011.

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 that 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.

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

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.

Further, it was ordered that the Liquidator be assisted by Callenders & Co. as General Counsel.

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.

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**BACKGROUND AND BASIS OF APPOINTMENT** (continued)

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.

Evans & Co. was appointed as General Counsel to the Liquidator in place of Callenders & Co. on February 19, 2010.

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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.

“General Counsel” means Callenders & Co., the Liquidator’s General Counsel up to February 18, 2010 and Evans & Co. from February 19, 2010 to the date of this report.

“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 from 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 Limited.

## STEPS TAKEN BY THE LIQUIDATOR (for the period from June 1, 2010 to March 31, 2011)

1. Attended court with General Counsel for the granting of the Order to approve the Ninth Report of the Liquidator.
2. Placed the Ninth Report of the Liquidator on the Bank’s website.
3. Met with several clients of the Bank and provided updates on the liquidation.
4. Attended the Supreme Court on the Cash 4 Titles (“C4T”) directions matter.
5. Attended the Supreme Court as a result of the C4T Summons for payment Judgment by the C4T Class.
6. Attended the Magistrate Court for a deposition on Boustead et. al matter from the Attorney General’s office.
7. Received a proposal from Nuvo to settle their outstanding loan with the Bank.
8. Sent counter-proposal to Nuvo on the settlement of their outstanding loan with the Bank.
9. Received opinion from US Counsel on the C4T directions matter and discussed same with General Counsel.

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**STEPS TAKEN BY THE LIQUIDATOR** (for the period from June 1, 2010 to March 31, 2011)  
(continued)

10. Met with General Counsel to discuss their opinion sent to me on how I should proceed on the C4T direction matter.
11. Continued to receive various communications from the bank's clients requesting updates on the status of the distribution of the bank's assets.
12. Continued to address the concerns of the cardholders of Axxess International Limited whose accounts were transferred to First Financial Caribbean Trust Company. These cardholders continue to call the Liquidator for the refund of their credit card security deposits.
13. Attended the Supreme Court with General Counsel on the Whale Cay matter and an Order was received to transfer the Trust to a Successor Trustee.
14. Attended the Supreme Court with General Counsel in relation to the Summons taken out by Doma Company Limited regarding the turn over of assets allegedly held on behalf of the Company.
15. Attended the Supreme Court with General Counsel in relation to two (2) Summonses taken out by Counsel on behalf of the C4T Class of creditors seeking, among other things (i) the payment of an interim dividend and (ii) the inspection and copies of all company documents relating to the settlement between First Financial Caribbean Trust Company Limited and the Bank.
16. Attended the Supreme Court with General Counsel for the Court rulings in respect of various Summonses and the Liquidator's application in respect to costs.

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## CONCERNS

- **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 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".

In June 2008, I received a bundle of documents from Peter Maynard & Co. ("Maynard & Co.") 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 Maynard & Co. a letter rejecting all claims received from the C4T Class.

On October 29, 2008, Maynard & Co. filed a summons to appeal my rejection of the C4T Class claim.

On November 4, 2008, I was served with a further bundle of documents from Maynard & Co. in the C4T matter.

I attended Court on December 12, 2008 with General Counsel (Callenders & Co.) to obtain a hearing date for the appeal of the rejection of the C4T claim. The hearing date was set for February 6, 2009.

I, along with General Counsel (Callenders & Co.), met with Julian Malins, QC, to obtain a briefing on the hearing set for February 6, 2009 and discussed matters in the liquidation that could be affected by the rejection of the C4T claim.

I attended Court with General Counsel (Callenders & Co.) on February 6, 2009, for the substantive hearing on the C4T rejection matter.

I attended Court with General Counsel (Callenders & Co.) on February 19, 2009, for the ruling on the appeal hearing. A further submission was requested by the Judge from General Counsel and C4T attorneys.

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## CONCERNS

- **Cash 4 Titles** (continued)

On April 30, 2009 Justice Lyons handed down a Judgment against Leadenhall to admit the claim from the C4T Judgment by the USA Court.

On May 5, 2009 General Counsel filed a Notice of Appeal of the decision of Justice Lyons ruling dated April 30, 2009 against the rejection of proof by the Liquidator in respect of the C4T Class Judgment in the amount of \$313M, awarded in the Florida, USA Court.

I attended the Court of Appeal with General Counsel and Mr. Julian Malins, QC on December 15, 2009, on the appeal hearing on the judgment handed down by Justice Lyons against Leadenhall on April 30, 2009 in the C4T rejection matter. The Court of Appeal dismissed the Appeal.

At the time the Appeal before The Bahamas Court of Appeal was dismissed, Mr. Julian Malins QC (who was instructed by Callenders & Co.) appeared on behalf of Leadenhall. In my capacity as Liquidator in the appeal, I made an oral application for leave to appeal to the Privy Council. Leave was granted and Mr. Malins undertook to file the necessary documents.

Subsequent to Mr. Malins' oral application to the Court of Appeal for leave to appeal to the Privy Council, Callenders & Co. further without leave of the Supreme Court (who has supervision of this liquidation) or instructions from me, the Liquidator, made a formal application to the Court of Appeal via Summons for leave to appeal to the Privy Council.

I met with the proposed new General Counsel on December 17, 2009 to give them a briefing on the C4T matter and to discuss the various views as to how I should proceed in this matter.

Based on the restructuring of my legal team at Callenders & Co., I decided to utilize the services of Evans & Co. Further, Evans & Co. was considered to be less costly to the liquidation. I attended Court on February 15, 2010 to obtain an order to change my General Counsel. The Order was granted that the law firm of Evans & Co. be appointed as the Liquidator's new General Counsel. As a result of these factors, and since this matter was approved by the Court, I instructed Callenders & Co. to forward all documents for Leadenhall to Evans & Co.

I attended Court with General Counsel on May 14, 2010, as a result of a summons served on General Counsel on September 8, 2009, by Maynard & Co. on behalf of C4T. The matter was adjourned to June 11, 2010.

The June 11, 2010 matter was further adjourned to July 29, 2010.

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## CONCERNS

- **Cash 4 Titles** (continued)

I attended Court with General Counsel on July 29, 2010, as a result of a Summons served on General Counsel on September 8, 2009, by Maynard & Co. on behalf of C4T. This Summons was addressing the matter of a payment of a dividend by the Liquidator.

I attended Court with General Counsel on August 11, 2010, as a result of a Summons served on General Counsel on September 8, 2009, by Maynard & Co. on behalf of C4T.

I attended Court with General Counsel on August 26, 2010, on the Summons for directions in the C4T matter.

I attended Court with General Counsel on September 6, 2010, to obtain the approval of the Ninth report of the Liquidator. Approval was obtained.

I attended Court with General Counsel on September 10, 2010, for the ruling on the payment of the Liquidator and his General Counsel's fees. Approval was obtained to pay fees.

I attended Court with General Counsel on September 24, 2010, as a result of a Summons served on General Counsel on September 8, 2009, by Maynard & Co. on behalf of C4T.

I received on February 5, 2011 a bill from Counsel for C4T Class, which was sent to General Counsel. This is subject to a Court hearing and subsequent ruling.

I attended Court with General Counsel on March 30, 2011, for the ruling on the Summons served on General Counsel on September 8, 2009, by Maynard & Co. on behalf of C4T. The Summons was dismissed.

I attended Court on March 30, 2011, for the C4T Directions ruling. The Liquidator was not given leave to Appeal the ruling of Justice Lyons to the Privy Council. See Appendix 3 for Court ruling.

- **Other Court Matters**

I attended the Magistrate Court on July 29, 2010, by an Order from the Court, to be deposed in the matter, the Attorney General v. Boustead PLC, et. al. and the matter was adjourned to July 30, 2010

I attended the Magistrate Court on July 30, 2010 and was deposed in the matter of the Attorney General v. Boustead PLC, et. al.

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## CONCERNS

- **Other Court Matters** (continued)

I attended the Magistrate Court on August 4, 2010, to review and agree the contents of the Court transcript from my deposition on Boustead, et. al.

By an undertaking from the Court, I amended the Ninth Report of the Liquidator to admit the C4T claim of US\$330M and I delivered a copy of the amended report to Maynard & Co, attorneys for C4T.

- **General Counsel**

I requested and received an opinion from US Counsel on the C4T direction matter.

I also requested and received an opinion from General Counsel on August 10, 2010, on how I should proceed in the C4T direction matter.

I met with General Counsel on August 11, 2010, to review and discussed the opinions received as to how I should proceed in the C4T direction matter.

I met with General Counsel on February 25, 2011, to discuss the bill received from Counsel for the C4T Class. At that meeting we also discussed action against the management of the Company.

- **OS International / Vanguard Assignment**

OS International was one of the Bank's managed companies. Leadenhall acted as Registered Agent and Office for OS international. At the time of the liquidation, OS International had entered into an agreement with Vanguard Car Rental USA Inc. ("Vanguard") in the amount of US\$600K.

Subsequent to the agreement, OS International made an assignment to Vanguard for a portion of their funds held with Leadenhall for the agreement amount. OS International subsequently cancelled the agreement and Vanguard pursued legal action against Leadenhall to have their name entered into the liquidation in place of OS International.

The Order was granted on December 18, 2008 by Justice John Lyons to have Vanguard's name entered into the list of Creditors, replacing OS International.

I have since complied with the Court's Order and have entered Vanguard's name on Leadenhall's list of Creditors instead of OS International.

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## CONCERNS

- **Doma Company Limited**

I attended Court with General Counsel on May 14, 2010 to hear the complaint of the beneficial owner of Doma Company Limited, claiming misappropriation of his funds by Leadenhall. The matters placed before the Court was prior to the date that Leadenhall was placed into receivership and subsequently, liquidation.

The Court was minded to dismiss Doma's Summons with the caveat that the beneficial owner of Doma can requisition an investigation as to funds held in the hands of the Bank on behalf of Doma, provided Doma undertakes to pay for the said investigation. The Court further indicated that it would render a ruling on the Summons. Counsel for Doma was to take instructions from her client as to its willingness to pay for the said investigation and communicate that position to the Liquidator and the Court.

As at the date of this report, Doma's attorney has not yet indicated, whether or not her client was prepared to pay costs for the inquiry. However, the Court has rendered its ruling on the Doma Summons. The Court ordered that the Doma Summons stand dismissed and that Doma pay the costs of the Liquidator in relation to the same. Cost ordered in the amount of \$3,500.00 for the application.

- **Whale Cay**

The Whale Cay Group of investors ("the investors") entered into a contract to purchase land on Whale Cay, Berry Islands, The Bahamas. However, the investors applied for but did not get the approval for a foreign person to own land in The Bahamas at the time of the contract. Leadenhall was approached and provided a declaration of trust, dated August 2, 2000, and June 13, 2002 to hold the mortgage for the land on behalf of the investors. Leadenhall received a one time payment of \$15,000.00 for their services. The permit for a foreign person to own land in The Bahamas was obtained by the investors from The Bahamas Investment Authority Board on March 29, 2010.

Several requests were made of the Liquidator by Higgs & Johnson to transfer assets held under trusts, namely mortgages held on behalf of American Investment Properties Inc. and Peter Casoria, Jr., as security for sums loaned to Whale Cay Group Limited, to a new trustee.

Application for directions was made to the Court on March 31, 2010 and came on for hearing on June 11, 2010. The Honourable Justice Bernard Turner made no pronouncement as to the validity of the trusts but found that the assets requested to be transferred does not form a part of the estate of the Bank and ordered the transfer of the assets to The Private Trust Corporation Limited ("PTC"). The assets were transferred to the PTC as ordered.

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## CONCERNS

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

The portfolio totaled \$15,757,625 as at March 31, 2011. The investment is comprised of the following:

	<b>March 31, 2011 Market Value</b>
Cash	\$15,757,625
<b>Total</b>	<b>\$15,757,625</b>

- **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 primary activity during the reporting period is as follows:

### **Nuvo (formerly Dimethaid Research Inc.)**

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 will be compelled to write-off.

Nuvo alleges that the interest calculation on the loan violated the Canadian Interest Rate 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.

Shortly after the First Report of the Liquidator, officers of Nuvo 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.

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## CONCERNS

- **Loan receivables** (continued)

### **Nuvo (formerly Dimethaid Research Inc.)** (continued)

A Summons from Nuvo's Counsel, Lennox Paton, was served on General Counsel on June 20, 2007, seeking the return of the funds held by me in escrow pending Court approval. This matter was not brought before the Court.

An offer has been made by Nuvo in an effort to negotiate a settlement of the matter.

I had a teleconference with Mr. John London from Nuvo on October 28, 2010 to discuss his proposal to settle Nuvo's outstanding loan and subsequently I sent him a counter-proposal

I have since received a counter-proposal from Nuvo to my counter-proposal, which I have forwarded to General Counsel for application to the Court for consideration.

- **Transfer of Accounts**

Based on the time lapsed and the lack of requests, it is my view that the remaining former clients of the Bank have little or no interest in having their companies and trust transferred to other service providers or trustees.

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

The off-balance sheet assets that are being held by Caledonia Corporate Management Limited, an entity which went into liquidation on February 20, 2008, and any request to transfer these assets is now delayed until such time when the Liquidator of Caledonia can release them.

We had commenced investigation with Caledonia pertaining to assets which were inadvertently transferred from the Bank's HSBC portfolio to one of Leadenhall's clients who also held off-balance sheet assets at HSBC, which was distributed by a Court order dated March 13, 2006. The Bank at that time held adequate funds on behalf of that client to recover funds. The investigation had slowed after Caledonia was placed into liquidation. This matter was further complicated by the C4T Judgment. I am presently in talks with the Liquidator of Caledonia to resolve this matter.

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## CONCERNS

- **Other Matters**

On March 1, 2011, I met with the Administrator of the Turks & Caicos Company, First Financial Caribbean Trust Company Limited to discuss the whereabouts of Axxess International Limited ("Axxess") records and provided certain information with regard to the Axxess credit card deposit settlement.

- **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 March 31, 2011.

- **Receipts and disbursements**

Receipts and disbursements made during the period from June 1, 2010 to March 31, 2011 are shown at Appendix 2.

- **Customer Communications**

I continue to receive emails, telephone calls and correspondence from Axxess cardholders, wanting to know the status of their accounts and when can they expect the refund of their credit card security deposits. We have advised them that the Bank is no longer the Trustee of the credit card assets 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.

We have placed on the Bank's website, the contact information for First Financial Caribbean Trust Company Limited.

In accordance with the Court Order dated August 25, 2008 the Bank has been discharged from all matters in reference to the credit card assets of Axxess International Limited, as FFCTC is now the successor trustee.

I also continue to receive email, telephone calls and visits from clients of the Bank wanting to know the status of their accounts and when the Liquidator is likely to commence distribution of the Bank's assets.

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## CONCLUSION

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

- Resolution of the Nuvo/formerly Dimethaid loan matter;
- Dividend distributions to creditors of the Bank.

I will continue to have all outstanding matters resolved and bring the liquidation to a conclusion in the quickest possible time.

Very truly yours

Craig A. (Tony) Gomez  
Liquidator  
Leadenhall Bank & Trust Company Limited  
(In Liquidation)  
Nassau, Bahamas  
March 31, 2011

**LEADENHALL BANK & TRUST COMPANY LIMITED**  
**(In Liquidation)**

Statement of Assets at Estimated Realizable Values  
And Liabilities As Expected to Rank

As at March 31, 2011  
(Expressed in Bahamian dollars)

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**ASSETS**

Cash due from Banks	\$ 20,122,386
Loans receivable, net	3,458,486
Investment in securities	403,561
Accounts receivable	336,148
Fixed assets, net	10,670
Deposit - utilities	9,556
	<hr/>
	24,340,807

**LIABILITIES**

Amount due to Creditors	356,999,814
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**ESTIMATED LOSS AS REGARDS MEMBERS** **\$(332,659,007)**

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**Leadenhall Bank & Trust Company Limited**  
**(In Liquidation)**

Cash and Due from Banks

As of March 31, 2011  
(Expressed in Bahamian dollars)

<b><u>Cash and due from Banks (BSD)</u></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	51,246	1.0000	51,246
First Caribbean International	C/A	27	1.0000	27
<b>Total BSD Cash</b>		<b>51,273</b>		<b>51,273</b>
<b><u>Cash and due from Banks (CAD)</u></b>				
Generali International	Call	1,425,876	1.0306	1,469,508
First Caribbean International	C/A	21,528	1.0306	22,187
First Caribbean International	F/D	822,661	1.0306	847,834
<b>Total CAD Cash</b>		<b>2,270,065</b>		<b>2,339,529</b>
<b><u>Cash and due from Banks (GBP)</u></b>				
Generali International	Call	1,702,686	1.6077	2,737,408
HSBC Bank	F/D	115,146	1.6077	185,120
First Caribbean International	C/A	79,384	1.6077	127,626
HSBC Bank	C/A	746,594	1.6077	1,200,299
First Caribbean	F/D	466,028	1.6077	749,234
<b>Total GBP Cash</b>		<b>3,109,838</b>		<b>4,999,687</b>
<b><u>Cash and due from Banks (USD)</u></b>				
Generali International	Call	11,552,165	1.0000	11,552,165
Royal Bank of Canada	C/A	1,179,732	1.0000	1,179,732
<b>Total USD Cash</b>		<b>12,731,897</b>		<b>12,731,897</b>
<b>CLOSING CASH POSITION</b>				<b>\$20,122,386</b>

**Leadenhall Bank & Trust Company Limited  
(In Liquidation)**

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Statement of Receipts & Disbursements

For the period from June 1, 2010 to March 31, 2011  
(Expressed in Bahamian dollars)

**OPENING CASH POSITION** **\$19,617,943**

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**Receipts**

Sale of Bond (held with Generali)	27,515
Interest earned on First Caribbean deposits	308
Interest earned on Generali Account	295
Other interest	104
	<hr/> 28,222

**Disbursements**

Legal fees	89,153
Liquidator's remuneration	82,561
Salaries	7,750
Rent	5,000
Bank charges	2,051
Sundry	40
	<hr/> 186,555

**Add mark to market unrealized forex difference on CAD\$ and GBP \*** **662,776**

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**CLOSING CASH POSITION** **\$20,122,386**

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