

There is no application before me as there was in the *Macfayden & Co's* case and as in *Maxwell's* case for an injunction or for a stay of the proceedings in the Bankruptcy court. Indeed, certain creditors had already commenced involuntary bankruptcy proceedings in the Bankruptcy Court before this court, as well as the Bankruptcy Court, was asked to approve the protocol and as the unofficial creditors committee should be taken as being concerned to maximise the collection of what is due to the creditors as a whole, I am of the view that the implementation of the protocol would be for the benefit of all parties interested (except perhaps TPC) and in those circumstances as I find nothing illegal about the protocol and on its face it appears to be a common sense business arrangement, thus the liquidators were right to come to court to ask for its approval — even though it is "nunc pro tunc" to the protocol.

Mr. Ginton, who adopted Mr. Seligman's submission drew attention to a number of Australian and New Zealand cases, inter alia, in which it was held that schemes of arrangement under the particular statutory provisions should have been brought before the court before being presented to the creditors for approval.

Unless I have misread those cases, in most if not all of them, the subject company was continued as a going concern and these were applications for "down sizing" as it might now be called or for a reduction of capital which required the input of the creditors if it was to be approved by the court. Here there are winding-up orders which have, for the purposes of Bahamian law, brought the companies to an end, except for the purposes of the winding-up. The creditors are therefore the only ones — or at least, the main group of persons/companies whose interests is to be considered. It therefore follows that if they have agreed to the protocol, there is no need for this court to second-guess them as to what has been done.

There is one other matter with which I would deal and that it is the issue of the standing of the former directors of the companies in opposing the application.

Upon the winding-up, whether under the supervision of the court or compulsorily, the liquidators became the "brain and hands" of the companies and the directors automatically cease to function as such. Unless, therefore they are creditors of the companies in their own right they can have nothing to do with the actual liquidation proceedings apart from when their assistance or attendance at court is required under the provisions of the *Companies Act*. That being so, I hold that they have no standing to oppose this application.

In the result, I will make an order authorising the liquidators to enter into the protocol nunc pro tunc.

The costs of TPC as well as the liquidators on this application will come out of the estates of the companies. I make no order as to the costs of the past directors as I have found that they had no standing to intervene in this matter.

Dated the 27th day of March A.D., 1995

J.A. Sawyer

Appendix G — United States Bankruptcy Court Southern District of New York

Cross-Border Insolvency Protocol between the United States and Israel in Re Nakash: United States Bankruptcy Court for the Southern District of New York; (Case No. 94 B 44840: May 23, 1996) and District Court of Jerusalem; (Case No. 1595/87 — May 23, 1996).

In re : Chapter 11 Case No. 94 B 44840 (BRL)
: :
JOSEPH NAKASH, :
: :
Debtor :
: :
: :

JOSEPH NAKASH :
Debtor-Plaintiff :
v. :
SHMUEL TSUR, THE OFFICIAL :
RECEIVER OF THE STATE OF ISRAEL : Adversary Proceeding No. 95 B 8101A
IN HIS CAPACITY AS SUCH AND IN HIS :
CAPACITY AS LIQUIDATOR OF THE :
NORTH AMERICAN BANK LTD. (IN :
LIQUIDATION), YORI NEHUSHTAN, :
AND JOHN DOES 1-50, :
Defendants. :

Order Approving Cross-Border Protocol, Granting Comity to Jerusalem District Court Letter of Request, Setting Damages for Initial Stay Violation and Granting Nunc Pro Tunc Stay Relief in Respect of Alleged Further Stay Violations

WHEREAS, Richard A. Gitlin, the examiner appointed in this case (the "Examiner"), has filed his application of Richard A. Gitlin, Examiner for (1) Approval of Stipulation and Order Implementing Cross-Border Protocol and (2) Consideration of Request of Jerusalem District Court With Respect to (a) Damages Concerning Initial Stay Violation by Official Receiver and (b) *Nunc Pro Tunc* Relief Concerning Alleged Further Stay Violations, dated January 25, 1996 (the "Application");

WHEREAS, due and sufficient notice of the Application has been given;

WHEREAS, the Court has considered the written objections interposed to the Application by Joseph Nakash (the "Debtors) and Nelux Holdings International N.V. ("Nelux");

WHEREAS, the Court has considered the Letter of Request of Judge Yaffa Hecht of the Jerusalem District Court, dated January 21, 1996 (the "Letter of Requests");

WHEREAS, a hearing has be on held on the Application on February 14, 1996 (the "Hearing");

WHEREAS, after due deliberation and upon the record of the Hearing, including the oral arguments presented by respective counsel for the Examiner, the Official Receiver of the State of Israel, the Debtor and Nelux, and for the reasons stated in the Bench Ruling of February 14, 1996 of this Court in connection herewith, this Court finds that good and sufficient cause exists to grant the relief requested by the Application generally, and in particular, (i) to approve the Stipulation and Order Implementing Cross-Border Protocol (the "Protocol") in the form annexed hereto, incorporating the Notice Clarification (as defined below) and (ii) to grant the requests contained in the Letter of Request; and

WHEREAS, this Court has been advised that the NAB Liquidation Court (as defined in the Application) has approved and executed the Protocol in the form annexed hereto, incorporating the Notice Clarification;

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Application is granted in all respects;
2. The requests contained in the Letter of Request are granted;
3. Damages in connection with the Stay Violation Finding (as defined in the Application) are set at \$10.00 as a symbolic and nominal amount;

4. As set forth in the Protocol, relief from the automatic stay to pursue the Receiver's Investigation (as defined in the Protocol) is granted to the Official Receiver *nunc pro tunc* to October 25, 1995;

5. The Protocol is approved and granted in the form annexed hereto, incorporating the inclusion of the following provision (the "Notice Clarification") at the end of paragraph 32 of the Protocol:

In the event that relief is properly obtained other than on prior notice to the Debtor, the Debtor shall be notified of such relief by the party requesting such relief as soon as is reasonably practicable and possible thereafter without defeating the effectiveness of such relief.; and

6. In accordance with paragraph 38 of the Protocol, the Protocol is hereby declared to be effective.

Dated:

May 23, 1996

New York, New York

By:

Burton R. Lifland

United States Bankruptcy Judge

cc:

Goodwin E. Benjamin, Esq.

Evan D. Flaschen, Esq.

Sally M. Henry, Esq.

Dr. Joseph Segev, Adv.

Amnon Shibolet, Esq.

Arthur Steinberg, Esq.

John Westerman, Esq.

George N. Jarvis

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK

DISTRICT COURT OF JERUSALEM

In re	:	:	In the Matter of	The North American Bank Ltd. (In Liquidation)
	:	:		
	:	:		
JOSEPH NAKASH	:	:		
	:	:		
Debtor	:	:	And in the Matter of:	The Official Receiver in his
	:	:		

	:	:			capacity as such and
					in his
	:	:			capacity as
	:	:			Liquidator of
	:	:			North American
	:	:			Bank Ltd.
	:	:			(In Liquidation)
	:	:			
	:	:		And in the Matter of:	
	:	:			Joseph (Joe) Nakash
:	:	:			

Chapter.11 Case No. 94 B 44840 (BRL)

Civil Case 1595/87 (Liquidation /95)

Stipulation and Order Implementing Cross-border Protocol¹²

¹² A certified Hebrew translation of this Stipulation is annexed hereto as Exhibit A.

WHEREAS, Joseph Nakash (the "Debtor") is a citizen of the United States of America, with his principal residence, domicile and place of business in the State of New York;

WHEREAS, the Debtor is an individual with diversified business interests throughout the world including, without limitation, fashion apparel, trans-oceanic shipping and real estate businesses;

WHEREAS, (i) on December 27, 1993, the Official Receiver of the State of Israel (the "Official Receiver") in his capacity as such and as liquidator of the North American Bank, Ltd. (in Liquidation) ("NAB") obtained a judgment (the "NAB Judgment") in the District Court of Jerusalem, Israel (the "Israeli NAB Liquidation Court") in the approximate amount of \$160 million against the Debtor (among others), stemming from the Debtor's role as a member of the NAB board of directors. (ii) the Debtor disputes the NAB Judgment and has appealed same to the Supreme Court of Israel, and (iii) such appeal is presently pending;

WHEREAS, (i) on January 30, 1994, the Official Receiver filed an involuntary bankruptcy petition (the "First Involuntary Petition") against the Debtor in the Tel Aviv District Court, (ii) the First Involuntary Petition was denied and such denial was appealed by the Official Receiver, and (iii) the Supreme Court of Israel reversed the Tel Aviv District Court's denial of the First Involuntary Petition and remanded the First Involuntary Petition to the Tel Aviv District Court for further consideration;

WHEREAS, on October 11, 1994, the United States District Court for the Eastern District of New York confirmed an order of attachment in favor of the Official Receiver against the Debtor's assets in the United States to aid in the enforcement and collection of the NAB Judgment, but stayed execution on such attachment pending a final adjudication of the appeal of the NAB Judgment;

WHEREAS, on October 14, 1994, the Debtor commenced a Chapter 11 bankruptcy case in the United States Bankruptcy Court for the Southern District of New York (the "US Bankruptcy Courts');

WHEREAS, on January 16, 1995, pursuant to the Israeli NAB Liquidation Court's Order approving the Official Receiver's Motion for Instructions, the Official Receiver filed a second involuntary bankruptcy petition against the Debtor in the Tel Aviv District Court and a hearing on such is scheduled for February 11, 1996 (the "Second Involuntary Petition");

WHEREAS, on February 7, 1995, the US Bankruptcy Court entered an order (the "Examiner Order") appointing Richard A. Gitlin as the examiner (the "Examiner") in the Debtor's Chapter 11 bankruptcy case;

WHEREAS, pursuant to the Examiner Order, the Examiner was directed to develop a protocol for harmonizing and coordinating proceedings concerning the Debtor before the Courts of the United States and the State of Israel;

WHEREAS, (i) on January 16, 1996, the US Bankruptcy Court, in response to a Motion filed by the Debtor, docketed a Memorandum Endorsement (the "Stay Violation Finding") (a) finding that the Official Receiver violated the automatic stay under the United States Bankruptcy Code by filing the Second Involuntary Petition and Motion for Instructions related thereto and (b) reserving for another time the issue of sanctions and damages, and (ii) the Official Receiver disputes the Stay Violation Finding;

WHEREAS, on January 14, 1996, at a hearing on the Debtor's objection to an investigation being conducted by the Official Receiver (which hearing was continued until January 24, 1996), the Israeli NAB Liquidation Court expressed the view that it might be desirable to reach an agreement between the interested parties and the Courts in the United States and the State of Israel;

WHEREAS, the parties hereto are desirous of developing an agreement and protocol and presenting it to their respective Courts for consideration in order to promote the following mutually desirable goals and objectives:

- (1) Harmonization and coordination of proceedings concerning the Debtor before the Courts of the United States and the State of Israel;
- (2) Honoring of the integrity of the Court of the United States and the State of Israel;
- (3) Promotion of the orderly and efficient administration of proceedings involving the Debtor;
- (4) Identification, preservation and maximization of value of the Debtor's world-wide assets for the collective benefit of the Debtor's world-wide creditors, the Debtor and other parties in interest; and
- (5) Coordination of activities and sharing of information in order to reduce the costs involved and to avoid duplication of efforts.

NOW, THEREFORE, THE EXAMINER AND THE OFFICIAL RECEIVER HEREBY STIPULATE AND AGREE, which Stipulation when approved by both the US Bankruptcy Court and the Israeli NAB Liquidation Court shall constitute an Order of each Court, as follows:

General Principles

1. The US Bankruptcy Court and the Israeli NAB Liquidation Court are independent, sovereign courts. The two Courts will seek to cooperate and coordinate with each other in good faith, but at all times each Court will be entitled to exercise its independent jurisdiction and authority with respect to matters before it and the conduct of the parties before it.
2. With respect to investigations, marshalling actions, discovery, depositions and other actions proposed to be taken hereunder within the United States, (a) the parties agree that they shall initially seek authority, relief and/or redress from the US Bankruptcy Court and (b) the Israeli NAB Liquidation Court shall respect the jurisdiction of the US Bankruptcy Court, to the maximum extent it is lawfully able to do so.
3. With respect to investigations, marshalling actions, discovery, depositions and other actions proposed to be taken hereunder within the State of Israel, (a) the parties agree that they shall initially seek authority, relief and/

or redress from the Courts of Israel and (b) the US Bankruptcy Court shall respect the jurisdiction of the Courts of Israel, to the maximum extent it is lawfully able to do so.

4. With respect to investigations, marshalling actions, discovery, depositions and other actions proposed to be taken hereunder outside both the United States and the State of Israel, (a) the parties agree that they shall initially seek authority, relief and/or redress from both the US Bankruptcy Court and the Courts of Israel and (b) the US Bankruptcy Court and the Courts of Israel shall, to the maximum extent they are lawfully able to do so, seek to coordinate their efforts in order to avoid conflicting rulings whenever possible. In furtherance of the foregoing, the US Bankruptcy Court and the Israeli NAB Liquidation Court hereby express their desire (to the extent they are lawfully able to do so) that, to the extent practical and feasible under the circumstances, they should endeavor to consult with each other through the Official Receiver and the Examiner and/or via telephonic conference in order to attempt to coordinate their efforts and avoid (if possible) potentially conflicting rulings.

5. Consistent with the foregoing, (i) to the extent the Official Receiver or the Examiner desires to pursue activities of the type described below within the United States, such party shall be required to obtain approval from the US Bankruptcy Court (with appropriate notice to the Courts of Israel) consistent with applicable procedures and other parties in interest shall have the rights available to them under applicable law to object to such activities; (ii) to the extent either such party desires to pursue activities of the type described below within the State of Israel, such party shall be required to obtain approval from the Courts of Israel (with appropriate notice in the US Bankruptcy Court) consistent with applicable procedures and other parties in interest shall have the rights available to them under applicable law to object to such activities; and (iii) to the extent either such party desires to pursue activities of the type described below outside both the United States and the State of Israel, such party shall be required to use its reasonable best efforts under the circumstances to obtain approval from both the US Bankruptcy Court and the Courts of Israel consistent with applicable procedures and other parties In Interest shall have the rights available to them under applicable law to object to such activities.

6. Notwithstanding the foregoing, in situations hereunder involving assets or persons outside both the United States and the State of Israel, the Official Receiver and the Examiner shall each be entitled to seek emergency relief if warranted under the circumstances from either the US Bankruptcy Court or the Courts of Israel without being required to seek concurrent relief from the other Court, provided that in all such situations such party shall use its reasonable best efforts as promptly as practicable thereafter to obtain such other Court's *ex post facto* approval of any such relief that has been obtained.

Investigation of Debtor's Assets

7. There shall be an investigation (including as appropriate, without limitation, depositions, document discovery and other discovery permitted under applicable law) into the Debtor's assets wherever located. Because the Official Receiver has already commenced such an investigation, considerations of continuity, efficiency and expense inform a determination that the Official Receiver should continue with his investigation in accordance with this Stipulation and Order, rather than for the Examiner to commence now an independent investigation. Such investigation by the Official Receiver, as conducted in accordance with this Stipulation and Order, is referred to as the "Receiver's Investigation." Notwithstanding the foregoing, the Examiner, the Debtor or any other party in interest shall have the right at any time to request either Court to permit or order the Examiner to conduct an independent investigation.

8. The foregoing authorization for the Official Receiver to continue with the Receiver's Investigation is not intended to increase, decrease or otherwise affect the Official Receiver's ability under applicable Israeli law (which ability the Debtor disputes) to conduct such an investigation within the context of the NAB liquidation proceedings or to increase or decrease the rights of any other party in interest to object to the Official Receiver's past or future conduct of the Receiver's Investigation.

9. In conducting the Receiver's Investigation, the Official Receiver shall at all times provide to the Examiner reasonable prior notice of any actions that the Official Receiver desires to pursue and shall consult in good faith with the Examiner as to the reasons for and propriety of pursuing such actions. Unless not reasonably practical due to the exigencies of the circumstances, the Official Receiver shall provide to the Examiner a draft of each motion for instructions (including *ex parte* motions) or other pleading that the Official Receiver proposes to file with either Court in pursuit of such actions. The Official Receiver shall not be required to obtain the consent of the Examiner with respect to such actions, but to the extent the Examiner disagrees with any of the Official Receiver's proposed actions, (i) the Official Receiver shall be required to inform the Court from whom the Official Receiver is seeking authority to pursue such actions of the Examiner's position with respect thereto, and (ii) the Examiner shall be provided a reasonable opportunity under the circumstances to appear and be heard in, and to seek relief from, the US Bankruptcy Court and/or the Courts of Israel with respect to his concerns (if any) as to the Official Receiver's proposed actions.

10. The Official Receiver shall at all times keep the Examiner fully informed as to the course and conduct of the Receiver's Investigation and shall periodically consult with the Examiner as to the progress and results thereof. Unless otherwise requested by the Examiner or directed by either Court with respect to specified information, the Official Receiver shall promptly share with the Examiner all documents and other information obtained in connection with the Receiver's Investigation.

11. Pursuant to Section 362(d)(1) of the United States Bankruptcy Code, the US Bankruptcy Court hereby grants to the Official Receiver relief from the US automatic stay *nunc pro tunc* to October 25, 1995 to the extent necessary to permit the Official Receiver to pursue the Receiver's Investigation consistent with the provisions of this Stipulation and Order. Such relief from stay shall not be construed or deemed to constitute (i) an approval of any specific actions that the Official Receiver has taken or may take in pursuit of the Receiver's Investigation that, under applicable law, require further specific Court approval or authorization, or (ii) relief or protection from any applicable non-bankruptcy laws that may be implicated by the Official Receiver's conduct of the Receiver's Investigation. Notwithstanding any (i) notices, documents, pleadings or information provided by the Official Receiver to the Examiner, (ii) consultations between the Official Receiver and the Examiner, and (iii) consents or non-objections by the Examiner in respect of the Official Receiver's proposed actions, the Examiner (including his professionals) shall not have or incur any liability in respect of the Receiver's Investigation.

12. Pursuant to the equivalent provisions of the *Israeli Companies Act* (New Version) 1983 and the Israeli Bankruptcy Ordinance (New Version) 1980, the Israeli NAB Liquidation court hereby grants to the Examiner relief from the Israeli statutory stay on and after the date hereof to the extent necessary to permit the Examiner to pursue an investigation consistent with the foregoing provisions of this Stipulation and Order. Such relief from stay shall not be construed or deemed to constitute (i) an approval of any specific actions that the Examiner has taken or may take in pursuit of an investigation by the Examiner that, under applicable law, require further specific court approval or authorization, or (ii) relief or protection from any applicable non-bankruptcy laws that may be implicated by the Examiner's conduct of an investigation. Notwithstanding any (i) notices, documents, pleadings or information provided by the Examiner to the Official Receiver, (ii) consultations between the Examiner and the Official Receiver, and (iii) consents or non-objections by the Official Receiver in respect of the Examiner's proposed actions, the Official Receiver (including his professionals) shall not have or incur any liability in respect of any investigation by the Examiner.

Preservation and Marshalling of the Debtor's Assets

13. As part of the Receiver's Investigation, the Official Receiver may consider it desirable or necessary to seek to attach or otherwise pursue assets allegedly belonging to the Debtor's estate. The Official Receiver shall only pursue such actions ("Marshalling Actions") consistent with the provisions of this Stipulation and Order.

14. Marshalling Actions shall be deemed to constitute part of the Receiver's Investigation and the Official Receiver shall provide to the Examiner the same notice, consultation rights, information, and other cooperation with respect thereto, and shall obtain the same Court approval (to the extent needed), as required by this Stipulation and Order with respect to the other aspects of the Receiver's Investigation.

15. Any interest of the Debtor in property attached, arrested, garnished, levied upon or otherwise seized or restrained by or on behalf of the Official Receiver after the commencement of the Debtor's Chapter 11 case (including after the date hereof) shall be subject to the concurrent jurisdiction of the US Bankruptcy Court and the Courts of Israel and all assets so attached, etc. shall be preserved and maintained *in situ* for the benefit of all creditors of the Debtor wherever located. There shall be no execution levied upon any assets so attached, etc. unless, due to the facts and circumstances as they may develop hereafter or the exigencies of the circumstances based on the character of the particular assets involved (such as perishable items), the Official Receiver and the Examiner consent to such execution and it is approved by the appropriate Court.

16. Nothing herein shall be construed to increase, decrease or otherwise affect the rights of the persons subject to Marshalling Actions or of any other person that may be available to them under applicable law to object to or otherwise take actions in respect of the pursuit or the consequences of Marshalling Actions.

17. Pursuant to Section 362(d)(1) of the United States Bankruptcy Code, the US Bankruptcy Court hereby grants to the Official Receiver relief from the US automatic stay *nunc pro tunc* to October 25, 1995 to the extent necessary to permit the Official Receiver to pursue Marshalling Actions consistent with the foregoing provisions of this Stipulation and Order. Such relief from stay shall not be construed or deemed to constitute (i) an approval of any specific actions that the Official Receiver has taken or may take in pursuit of Marshalling Actions that, under applicable law, require further specific Court approval or authorization, or (ii) relief or protection from any applicable non-bankruptcy laws that may be implicated by the Official Receiver's conduct of the Receiver's Investigation. Notwithstanding any (i) notices, documents, pleadings or information provided by the Official Receiver to the Examiner, (ii) consultations between the Official Receiver and the Examiner, and (iii) consents or non-objections by the Examiner in respect of the Official Receiver's proposed actions, the Examiner (including his professionals) shall not have or incur any liability in respect of Marshalling Actions pursued by the Official Receiver.

18. Pursuant to the equivalent provisions of the *Israeli Companies Act* (New Version) 1983 and the Israeli Bankruptcy Ordinance (New Version) 1980, the Israeli NAB Liquidation Court hereby grants to the Examiner relief from the Israeli statutory stay on and after the date hereof to the extent necessary to permit the Examiner to pursue Marshalling Actions consistent with the foregoing provisions of this Stipulation and Order. Such relief from stay shall not be construed or deemed to constitute (i) an approval of any specific actions that the Examiner has taken or may take in pursuit of Marshalling Actions by the Examiner that, under applicable law, require further specific Court approval or authorization, or (ii) relief or protection from any applicable non-bankruptcy laws that may be implicated by the Examiner's conduct of Marshalling Actions. Notwithstanding any (i) notices, documents, pleadings or information provided by the Examiner to the Official Receiver, (ii) consultations between the Examiner and the Official Receiver, and (iii) consents or non-objections by the Official Receiver in respect of the Examiner's proposed actions, the Official Receiver (including his professionals) shall not have or incur any liability in respect of Marshalling Actions pursued by the Examiner.

Confidentiality

19. In order to facilitate the full and cooperative exchange of information and otherwise to promote the principles set forth above, the Official Receiver and the Debtor shall each be entitled separately to share information in confidence with the Examiner. With respect to (i) all non-public information (for so long as it remains non-public other than through the Examiner's disclosure thereof) provided by the Official Receiver to the Examiner in

connection with the Receiver's Investigation and Marshalling Actions (including, without limitation, information provided in accordance with numbered paragraphs 9,10 and 14 hereof), and (ii) any other such information designated as confidential that is not publicly available (and does not subsequently become publicly available other than through the Examiner's disclosure thereof), the Examiner is hereby authorized and directed by both the US Bankruptcy Court and the Israeli NAB Liquidation Court to hold such information in confidence and not to disclose such information to any person, except in accordance with the next paragraph hereof.

20. The Examiner shall be entitled to disclose confidential information of the type described in the immediately preceding paragraph hereof (and shall not incur or suffer any liability for disclosing such information) to his US Bankruptcy Court-approved professionals provided they agree to be subject to the confidentiality provisions of this Stipulation and Order (and Hebb & Gitlin and Kantor, Elhanani, Tal & Co., by signing this Stipulation, hereby so agree), and under the following circumstances: (i) if ordered to do so by the US Bankruptcy Court, the Israeli NAB Liquidation Court, or any other court with actual or apparent jurisdiction over the Examiner, (ii) if the Examiner reasonably believes he needs guidance from, or is required to or otherwise ought to disclose such information to, the US Bankruptcy Court or to the Courts of Israel under circumstances that will allow the confidential nature of such information to be maintained and protected (unless any such Court determines that the maintenance and protection of such confidentiality is not appropriate or necessary under the circumstances), or (iii) if the Examiner is concerned that such information may involve improper conduct, in which case the Examiner shall be entitled to disclose such information to such Courts or other legal authorities as the Examiner considers appropriate. In all cases it is understood and agreed that the Examiner shall, if reasonably practicable under the circumstances, use his reasonable best efforts to provide prior notice to the Debtor (with respect to information received from the Debtor) or the Official Receiver (with respect to information received from the Official Receiver) of the Examiner's belief of the existence of any circumstances of the type described in clauses (i)-(iii) above.

21. The fact that the Debtor or the Official Receiver provide confidential information to the Examiner and/or his professionals in accordance with the above shall not (i) relieve the Debtor or the Official Receiver (as the case may be) from any duty or obligation they may have under applicable law to disclose publicly such information or (ii) result in the imposition of any duty, responsibility or liability on the Examiner or his professionals to any person in connection with, and the Examiner and his professionals are hereby expressly discharged and released from any duties, responsibilities or liabilities in respect of, the receipt of any such information or any failure on their part to disclose any such information.

First Involuntary Petition and Second Involuntary Petition

22. Pursuant to Section 362(d)(1) of the United States Bankruptcy Code, the US Bankruptcy Court hereby grants to the Official Receiver relief from the US automatic stay on and after the date hereof to the extent necessary to permit the Official Receiver to pursue the First Involuntary Petition and the Second Involuntary Petition.

23. The foregoing grant of relief by the US Bankruptcy Court is not intended to constitute, nor shall it be construed or deemed to constitute, (i) the expression of any opinion by the US Bankruptcy Court as to whether the Courts of Israel should or should not grant either the First Involuntary Petition or the Second Involuntary Petition, or (ii) any restriction or limitation on the Debtor's rights under applicable law to object to, challenge or otherwise contest the validity or merits of the First Involuntary Petition and the Second Involuntary Petition.

24. In the event that either, or both, the First Involuntary Petition or Second Involuntary Petition are approved (and without prejudice to any rights of appeal the Debtor may have), the parties shall each use their best efforts in good faith to encompass the resultant Israeli bankruptcy case involving the Debtor within the ambit of this Stipulation and Order, and to agree on such other terms and provisions as may be appropriate or desirable in connection therewith.

Fees, Costs and Expenses

25. The Courts and the parties recognize that the Receiver's Investigation, the Marshalling Actions, and any other actions taken by the parties in accordance with this Stipulation and Order will result in the incurrence of fees, costs and expenses (collectively, "Expenses") by the Debtor, the Examiner and the Official Receiver.

26. The Debtor's Chapter 11 estate shall, as initial matter, bear the Expenses incurred by the Debtor and the Examiner in connection with such actions, subject to normal rights of review and objection by parties in interest and approval by the US Bankruptcy Court.

27. The NAB liquidation estate shall, as initial matter, bear the Expenses incurred by the Official Receiver in connection with such actions, subject to normal Israeli provisions for the approval and payment of such fees, costs and expenses.

28. The parties reserve the right to request that, and the Courts reserve the right to consider whether, a different allocation of the Expenses of the Debtor, the Examiner and/or the Official Receiver would be more appropriate based on the facts and circumstances as they develop.

Status; Good Faith

29. Pursuant to the US Bankruptcy Court's request in its Letters of Introduction to the Courts of Israel dated March 2, 1995, the Examiner is recognized by the Israeli NAB Liquidation Court as the emissary of the US Bankruptcy Court, and the Examiner is granted leave to appear and be heard in the Courts of Israel in respect of all matters relating to the Debtor, the Debtor's Chapter 11 estate or the Debtor's assets (including alleged assets).

30. The Official Receiver is recognized as a party in interest in the US Bankruptcy Court and shall be entitled to appear and be heard in the Debtor's Chapter 11 case.

31. The parties are hereby authorized and directed to take such steps as are necessary in good faith to effectuate the provisions, spirit and intent of this Stipulation and Order.

32. When the exigencies of the circumstances render it impractical to provide prior written notice as required herein, the necessary notice shall be provided as soon as possible thereafter. In the event that relief is properly obtained other than on prior notice to the Debtor, the Debtor shall be notified of such relief by the party requesting such relief as soon as is reasonably practicable and possible thereafter without defeating the effectiveness of such relief.

Preservation of Jurisdiction and Right

33. Except as otherwise expressly provided herein, this Stipulation and Order is intended to and shall operate prospectively only, and nothing herein shall be construed to increase, decrease or otherwise affect any rights that may exist with respect to matters or actions that occurred prior to the date hereof.

34. Anything herein to the contrary notwithstanding, nothing contained herein shall be construed to increase, decrease or otherwise affect in any way the independence, sovereignty or jurisdiction of the US Bankruptcy Court, the Israeli NAB Liquidation Court or any other Court in the United States or Israel including, without limitation, the ability of such Court under applicable law to provide appropriate relief on an *ex parte* or "limited notice" basis.

35. Nothing contained herein shall be construed to increase, decrease or otherwise affect any rights (i) to pursue lawful rights and remedies in the US Bankruptcy Court (including, without limitation, the right to cause or request conversion of the Debtor's Chapter 11 case to a Chapter 7 case or the right to request the appointment of a Chapter 11 trustee), the Israeli NAB Liquidation Court, the other Courts of the United States and Israel, or any other Courts (including in all such Courts, without limitation, any rights that may exist under applicable law to challenge or seek the avoidance of any transfers of any interest of the Debtor in property or any obligations incurred by the Debtor)

or (ii) to request that notice of proposed actions be limited or restricted as may be permitted under applicable law (provided this shall not interfere with the Official Receiver's obligations hereunder to provide notice to the Examiner with respect to the Receiver's Investigation or Marshalling Actions unless ordered otherwise).

36. The Official Receiver and the Examiner shall endeavor in good faith to comply with all Orders of the US Bankruptcy Court and the Courts of Israel directed at them, but nothing contained herein shall be construed to increase, decrease or otherwise affect their respective rights under the laws of the United States or Israel to appeal from, dispute, challenge or otherwise seek relief or protection from any such Order in either the US Bankruptcy Court (or US appellate courts) or the Courts of Israel.

37. The US Bankruptcy Court and the relevant Court of Israel shall have the right at any time to modify, amend or discontinue this Order, and any party in interest shall be entitled to apply to either such Court for such relief. The granting of any such relief shall render this Stipulation and Order null and void after the date of the grant of such relief (the "Termination Date") unless such relief is consented to by each of the parties hereto and granted on substantially the same terms (or otherwise approved in satisfactory form) by both the US Bankruptcy Court and the relevant Court of Israel within a reasonable period of time. If this Stipulation and Order becomes null and void after the Termination Date in accordance with the foregoing, such will not affect the validity or enforceability of matters approved, taken or agreed to hereunder prior to the Termination Date.

38. This Stipulation and Order shall be deemed effective upon (and only upon) its (i) execution by each of the parties hereto and (ii) approval by the US Bankruptcy Court and the Israeli NAB Liquidation Court.

Dated: January, 1996

RICHARD A. GITLIN, EXAMINER, by

HEBB & GITLIN

A Professional Corporation

By:

Evan D. Flaschen (EF 6973)

Ronald J. Silverman (RS 7762)

One State Street

Hartford, CT 06103 USA

(860) 240-2700

KANTOR, ELHANANI, TAL & CO.

By:

Israel Kantor

76 Rothschild Blvd., 4th Floor

Mozes House, 65785 Tel-Aviv Israel

(972-3) 566-2950

SHMUEL TSUR, OFFICIAL RECEIVER, by

SKADDEN, ARPS, SLATE, MEAGHER & FLOM

By:

Sally M. Henry (SH 0839)

Jerome J. Lawton (JL 9353)

919 Third Avenue

New York, New York 10022 USA

(212) 735-2000

DR. SEGEV & CO.

By:

Joseph Segev

Yori Nehushtan

4 Wissotzky Street

62502 Tel-Aviv Israel

(972-3) 541 1417

The foregoing Stipulation and Order Implementing Cross-Border Protocol is hereby approved, granted and ordered in all respects.

Dated: New York, New York,, 1996

..... Burton R. Lifland

United States Bankruptcy Judge

Jerusalem, Israel,, 1996

..... Yaffa Hecht

Jerusalem District Court Judge

Appendix H — United Nations

General Assembly

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6 September 1996

ORIGINAL: ENGLISH