

10 January 2019

**TO CREDITORS**

Dear Sir / Madam

**Killarnee Civil & Concrete Contractors Pty Ltd (In Liquidation)**  
**ACN 085 230 486 (the Company)**  
**ATF The Thompson Family Trust and in its own right**

**Report to Creditors and Notice of Meeting**

We enclose our report to creditors dated 10 January 2019 detailing the conduct of the liquidation to date.

We advise that a meeting of creditors of the Company has been convened on **Thursday, 31 January 2019**.

Included as attachments to this report are the following:

- Notice of Liquidator's Consent Order
- An account of the receipts and payments in the liquidation to 31 December 2018
- Remuneration Approval Request Report, setting out:
  - the remuneration claim that we intend to seek approval for at the meeting
  - disbursements paid to Ferrier Hodgson from the liquidation to date
- Form 529: Notice of Meeting of Creditors to be held on **Thursday, 31 January 2019**. The meeting commences at 11.00am (AWST). Please arrive for registration at least fifteen (15) minutes prior to the meeting
- Appointment of Proxy form and Proof of Debt Form for the purposes of voting at the meeting. These forms should be lodged with this office by 4.00pm on Wednesday, 30 January 2019.

Should you require any further information concerning the contents of this report, or the liquidation in general, please do not hesitate to contact Corina Kast of this office.

Yours faithfully  
**Killarnee Civil & Concrete Contractors Pty Ltd**



**Martin Jones**  
Joint and Several Liquidator

Encl.



**Killarnee Civil & Concrete  
Contractors Pty Ltd  
(In Liquidation)  
ACN 085 230 486**

Report to Creditors

10 January 2019

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## 1 Introduction

We refer to our appointment as Liquidators of the Company on 9 December 2014. The purpose of this report is to provide an update to creditors on the Liquidators' acts and dealings since our previous reports.

This report should be read in conjunction with the Liquidators' previous reports / circulars to creditors dated 16 May 2016, 19 July 2016, 9 September 2016, 8 March 2017, 19 July 2017, 4 August 2017 and 2 March 2018 which are also available on the Ferrier Hodgson website at [www.ferrierhodgson.com](http://www.ferrierhodgson.com)

## 2 Update on Federal Court Application

In May 2016 the Liquidators brought an application in the Federal Court seeking directions about the conduct of the liquidation, including a direction as to whether or not Westpac (being the secured creditor) was entitled to be subrogated to the priority position of the employees of the Company and the Administrators under the terms of the Act (**Subrogation Issues**).

Several decisions handed down by other state courts raised questions as to whether assets of the Company which it held on trust can be applied using priority rules set down in the Act (**Trust Issues**). As such, prior to determining the Subrogation Issues, the Trust Issues needed to be resolved first. This led to the hearing of Trust Issues by the Full Court of Federal Court of Australia (**FCA**) on 10 and 11 August 2017.

On 21 March 2018 the Full Court of FCA handed down its decision and held in effect that (amongst others) the sale proceeds of the trust assets and the unfair preference proceeds are to be applied in accordance with the priority regime established by sections 555, 556, 560 and 561 of the Act.

In respect with the Subrogation Issues, the Liquidators had proceeded to obtain senior counsel's advice which supports the view that Westpac was entitled to be subrogated to the priority position of the employees of the Company. If not contested, the Liquidators propose to follow senior counsel's advice and pay Westpac in priority to general creditor in a normal dividend process. There is considerable merit in this approach as it would likely reduce the time, complexity and costs involved in the hearing of the direction application still before the Court.

Generally, a contested hearing will involve significant time and cost. The general rule is that the costs of all interested parties, including the Liquidators, are paid from the Company's funds. Given that the Trust Issues have been resolved and on the basis of the senior counsel's advice, the option of settling with Westpac (i.e. pay Westpac in priority) is therefore likely to reduce the length and complexity of the hearing and the costs burden on the Company's funds.

To allow creditors an opportunity to object to the Liquidator's proposal to pay Westpac in priority, the FCA also made orders allowing creditors to file a notice of appearance in the proceeding and act as a contradictor in the proceeding.

Please find enclosed at **Annexure A** our notice to creditors in relation to Westpac's subrogated entitlement position to a priority dividend as if was the Company's employees. Creditors who wish to object to the Liquidators paying Westpac from the Company's funds in priority to the ordinary unsecured creditors are advised to file a notice of appearance in the proceeding (and act as the contradictor) and serve a copy of it on the Liquidators **by close of business, Thursday 7 February 2019**.

If no creditor files a notice of appearance by 7 February 2019, the application in so far as it relates to the Subrogation Issues will be discontinued and the Liquidators will pay Westpac in priority to ordinary unsecured creditors in a normal dividend process.

On 20 December 2018, the FCA made an order that the Liquidators of the Company (the Company being trustee of the Trust) be granted power to realise assets of the Trust retrospectively from the date of their appointment.

### 3 Recovery of Unfair Preference Payments

To date, we have recovered a total of \$5.32M of unfair preference payments and are still pursuing a further claim of up to \$2.3M with an originating process filed with the Supreme Court of Western Australia on 30 August 2017. A mediation conference was held on 8 May 2018 but no settlement was reached.

At the time of writing, the matter is ongoing, and we are currently negotiating the settlement with the relevant trade creditor.

### 4 Superannuation guarantee charge

On 16 June 2016 the Liquidators lodged a formal objection with the ATO in respect to the superannuation guarantee charge (SGC) claim of \$1,736,158 against the Company, as the Company's records indicated that the unpaid SGC was significantly lower (\$838,887) than that claimed by the ATO.

Following our review, we discovered that the discrepancy was caused predominately by the March 2014 quarter (**March 2014 quarter**) liability being included by the ATO in its claim. Our enquiries reveal that the March 2014 quarter obligations were paid late in July 2014 (instead of the due date 28 April 2014) and therefore the Company is liable for SGC.

Following a reconciliation exercise performed, the ATO's claim has been reduced by \$540,974 and the ATO lodged an amended proof of debt on 20 March 2018 for \$1,195,184.

### 5 Receipts and Payments

A summary of the receipts and payments for the period 25 February 2018 to 31 December 2018 is set out at **Annexure B** of this report.

### 6 Return to creditors

Once the Subrogation Issue and unfair preference claim have been resolved, the Liquidators will then be in the position to pay a dividend to the priority and unsecured creditors.

The **updated** estimated return to creditors under the different scenarios are set out below:

Statement of Position as at 2 January 2019	Westpac entitled to subrogation		Westpac not entitled to subrogation
	Not Court Contested	Court Contested	
<b>Assets available</b>			
Cash at Bank	118,476	118,476	118,476
Term Deposit	4,372,415	4,372,415	4,372,415
<b>Total Assets available</b>	<b>4,490,891</b>	<b>4,490,891</b>	<b>4,490,891</b>
<b>Less: Cost of Liquidation</b>			
Liquidators' fees to 31 December 2018	(298,261)	(298,261)	(298,261)
Estimated future Liquidators' fees to completion	(100,000)	(200,000)	(200,000)
Estimated future Liquidators' disbursements	(15,000)	(15,000)	(15,000)
Estimated legal cost (incurred but pending Court determination)	(230,000)	(230,000)	(230,000)
Estimated further legal cost for Direction Application	N/A	(200,000)	(200,000)
<b>Total estimated cost of Liquidation</b>	<b>(643,261)</b>	<b>(943,261)</b>	<b>(943,261)</b>
<b>Total Funds available</b>	<b>3,847,630</b>	<b>3,547,630</b>	<b>3,547,630</b>

**Less: Priority Creditors (employee entitlements)**

Payment to Westpac (subrogated)	(1,862,295)	(1,862,295)	N/A
Pre-appointment employee entitlements	(1,464,026)	(1,464,026)	(1,464,026)
<b>Total Priority Creditors</b>	<b>(3,326,321)</b>	<b>(3,326,321)</b>	<b>(1,464,026)</b>
<b>Surplus / (Deficit) after Priority Creditors</b>	<b>521,309</b>	<b>221,309</b>	<b>2,083,604</b>
Add: Further unfair preference recoveries	TBA	TBA	TBA
<b>Total Funds Available to meet Unsecured Creditors' Claims</b>	<b>521,309</b>	<b>221,309</b>	<b>2,083,604</b>
Trade & Other Creditors (unsecured)	(17,625,116)	(17,625,116)	(17,625,116)
Pre-appointment employee entitlements	N/A	N/A	N/A
Payment to Westpac (not subrogated)	N/A	N/A	(1,862,295)
<b>Total Unsecured Creditors' Claims</b>	<b>(17,625,116)</b>	<b>(17,625,116)</b>	<b>(19,487,411)</b>
<b>Estimated Surplus / (Deficiency)</b>	<b>(17,103,807)</b>	<b>(17,403,807)</b>	<b>(17,403,807)</b>
<b>Estimated Dividend Rate to unsecured creditors (cents in \$)</b>	<b>2.96</b>	<b>1.26</b>	<b>10.69</b>

In the event that Westpac is entitled to be subrogated to the position of employees without the need for a contested hearing, our analysis indicates that the estimated dividend rate will be approximately 2.96 cents in the dollar.

Should there be a contested hearing then the estimated dividend rate will be reduced to 1.26 cents in the dollar, if the FCA determines that Westpac is entitled to be subrogated to the position of employees and 10.69 cents in the dollar if the FCA determines that Westpac is not entitled to subrogation.

That said, the final dividend rate would dependent upon the final funds available (pending further recoveries of the unfair preferences) and the quantum of claims received and ultimately adjudicated.

## 7 Liquidators' remuneration

We intend to seek approval from creditors at the forthcoming meeting for additional Liquidators' fees totalling \$498,261 plus GST.

Below is a summary of the Liquidators' remuneration from the commencement of the Liquidation to 31 December 2018 and estimated cost to completion:

Period	Amount Approved \$	Amount Incurred \$	Amount Drawn \$	Balance of Fee Approval \$	Fees to be approved \$
9 December 2014 to 30 April 2016	512,032	512,032	512,032	-	-
1 May 2016 to 24 February 2017	301,165	301,165	301,165	-	-
25 February 2017 to 31 December 2018	150,000	448,261	150,000	-	298,261
1 January 2019 to conclusion of liquidation	-	-	-	-	200,000
<b>Total further remuneration approval sought</b>	<b>\$963,197</b>	<b>\$1,261,458</b>	<b>\$963,197</b>	<b>-</b>	<b>\$498,261</b>

Details of the Liquidators' remuneration and disbursements are available in the Remuneration Approval Request attached at **Annexure C**.

## 8 Meeting of creditors

A meeting of creditors is scheduled to be held at **11.00am (AWST)** on **Thursday, 31 January 2019** at the offices of Ferrier Hodgson, Level 28, 108 St Georges Terrace, PERTH WA 6000.

The main purpose of the meeting is to provide creditors with an opportunity:

- To be provided with an account of the Liquidators' acts and dealings and of the conduct of the winding up to date
- To clarify any queries in respect to the Subrogation Issues
- To fix the further remuneration of the Liquidators.

In this regard, we enclose the following documents:

- Notice of Meeting of Creditors (**Annexure D**). Please arrive for registration fifteen (15) minutes prior to the meeting
- Form 532: Appointment of Proxy Form (**Annexure E**). The form enables you to appoint a person to act on your behalf at the meeting. Proxy Forms submitted for prior creditor meetings are **not** valid at this meeting. A proxy form will be deemed invalid by the Chairman if any of the following occurs:
  - the form is not completed in full
  - if a company wishes to appoint a proxy, the proxy form must be completed and signed by an officer of the company under the company seal. The presence of a company manager without being appointed as proxy is insufficient
  - a creditor will not be permitted to vote at the meeting unless that creditor is present in person or his representative has provided a correctly completed proxy form or Power of Attorney.

Instructions to complete the proxy form are included on the last page of the form.

- Form 535: Formal Proof of Debt Form ("FPOD") (**Annexure F**). A creditor is not entitled to vote at the meeting unless they provide particulars of the debt or claim to me before the meeting. All creditors must furnish full details of their claims, indicating whether they rank as secured, preferential or unsecured. **If you have previously submitted the FPOD, you do not need to submit another form unless you wish to amend your claim**

Creditors should lodge the FPOD (if applicable) and Proxy form with this office before the meeting and, in any event, **no later than 4.00pm on Wednesday, 30 January 2019**. Forms can be sent by facsimile on (08) 9214 1400 marked to the attention of Alex Rompotis or scanned and emailed to [Alex.Rompotis@fh.com.au](mailto:Alex.Rompotis@fh.com.au). However, Corporations Regulation 5.6.36A requires lodgement of the original of the Proxy form with the Liquidators' office within 72 hours of lodging the faxed copy.

Creditors should ensure that the Appointment of Proxy (and Proof of Debt if one has not already been lodged with the Liquidator) is lodged prior to the meeting to be eligible to vote.

## 9 Next Steps

The following matters will continue to be progressed:

- Pursuing (and resolving of) existing unfair preference claim
- Lodgement of statutory reporting with ASIC
- Subject to the creditors' response to the Subrogation Issues, dividend distribution to priority and ordinary unsecured creditors
- Finalising the liquidation administration.



Should you have any questions, please contact Corina Kast of this office on 08 9214 1444 or by email at [Corina.Kast@fh.com.au](mailto:Corina.Kast@fh.com.au).



**Martin Jones**  
Joint and Several Liquidator

Abbreviation	Description
ACN	Australian Company Number
Act	The Corporations Act 2001
ARITA	Australian Restructuring Insolvency & Turnaround Association
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
Company	Killarnee Civil & Concrete Contractors Pty Ltd (In Liquidation)
ERV	Estimated Realisable Value
FEG	Fair Entitlements Guarantee
FY	Financial Year
GST	Goods and Services Tax
RBA	Running Balance Account
RATA	Report as to Affairs



# A – Notice of Liquidator’s Consent Orders Ferrier Hodgson

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## Notice of Federal Court Orders

**Killarnee Civil & Concrete Contractors Pty Ltd (In Liquidation)**  
**ACN 085 230 486 (the Company)**  
**ATF The Thompson Family Trust and in its own right**

NOTICE IS GIVEN that by Consent Orders made on 20 December 2018 the Federal Court of Australia in the matter WAD 181/2016, has ordered in effect that:

- **Should creditors have any objection to the Liquidators paying Westpac from the Company’s funds in priority to the ordinary unsecured creditors, that creditor is to file a notice of appearance in the proceeding (WAD 181/2016) to act as the contradictor to the proceeding and serve a copy of it on the Liquidators by close of business, Thursday 7 February 2019.**
- By 7 February 2019, if no creditor files a notice of appearance the application in so far as it relates to the question of paying Westpac be discontinued.
- By 7 February 2019, if a notice of appearance is filed the matter be listed for directions on the first available date after 8 March 2019.

A copy of the Consent Order is attached.

Dated this 10<sup>th</sup> day of January 2019.



**Martin Jones**  
Joint and Several Liquidator

Ferrier Hodgson  
GPO Box 2537  
Perth WA 6001

Tel: (08) 9214 1444  
Fax: (08) 9214 1400

## B – Receipts and Payments

Receipts and payments for the period 25 February 2018 to 31 December 2018	Total \$
<b>Balance c/f from 24 February 2018</b>	<b>4,810,838</b>
<b>Receipts</b>	
GST refund	31,611
Interest income	86,625
<b>Total receipts</b>	<b>4,929,074</b>
<b>Payments</b>	
External printing	(637)
Liquidators' fees	(299,434)
Liquidators' disbursements	(320)
Legal fees	(137,792)
<b>Total payments</b>	<b>(438,183)</b>
<b>Net receipts and payments</b>	<b>4,490,891</b>

# C – Remuneration approval request

*Schedule 2 to the Corporations Act 2001, Section 60-10*  
*Insolvency Practice Rules (Corporations) 2016, Section 70-45*

**Killarnee Civil & Concrete Contractors Pty Ltd (In Liquidation)**  
**ACN 085 230 486 (the Company)**  
**ATF The Thompson Family Trust and in its own right**

## Remuneration Approval Request

This report contains the following information:

- Part 1: Declaration
- Part 2: Executive summary
- Part 3: Remuneration
- Part 4: Disbursements
- Part 5: Report on progress of the liquidation
- Part 6: Summary of receipts and payments
- Part 7: Approval of remuneration
- Part 8: Questions
- Schedule A: Resolution 1 details
- Schedule B: Resolution 2 details

Next steps for creditors:

- Please review the contents of this report, which sets out the resolutions to be approved by creditors at the meeting of creditors on Thursday, 31 January 2019.
- Refer to section 8 of the report to creditors dated 10 January 2019 for details as to how you can attend the meeting of creditors in person or by proxy in order to vote on the resolutions contained in this report.

## 1 Declaration

We, Martin Jones and Andrew Smith of Ferrier Hodgson, have undertaken a proper assessment of this remuneration claim for our appointment as Liquidators of the Company in accordance with the Corporations Act 2001 (Cth) (**the Act**), the Australian Restructuring Insolvency & Turnaround Association (**ARITA**) Code of Professional Practice (**the Code**) and applicable professional standards.

We are satisfied that the remuneration claimed is in respect of necessary work, properly performed, or to be properly performed, in the conduct of the liquidation.

## 2 Executive summary

### 2.1 Summary of remuneration approval sought for the Company

To date, remuneration totalling \$963,197 has been approved and paid in the liquidation of the Company.

This report details approval sought for the following remuneration:

Period	Amount (ex GST) \$
<b>Current remuneration approval sought:</b>	
<i>Resolution 1: 25 February 2017 to 31 December 2018</i>	298,261
<i>Resolution 2: 1 January 2019 to completion</i>	200,000
<b>Total current remuneration approval sought</b>	<b>498,261</b>

Period	Amount (ex GST) \$
<b>Past remuneration approved:</b>	
9 December 2014 to 30 April 2016	512,032
1 May 2016 to completion	200,000
1 May 2016 to 24 February 2017	101,165
25 February 2017 to completion	150,000
<b>Total past remuneration approved</b>	<b>963,197</b>
<i>* Approval for the future remuneration sought is based on an estimate of the work necessary to the completion of the liquidation. Should additional work be necessary beyond what is contemplated, further approval may be sought from creditors.</i>	

Please refer to section 3 for full details of the calculation and composition of the remuneration approval being sought.

## 2.2 Summary of internal disbursements approval sought for the Company

This report details approval sought for the following internal disbursements:

Period	Amount (ex GST) \$
<b>Current internal disbursements approval sought:</b>	
<i>Resolution 3: 5 October 2018 to 31 December 2018</i>	210.60
<i>Resolution 4: 1 January 2019 to completion</i>	1,693.00
<b>Total past internal disbursements approved</b>	<b>1,903.60</b>
<i>* Approval for the future internal disbursements sought is based on an estimate of the internal disbursements necessary to the completion of the liquidation. Should additional internal disbursements be necessary beyond what is contemplated, further approval may be sought from creditors.</i>	

## 2.3 Comparison to estimate of costs provided to creditors in previous reports

The remuneration approval sought differs to the estimate of costs provided to creditors in our previous Remuneration Approval Requests for the following reasons:

- Applying to the Federal Court of Australia for directions to determine whether Westpac was entitled to be subrogated into the employees' position following our unfair preference recovery from the ATO. However due to certain decisions which were made subsequently by other courts, the question of whether those priorities existed in circumstances where a company acted as a trustee needed to be resolved first. This required amendments to be made to our initial application in order to address the relevant trust issues - which were heard in August 2017 and decision by the Full Court of the FCA handed down in March 2018.

Since our initial Court application, we have (amongst others):

- issued a number of circulars to creditors to apprise them of the matter and status
  - undertaken a reconciliation exercise for employee entitlements based on the Company records and information provided by employees
  - written to employees to seek confirmation of their outstanding entitlements
  - prepared and updated Statement of Position from time to time to facilitate submissions to the Court
  - corresponded with Westpac and FEG in respect to the Court application
  - approached creditors to identify contradictor to participate in our Court application
  - sought advice from senior counsels
- Pursuing unfair preference recoveries from the ATO, Office of State Revenue (**OSR**) and a trade creditor. To date, we have successfully recovered the sums of \$4.5M from the ATO and \$824,753.60 from the OSR and are currently

pursuing a claim of up to \$2.3M from a trade creditor (refer to section 3 of the Report to Creditors dated 10 January 2019).

Before writing to the relevant parties or creditors to recover any payments, we were required to undertake the following tasks:

- Based on the solvency analysis performed on the Company, we identified the parties/creditors who may have received unfair preference payments during the relation back period
  - For each of the identified parties/creditors, we undertook a review of the Company records for evidence and collate the relevant documentation (letters and email correspondence, bank statements, etc) in support of our claim. The amount of time required to undertake this task depends on the amount of information available to us. Where necessary, we would seek assistance from former employees and/or other parties (e.g. banks, government bodies) to provide further information.
- Resolving dispute on the superannuation guarantee charge (**SGC**) claim with the ATO. The objection was lodged with the ATO on 16 June 2016 after they assessed the Company of having outstanding SGC totalling \$1,736,158.

Subsequently we also attended to the following:

- seeking breakdown of ATO's initial SGC claim
- providing payment details requested by the ATO
- providing payroll information of the March quarter to establish the total SGC payable
- discussions with the ATO as to options available to apply the contribution made by the Company in July 2014 with a view to reduce the total SGC payable
- reviewing ATO's updated / amended worksheets and calculations and provided feedback on discrepancies identified
- collating a listing of employees with their respective termination dates
- identifying employees who salary sacrificed
- providing payment evidence and payroll information for the relevant periods for all sites
- reconciling the amount claimed by the ATO for the March 2014 quarter to the amount actually paid by the Company and determining the causes of discrepancies
- completing and lodging a Late Payment Offset form with the ATO
- Agreeing the amended SGC with the ATO
- Following up on the ATO's amended proof of debt.

Due to the number of employees and different time periods involved, the dispute was finally resolved in or around August 2017. The exercise resulted in a reduction of approximately \$541k in SGC claim against the Company. The ATO lodged an amended Proof of Debt with the Liquidators in March 2018.

- Preparing a supplemental report under section 533(2) of the Act as requested by the ASIC to provide further details around certain breaches of civil obligations by the Director.

### 3 Remuneration

#### 3.1 Remuneration claim resolutions

We will be seeking approval of the following resolutions with respect to remuneration. Details to support these resolutions are included in section 3.2.



**Resolution 1:**

*"That the remuneration of the Liquidators, as set out in the Remuneration Approval Request dated 10 January 2019, for the period from 25 February 2017 to 31 December 2018 be fixed in the amount of \$298,261 plus GST, and may be paid."*

**Resolution 2:**

*"That the remuneration of the Liquidators, as set out in the Remuneration Approval Request dated 10 January 2019, for the period from 1 January 2019 to completion be fixed up to a maximum amount of \$200,000, plus GST, but subject to upward revision by resolution of creditors, and that the Liquidators be authorised to make periodic payments on account of such accruing remuneration as incurred."*

**3.2 Details of remuneration**

The basis of calculating the remuneration claims are set out below, including the details of the major tasks performed and the costs associated with each of those major tasks.

### 3.2.1 Resolution 1: 25 February 2017 to 31 December 2018

The below table sets out time charged to each major task area performed by the Liquidators and their staff for the period 25 February 2017 to 31 December 2018, which is the basis of the Resolution 1 claim. Please refer to Schedule A for further details with respect to the tasks performed.

Employee	Position	Rate (ex GST) \$/Hour	Total		Task Area														
					Assets		Creditors		Employees		Trade On		Investigation		Dividend		Administration		
					Hrs	\$	Hrs	\$	Hrs	\$	Hrs	Hrs	Hrs	\$	Hrs	\$	Hrs	\$	
Martin Jones	Partner / Appointee	625	10.1	6,313	0	0	0	0	0	0	0	0	0	0	0	0	0	10.1	6,313
Malcolm Field	Executive Director	575	5.4	3,105	0.2	115	3.7	2,128	0	0	0	0	0.4	230	0	0	0	1.1	633
Sean Powell	Director / Specialist	550	3.1	1,705	0	0	0	0	0	0	0	0	3.1	1,705	0	0	0	0.0	0
Kieran Chu	Senior Manager	500	185.9	92,950	1.6	800	41.7	20,850	21.6	10,800	1	500	76.5	38,250	0	0	0	43.5	21,750
Yvonne Liew	Manager	450	408.1	183,645	0.3	135	126.7	57,015	29.2	13,140	1.4	630	230.0	103,500	0	0	0	20.5	9,225
Miranda Stephens	Assistant Manager	390	9.4	3,666	0	0	0	0	0	0	0	0	0	0	0	0	0	9.4	3,666
William Hulmes	Assistant Manager	390	17.2	6,708	0	0	0	0	0	0	0	0	17.2	6,708	0	0	0	0.0	0
Yvonne Liew	Assistant Manager	390	185.5	72,345	0	0	65	25,350	83.4	32,526	0.4	156	31.9	12,441	0	0	0	4.8	1,872
Deepa Sivarajasingam	Assistant Manager	390	0.2	78	0	0		0		0		0		0	0	0	0	0.2	78
Nirav Shah	Senior Analyst	330	162.3	53,973	0	0	53	17,490	5.2	1,716	2	660	33.6	11,088	1.3	429	68.5	22,590	
Bradley Collins	Senior Analyst	330	1.8	594	0	0	0	0	0	0	0	0	1.8	594	0	0	0	0.0	0
Deepa Sivarajasingam	Senior Analyst	330	0.5	165	0	0	0	0	0	0	0	0	0	0	0	0	0	0.5	165
William Hulmes	Senior Analyst	330	1.4	462	0	0	0	0	0	0	0	0	1.4	462	0	0	0	0.0	0
Jason Soo	Senior Analyst	330	0.2	66	0	0	0.2	66	0	0	0	0	0	0	0	0	0	0.0	0
Samuel Cohen Cooke	Senior Analyst	330	0.1	33	0	0	0	0	0	0	0	0	0	0	0	0	0	0.1	33
William George	Analyst	290	16.8	4,872	0	0	16.8	4,872	0	0	0	0	0	0	0	0	0	0.0	0
Corina Kast	Analyst	290	8.8	2,552	0	0	1.5	435	0	0	1.7	493	0	0	0	0	0	5.6	1,624
Samuel Cohen Cooke	Analyst	290	17.4	5,046	0	0	0	0	0	0	0	0	3.7	1,073	0	0	0	13.7	3,973

Omeed Rassoul	Analyst	290	1.3	377	0	0	0	0	0	0	0	0	0	0	0	0	1.3	377
Alex Rompotis	Accountant	250	0.1	25	0	0	0	0	0	0	0	0	0.1	25	0	0	0.0	0
Samuel Cohen Cooke	Accountant	250	1.3	325	0	0	0	0	0	0	0	0	0	0	0	0	1.3	325
Corina Kast	Accountant	250	30.0	7,500	0	0	17.5	4,375	0.1	25	1.7	425	1.3	325	0	0	9.4	2,350
Jacqui Daniel	Personal Assistant	180	2.8	504	0	0	0	0	0	0	0	0	0	0	0	0	2.8	504
Jason Diaz	Filing Clerk	180	0.5	90	0	0	0	0	0	0	0	0	0	0	0	0	0.5	90
Jacob Newland	Filing Clerk	140	3.7	518	0	0	0	0	0	0	0	0	0	0	0	0	3.7	518
Heriman Samuel	Filing Clerk	140	0.1	14	0	0	0	0	0	0	0	0	0	0	0	0	0.1	14
Keith Robinson	Filing Clerk	140	3.0	420	0	0	0	0	0	0	0	0	0	0	0	0	3.0	420
Brendan Buckley	Filing Clerk	140	1.5	210	0	0	0	0	0	0	0	0	0	0	0	0	1.5	210
<b>Total (excl. GST) for the period 25.02.17 to 31.12.18</b>		<b>1,078.5</b>		<b>448,261</b>	<b>2.1</b>	<b>1,050</b>	<b>326.1</b>	<b>132,581</b>	<b>139.5</b>	<b>58,207</b>	<b>8.2</b>	<b>2,864</b>	<b>401.0</b>	<b>176,401</b>	<b>1.3</b>	<b>429</b>	<b>201.6</b>	<b>76,729</b>
<b>Less: amount approved at annual meeting on 24.03.17</b>				<b>(150,000)</b>														
<b>Total (excl. GST) approval sought Resolution 1</b>				<b>298,261</b>														
<b>GST</b>				<b>29,826</b>														
<b>Total (incl. GST)</b>				<b>328,087</b>														
<b>Average Hourly Rate</b>				<b>416</b>														

### 3.2.2 Resolution 2: 1 January 2019 to completion

The below table sets out the expected costs for the major tasks likely to be performed by the Liquidators and their staff for the period 1 January 2019 to completion, which is the basis of the Resolution 2 claim. Please refer to Schedule B for further details with respect to the tasks likely to be performed.

Task	Hours	Amount \$
Creditors	66.4	27,625
Employees	73.0	28,950
Investigation	28.0	13,625
Dividend	173.0	66,475
Administration	173.0	63,325
<b>Total</b>	<b>513.4</b>	<b>200,000</b>

### 3.3 Total remuneration reconciliation

#### 3.3.1 Comparison between current total and previous estimates

At this point in time we estimate that the total remuneration for the winding up will be \$1,461,458 (excluding GST). This includes the current approval amounts being sought totalling \$498,261 (excluding GST). This is subject to the following variables which have a significant effect on this estimate:

- no contest by ordinary unsecured creditors to Westpac being subrogated to the priority position of the employees of the Company
- successful recovery of unfair preference claim from the relevant trade creditor by way of a settlement deed (refer to section 3 of the Report to Creditors dated 10 January 2019)
- dividend distribution to the different classes of creditors of the Company.

#### 3.3.2 Comparison between current and previous prospective approvals

Creditors previously approved my prospective remuneration of \$150,000.00 plus GST at the creditors meeting on 24 March 2017.

To date, we have drawn the \$150,000.00 plus GST and applied it in payment of our remuneration. Our remuneration has exceeded this cap and in this report, we are now seeking approval of a further capped amount of \$200,000 to enable us to complete the liquidation.

In the following table we compare, on a task basis, our estimate from our report dated 8 March 2017 to our actual costs as at 31 December 2018 and provide an explanation for the difference in cost.

Task	Estimate \$	Actual \$	Reasons for differences
Assets	Nil	1,050	Attending to tasks not previously provided for - in relation to related party claim/set-off and release of PPSR security interest.
Creditors	30,575	132,581	Additional tasks undertaken which included issuing circular to creditors to update status of our Court application and 2 annual reports to creditors; compiling various information (Westpac's debt, receipts and payments for VA and liquidation periods, breakdown of funds held by liquidators) for submissions to Court; attempts to contact former employee for specific details; discussions with solicitors on progress of Court application and strategy; update of statement of position; responding to creditor queries; peruse submissions.
Employees	20,655	58,207	The actual is higher than estimate due to time incurred in resolving the SGC dispute with the ATO. To facilitate the process, we were requested to provide further details and

Task	Estimate \$	Actual \$	Reasons for differences
			information and performed a number of tasks as stated in section 4 of report to creditors.
Trade on	Nil	2,864	Recording of Receipts and Payments as an ongoing task.
Investigation	30,350	176,401	The actual is significantly higher than the estimate due to investigations into and recovery of unfair preference payments from the OSR and trade creditor(s), including initiating legal proceedings. Process involved discovery and compilation of relevant documentations/information in support of our claims.
Dividend	33,655	429	Actual cost is minimal and related to updating of proof of debt into the system and we have yet to commence the distribution process.
Administration	34,765	76,729	Apart from the usual administrative tasks such as renewal / placement of term deposits, lodging business activity statements, statutory lodgements with ASIC, the cost also included review of Court submissions in relation to our legal proceedings (WAD181/2016), attendance at Court hearing, discussions with lawyers and relevant stakeholders, commencing supplemental report under section 533(2) of the Act.
<b>Total</b>	<b>150,000</b>	<b>448,261</b>	

We also make the following general comments regarding the progress of the liquidation that have affected our previous remuneration estimate:

- our Federal Court application for Court directions for a determination on the application of proceeds of trust property and the Subrogation Issue
- issuing circulars and notices to creditors dated 19 July 2016, 9 September 2017 and 19 July 2017 seeking their response regarding our Federal Court application and subsequent amendments
- resolving our dispute on the outstanding superannuation guarantee charge owed to more than 250 employees with the ATO
- investigating and other tasks associated with pursuing recovery of unfair preference payments from the ATO, Office of State Revenue and trade creditor(s), including initiating legal proceedings.

We have provided an explanation of tasks remaining to be completed, including our estimated costs to complete those tasks, to support our current remuneration approval request, at section 3.2.2 of the report and in Schedule B.

### 3.3.3 Future remuneration requests

In preparing this report, we have made our best estimate at what we believe the liquidation will cost to complete. That said, due to the complex nature of the liquidation, we may seek approval of further remuneration. Should this happen, we will advise creditors and provide a report on time spent and tasks undertaken, including details on why the remuneration has changed. We will then ask creditors to approve our remuneration at the creditors meeting. Matters that may affect the progress and the cost of the liquidation are the variables listed in section 3.3.1.

### 3.4 Likely impact on dividends

The Liquidators' remuneration and disbursements for work performed are a priority expense that ranks ahead of the payment of creditors pursuant to Section 556 of the Act. The payment of the Liquidators' remuneration would result in a reduction of the amounts available for dividend distribution to creditors.

## 4 Disbursements

### 4.1 Types of disbursements

Disbursements are divided into three types:

- Externally provided professional services. These are recovered at cost. An example is legal fees.

- Externally provided non-professional costs such as travel, accommodation and search fees. These disbursements are recovered at cost.
- Internal disbursements such as photocopying, printing and postage. These disbursements, if charged to the liquidation, would generally be charged at cost; although if a data room is utilised, the fee will comprise an initial setup fee and then a fee based on the duration and size of the data room. Certain services provided by Ferrier Hodgson may require the processing of electronically stored information into specialist review platforms. Where these specialist resources are utilised, the fee will be based on units (e.g. number of computers), size (e.g. per gigabyte) and/or period of time (e.g. period of hosting). The relevant rates for internal disbursements are set out below:

Disbursement type	Charges (excl GST)
Advertising	At cost
ASIC industry funding model levy – metric events	At prescribed ASIC rates / \$77
Couriers	At cost
Data room set-up	\$450.00
Data room hosting – Option A	Variable – see separate table below
Data room hosting – Option B (incl 100GB of data)	\$84.95 per user per month
eDiscovery services	Variable
Photocopying / printing (colour)	\$0.50 per page
Photocopying / printing (mono)	\$0.20 per page
Photocopying / printing (outsourced)	At cost
Postage	At cost
Searches	At cost
Staff travel reimbursement	Up to \$100/day
Staff vehicle use	At prescribed ATO rates
Storage and storage transit	At cost
Telephone calls	At cost

Note: Above rates are applicable for the financial year ending 30 June 2019. Disbursements charged at cost do not require creditor approval

Data room hosting fees by size (MB)	Charges per month (excl GST)
0-300	\$950
300-1000	\$950 + \$2.50/MB
1000-5000	\$2,500 + \$1.25/MB
5000+	\$7,500 + \$0.60/MB

Note: Above rates are applicable for the financial year ending 30 June 2019. Disbursements charged at cost do not require creditor approval

## 4.2 Disbursements incurred from the liquidation to Ferrier Hodgson to date

We have undertaken a proper assessment of disbursements claimed for the liquidation of the Company, in accordance with the law and applicable professional standards. We are satisfied that the disbursements claimed are necessary and proper.

## 4.3 Disbursement claim resolution

We will be seeking approval of the following resolutions with respect to our disbursements in respect of the Company. Details to support these resolutions are include in Part 4.4.

### Resolution 3:

*"That the internal disbursements of the liquidation, as set out in the Remuneration Approval Request dated 10 January 2019, for the period from 5 October 2018 to 31 December 2018 be fixed in the amount of \$210.60, plus GST, and may be paid."*

#### Resolution 4:

"That the internal disbursements of the liquidation, as set out in the Remuneration Approval Request dated 10 January 2019, for the period from 1 January 2019 to completion be fixed up to a maximum amount of \$1,693.00, plus GST, but subject to upward revision by resolution of creditors, and that the Liquidators be authorised to make periodic payments on account of such accruing remuneration as incurred."

#### 4.4 Details of disbursements

##### 4.4.1 Retrospective internal disbursement claim

To date, disbursements totalling \$38,250.61 have been paid in the liquidation of the Company.

The following internal disbursements have been incurred by our firm, Ferrier Hodgson, for the period 5 October 2018 to 31 December 2018.

Disbursements claimed	Basis	Total (excl GST) \$
ASIC industry funding model key – metric events	2 events at 77 per event	154.00
Photocopying / printing (mono)	283 pages at \$0.20 per page	56.60
<b>Total</b>		<b>210.60</b>

Note: Above rates are applicable for the financial year ending 30 June 2019

Approval of the payment of these disbursements at the above rates to a capped amount of \$210.60, plus GST is being sought from creditors at the meeting of creditors.

##### 4.4.2 Prospective internal disbursement claim

Future disbursements provided by our firm, Ferrier Hodgson, will be charged to the liquidation on the same basis as set out in Part 4.1. Approval of the payment of these disbursements at the above rate to a capped amount of \$1,693.00, plus GST is being sought from creditors at the meeting of creditors.

Prospective internal disbursements	Basis	Total (excl GST) \$
ASIC industry funding model key – metric events	9 events at 77 per event	693.00
Photocopying / printing (mono)	5,000 pages at \$0.20 per page	1,000.00
<b>Total</b>		<b>1,693.00</b>

Note: Above rates are applicable for the financial year ending 30 June 2019

## 5 Report on progress of the liquidation

The Remuneration Approval Request must be read in conjunction with the circular to creditors dated 10 January 2019 which outlines the progress of the liquidation.

## 6 Summary of receipts and payments

A summary of receipts and payments for the period 25 February 2018 to 31 December 2018 is set out in **Annexure B** to the Report to Creditors dated 10 January 2019.

## 7 Approval of remuneration

For information about how approval of the resolutions for remuneration and internal disbursements will be sought, refer to section 8 of the Report to Creditors dated 10 January 2019.

## 8 Questions

If you require further information in respect of the above, or have other questions, please contact Corina Kast of this office on 08 9214 1444 or by email at Corina.Kast@fh.com.au.

The partners of Ferrier Hodgson are members of ARITA. Ferrier Hodgson follows the Code. A copy of the Code may be found on the ARITA website at [www.arita.com.au](http://www.arita.com.au).

An information sheet concerning approval of remuneration in external administrations can also be obtained from the Australian Securities & Investments Commission website at [www.asic.gov.au](http://www.asic.gov.au).

Dated this 10<sup>th</sup> day of January 2019.



**Martin Jones**  
Joint and Several Liquidator



**Schedule A – Resolution 1**

The below table contains more detailed descriptions of the tasks performed within each task area performed by the Liquidators and their staff for the period 25 February 2017 to 31 December 2018, which is the basis of the Resolution 1 claim in section 3.2.1.

<b>Task area</b>	<b>General description</b>	<b>Includes</b>
<b>Assets</b>	Debtors	– Related party debtor claim/set-off
	<b>2.1 hours</b> <b>\$1,050</b> <b>(excl GST)</b>	– Release of PPSR security interest over previously sold equipment
<b>Creditors</b>	Creditor enquiries, requests and directions	– Receive and respond to creditor enquiries – Maintaining creditor request log – Review and prepare initial correspondence to creditors and their representatives – Documenting – Considering reasonableness of creditor requests – Obtaining legal advice on requests – Documenting reasons for complying or not complying with requests or directions – Compiling information requested by creditors
	Creditor reports and circulars	– Preparing circulars and notices to creditors to update status of our Court application – Preparing annual reports to creditors
	Dealing with proofs of debt	– Receipting and filing proofs of debt when not related to a dividend – Corresponding with OSR and ATO regarding proofs of debt when not related to a dividend
	Meeting of creditors	– Preparation of meeting notices, proxies and advertisements – Forward notice of meeting to all known creditors – Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting. – Preparation and lodgement of minutes of meetings with ASIC – Respond to stakeholder queries and questions immediately following meeting
	Secured creditor reporting	– Correspondence with secured creditor regarding our application to court for directions in respect to secured creditor entitlement to preference claim recovery
	Security position	– Preparing and updating statement of position – Discussions regarding different scenarios
	<b>326.1 hours</b> <b>\$132,581</b> <b>(excl GST)</b>	

Task area	General description	Includes
<b>Employees</b>  139.5 hours \$58,207 (excl GST)	Employee enquiries	<ul style="list-style-type: none"> <li>– Receive and follow up employee enquiries via telephone</li> <li>– Review and prepare correspondence to creditors and their representatives via facsimile, email and post</li> <li>– Preparation of letters to employees advising of their entitlements</li> </ul>
	Calculation of entitlements	<ul style="list-style-type: none"> <li>– Calculating employee entitlements</li> <li>– Reviewing employee files and Company's books and records</li> <li>– Reviewing awards and contracts</li> <li>– Correspondence with FEG</li> </ul>
	Superannuation guarantee charge	<ul style="list-style-type: none"> <li>– Correspondence with ATO regarding SGC proof of debt</li> <li>– Providing various detailed information to the ATO to facilitate re-assessment of SGC liability (refer to section 4 of the Report to Creditors)</li> <li>– Discussions with the ATO regarding options available to reduce SGC payable</li> <li>– Contacting former employees for assistance</li> <li>– Reviewing ATO's worksheets and calculations</li> <li>– Agreeing with ATO regarding final SGC amount</li> </ul>
<b>Trade on</b>  8.2 hours \$2,864 (excl GST)	Processing receipts and payments	<ul style="list-style-type: none"> <li>– Entering receipts and payments into accounting system</li> </ul>
<b>Investigation</b>  401.0 hours \$176,401 (excl GST)	Conducting investigation	<ul style="list-style-type: none"> <li>– Reviewing Company's books and records</li> <li>– Review of specific transactions to identify potential voidable transactions</li> <li>– Preparation of investigation file</li> </ul>
	Litigation / recoveries	<ul style="list-style-type: none"> <li>– Discussions regarding strategy / status of litigation</li> <li>– Correspondence to the OSR and trade creditors to recover preference payments</li> <li>– Collating relevant supporting documentation</li> <li>– Liaising with solicitors regarding unfair preference recovery actions</li> <li>– Attending to negotiations</li> <li>– Attending mediation conference</li> </ul>
	ASIC reporting	<ul style="list-style-type: none"> <li>– Preparing statutory investigation reports</li> <li>– Preparing affidavits seeking non-lodgement assistance</li> <li>– Liaising with ASIC</li> </ul>

<b>Dividend</b>		
<b>1.3 hours \$429 (excl GST)</b>	Proof of Debt	– Updating Proof of Debts
	Correspondence	– General correspondence
		– Discussions regarding status / strategy
		– Review of affidavits and submissions
		– Swearing of affidavits
	Application for Court directions	– Court attendance
		– Compiling various detailed information, including but not limited to receipts and payments, breakdown of funds held by Liquidators, employee-related information
	Document maintenance / file review / checklist	– Administration reviews
		– Filing of documents
		– File reviews
		– Updating checklists
<b>Administration</b>		
<b>201.6 hours \$76,729 (excl GST)</b>	Insurance	– Identification of potential issues requiring attention of insurance specialists
		– Reviewing insurance policies
	Bank account administration	– Preparing correspondence opening and closing accounts
		– Requesting bank statements
		– Bank account reconciliations
		– Correspondence with bank regarding specific transfers
	ASIC forms	– Preparing and lodging ASIC forms
		– Preparing BASs
	ATO and other statutory reporting	– Supplemental report under section 533(2) of the Act
	Planning / review	– Discussions regarding status / strategy of administration
	Books and records / storage	– Dealing with records in storage
		– Sending job files to storage

## Schedule B – Resolution 2

The below table contains more detailed descriptions of the tasks performed within each task area likely to be performed by the Liquidators and their staff for the period 1 January 2019 to completion of the liquidation which is the basis of the Resolution 2 claim in section 3.2.2:

Task area	General description	Includes
<b>Creditors</b>  <b>66.4 hours</b> <b>\$27,625</b> <b>(excl GST)</b>	Creditor enquiries	– Respond to creditor enquiries
	Secured creditor reporting	– Correspondence with secured creditor regarding progress on application to court for directions in respect to secured creditor entitlement to preference claim recovery
		– updating statement of position
	Creditor reports	– Preparing further report(s)/circular(s) to creditors
	Dealing with proofs of debt	– Receipting and filing proofs of debt when not related to a dividend
		– Preparation of meeting notices, proxies and advertisements
		– Forward notice of meeting to all known creditors
	Meeting of creditors	– Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting.
		– Preparation and lodgement of minutes of meetings with ASIC
		– Respond to stakeholder queries and questions immediately following meeting
– Respond to employee enquiries		
<b>Employees</b>  <b>73.0 hours</b> <b>\$28,950</b> <b>(excl GST)</b>	Employee enquiries	– Respond to employee enquiries
	Calculation of entitlements	– Calculating employee entitlements
		– Correspondence with employees regarding dividend
		– Calculating dividend rate
		– Preparing dividend file
		– Advertising dividend notice
		– Preparing distribution
Employee dividend	– Receipting proofs of debt	
	– Adjudicating proofs of debt	
	– Ensuring PAYG is remitted to ATO	
	– Discussions regarding strategy	
	– Collating information to facilitate submission to Court	
	– Attending to negotiations	
	– Court attendance	
<b>Investigation</b>  <b>28.0 hours</b> <b>\$13,625</b> <b>(excl GST)</b>	Litigation / recoveries	– Preparation and lodgement of supplementary report
	ASIC reporting	

Task area	General description	Includes
	Processing proofs of debt	<ul style="list-style-type: none"> <li>– Preparation of correspondence to potential creditors inviting lodgement of proofs of debt</li> <li>– Receipt of proofs of debt</li> <li>– Maintain proof of debt register</li> <li>– Adjudicating proofs of debt</li> <li>– Request further information from claimants regarding proofs of debt</li> <li>– Preparation of correspondence to claimant advising outcome of adjudication</li> </ul>
	Dividend	<ul style="list-style-type: none"> <li>– Preparation of correspondence to creditors advising of intention to declare dividend</li> <li>– Advertisement of intention to declare dividend</li> <li>– Obtain clearance from ATO to allow distribution of Company's assets</li> <li>– Preparation of dividend calculations</li> <li>– Preparation of correspondence to creditors announcing declaration of dividend</li> <li>– Advertise announcement of dividend</li> <li>– Preparation of distribution</li> <li>– Preparation of dividend file</li> <li>– Preparation of payment vouchers to pay dividend</li> <li>– Preparation of correspondence to creditors enclosing payment of dividend</li> </ul>
<b>173.0 hours</b> <b>\$66,475</b> <b>(excl GST)</b>	Dividend procedures	
<b>Administration</b>	Correspondence	<ul style="list-style-type: none"> <li>– General correspondence</li> </ul>
	Application for Court directions	<ul style="list-style-type: none"> <li>– Discussions regarding status / strategy</li> <li>– Review of affidavits and submissions</li> <li>– Court attendance</li> </ul>
	Document maintenance / file review / checklist	<ul style="list-style-type: none"> <li>– Administration reviews</li> <li>– Filing of documents</li> <li>– File reviews</li> <li>– Updating checklists</li> </ul>
	Bank account administration	<ul style="list-style-type: none"> <li>– Preparing correspondence opening and closing accounts</li> <li>– Requesting bank statements</li> <li>– Bank account reconciliations</li> <li>– Correspondence with bank regarding specific transfers</li> </ul>
	ASIC forms	<ul style="list-style-type: none"> <li>– Preparing and lodging ASIC forms</li> </ul>
	ATO and other statutory reporting	<ul style="list-style-type: none"> <li>– Preparing BASs</li> <li>– Supplemental report under section 533(2) of the Act</li> </ul>
	Finalisation	<ul style="list-style-type: none"> <li>– Notifying ATO of finalisation</li> <li>– Cancelling ABN / GST / PAYG registration</li> <li>– Completing checklists</li> <li>– Finalising WIP</li> </ul>

Task area	General description	Includes
	Planning / review	– Discussions regarding status / strategy of administration
	Books and records / storage	– Dealing with records in storage – Sending job files to storage

# D – Notice of meeting of creditors

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## Notice of meeting of creditors

*Insolvency Practice Rules (Corporations) 2016, Section 75-15*

**Killarnee Civil & Concrete Contractors Pty Ltd (In Liquidation)**  
**ACN 085 230 486 (the Company)**  
**ATF The Thompson Family Trust and in its own right**

NOTICE IS GIVEN that a meeting of the creditors of the Company will be held at the offices of Ferrier Hodgson, Level 28, 108 St Georges Terrace, PERTH WA 6000 on 31 January 2019 at 11.00am (AWST).

### Agenda

1. To receive an account of the Liquidators' acts and dealings and of the conduct of the winding up to date.
2. To fix the further remuneration of the Liquidators.
3. Any other business that may be lawfully brought forward.

Dated this 10<sup>th</sup> day of January 2019.



**Martin Jones**  
Joint and Several Liquidator





# E – Appointment of proxy

## Form 532 - Appointment of Proxy

Insolvency Practice Rules (Corporations) 2016, Section 75-25

Return no later than **4.00 pm on 30 January 2019** to:  
Alex Rompotis, c/- Ferrier Hodgson, GPO Box 2537  
PERTH WA 6001  
Tel: 08 9214 1444  
Fax: 08 9214 1400  
Email: alex.rompotis@fh.com.au

**Indebted Company: Killarnee Civil & Concrete Contractors Pty Ltd (In Liquidation) ACN 085 230 486**  
**Date of Appointment: 9 December 2014**

### A. Name and Contact Details of Person or Entity Entitled to Attend Meeting

1

(if entitled in a personal capacity, given name and surname; if a corporate entity, full name of company, etc)

2 of

(address)

3 Tel:

4 Email:

### B. Appointment of Person to Act as Proxy

Note: You may nominate "the Chairperson of the meeting" as your proxy (or your alternate proxy in the event that the first-named proxy is not in attendance).

1 I/We, as named in Section A above, a creditor/employee/contributory/member of the Company, appoint

2

(name of person appointed as proxy)

3

4 or in his / her absence

(address of person appointed as proxy)

5

(name of person appointed as alternate proxy)

6

7 as \*my / \*our proxy

(address of person appointed as alternate proxy)

to vote at the meeting of creditors to be held on 31 January 2019 at 11:00 AM at Level 28, 108 St Georges Terrace PERTH WA 6000, or at any adjournment of that meeting in accordance with the instructions in Section C below.

### C. Voting Instructions

1 \*My / \*Our proxy, as named in Section B above, is entitled to act as \*my / \*our :

2 **general proxy**, to vote on \*my / \*our behalf **and / or**

3 **special proxy**, to vote on \*my / \*our behalf specifically as follows:

Resolution	For	Against	Abstain
1. "That the remuneration of the Liquidators, as set out in the Remuneration Approval Request dated 10 January 2019, for the period from 25 February 2017 to 31 December 2018 be fixed in the amount of \$298,261 plus GST, and may be paid."	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. "That the remuneration of the Liquidators, as set out in the Remuneration Approval Request dated 10 January 2019, for the period from 1 January 2019 to completion be fixed up to a maximum amount of \$200,000, plus GST, but subject to upward revision by resolution of creditors, and that the Liquidators be authorised to make periodic payments on account of such accruing remuneration as incurred."	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- |  |                          |                          |                          |
|--|--------------------------|--------------------------|--------------------------|
| 3. <i>"That the internal disbursements of the liquidation, as set out in the Remuneration Approval Request dated 10 January 2019, for the period from 5 October 2018 to 31 December 2018 be fixed in the amount of \$210.60, plus GST, and may be paid."</i>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. <i>"That the internal disbursements of the liquidation, as set out in the Remuneration Approval Request dated 10 January 2019, for the period from 1 January 2019 to completion be fixed up to a maximum amount of \$1,693 plus GST, but subject to upward revision by resolution of creditors, and that the Liquidators be authorised to make periodic payments on account of such accruing remuneration as incurred."</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**D. Signature**

<sup>1</sup> Dated:

<sup>2</sup> Signature:

<sup>3</sup> Name / Capacity:

## Creditor Assistance Sheet: Completing a Proxy Form

### Section A – Name and Contact Details of Person or Entity Entitled to Attend Meeting

1. Insert the full name of the employee, individual, sole trader, partnership or company that the debt is owed to.
2. Insert the address of the employee, individual, sole trader, partnership or company that the debt is owed to.
3. Insert the telephone number of the employee, individual, sole trader, partnership or company that the debt is owed to.
4. Insert the email address of the employee, individual, sole trader, partnership or company that the debt is owed to.

### Section B – Appointment of Person to Act as Proxy

1. Cross out any wording that is **not** applicable. For example, if the employee/individual/sole trader/partnership/company is a creditor, cross out “\*eligible employee creditor”, “\*contributory”, “\*debenture holder” and “\*member”.
2. Insert the name of the person who will be exercising the creditor’s vote at the meeting. If someone is attending the meeting in person, that person’s name should be inserted. Alternatively, if someone is unable to attend, but you still want to cast a vote at the meeting, then you can appoint the Chairperson of the meeting to vote on your behalf by inserting the words ‘the Chairperson’ here.
3. Insert the address of the person nominated at (2) that will be attending the meeting as proxy. If you have elected ‘the Chairperson’ because no one is attending in person, leave this row blank.
4. Cross out any wording that is **not** applicable.
5. If the person you have elected to attend is unavailable on the day, you may nominate a second person to attend in their absence. Alternatively, you can appoint the Chairperson of the meeting to vote on your behalf by inserting ‘the Chairperson’.
6. Insert the address of the second person here. If you have elected ‘the Chairperson’, leave this row blank.
7. Cross out any wording that is not applicable.

### Section C – Voting Instructions

1. Cross out any wording that is not applicable.
2. Insert an ‘X’ in this box if you want the person who is attending the meeting to vote as they see fit on each of the resolutions in the ‘Resolution’ table. If you select this option, proceed to Section D, **unless** you wish to vote specifically on certain resolutions, in which case you also insert an ‘X’ in the special proxy box and select ‘For’, ‘Against’ or ‘Abstain’ on the resolutions. The person voting at the meeting will have discretion to vote as they see fit on any resolutions where you have **not** selected ‘For’, ‘Against’ or ‘Abstain’.
3. Insert an ‘X’ in this box if you want the person who is attending the meeting, to vote exactly in accordance with your instructions. If you select this option, you must select ‘For’, ‘Against’ or ‘Abstain’ for each of the resolutions in the ‘Resolution’ table. Do not tick more than one box for each resolution.

### Section D – Signature Instructions

1. Insert the date that the proxy form is being signed.
2. The form should be signed by **one** of the following persons:
  - If the debt is owed to an employee/individual, then the individual that the debt is owed to; or
  - If the debt is owed to a sole trader, then the sole trader that the debt is owed to; or
  - If the debt is owed to a partnership, then one of the partners of the partnership; or
  - If the debt is owed to a company, then a duly authorised office of the company (normally a director or secretary of the company).
3. Insert the name of the person signing the form, and note their capacity (that is, their role):
  - If the debt is owed to a sole trader, note their capacity as proprietor, eg: “[Full name], proprietor”; or
  - If the debt is owed to a partnership, note their capacity as partner, eg: “[Full name], partner of the firm named in Section A above”; or
  - If the debt is owed to a company, note their capacity as director or secretary, eg: “[Full name], director/secretary of the company named in Section A above”]



# F – Proof of debt

**Form 535 Formal Proof of Debt or Claim Form**  
*Corporations Act 2001, Regulation 5.6.49(2)*

Return to:  
Alex Rompotis  
C/- Ferrier Hodgson  
GPO Box 2537  
PERTH WA 6001  
Tel: 08 9214 1444  
Fax: 08 9214 1400  
Email: alex.rompotis@fh.com.au

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**Indebted Company: Killarnee Civil & Concrete Contractors Pty Ltd (In Liquidation) ACN 085 230 486**  
**Date of Appointment: 9 December 2014**

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## A. Name and Contact Details of Creditor

<sup>1</sup> \_\_\_\_\_ (the Creditor)

*(if in a personal capacity, given name and surname; if a corporate entity, full name of company, etc)*

<sup>2</sup> of \_\_\_\_\_

*(insert address)*

<sup>3</sup> Tel: \_\_\_\_\_

<sup>4</sup> Email: \_\_\_\_\_

Tick this box to elect to receive electronic notification of notices or documents, in accordance with Section 600G of the Corporations Act 2001, at the email address specified above.

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## B. Details of Debt or Claim

<sup>1</sup> Amount owing: \_\_\_\_\_

*(insert dollars and cents, inclusive of GST if applicable)*

<sup>2</sup> Nature of Debt or Claim: \_\_\_\_\_

*(insert description of debt and/or reference any supporting documentation)*

<sup>3</sup> Select one of the following options:

- The Creditor is an unsecured creditor of the indebted Company
- The Creditor is a secured creditor of the indebted Company
- The Creditor is an employee / former employee of the indebted Company
- The Creditor is a related party (please indicate: secured / unsecured)

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For all claims:

<sup>4</sup> I have attached supporting documentation to substantiate the Creditor's claim *(secured creditors must attach evidence of security)*

<sup>5</sup> To my knowledge or belief the creditor has not, nor has any person by the creditor's order had or received any satisfaction or security for the sum or any part of it except for the following:

\_\_\_\_\_  
*(insert details and value of security where relevant)*

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## C. Signature

<sup>1</sup> Dated: \_\_\_\_\_

<sup>2</sup> Signature: \_\_\_\_\_

<sup>3</sup> Name / Capacity: \_\_\_\_\_

## Creditor Assistance Sheet: Completing a Proof of Debt Form

### Section A – Name and Contact Details of Creditor

1. Insert the full name of the employee, individual, sole trader, partnership or company that the debt is owed to.
2. Insert the address of the employee, individual, sole trader, partnership or company that the debt is owed to.
3. Insert the telephone number of the employee, individual, sole trader, partnership or company that the debt is owed to.
4. Insert the email address of the employee, individual, sole trader, partnership or company that the debt is owed to.

### Section B – Details of Debt or Claim

1. The amount owing should only include debts or claims which arose prior to the date of appointment.
2. Insert the currency if not Australian dollars.
3. Type of creditor: tick one of the options only.
4. For all claims, ensure supporting documentation is attached, such as invoices, statements, agreements.
5. For secured creditors, insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, indicate “refer attached” above and show them in a schedule in the following form:

Date	Drawer	Acceptor	Amount (\$)	Due Date

### Section C – Signature Instructions

1. Insert the date that the proof of debt form is being signed.
2. The form should be signed by **one** of the following persons:
  - If the debt is owed to an employee/individual, then the individual that the debt is owed to; or
  - If the debt is owed to a sole trader, then the sole trader that the debt is owed to; or
  - If the debt is owed to a partnership, then one of the partners of the partnership; or
  - If the debt is owed to a company, then a duly authorised office of the company (normally a director or secretary of the company).
3. Insert the name of the person signing the form, and note their capacity (that is, their role):
  - If the debt is owed to a sole trader, note their capacity as proprietor, eg: “[Full name], proprietor”; or
  - If the debt is owed to a partnership, note their capacity as partner, eg: “[Full name], partner of the firm named in Section A above”; or
  - If the debt is owed to a company, note their capacity as director or secretary, eg: “[Full name], director/secretary of the company named in Section A above”]



Federal Court of Australia

District Registry: Western Australia

Division: General

No: WAD181/2016

**MARTIN BRUCE JONES IN HIS CAPACITY AS THE LIQUIDATOR OF  
KILLARNEE CIVIL & CONCRETE PTY LTD (IN LIQUIDATION)** and others named  
in the schedule  
Plaintiff

**MATRIX PARTNERS PTY LTD**  
Defendant

### CONSENT ORDER

**JUDGE:** JUSTICE COLVIN

**DATE OF ORDER:** 20 December 2018

**WHERE MADE:** Perth

**BY CONSENT THE COURT ORDERS THAT:**

#### Power of Sale

1. Pursuant to section 89(1) of the *Trustees Act 1962 (WA)*, orders be made that:
  - (a) any sale of the assets of the Thompson Family Trust (**Trust**) which have already taken place be deemed to be a sale within the power of the Liquidators of Killarnee Civil & Concrete Pty Ltd (in Liquidation) ACN 085 230 486 (**Company**) and the Company as the trustee of the Trust.
  - (b) the Company through its Liquidator be granted power to realise any remaining assets of the Trust.

#### Subrogation

2. By 10 January 2019, the Plaintiff to give notice of this order to the creditors of Killarnee Civil & Concrete Pty Ltd (in Liquidation) and the Thompson Family Trust.



3. By 7 February 2019, any creditors who wish to object to the plaintiff paying the debts of Westpac Banking Corporation ACN 007 467 141 (**Westpac**) from the Company's monies within the Plaintiff's control in priority to the ordinary unsecured creditors of the Company file and serve a notice of appearance in this proceeding and act as the contradictor to Order 1 sought by the Plaintiff in the Further Re-Amended Originating Process amended pursuant to Order of Siopis J 12 May 2017, being:


*"1. Directions on the following questions:*

- (a) whether it would be proper for the Plaintiff to pay the debt of Westpac Banking Corporation ACN 007 467 141 (**Westpac**) (or some of it) from the Company's monies within the Plaintiffs' control in priority to the ordinary unsecured creditors of the Company.*
- (b) if the above direction is yes, how much is Westpac entitled to be paid in priority."*

**(the Subrogation Question)**

4. By 7 February 2019, if no creditor files a notice of appearance in accordance with Order 3, this application in so far as it relates to the Subrogation Question be discontinued.
5. By 7 February 2019, if a notice of appearance is filed in accordance with Order 3, this matter be listed for directions on the first available date after 8 March 2019 at 9.15am.
6. Costs reserved.

Date that entry is stamped: 20 December 2018

  
Registrar





**Schedule**

No: WAD181/2016

Federal Court of Australia

District Registry: Western Australia

Division: General

Interested Person                    COMMONWEALTH DEPARTMENT OF EMPLOYMENT

Second Interested  
Person                                    WESTPAC BANKING CORPORATION