



February 2015

Cayman Appeal Court reverses decision in *Weaving* case.

Damages award of US\$111m against errant directors overturned.

The judicial proceedings around the *Weaving* case both in the Cayman Islands and in England have been well reported. In Cayman, the judgment issued on 26th August 2011 by the Hon Mr. Justice Andrew Jones QC determined that the two directors of the Weaving Macro Fixed Income Fund Limited (the "Fund") had conducted themselves in a manner which constituted "*wilful neglect or default*" thus excluding them from access to the indemnification provisions of the Fund's Articles of Association and leaving them personally liable for an award in damages exceeding US\$100m. The judgment was appealed.

The Court of Appeal of the Cayman Islands issued its judgment on the appeal on 12th February 2015 and although supporting the findings of Jones J that the directors had breached the duties owed by them to the Fund, they did not support the decision of the Grand Court that the conduct or lack thereof by the directors amounted to "willful default or neglect" and the appeal was allowed. In allowing the appeal, the Court of Appeal analysed the case law treatment and essence of the word "wilful" and concluded that, as the directors' conduct lacked the essential element of a conscious decision by them not to perform their duties to the required standard, they could not be found to have performed an intentional or a reckless breach of duty which amounted to wilful default.

The central findings of the Court of Appeal were in stark contrast to those of Jones J at first instance, in particular:

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- ▣ no finding that either director had made a deliberate and conscious decision not to read the financial reports provided to them knowing that failure to do so was in breach of his duty.
- ▣ no finding that the directors appreciated or at least suspected that their conduct might be a breach of duty but they proceeded regardless of the outcome.
- ▣ a finding that albeit that the negligent conduct of the directors fell beneath the standard owed to the company, their conduct was consistent with their having a different understanding to the judge of how they should fulfill their duty to perform a supervisory role and accordingly it lacked the element of being wilful.

The Court of Appeal decision emphasises the “wilful” nature of a director’s conduct and makes it clear that whether a director’s act or omission is wilful neglect or default will depend on the views of that director, not those of the court. A director failing to carry out his duty or performing it to a poor level of competence will not by that alone be held to have acted in wilful default.

In his ruling at first instance Jones J set out a detailed set of standards for best practice in the corporate governance of Cayman Islands funds. The industry seized upon that and many revisited their internal systems and controls to ensure compliance with the announcements of the court. The judgment also led the Cayman Islands Monetary Authority to issue a public consultation on fund governance and ultimately resulted in new legislation being passed regulating certain providers of directorship services.

In its ruling the Court of Appeal did not invalidate the findings of Jones J as to the requirements applicable to the directors of funds but clarified that a failure to meet those requirements did not, alone, mean that there was a clear intention by a director to not perform their role.

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