

Made on behalf of	Ian Driscoll
Initials and surname of witness	R.C. Curtin
No. of statement of this witness (if more than one)	
Identifying initials and number of each exhibit (if any)	[RCC 1] - [RCC 21]
Date of statement	24.02.14

Claim No.

CHP 14/0008

**IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN
CIVIL DIVISION**

Chancery	PROCEDURE
Parties	
Targus Investments Limited	Claimant
Banners Broker International Limited ("BBIL")	Defendant
Full name of witness	Richard Christopher Curtin
Address ¹	Burlingtons LLP 38 Hertford Street Mayfair London W1J 7SG
Position held and name of	Partner, Burlingtons LLP

¹ Place of residence or, if witness is making statement in a professional, business or other occupational capacity, work address

firm or employer ²	
Occupation or description	Solicitor
Please indicate with an 'X' here if witness is <input type="checkbox"/> a party <input type="checkbox"/> an employee of a party	
<p>Statement³ (use numbered paragraphs)</p> <p>1. I am a Solicitor and Partner of Burlingtons LLP. I practise, inter alia, in the field of insolvency litigation. My firm acts for Ian Driscoll in England and Wales.</p> <p>Documents exhibited</p> <p>2. The following documents are now exhibited (in chronological order):-</p> <p>[Tab 1]: 'Terms and Conditions of Banners Broker United Kingdom' (downloaded on 26.05.12) and Banners Broker, 'Policies and Procedures' (last updated 13.06.13, downloaded 12.08.13)</p> <p>[Tab 2]: Ian Driscoll / BBIL - Independent Contractor Agreement (effective 01.06.12)</p> <p>[Tab 3]: Ian Driscoll - 'screenshots' of BBIL account (as at 16.12.12)</p> <p>[Tab 4]: Form 335a, Isle of Man Companies Registry (stamped 21.01.13)</p> <p>[Tab 5]: Order, Isle of Man High Court of Justice (10.09.13)</p> <p>[Tab 6]: Amended Claim Form (Ian Driscoll v BBIL) (issued on 24.10.13) (not including appendices)</p> <p>[Tab 7]: Acknowledgment of Service (16.12.13)</p> <p>[Tab 8]: Letter, OCC to Callin Wild (06.02.14) (+ enclosures + cover e-mail, timed at 17.31)</p> <p>[Tab 9]: Letter, OCC to Callin Wild (07.02.14) (+ attached spreadsheet of creditor claims) (and cover e-mail, timed at 13.50)</p> <p>[Tab 10]: Letter, Callin Wild to OCC (07.02.14) (+ cover e-mail, timed at 15.44)</p> <p>[Tab 11]: E-mail, Callin Wild to OCC (07.02.14) (timed at 15.53)</p> <p>[Tab 12]: 'Moving Forward' (07.02.14) (from bannersbrokerblogspot.com) (see p. 8)</p> <p>[Tab 13]: Order, Isle of Man High Court of Justice (10.02.14)</p>	

² Complete if witness is making statement in a professional, business or other occupational capacity

³ The statement must comply with Schedule 8.1 to the Rules of the High Court 2009. Continue on a separate sheet or sheets if necessary (but each page must be numbered, and the last page must contain the above statement of truth and be signed by the witness).

[Tab 14]: Callin Wild, costs submissions (ref: ORD 13/0035) (17.02.14)

[Tab 15]: Spreadsheet of BBIL creditor claims, as at 20.02.14, and supporting documents, arranged by creditor surname (supporting documents to be filed separately, due to volume)

[Tab 16]: Spreadsheet of BBIL creditor claims, as at 21.02.14

[Tab 17]: BBIL account lock notification (screenshot) (sample 21.02.14)

[Tab 18]: Rule 22 Notice, filed on behalf of Mr Driscoll (24.02.14)

[Tab 19]: Paul Appleton, Notice of consent to act (24.02.14)

[Tab 20]: Schedule of rates of Mr Appleton (24.02.14)

[Tab 21]: Spreadsheet of BBIL creditor claims, as at 24.02.14

Relief sought by Mr Driscoll

3. I refer to the notice, served today on behalf of Mr Driscoll, in accordance with Rule 22 of The Companies (Winding-Up) Rules 1934 ("the Rule 22 notice"). This also sets out, in effect, the precise relief sought by Mr Driscoll, in respect of this Claim.

4. In summary, Mr Driscoll supports the proposed winding-up of BBIL, but subject to the specific amendments to the draft Order filed with the winding-up Claim ("the draft Order"). The proposed amendments are set out within the Rule 22 notice.

5. A Skeleton Argument, in support of Mr Driscoll's position, is being filed separately.

6. This Witness Statement addresses the following points:-

6.1. Basis for the winding-up

6.2. Creditors of BBIL, or of another entity?

6.3. Experience, and benefits to appointment, of Paul Appleton

6.4. Independence of Mr Appleton

6.5. Proposed rates of Mr Appleton

6.6. Reasons for seeking Mr Appleton's immediate appointment on 26th February.

(1) Basis for the winding up

7. Targus Investments Limited ("Targus") applies for a winding-up under section 162(1) of the Companies Act 1931 (see paragraph 1 of the draft Order).

8. Mr Driscoll considers that the appropriate basis for the winding-up Claim is section

162(5) (the 'inability to pay debts' ground).

9. As to inability to pay debts, I refer to exhibit [Tab 21], which exhibits a spreadsheet of BBIL creditors's claims, updated to 24th February 2014. This shows some 215 BBIL creditors. The combined aggregate claims amount to \$11,586,554.12. The spreadsheet demonstrates actual physical funds invested and claimed to be owed; amounts in 'e-Wallets' available to spend; pending withdrawals; and any other amounts/costs claimed to be owed.

10. At [Tab 16], a similar spreadsheet of BBIL creditor claims, updated to 21st February 2014, is shown. This shows some 190 creditors. The combined aggregate claims amount, as at 21st February, was \$10,593,305.41.

11. At [Tab 15], a similar spreadsheet of BBIL creditor claims updated to 20th February 2014, is shown, additionally includes full supporting documentation, including, inter alia:-

- 'screen-shots' of e-Wallets; and
- letters of support for the immediate joint or sole appointment of Paul Appleton, ie. at the hearing on 26th February 2014.

Such list, updated to 20th February 2014, shows 156 creditors, with combined aggregate claims, as at 20th February 2014, of \$10,143,948.27.

12. Based on the above:-

12.1 the number of creditors, and aggregate value of creditor claims, has risen sharply in recent days, and it is foreseeable that the list of creditors, and aggregate value of claims, will rise further;

12.2. when reviewing the latest spreadsheet of creditor claims (see [Tab 20]), Mr Driscoll's is, to date, the largest single claim. The quantified element of Mr Driscoll's claim is \$3,030,106.10, not including fees, interest and costs. This does not include the presently unquantifiable element of his Claim (as set out in at paragraphs [36] and [41.2] to [41.4] of his amended Claim issued on 24th October 2013: see [Tab 6]);

12.3. further, the level of creditor support for the immediate joint or sole appointment of Mr Appleton, ie. at the hearing on 26th February 2014, is overwhelming.

13. Mr Driscoll's position is that the most appropriate basis for the winding-up is,

quite simply, that BBIL is unable to pay its debts. This would clearly be an insolvent liquidation, and one in which, he considers, the stated views of the creditors should be accorded due weight.

14. It is also relevant, to any suggestion that BBIL is unable to pay its debts, that Mr Driscoll was entitled to apply for judgment in default of (1) acknowledgment of service and (2) defence, prior to the Court Order of 10th February 2014, staying his Claim (see [Tab 13]) (it is accepted that no such judgment was ultimately obtained).

15. Further, Mr Driscoll notes that, whereas Targus' recently stated position is that it "remains neutral in the interests of all creditors" (see letter from Callin Wild to OCC, dated 7th February 2014, at [Tab 10]), at p. 3 thereof):-

15.1. Targus is nonetheless proposing, as the basis for the winding-up, not section 162(5) ('inability to pay debts'), but, instead, section 162(1) ('company resolving by special resolution to wind itself up') (and also to do so, notwithstanding that the relevant resolution, in support of the Claim, as appended to the Witness Statement of Stephen Porter of 10th January 2014, is a resolution of Targus, rather than one of BBIL); and

15.2. as the resolution of Targus to wind up BBIL, dated 23rd December 2013, has now been disclosed to have been passed at the request of Christopher Smith (see letter of Callin Wild to OCC, dated 7th February 2014, at [Tab 10], at paragraph 4, on p. 2 thereof) - and taking into account not only that Mr Driscoll considers Mr Smith as the person to bear the greatest responsibility in bringing BBIL to its present parlous position, but also Mr Driscoll's belief that Mr Smith would be more likely to prefer his own interests, as apparent ultimate owner of BBIL, to those of its creditors generally - Mr Driscoll, quite reasonably, has little or no confidence that such step was taken, as claimed, "in the interests of all creditors", or indeed that Targus is itself now so acting.

(2) Creditors of BBIL, or of another entity?

16. In an e-mail of 7th February 2014, timed at 15.53 (see [Tab 11], Callin Wild, on behalf of Targus, states:-

"... we have no evidence that the list [of creditors] you have provided [on 7th February 2014: see [Tab 9]] is a list of creditors of BBIL.... BBIL was part of a group of companies within the structure and monies were paid, as far as we are aware, into various entities over a period of time. Not all of these monies came into BBIL and accordingly it is a matter for consideration by any duly appointed liquidator as to whether the list you have provided is in fact a definitive list of creditors within the Isle of Man company".

Mr Driscoll's response is twofold.

(a) Mr Driscoll's status, as a creditor of BBIL

17. In response, and for his own part, Mr Driscoll claims, inter alia:-

17.1. breach of an Affiliate Agreement entered into on or around 4th March 2011 (see 'Terms and Conditions of Banners Broker United Kingdom' (downloaded on 26th May 2012) at [Tab 1]); and

17.2. breach of an Independent Contractor Agreement, entered into on or around 1st June 2012 (see [Tab 2]).

18. In respect of the Affiliate Agreement, when one reviews the 'Terms and Conditions of Banners Broker United Kingdom' (at [Tab 1]) (Mr Driscoll claiming that such document is indicative of his agreement with BBIL: see his Amended Claim Form, at [Tab 6], at paragraph [10] thereof), and cross-refer to the Banners Broker "Policies and Procedures" (last updated 13th June 2013, and downloaded on 12th August 2013), the relevant counter-party, to Mr Driscoll, is clearly stated (in the latter document) to be "Banners Broker International"; and the "Banners Broker International Head Office" address is stated to be:-

"Kissack Court
20 Parliament Street
Ramsey, Isle of Man
IM8 1AT".

19. This is the same address as was used by BBIL as its (purported) registered office (see Form 335a, at [Tab 3]).

20. Similarly, when one reviews the Independent Contractor Agreement (see [Tab 1]), the counter-party to Mr Driscoll is stated to be "Banners Broker International"; and the address is stated to be:-

"Kissack Court
29 Parliament Street
Ramsey, Isle of Mann [sic]
IM8 1AT"

21. Thus it is straightforward for Mr Driscoll to demonstrate his claim to be a creditor of BBIL, rather than of another Banners Broker entity.

22. Further, pursuant to a Court Order of 10th September 2013 (see [Tab 5]), Mr Driscoll's Claim Form was served on Christopher Smith of 250 Jarvis Street, Suite 503, Toronto, Ontario, Canada, M5B 2L2, Mr Smith being shown as a director of BBIL. On behalf of BBIL, Mr Smith acknowledged service on 16th December 2013 (see [Tab 7]). Whilst Mr Smith indicated an intention to defend all the Claim (no such Defence ultimately being filed, by the deadline of 20th January 2014), there was, notably, no challenge, by BBIL, to the jurisdiction of this Court, in respect of Mr Driscoll's Claim (eg. on the basis that another 'Banners Broker' entity, in another jurisdiction, was the proper defendant to Mr Driscoll's Claim).

(b) The status of other creditors, as creditors of BBIL

23. It is fully accepted that it is, ultimately, for the liquidator(s), duly appointed, to consider whether the list of creditors provided as at 7th February (or indeed as at 24th February) is "a definitive list of creditors within the Isle of Man company". However, when one considers:-

23.1. the above evidence in support of Mr Driscoll's own claim to be a creditor of BBIL (rather than of any other entity); and

23.2. the evident similarity between the nature and type of documents supporting Mr Driscoll's claim against BBIL, and the nature and type of those supporting the claims of other listed creditors to date (see documents exhibited at [Tab 15]),

there is, putting matters at their lowest, a very strong prima facie case that all the listed creditors are, in fact, creditors of BBIL.

(3) Experience, and benefits to appointment, of Paul Appleton

24. I refer to OCC's letter to Callin Wild dated 6th February 2014 (see [Tab 8]). Such letter sets out (at pp. 2-4 thereof) the experience of Paul Appleton, a Licensed Insolvency Practitioner; the support of Mr Driscoll, and also of Michael Andrew Bowe (a creditor claiming in excess of \$2,500,000) for Mr Appleton's appointment; various multi-jurisdictional issues arising, stated therein to tend to support Mr Appleton's appointment; and various specific benefits of Mr Appleton's appointment (see pp. 3-4 thereof).

25. I pause to note that further relevant jurisdictions have been identified since (arising from the rising list of jurisdictions represented in the spreadsheet of creditors, as at 24th February 2014), tending to support, further, the appointment of

a joint liquidator with Mr Appleton's experience.

26. Mr Driscoll respectfully seeks an immediate joint appointment, namely, that Mr Appleton be immediately appointed jointly with one of Messrs Benham or Mann; but, in default, the sole appointment of Mr Appleton.

27. It is accepted that Messrs Benham and Mann each has experience, as Isle of Man advocates, in advising liquidators. Mr Driscoll raises no objection to the Court appointing one of Messrs Mann or Benham to act jointly as liquidator, provided that this is a joint appointment, together with Mr Appleton. If the Court is not minded to make such a joint appointment, then Mr Driscoll seeks a sole appointment of Mr Appleton.

28. However, as is evident from the Witness Statements of Messrs Benham (at paragraphs 14-20) and Mann (at paragraphs 7-12) (in each case, under the heading "Fitness to act as Liquidator"), neither professes ever to have acted as a liquidator.

29. To state the obvious, experience as an advocate, in advising liquidators, is not at all the same as experience in actually having acted as a liquidator.

30. Mr Driscoll, for his part (and with respect) lacks confidence that two Isle of Man advocates - neither of whom claims, in support of his fitness to act as liquidator, any prior experience of having acted as a liquidator - could perform the range of specialist functions required of liquidators in a complex, high-value liquidation, raising multi-jurisdictional issues (such as Mr Driscoll anticipates the proposed liquidation to be).

31. In considering such position, Mr Driscoll has made due allowance for the proposed assistance, to be afforded to Messrs Benham and Mann, of an in-house accountant and/or additional support; but he does not consider that this compares at all favourably with the range of in-house specialist services, experience and expertise offered by Mr Appleton which are (as Mr Driscoll believes) required in the proposed liquidation.

32. By contrast, Mr Driscoll is satisfied that Mr Appleton has significant experience of having acted as a liquidator (including on the Isle of Man) (as pp. 3-4 of OCC's letter of 6th February 2014, at [Tab 8], summarises).

33. It is, for this reason, principally, that Mr Driscoll supports the joint appointment of Mr Appleton at the hearing on 26th February 2014. Mr Driscoll considers, candidly, that Mr Appleton's immediate joint (or, in default, sole) appointment would materially increase the prospects of Mr Driscoll's asset recovery.

34. Mr Driscoll does not, of course, speak for other creditors. However, reference is again made to [Tab 21], where 215 creditors, with combined aggregate claims of \$11,586,554.12 (as at 24th February 2014), are listed, the overwhelming majority of whom, likewise, demonstrably support Mr Appleton's appointment, at the hearing on 26th February 2014 (ie. all names listed in the spreadsheet, save where expressly indicated, therein, that there is no letter of support for Mr Appleton).

35. There seems, to Mr Driscoll, little advantage - and real potential disadvantage (see further section (6), below) - in delaying the appointment of Mr Appleton.

(4) Independence of Paul Appleton

36. Targus' stated position, towards support for the joint appointment of Mr Appleton, appears recently to have shifted from one of claimed neutrality in the interests of all creditors / non-objection to Mr Appleton's joint appointment (see Callin Wild's letter to OCC of 7th February 2014, at [Tab 10], at pp. 3-4 thereof), to one of raising "concerns as to [Mr Appleton's] independence" (see Callin Wild's costs submissions of 17th February 2014, at [Tab 14], at paragraph 28).

37. There is no evidence justifying any concern whatsoever as to Mr Appleton's independence. Targus' suggestion to the contrary is without foundation, and is inappropriately made. The mere fact that a large number of creditors have supported Mr Appleton's proposed appointment on 26th February 2014, prior to publication of advertisements in Isle of Man newspapers (presumably not readily available to off-Island creditors in any event) raises no valid concern as to Mr Appleton's independence. If there is any concern as to independence it is, in reality, as to Targus' own independence, or otherwise, from Mr Smith.

38. Mr Driscoll, for his part, supports the proposed joint (or, in default, sole) appointment of Mr Appleton, at the hearing on 26th February. On Mr Driscoll's behalf, I (and not Mr Appleton) approached another high-value creditor, reasonably considering that the support of such party for the same proposed course of action as that advocated by Mr Driscoll could, in turn, only assist Mr Driscoll. Such approach has, in turn, had a 'domino effect', leading many other creditors of BBIL likewise to approach, and to support the sole or joint appointment of, Mr Appleton, as indicated in the documents exhibited at [Tab 15]. Being aware of the forthcoming hearing on 26th February 2014, such creditors were, presumably, anxious to indicate their support for Mr Appleton as soon as possible, so that the Court, on 26th February, could be under no doubt as to their views. Mr Appleton has not, for his part, proactively solicited the support of, nor approached, creditors with a view to his appointment, nor has he acted in any way so as to raise any valid concern as to his independence.

39. Further, the very raising of this (non-) issue as to Mr Appleton's independence demonstrates, to Mr Driscoll, that Targus may not necessarily be acting, as claimed, "in the interests of all creditors", not least given the demonstrable wishes of the

significant number of creditors in favour of Mr Appleton's joint (or sole) appointment at the hearing on 26th February.

(5) Proposed rates of Mr Appleton

40. The proposed rates of Mr Appleton are set out in a schedule at [Tab 20]. These are considered, by Mr Driscoll, to be reasonable rates, not least given Mr Appleton's significant specialist experience.

(6) Reasons for seeking Mr Appleton's immediate appointment on 26th February

41. To any point that it is open for the question of the appointment of liquidators to be considered at any creditors' meeting, in due course, Mr Driscoll raises the reasonable objection that he wishes Mr Appleton to be involved, in the liquidation, immediately and from the very outset, in order to take such steps as may be required immediately.

42. Mr Driscoll's concern is based on emerging evidence of a real risk of asset dissipation, as set out below. Mr Driscoll fears that such potential asset dissipation could endanger asset recovery of all creditors, including himself.

(i) Migration of data

43. To support Mr Driscoll's concern, reference is made to a Banners Broker news story headed 'Moving Forward', dated 7th February 2014 (and appearing on bannersbrokerblogspot.com: see [Tab 12], at p. 8), which states:-

"Very shortly, we will be announcing the black out period and initiating the migration of data to BBv3 and retiring the old system."

44. Mr Driscoll is concerned that the proposed migration of BBIL data, from the existing system, may be a flagrant attempt to frustrate the proper and orderly winding-up of BBIL. Mr Driscoll is particularly concerned at the possibility of a 'phoenix company' emerging, from the 'ashes' of BBIL, enabling the principal(s) behind BBIL to continue to trade (with the benefit of the migrated data), whilst allowing BBIL to be liquidated, to the obvious detriment of BBIL's creditors. Mr Driscoll respectfully considers that such steps cannot possibly be "in the interests of all [BBIL] creditors", and that Mr Appleton's immediate appointment is required, to ensure that appropriate immediate steps can be taken.

(ii) Recent 'locking' of BB accounts

45. There is, also, evidence of recent 'locking' of accounts on the Banners Broker website (thereby preventing withdrawal of funds), specifically in cases where creditors have lent their support to Mr Appleton's proposed appointment, and have appeared on a spreadsheet of creditors supporting Mr Appleton's proposed nomination.

46. Thus, for example, on 21st February 2014, one of the creditors appearing on the spreadsheet of 7th February 2014 (as e-mailed by OCC to Callin Wild), a Neil Salway, received a notification that Banners Broker accounts for himself and his extended family had been locked as of 21st February. A copy of the notification appearing on Mr Salway's account, indicating that the account has been locked "due to your participation in the lawsuit against Banners Broker", is exhibited at [Tab 17].

47. Quite apart from raising the reasonable question as to how BBIL could have learned that such party was supporting Mr Appleton's appointment, which will be for Callin Wild to explain - one theoretical route being that the spreadsheet of creditors as at 7th February 2014, forwarded to Callin Wild (see [Tab 9]) has, somehow, reached Mr Smith, who may, on behalf of BBIL, have responded thereto in the above manner - such evidence demonstrates:-

47.1. that there is, in practice, little or no apparent separation between Mr Smith, the stated beneficiary of BBIL, and instigator of the present winding-up Claim, and apparent day-to-day principal at BBIL, on the one hand, and Targus, on the other;

47.2. that Targus' claim to be acting "in the interests of all creditors" appears incorrect; and

47.3. the need for Mr Appleton to be jointly (or, in default, solely) appointed at the hearing on 26th February, in order that immediate steps can be taken to safeguard BBIL assets.

(iii) Conclusions on risk of asset dissipation


48. Mr Driscoll is most concerned that the proposed migration of BBIL data, and locking of accounts of parties supporting Mr Appleton's appointment - timed, as these steps apparently are, immediately prior to the winding-up hearing - may be a flagrant attempt to frustrate the proper and orderly winding-up of BBIL. Mr Driscoll seeks the confidence of a Licensed Insolvency Practitioner with Mr Appleton's experience to act, immediately from 26th February, inter alia, to take such steps as might be necessary to safeguard relevant data and other assets of BBIL.

49. For the same reason, Mr Driscoll supports the taking place of a creditors' meeting

within one month, not two (as proposed by Targus).

If you need to continue on a separate sheet please use prescribed form – 'HCC
CONTINUATION SHEET'

I believe that the facts stated in this witness statement are true.

Date	24.02.14	Signature	
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