

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 29/09/2020 10:15:32 AM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged:	Affidavit - Form 59 - Rule 29.02(1)
File Number:	NSD92/2020
File Title:	GAYLE DICKERSON, TIM MABLESON AND RYAN EAGLE IN THEIR CAPACITY AS JOINT AND SEVERAL ADMINISTRATORS OF MCWILLIAM'S WINES GROUP LTD (ADMINISTRATORS APPOINTED) ACN 000 024 108 AND MOUNT PLEASANT WINES PTY LTD (ADMINISTRATORS APPOINTED) ACN 000 024 813 & ORS
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Dated: 29/09/2020 10:36:43 AM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 59
Rule 29.02(1)

Affidavit

Federal Court of Australia
District Registry: New South Wales
Division: General

No. NSD 92 of 2020

Gayle Dickerson, Tim Mablesen and Ryan Eagle in their capacity as joint and several Deed Administrators of McWilliam's Wines Group Ltd ACN 000 024 108 (Subject to Deed of Company Arrangement)

First Applicants

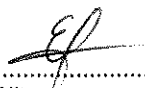
McWilliam's Wines Group Ltd ACN 000 024 108 (Subject to Deed of Company Arrangement)

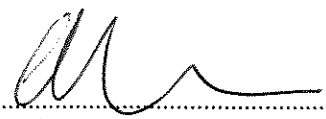
Second Applicant

Affidavit of: **Gayle Dickerson**
Address: c/ KPMG, Tower Three, International Towers Sydney, 300 Barangaroo Avenue
Sydney NSW 2000
Occupation: Chartered Accountant
Date: 29 September 2020

CONTENTS

Document number	Details	Paragraph	Page
1.	Affidavit of Gayle Dickerson in support of application for orders pursuant to section 444GA of the <i>Corporations Act</i> 2001 (Cth) sworn on 29 September 2020	1 to 107	1 to 29
2.	Exhibit 'GD1'		


.....
Witness


.....
Deponent

Filed on behalf of Gayle Dickerson, Tim Mablesen and Ryan Eagle in their capacity as joint and several deed administrators of McWilliam's Wines Group Ltd (Subject to Deed of Company Arrangement) ACN 000 024 108 and McWilliam's Wines Group Ltd (Subject to Deed of Company Arrangement) ACN 000 024 108, Applicants

Prepared by Grant Whatley

Law firm HWL Ebsworth Lawyers

Tel +61 2 9334 8555

Fax 1300 369 656

Email

Ref GBW:967834

Address for Service HWL EBSWORTH LAWYERS

Level 14, Australia Square, 264-278 George Street, Sydney NSW 2000
DX 129 SYDNEY

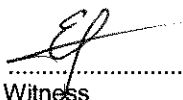
[Version 3 form approved 2/05/2019]

I, Gayle Dickerson of KPMG, Tower Three, International Towers Sydney, 300 Barangaroo Avenue, Sydney in the State of New South Wales, Chartered Accountant, say on oath:

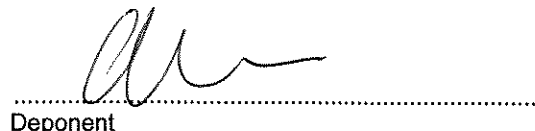
1. I am one of the Applicants. I am a Chartered Accountant, a Registered Liquidator and a partner in the Restructuring Services Group of KPMG. I have been qualified as and have practised as a Chartered Accountant for over 18 years, focusing primarily on corporate insolvency and restructuring.
2. The other Applicants are my joint deed administrators, Tim Mableson and Ryan Eagle. I make this affidavit on my own behalf in my capacity as a deed administrator of McWilliam's Wines Group Ltd ACN 000 024 108 (Subject to Deed of Company Arrangement) (**McWilliam's**) and Mount Pleasant Wines Pty Ltd (ACN 000 024 813) (Subject to Deed of Company Arrangement) (**Mount Pleasant**), which are together referred to as the **Companies**. I am also authorised to make this affidavit on behalf of Mr Mableson and Mr Eagle. I refer below to us collectively as the '**Deed Administrators**' or the '**Administrators**'.
3. I do not have direct personal knowledge of all the facts and matters I depose to in my affidavit. Where I depose to facts and matters in this affidavit or refer to documents that are not from my personal knowledge, I do so from the following sources:
 - (a) historical and current extracts from the database of the Australian Securities and Investments Commission (**ASIC**);
 - (b) the books and records (including electronic records) of the Companies; and
 - (c) documents obtained via notices and production orders issued under the *Corporations Act 2001* (Cth) (**Act**).
4. This affidavit is sworn in support of the Deed Administrators' Interlocutory Process (**Application**) seeking orders, amongst other things, that the Applicants be granted leave to transfer all of the issued shares of McWilliam's (**Shares**) to MCW BidCo Pty Ltd ACN 642 488 524 or its nominee (**Proponent**), pursuant to section 444GA(1)(b) of the Act;
5. The making of the order sought in paragraph 4 above forms part of several conditions precedent of a deed of company arrangement executed by the Companies, the Applicants and the Proponent on 3 August 2020 (**DOCA**) that are required to be satisfied (unless waived). The DOCA and its conditions precedent are discussed in detail in paragraphs 70 to 76 below.

Documents

6. Exhibited to me at the time of swearing this affidavit and marked '**GD1**' is a bundle of documents to which I refer in this affidavit. Where I refer to a page number in exhibit GD1, I am referring to a document in the exhibit commencing at that page.



 Witness

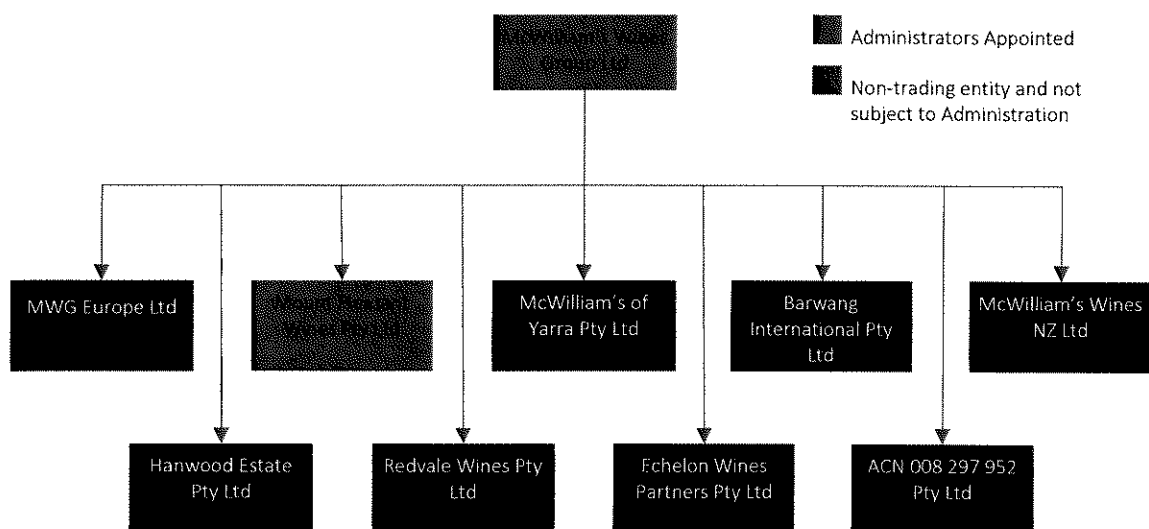


 Deponent

7. As a part of our investigations, the Deed Administrators have caused to be prepared a number of tables and graphs to summarise information and data that has been extracted from the books and records (including electronic records) of the Companies. Where tables and graphs have been included in this affidavit, these have been prepared by members of my staff under my supervision and I have referenced the table or graph with the words "Source: KPMG Analysis". Where tables and graphs have been reproduced from the Companies' records, I have referenced the table with the words "Source: Company records".
8. At **page 1 of exhibit GD1** is a Glossary of Acronyms used throughout this affidavit.

Background to the Companies

9. The Companies operate as a vertically integrated wine producer and distributor of Australian wine products. Prior to our appointment as Administrators the Companies were also a distributor of various international wine products. They form part of a wider group of companies (**the Group**) but only the Companies are in external administration. The Group was established in 1877. Since then, the Group has established a presence and an extensive portfolio of vineyard and winery operations and properties in the New South Wales Riverina and Hunter Valley regions. Its products are sold under the "Mount Pleasant Wines", "McW" and "McWilliam's" brands. The Group's head office is located in Pyrmont, NSW.
10. In terms of the corporate structure of the Group, McWilliam's is the ultimate holding company and immediate parent company of Mount Pleasant (that is, Mount Pleasant is a wholly owned subsidiary of McWilliam's) and McWilliam's is an unlisted public company with approximately 80 shareholders (being members of the McWilliam family and their relatives including corporate entities related to them). The issued share capital of McWilliam's comprises 67,522,705 ordinary shares.
11. From the records obtained from ASIC, I have caused to be prepared the following diagram to illustrate the corporate structure of the Group:

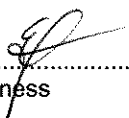


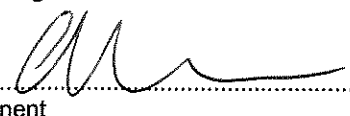
Witness

Deponent

Source: Company records; ASIC records and KPMG analysis

12. McWilliam's owns all of the Group's assets and intellectual property except for the Mount Pleasant Winery and Vineyard, Rosehill Vineyard, Lovedale Vineyard and associated Water Licences which are owned by Mount Pleasant.
13. The remaining entities within the Group are dormant non-trading entities with no known assets or liabilities.
14. The Group's current product range consists of, among others, the McWilliam's 1877 and Single Vineyard labels, McW, Mount Pleasant Estate and Show Reserve range of Fortified wines. The Group was also the sole Australian distributor for various global brands such as Henkell, Mateus, Mionetto and Champagne Taittinger.
15. The Group's key assets include:
 - (a) its business as a going concern, including two major standalone winery operations in the Riverina and Hunter Valley regions of New South Wales;
 - (b) stock on hand;
 - (c) water rights; and
 - (d) portfolio of leasehold and freehold assets relating to the vineyard, winery and warehouse properties in prominent wine growing regions throughout the Riverina and Hunter Valley, including:
 - (i) Beelbangera Winery Rd, Beelbangera, NSW 2680;
 - (ii) Lovedale Vineyard;
 - (iii) 'McWilliam's Wines', 268 Jack McWilliam Road, Hanwood NSW 2680;
 - (iv) Mount Pleasant Winery and Vineyard; and
 - (v) Rosehill Vineyard.
16. A summary of the Group's employees by location is contained in the below table. As at the date of our appointment as administrators of the Companies on 8 January 2020 (**Administrators**), there were 148 employees (excluding casual labour for 'Vintage 2020') identified in the books and records of the Group, in addition to six permanent contractors who work across different functions. The legal employing entity of the Group's employees is McWilliam's. Since our appointment as Administrators, approximately 80 employees have left the business which included 36 casual employees employed to support the 'Vintage 2020' harvesting activities in the Riverina region.

.....

 Witness

.....

 Deponent

Summary – Workforce as at September 2020

Location	Description	Employees
Sydney, NSW	The Group's Head Office is located at Pyrmont, NSW where support functions including Finance, IT, Human Resources, Sales, Customer Services and Marketing operate from. On appointment, a leased warehouse located in Chullora, NSW was also occupied but this lease was subsequently disclaimed by the Administrators following our appointment.	34 permanent 1 regular casual
Pokolbin, NSW	Across the Pokolbin area, there is a team of 10 permanent employees working within the vineyards, winery and cellar door. The Group also employs casuals throughout the year, with workforce size increasing during the vintage period (January – April).	10 permanent 6 regular casuals
Hanwood, NSW	Operates a warehouse and distribution facility at Griffith, NSW with 40 permanent employees on site. The Group also employs casuals throughout the year, with workforce size increasing during the vintage period (January – April).	40 permanent 4 regular casuals
Young, NSW	The Group operates a leasehold vineyard ('Barwang') in Young, NSW consisting of a vineyard manager, supervisor and vineyard hands.	3 permanent 0 casuals
Various (Vic, NSW and Qld)	There is also a small sales team of 2 people located in Victoria and a team of 3 located in Queensland. NSW has 4 sales members working remotely as they cover all the different regions within their states.	9 permanent
Permanent contractors	The Group employs 4 permanent contractors working across different functions within the Group to support the head office functions or the operations in regional NSW.	4
Total permanent employees and contractors		111
Total labour force		111

Source: Company records

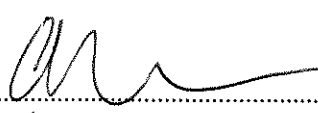
Appointment as Administrators

17. By way of overview, the Deed Administrators have prepared the following timeline from our investigations in relation to the Companies' business, property, affairs and financial circumstances. The timeline summarises the key events in the Group's recent history leading up to our appointment as Administrators.

Date	Event
26 June 2013	The Group refinanced its existing bank loans under a 5 year credit facility with GE Capital up to a maximum availability of \$55 million.




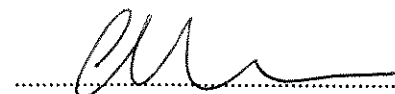
Witness



Deponent

Date	Event
29 September 2014	The Group's global wine supply agreement with E&J Gallo Winery (a leading wine producer and distributor of California Wines in select markets around the world) was terminated and its preference shares were fully redeemed for an amount of \$7.3 million, payable in instalments under a loan deed as follows: \$0.6 million on settlement and 4 equal instalments of \$1.675 million on 1 July 2016, 1 July 2017, 1 July 2018 and 1 July 2019. The final instalment was not paid prior to our appointment as Administrators on 8 January 2020.
2 February 2015	Sale and leaseback of the Coonawarra and Hanwood vineyards to CK Life Sciences International Inc for \$15.7 million.
8 November 2015	Bain Capital acquires GE Capital.
21 December 2015	McWilliam's sells Brand's Laira business to Casella Family Brands for \$15.8 million.
16 May 2016	Jeffrey McWilliam appointed CEO of the Group.
19 May 2017	The Board was notified of letter of default from Bain Capital triggered by a breach of the EBITDA covenant in March 2017.
23 May 2017	The Board approves an exclusive agreement with Pendulum Capital (an advisory firm associated with Peter Fogarty) to assist with the turnaround of McWilliam's.
9 June 2017	The Group entered into a 3 year loan agreement with Margaret River Wine Production Pty Ltd (MRWP), with funding of \$25 million provided by MRWP used to repay the facility owed to Bain Capital in full. In exchange for the loan of \$25 million, McWilliam's granted a future option of 30% to MRWP to purchase McWilliam's, and MRWP would have an option to purchase the Evans & Tate brand.
22 June 2017	The Group entered into a 3 year receivables purchase agreement with AssetSecure up to a maximum available facility of \$12 million.
12 September 2017	McWilliam's sold the Evans & Tate brand for \$32.8 million to MRWP. The proceeds of \$32.8 million consisted of a reduction in the debt facility between McWilliam's and MRWP of \$22.8 million and McWilliam's acquiring an additional 10% equity interest in MRWP valued at \$10 million.
23 July 2018	David Pitt appointed CEO of the Group, replacing Jeffrey McWilliam.
10 December 2018	The Group entered into a binding agreement with MRWP (a Heads of Agreement had been executed in September 2018) under which the Group sold about 20% of the shares in MRWP to Laguna Bay Agricultural Fund (Laguna Bay) for \$9.6 million (such that its shareholding in MRWP went from about 30.4% (fully diluted) to 10.2% (fully diluted)). The Group also received funds of \$6.2 million from MRWP by way of subscription by MRWP for 7 year secured convertible notes in the Group pursuant to a Secured Convertible Note Deed dated 7 December 2018 (Convertible Notes Deed) between MRWP and McWilliam's (as borrower) and Mount Pleasant (as guarantor).


 Witness

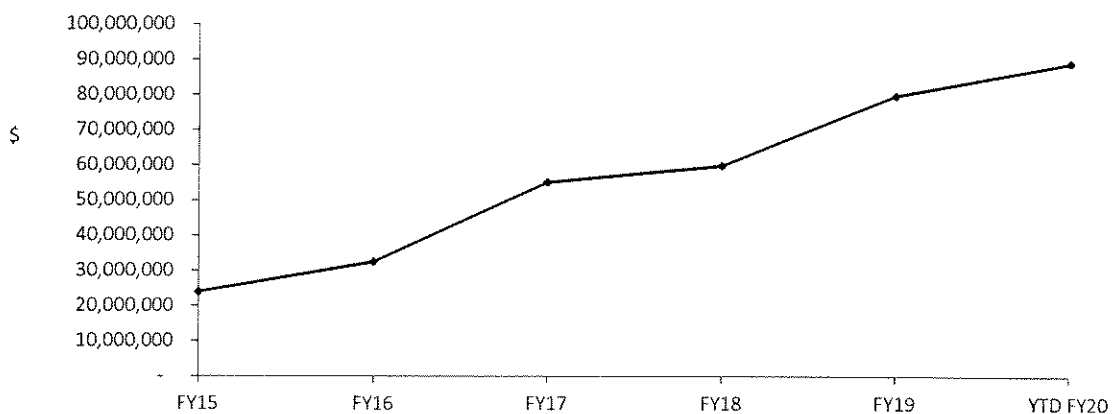

 Deponent

Date	Event
25 January 2019	The recapitalisation transaction with MRWP and Laguna Bay completed.
January 2019	The Board was restructured with the directors becoming Jim Brayne (Chair), Karen McWilliam, Lisa Ashton and Peter Fogarty, and four directors resigning (all McWilliam family members).
February 2019	1,110,538 ordinary shares valued at \$466,000 were issued pursuant to the conversion of unsecured shareholder loan notes.
June 2019	The Group renewed the receivables purchase agreement with AssetSecure for a further two years with the facility maturing on 30 June 2021
1 July 2019	6,254,064 ordinary shares valued at \$2.6 million were issued pursuant to the conversion of unsecured shareholder loan notes.
October 2019	Directors seek "safe harbour" protection under the premise of a 'better outcome' scenario.
20 December 2019	The Group sold its 10.2% residual shareholding interest in MRWP to Valley Vino Pty Ltd (a related party and an associate vehicle of Laguna Bay) for \$5.5 million with the \$4 million MRWP loan repaid on settlement.
December 2019 / January 2020	Directors & Officers insurance expired, with the business unable to secure new cover due to the insurer's concerns relating to solvency.
8 January 2020	Appointment of Voluntary Administrators.

Source: Company records

18. The Group had been trading at a loss for a number of years, as illustrated in the chart below for the period from FY15 to 31 December 2019.

Cumulative losses - FY15 to FY20 YTD



Source: Company records and KPMG analysis

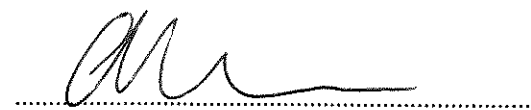
[Signature]
Witness

[Signature]
Deponent

19. In 2017, the Board determined that the Companies required additional funding to allow the business to continue to operate. This ultimately led to the sale of a number of key assets including the Evans & Tate brand in 2017.
20. Following a poor response to a proposed share rights issue in 2018, the Companies agreed with Laguna Bay to sell 20% of its investment in MRWP for \$9.6M, issuing \$6.2 million of convertible notes and subordinated the majority of the shareholder loan notes (which were already due and payable).
21. In January 2019, the Group made progress towards addressing its underlying cost base, however there were significant increases in one off costs relating to rental costs on an onerous lease at the former Chullora bottling site and operating costs due to production delays with the third party bottling arrangement at Hanwood.
22. In June 2019, the Group's management presented a turnaround plan to the Board, identifying the funding required to achieve break even in 3 years. The business engaged Pendulum Capital to assist in a debt/capital raise but was unable to secure funding options that the Board was prepared to support, due to conditionality or timing.
23. The inability to secure the necessary capital, combined with inadequate sales and cash flow, the inability to renew the Directors' and Officers' insurance policy and the consecutive trading losses for the financial years 2013 to 2019, culminated in the Board's decision to appoint the Administrators on 8 January 2020.
24. On 8 January 2020, the Administrators were appointed as joint and several voluntary administrators of each of the Companies pursuant to section 436A of the Act.
25. Commencing at **page 3 of exhibit GD1** is a copy of each of the instruments of appointment of voluntary administrators dated 8 January 2020 for each of the Companies. At **page 5 of exhibit GD1** is a company search of each of the Companies obtained from the records maintained by ASIC and dated 28 September 2020.
26. The first meeting of the creditors of each of the Companies required pursuant to section 436E of the Act was held concurrently on 20 January 2020 (**First Meeting**). I was the Chairperson of the First Meeting. At **page 25 of exhibit GD1** is a copy of the minutes of the First Meeting, which truly reflects the business of the meeting and the resolutions passed at the meeting.
27. On 3 February 2020, the Administrators (as we were then) and the Companies applied for an extension of the period in which the second meeting of creditors of the Companies was required to be convened (**Convening Period**).
28. On 4 February 2020, this Honourable Court made orders extending the Convening Period to 31 July 2020. A copy of the orders is at **page 33 of exhibit GD1**.



 Witness



 Deponent

29. On 15 July 2020, the Administrators finalised and issued a Report to Creditors pursuant to section 75-225 of the *Insolvency Practice Rules (Corporations)* 2016 (**Second Report**). A copy of the Second Report is at **page 37 of exhibit GD1**.
30. On 24 July 2020, at the concurrent second meeting of creditors of the Companies held pursuant to section 439A(1) of the Act (**Second Meeting**), the creditors of each of the Companies resolved, amongst other things, that the Companies execute the DOCA. A copy of the minutes of the Second Meeting is at **page 294 of exhibit GD1**. A copy of the DOCA executed by the Companies, the Applicants and the Proponent on 3 August 2020 is at **page 352 of exhibit GD1**.
31. Pursuant to the DOCA, Tim Mableson, Ryan Eagle and I were appointed as Deed Administrators. We are authorised to make the Application pursuant to the terms of the DOCA.

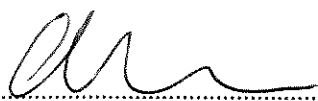
Historical financial performance of the Companies

32. The Group's financial reporting was prepared on a consolidated basis and accordingly there are no separate financial statements for the individual entities within the Group (that is, Mount Pleasant does not have separate financial statements).
33. The Group's financial statements were prepared up to 30 June 2019, however, the financial statements for the 2019 financial year were never signed due to unresolved concerns regarding the audit opinion of the Group's auditor (Deloitte) for that year. Accordingly, the Group's last signed audited financial statements were for the 2018 financial year.
34. Copies of the audited financial statements for the Financial Years ending 30 June 2018 (**FY18**) and 30 June 2019 (**FY19**) (unsigned) commence at **page 451 of exhibit GD1**.
35. My review of the books and records has identified that the Group also prepared monthly management reports, budgets and cash flow forecasts.
36. Using the financial statements and management accounts, I have prepared the table below that summarises the profit and loss statements for the Group for the FY18, FY19 and FY20 YTD. The FY20 YTD figures represent the management accounts for the 6 month period from 1 July 2019 to 31 December 2019.

\$000s	FY18 Restated (a)	FY19 Draft Unaudited	FY20 YTD Management (b)
Sales revenue (net of discounts and allowances)	87,030	70,824	39,107
Cost of sales (COS)	(70,691)	(58,304)	(32,391)
<i>Cost of Sales (%)</i>	81%	82%	83%
Gross profit	16,339	12,520	6,716
Other income	17,173	2,019	679
Total income	33,512	14,539	7,395



 Witness



 Deponent

Expenses			
Growing costs	(4,841)	(4,752)	
Distribution and marketing expenses	(21,846)	(20,934)	
Occupancy and administration expenses	(8,599)	(5,870)	
Finance expenses	(2,995)	(2,888)	
Other expenses	-	-	
Total Expenses	(38,281)	(34,444)	(16,739)
Profit / (loss) before income tax	(4,769)	(19,905)	(9,344)
Tax (expense) / benefit	(130)	-	-
Net profit / (loss) for the period	(4,899)	(19,905)	(9,344)
Total other comprehensive income for the year	38	20	-
Total comprehensive profit / (loss) for the year	(4,861)	(19,885)	(9,344)

Source: Company records and KPMG analysis

37. I make the following observations regarding the Group's profit and loss statements for FY18:

- (a) The Group's "other income" of \$17.2 million included the following "one off" or non-recurring amounts totalling \$14.8 million.

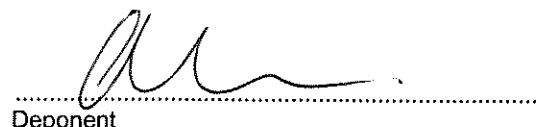
Item	\$
Net gain on sale of property, plant and equipment relating to Evans & Tate	3,491
Evans & Tate distributor's net income	3,100
FY18 share of profit in MRWP	632
Profit on sale of water rights	3,255
Changes in fair value of convertible notes	4,336
Total	14,814

- (b) With the exclusion of these amounts, the Group's loss before tax would have been approximately \$19.4 million.

38. I make the following observations regarding the Group's profit and loss statements for FY19:

- (a) during FY19 the Group took significant steps to restructure its business, including addressing its funding issues, the commencement of a strategic plan towards 'premiumisation' of its product range and a change of its management team;
- (b) the reduction in revenue from FY18 included the impact of the disposal of the Evans & Tate brand and a decline in overall sales, primarily driven by declining export volumes; and


Witness

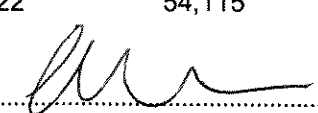

Deponent

- (c) there were significant increases in one off costs relating to rental costs on an already onerous lease for the former Chullora bottling site (\$3.7 million) and operating costs due to production delays with the third party bottling arrangement at Hanwood.
39. I make the following observations regarding the Group's profit and loss statements for FY20 YTD:
- (a) a \$2.7 million loss has been recognised on the sale of the Group's interest in MRWP to Laguna Bay for \$5.5 million; and
- (b) total sales for FY20 YTD were above budget, this was driven by sales of bulk wine and pre sales of Vintage 2020 juice to generate cash for the Group rather than the sale of finished goods into the Group's usual sales channels.
40. I have caused a summary of the balance sheet for the Group for each of FY18, FY19 and FY20 YTD to be prepared using the audited financial statements and management accounts (the FY20 YTD figures represent the management accounts for the 6 month period from 1 July 2019 to 31 December 2019) which is set out below:

\$000s	FY18 Audited (a)	FY19 Draft Unaudited	FY20 YTD Management (b)
Current assets			
Cash and cash equivalents	354	501	2,317
Trade and other receivables	18,404	12,483	17,075
Inventory	34,513	30,774	28,058
Derivative financial instruments	6	16	-
Total current assets	53,277	43,774	47,450
Non-current assets			
Investments	17,869	8,167	17
Inventory	4,783	5,241	-
Property, plant and equipment	28,935	27,912	27,648
Total non-current assets	51,587	41,320	27,665
Total assets	104,864	85,094	75,115
Current liabilities			
Trade and other payables	21,531	16,877	19,892
Borrowings	22,610	17,641	7,734
Provisions	430	1,220	1,665
Contract liabilities	108	332	-
Employee benefits	1,404	1,140	-
Total current liabilities	46,083	37,210	29,291
Non-current liabilities			
Borrowings	271	6,075	10,644
Provisions	743	3,437	3,726
Employee benefits	361	358	29
Financial liabilities	-	-	156
Total non-current liabilities	1,375	9,870	14,555
Total liabilities	47,458	47,080	43,846
Net assets	57,406	38,014	31,269
Equity			
Issued capital	53,622	54,115	54,240



Witness



Deponent


Reserves	4	42	14
Retained earnings / (accumulated losses)	3,780	(16,143)	(22,987)
Total equity	57,406	38,014	31,267

41. I make the following observations regarding the Group's balance sheets:

- (a) the Group's cash balance was \$2.3 million as at 31 December 2019, due to the sale of its remaining shareholding in MRWP for \$5.5 million in December 2019 less a simultaneous repayment of a \$4 million loan to MRWP. This also had the impact of reducing borrowings per the table below;
- (b) the Group's total borrowings as at 30 June 2019 and 31 December 2019 are detailed below:

Borrowings (\$000s)	30 June 2019	31 December 2019
MRWP Loan	3,996	--
MRWP Convertible Loan Notes	5,919	6,036
AssetSecure Receivables Facility	2,099	3,660
Shareholder Loan Notes	9,754	7,425
Other	1,948	1,257
Total	23,716	18,378

- (c) shareholder loan notes totalling \$2.6 million (including accrued interest) were converted into equity on 1 July 2019;
 - (d) receivables of \$17.1 million at 31 December 2019 are high due to the seasonality of demand leading up to the Christmas period;
 - (e) the Group sold down its 30.4% (fully diluted) shareholding in MRWP to 10.2% (fully diluted) in January 2019, resulting in a decline in the Group's non-current assets. The remaining 10.2% shareholding in MRWP was sold to Laguna Bay in December 2019 at a loss; and
 - (f) prior to our appointment, the Group had reduced its inventory balance, primarily excess bulk wine, to generate cash flow (and the lower balance as at December 2019 is partly due to timing, with inventory at a low point prior to the 2020 vintage and following the Christmas sales period).
42. From our investigations to date, it is the Deed Administrators' view that the Companies were cash flow insolvent on or about 30 November 2019. In forming this view, the Deed Administrators' have relied upon the following matters, among other things:



 Witness



 Deponent

- (a) the Group's historical financial performance, including consecutive trading losses including in the financial years ended 30 June 2018 and 30 June 2019;
 - (b) the aged creditors balance of the Companies;
 - (c) creditor payment deferrals, with creditors not being paid within their agreed trading terms;
 - (d) pressure from creditors including overdue payment notices and demands for payment;
 - (e) overdue Commonwealth and State taxes;
 - (f) informal payment plans with creditors; and
 - (g) no access to alternative sources of finance.
43. The reasons for the Deed Administrators' view are set out in greater detail in Section 8.3 of the Second Report.
44. As at the date of our appointment as Administrators, the Companies' major creditor groups were:
- (a) MRWP, which was the largest secured creditor on appointment, and was owed the amount of approximately \$6,231,020 (based on the proof of debt lodged by MRWP), which has since been paid out by the Administrators (discussed further commencing at paragraph 45 below);
 - (b) AssetSecure, who was owed approximately \$833,596 (excluding a default fee of approximately \$300,000) pursuant to a debtor finance facility. The Administrators took steps to repay, in full, the amount owing to Asset Secure with its facility being effectively terminated on 15 January 2020;
 - (c) other secured creditors holding registered security interest claims over assets of the Companies in the amount of approximately \$2,900,000;
 - (d) the Deputy Commissioner of Taxation, which was owed approximately \$1,398,065.41;
 - (e) employee creditors, who together were owed about \$1,662,256 comprising of accrued hours relating to annual leave, (unvested) long service, and rostered days-off, plus unpaid superannuation;
 - (f) shareholder loan note holders, in respect of which the total debt was approximately \$7,425,196.11;
 - (g) unsecured trade creditors, who were owed approximately \$23,933,458;
 - (h) E. & J. Gallo Winery – the Group was subject to a formal repayment plan dated 17 August 2019 in relation to a share redemption agreement, which required three equal payments of

.....
 Witness

.....
 Deponent

\$583,339 to be made on 30 September 2019, 31 December 2019 and 31 January 2020. As at our appointment as Administrators, the final two instalments totalling \$1,166,679 had not been paid and remained outstanding along with interest and winding up costs totalling approximately \$81,000; and


- (i) estimated contingent landlord claims and other accruals, in respect of which the total debt was approximately \$10,136,313.

Appointment of Receivers and Managers

45. At all material times, MRWP was the principal secured creditor of the Companies pursuant to the Convertible Notes Deed.
46. The essential terms of the Convertible Notes Deed were, among other terms, that:
 - (a) McWilliam's agreed to issue 147,970 secured notes to MRWP (**Notes**) and MRWP agreed to pay \$6,214,740 (at a face value of \$42.00 each) as a subscription price for the Notes;
 - (b) an event of default gave MRWP the right to require McWilliam's to redeem the Notes within 30 days of the notification of an event of default by McWilliam's upon the issuing of a notice of redemption;
 - (c) upon receipt of a redemption notice, McWilliam's was required to pay to MRWP the face value of the notes to be redeemed in the amount of \$6,214,740 and all accrued and unpaid Interest on the Notes within 15 Business Days of the date of the Notice of Redemption;
 - (d) MRWP (while it remained a holder of the Notes to the extent that (if converted into ordinary shares) it would own more than 10% of the issued equity capital in McWilliam's) had a pre-emptive right to acquire any assets of the Group ahead of any sale to a third party. In essence, this right gave MRWP a "last look" to acquire the assets of the Group on terms no less favourable than any third party offer received.
47. On or about 7 December 2018, at the same time as the Convertible Notes Deed was executed, McWilliam's and Mount Pleasant (as grantors) both executed a General Security Deed with MRWP (**MRWP General Security Deeds**).
48. Each of the MRWP General Security Deeds provided, among other things, that:
 - (a) the Companies granted in favour of MRWP a security interest over the whole, or substantially the whole, of all the present and future property, assets, rights, interests and undertakings of the Companies (**Secured Property**) as security for all debts and monetary liabilities of the Companies in connection with the Convertible Notes Deed, the Notes and the MRWP General Security Deeds (**MRWP Security**); and



 Witness



 Deponent

- (b) upon an event of default, including if an insolvency event occurred in relation to McWilliam's (including relevantly the appointment of administrators), MRWP became entitled to, among other things, appoint a receiver and manager over the Secured Property.
49. On 9 January 2020, the Administrators wrote to MRWP advising of their appointment as administrators of the Group and MRWP's rights in relation to the MRWP Security in light of the operation of sections 440B and 441A(1)(b) of the Act. At **page 545 of GD1** is a copy of the Administrators' letter to MRWP dated 9 January 2020.
50. On 15 January 2020, the Administrators received a letter from MRWP requesting an extension of the decision period to 14 February 2020 for the purposes of section 440B and 441A(1)(b) of the Act for MRWP to enforce the MRWP Security. At **page 547 of GD1** is a copy of the letter from MRWP dated 15 January 2020.
51. On 17 January 2020, the Administrators wrote to MRWP agreeing to the extension of the decision period to 5.00pm on 14 February 2020. At **page 550 of GD1** is a copy of the Administrators' email to MRWP dated 17 January 2020.
52. On 11 February 2020, MRWP served McWilliam's with a notice for the redemption for the sum of \$6,214,740 (equal to the face value of all Notes plus accrued interest of \$53,634.06) pursuant to the Convertible Notes Deed.
53. On 14 February 2020, MRWP appointed Shaun Fraser and Katherine Sozou of McGrathNicol as the joint and several receivers and managers of the Secured Property pursuant to the MRWP Security Deeds and the MRWP Security (**Receivers**).
54. On 17 February 2020, the Administrators entered into the Funding Agreement with Gordon Brothers Pty Ltd (**Gordon Brothers**) and borrowed \$6.5 million from Gordon Brothers in order to refinance the Companies' indebtedness to MRWP under the Convertible Notes Deed, the Notes and the MRWP General Security Deeds (together, **MRWP Facilities**). The refinance enabled the MRWP secured debt of \$6.4 million to be repaid in full (including the Receivers' and legal professional fees and expenses). As a result, the Receivers retired as receivers and managers on 18 February 2020 and the MRWP security interest was discharged on the Personal Property Securities Register (**PPSR**). The repayment of the MRWP Facilities also allowed the Administrators to seek to obtain the best possible market price and value for the McWilliam's Group without being subject to the matters set out at paragraph 46(d) above.
55. The Administrators considered that entering into the Funding Agreement and discharging the Group's indebtedness to MRWP was in the best interests of the Companies and its creditors for the following reasons, among others:
- (a) the Administrators could continue to trade the business of the Companies (including the production and completion of the '2020 Vintage') with a view to maximising the value of

.....
Witness

.....
Deponent

any sale of the Companies' business and assets as a going concern or recapitalisation to ensure a better return to creditors;

- (b) the expressions of interest and sale of business campaign (discussed further below commencing at paragraph 58) could be completed;
 - (c) duplicate costs of different insolvency practitioners (both the Administrators and the Receivers) in the external administration of the Companies would be avoided;
 - (d) MRWP's rights under the MRWP Facilities, including the pre-emptive "last look" rights it had to acquire the assets of the Companies, were extinguished, which would lead to a more competitive sale process for the sale of the business or recapitalisation of the Companies as a going concern for the benefit of creditors; and
 - (e) sufficient time would be allowed for the Administrators' investigations to be concluded, to enable the Administrators to form a view as to the future of the Companies (including any deed of company arrangement proposal), to permit the Administrators to make recommendations to creditors about the future of the Companies, and for the Administrators to prepare and provide our Second Report in a comprehensive and detailed manner.
56. Pursuant to the Funding Agreement, each of the Companies executed a deed (**the Gordon Brothers General Security Deed**) and granted to Gordon Brothers a general security interest over all present and after acquired property of the Companies.
57. On 9 March 2020, on the application of the Administrators, the Court made orders:
- (a) pursuant to section 447A of the Act and section 90-15 of the *Insolvency Practice Schedule (Corporations)*, limiting the Administrators' liability in relation to the Funding Agreement to the assets available to the Companies; and
 - (b) pursuant to section 588FM of the Act, extending the period for the registration of the security interest relating to the Gordon Brothers General Security Deed.

Sale of business / recapitalisation process

58. As a result of our investigations, the Administrators promptly upon appointment formed the view that it was in the best interests of all stakeholders that the business and assets of the Companies be sold as a going concern sale (as opposed to any liquidation sale).
59. On that basis, the Administrators continued to trade the business of the Companies (including by hiring additional casual employees and by continuing to meet the Companies' obligations to wine grape growers to ensure that the 2020 wine vintage was harvested) with a view to offering the

.....
Witness

.....
Deponent

business for sale as a going concern and/or to explore a possible deed of company arrangement or recapitalisation.

60. On or about 24 January 2020 the Administrators engaged and entered into an exclusive Agency Agreement with Colliers International (NSW) Pty Ltd (**Colliers**) to act as sale agents and advisers in relation to the sale of the Group's business.
61. During the period from 24 January 2020 to 30 June 2020, the Administrators, with the assistance of Colliers, conducted an exhaustive and comprehensive sale / recapitalisation process in relation to the Group's business.
62. This involved both an informal expressions of interest campaign followed by a formal sale and marketing program seeking expressions of interest both nationally and internationally.
63. In summary, the extensive sale / recapitalisation process conducted by the Administrators resulted in:
 - (a) 170 parties expressing initial interest;
 - (b) 94 confidentiality agreements received and that number of parties being granted access to a virtual data room;
 - (c) 18 non-binding indicative offers (**NBIO**) for whole or part of the Companies' business being received by 31 March 2020, in respect of which seven parties were shortlisted for further detailed due diligence;
 - (d) multiple parties submitting binding offers for the purchase or recapitalisation of the business of the Companies by 30 April 2020; and
 - (e) on 30 June 2020, having reopened the sale we received multiple final binding offers and offers in the form of NBIOs.
64. On 30 June 2020, the Administrators received a deed of company arrangement proposal from the Proponent (**DOCA Proposal**). At **page 553** of **exhibit GD1** is a copy of the DOCA Proposal.
65. The Administrators assessed every offer received during the sales campaign based on the following criteria:
 - (a) the likely outcome to all creditors of the Group (that is, with a focus on preserving the business of the Companies and considering the overall return to creditors);
 - (b) any conditions attached to the offer;
 - (c) the ability to complete on a timely basis; and

Witness

Deponent

(d) the ability to fund the offer and capacity to fund the turnaround of the Group.

66. After assessing all final offers, the Administrators formed the view that the Proponent's DOCA Proposal was more favourable than all other final offers received for the following reasons, among others:

- (a) it resulted in a greater return to creditors than all other offers received including for the purchase of the assets only. A sale on an asset only basis would have meant that the business of the Companies would have come to an end effectively resulting in the Companies being placed into liquidation;
- (b) it resulted in a higher return to creditors than in a liquidation scenario (as was proposed by, and compared to, all other final offers);
- (c) it resulted in a more certain and timely return to creditors than a liquidation (as was proposed by, and compared to, all other final offers);
- (d) it allowed for the ongoing employment of the Group's employees and full payment to secured creditors and priority unsecured creditors, together with a further likely outcome that ordinary unsecured creditors would be paid in full (that is, 100 cents in the dollar); and
- (e) there was the potential that if all unsecured creditors were paid in full there would be a distribution to existing shareholders of McWilliam's.

67. I refer to paragraph 29 above and, as noted in that paragraph, on 15 July 2020, the Administrators finalised and issued its Second Report to Creditors.

68. In the Second Report the Administrators, among other things:

- (a) prepared an analysis of the estimated return to creditors in a DOCA scenario (as envisaged by the Proponent's DOCA Proposal) compared to a liquidation of the Companies based on various assumptions (see paragraphs 81 - 94 below);
- (b) included a statement in accordance with section 75-225(3)(b) of the *Insolvency Practice Rules (Corporations)* setting out the Administrators' opinion that the DOCA Proposal should be accepted for the following reasons, among others:
 - (i) the DOCA Proposal provided a greater return to all creditors (and potentially shareholders) of the Companies than in a liquidation scenario;
 - (ii) the DOCA Proposal provided for the ongoing employment for current staff and an ongoing trading partner for customers and suppliers of McWilliam's;
 - (iii) the DOCA Proposal provided an ongoing tenant for the properties owned by Mount Pleasant;

Witness

Deponent

- (iv) the DOCA Proposal provided more certainty of outcome in comparison to a liquidation scenario;
- (v) the DOCA Proposal provided a likelihood of a dividend being paid to all creditors by the end of December 2020 (when compared to the prospect of payment of a dividend at a much later time in a liquidation scenario); and
- (vi) the various recoveries identified by the Administrators that may be in a winding up are uncertain, require additional funding to pursue and are ultimately unlikely to provide a greater return to creditors compared to the DOCA Proposal.

69. I refer to paragraph 30 above and as noted in that paragraph, at the Second Meeting held on 24 July 2020, the creditors of each of the Companies resolved that the Companies execute the DOCA and Creditors' Trust Deed proposed by the Proponent. A copy of the minutes of the Second Meeting is at **page 294 of exhibit GD1**.

Key terms of the DOCA

70. The DOCA was executed on 3 August and lodged with ASIC on 4 August 2020. A copy of the DOCA executed by the Companies, the Applicants and the Proponent on 3 August 2020 is at **page 352 of exhibit GD1**.
71. Pursuant to the DOCA, upon the payment by the Proponent of certain contribution amounts to the Deed Administrators (which in turn will be paid into a Creditors' Trust - see paragraph 75 below) and certain conditions precedent being satisfied or waived, 100% of the issued shares in McWilliam's are to be transferred to the Proponent (or another person or entity nominated by the Proponent prior to the Implementation Date (being the fifth business day after the satisfaction or waiver of the conditions precedent set out in the DOCA)) (clause 7.5 of the DOCA) (**Share Transfer**).
72. A Creditors' Trust will be used to facilitate the distribution of funds to stakeholders while allowing the Companies to emerge from insolvency in an accelerated manner (clause 11.1 of the DOCA). Upon the occurrence of certain pre-conditions in the DOCA (including but not limited to funds being contributed by the Proponent (or a related body corporate of the Proponent) into the Creditors' Trust), the rights of creditors are extinguished and exchanged for a beneficial right to claim in the Creditors' Trust (clause 10.5 of the DOCA). A copy of the Creditors' Trust Deed executed by the Companies, the Applicants and the Proponent on 3 August 2020 is at **page 591 of exhibit GD1**.
73. Effectuation of the DOCA is conditional on, among other things (**Conditions Precedent**):
- (a) ASIC granting relief from section 606 of the Act pursuant to section 655A of the Act as necessary to permit the Share Transfer (clause 6.1(a) of the DOCA); and

.....
Witness

.....
Deponent

(b) the Court making orders pursuant to section 444GA(1)(b) of the Act granting leave to the Deed Administrators to transfer the shares in McWilliam's to the Proponent in accordance with the terms of the DOCA (clause 6.1(c) of the DOCA).

74. The Conditions Precedent are required to be satisfied (or waived by the Proponent) on or prior to 30 November 2020, or such later date as is agreed in writing between the Proponent and the Deed Administrators, failing which the Proponent will cease to be bound by the DOCA and the Deed Administrators must convene a meeting of Creditors to determine the future of the Companies (clause 6.4 of the DOCA). (If that were to occur, and in the absence of any alternative deed of company arrangement proposal, I consider it overwhelmingly likely that the Deed Administrators would recommend that the Companies be wound up and that that would be the outcome of the meeting of creditors.)
75. The contribution payments to be made by the Proponent into the Creditors' Trust to be available for stakeholders are as follows (clause 7.2 of the DOCA):

Contribution	Description
Cash	Cash contribution by the Proponent of \$30 million minus 70% of the accrued and unpaid annual leave, leave loading and long services leave entitlements (in respect to employees with excess of 5 years continuous employment) of those employees continuing to be employed by the Group at the Implementation Date set out in the DOCA.
Stock	Cash contribution by the Proponent for Stock (estimated to be at least \$16 million at the Implementation Date) subject to a physical stocktake and a stocktake valuation mechanism contained within the DOCA to be calculated and determined immediately prior to the Implementation Date as set out in the DOCA.
VA/DOCA Trading and Receivables	<p>The Creditor's Trust is to also include:</p> <ul style="list-style-type: none"> • closing receivables; and • any net cash surplus from Administrators/Deed Administrators trading (after liabilities)

Witness

Deponent

76. Under the DOCA, current employees will continue to be employed by McWilliam's and McWilliam's will be responsible for any claim by any continuing employee for annual leave and leave loading, personal/carer's leave and long service leave due to or accrued by a continuing employee up to completion of the DOCA. Superannuation contributions for all continuing employees are expected to be paid prior to the completion of the DOCA. All other outstanding entitlements of former employees (including superannuation owed to former employees) will be a claim available to those creditors to be made in the Creditors' Trust.

Potential recovery action available to liquidators

77. From our preliminary investigations during the course of our appointment as Administrators and Deed Administrators, we have identified the following claims that may be available to a liquidator or liquidators of the Companies if the Companies were to be placed into liquidation:
- (a) a potential insolvent trading claim against the Directors pursuant to section 588G of the Act for an amount of approximately \$3.4 million, based on the Deed Administrators' preliminary conclusion that the Companies were insolvent from about 30 November 2019 onwards; and
 - (b) potential unfair preference claims against the Deputy Commissioner of Taxation and 14 suppliers/creditors pursuant to section 588FA and 588FE(2) of the Act for an amount of approximately \$1.7 million.
78. The Deed Administrators consider that the insolvent trading claim identified above may be difficult to prosecute successfully in this instance as the directors of the Companies (**Directors**) may have a number of defences available to them including under section 588GA of the Act (Safe Harbour) on the basis that the Directors sought independent "Safe Harbour" advice from restructuring and insolvency practitioners prior to our appointment as Administrators, which we expect would be relied upon by the Directors should an insolvent trading claim be pursued. There may also be other defences available to the Directors.
79. With respect to the potential unfair preference claims, it is my experience that it is rare for companies in liquidation and their liquidators to recover the total value of these claims. This is for a number of reasons including: the possibility that the claim will fail; the settlement of claims involving a compromise; unrecoverable legal costs; and an inability to recover judgment.
80. Ultimately, any decision to pursue the claims and commence litigation would require an assessment by the liquidator(s) of:
- (a) the costs of litigation and the uncertainty of success inherent in any complex litigation;
 - (b) the capacity of the proposed defendants to meet the claims even if litigation was successful;

.....
 Witness

.....
 Deponent

- (c) the extent of any further investigation required to establish the merits of the potential claims; and
- (d) the costs and risks of any proceedings and the ability to fund any proceedings, including whether creditors are prepared to forgo or delay the timing of any scheduled dividends and/or the cost of litigation funding as an alternative.

Estimated Return to creditors - implementation of the DOCA compared to the Companies in liquidation

81. For the purposes of our recommendation to creditors as to the future of the Companies as set out in the Second Report, and in considering whether or not the Share Transfer would (for the purposes of section 444GA(3) of the Act) unfairly prejudice the interests of members of McWilliam's for the purposes of this Application, the Administrators / Deed Administrators have conducted an analysis of the estimated likely return to stakeholders in a DOCA scenario as compared to a liquidation of the Companies.
82. The Deed Administrators have caused to be prepared an Estimated Outcome Statement (**EOS**) based on:
- (a) the Companies implementing and completing the DOCA and Creditor's Trust; and
 - (b) the Companies entering into liquidation.
83. In a liquidation scenario, the operations of the business of the Companies will cease and the liquidator will be tasked with realising the assets of the Companies (including all inventory and property, plant and equipment) and any return to stakeholders will ultimately depend, in part, on the value achieved by a liquidator from the sale of Companies' assets (to the extent that is possible).

DOCA

84. The EOS below (**DOCA EOS**) sets out the estimated low and high return for each class of creditors of the Companies in a DOCA scenario:

.....
 Witness

.....
 Deponent

Estimated outcome statement - DOCA scenario (\$000s)		
Description	McWilliams Group	
	High	Low
DOCA fund contribution	30,000	30,000
Less: transferring employee entitlements	(728)	(1,056)
Completion Stock Value	20,200	16,000
Closing cash at execution of DOCA	4,030	3,780
Trading profit / (deficit) from execution of DOCA to completion of DOCA	(420)	(824)
Total fund contribution	53,082	47,900
Less: Employee entitlements	(479)	(479)
Less: Secured creditor	(2,601)	(2,601)
Less: Gallo payment	(1,247)	(1,247)
Less: Administrators fees and disbursements	(2,033)	(2,237)
Less: DOCA fees and disbursements	(606)	(1,157)
Less: Legal fees and Independent expert report	(561)	(617)
Less: Agent's Commission	(495)	(444)
Less: Trustee fees	(393)	(432)
Funds available to unsecured creditors	44,667	38,681
Unsecured creditor claims	(31,534)	(41,255)
Estimated surplus / (deficiency) to unsecured creditors	13,133	(2,574)
Interest distribution to unsecured creditors	(2,661)	-
Estimated surplus / (deficiency) to shareholders	10,472	(2,574)
Estimated dividend (cents in \$)		
Secured creditor	100	100
Priority creditors	100	100
Unsecured creditors	100	94

85. The above analysis set out in the DOCA EOS has been prepared based on the Deed Administrators' currently available information and may change due to various factors (**Variances**), including:

- (a) the duration and final position of the Deed Administrators' trading of the business which continues to be unpredictable given the current economic and COVID-19 challenges;
- (b) changes in the quantum of costs of the DOCA and Creditors' Trust as a result of any delays, including the satisfaction of the conditions precedent to completion set out in the DOCA;
- (c) the valuation of stock at completion of the DOCA which will be based on a stocktake and will be influenced by the level of trading in the meantime; and
- (d) final proving and adjudication of creditor claims including contingent liabilities.

86. It should also be noted that the difference between the amount attributable to 'Unsecured creditor claims' in a high scenario (\$31,534 million) versus a low scenario (\$41,255 million) relates to the Deed Administrators' estimates and treatment of various contingent creditor claims, including in relation to:

- (a) the contingent landlord claims of Pipeclay Lawson Ltd (in relation to the former leased warehouse located in Chullora, NSW) and QWIL Investments Pty Ltd (in relation to the Hanwood Vineyard);
- (b) sundry accruals and rebates; and


Witness

Deponent

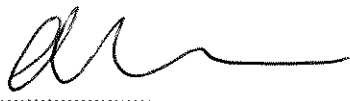
- (c) creditor claims based on the amount set out in their proofs of debts that are subject to final adjudication by the Deed Administrators.
87. Based on the above analysis and the currently available information, the Deed Administrators consider that if the DOCA is implemented, there will be a likely return to:
- (a) secured creditors of 100 cents in the dollar in all scenarios;
 - (b) priority unsecured creditors of 100 cents in the dollar in all scenarios;
 - (c) unsecured creditors of between 94 and 100 cents in the dollar in a low and high scenario respectively;
 - (d) employee and unsecured creditors of statutory interest on their debts of between zero and \$2.7 million (being the total interest due) in a low and high scenario respectively; and
 - (e) shareholders of McWilliam's of between zero and \$10.5 million in a low and high scenario respectively.
88. While there are a number of factors that may impact on the timing of any payment, the Deed Administrators anticipate that the DOCA could be effectuated and terminated by November 2020 and funds distributed to the beneficiaries of the Creditors' Trust prior to the end of December 2020.

Liquidations

89. The EOS below (**Liquidation EOS**) sets out the estimated low and high return for each class of creditors of the Companies in the event the Companies are placed into liquidation:



 Witness



 Deponent

McWilliam's Wines Group Ltd (Subject to Deed of Company Arrangement)				
Estimated outcome statement - Liquidation scenario				
\$000	McWilliams Wines Group Ltd		Mt Pleasant Wines Pty Ltd	
Description	High	Low	High	Low
Non circulating assets available				
Plant and equipment	5,175	4,658	638	574
Land and buildings (including vineyards)	14,416	7,538	9,377	9,240
Intellectual Property	Unknown	2	Unknown	2
Less: PMSI claims	(945)	(945)	-	-
Total non-circulating assets	18,646	11,252	10,015	9,816
Less: Secured creditor	(1,301)	(1,301)	(1,301)	(1,301)
Less: Administrators fees and disbursements	(470)	(470)	(165)	(165)
Less: DOCA fees	(237)	(259)	(45)	(49)
Less: DOCA Completion fees	(349)	(384)	(50)	(55)
Less: Liquidators fees and disbursements	(130)	(144)	(46)	(46)
Less: Legal fees	(59)	(65)	(20)	(22)
Less: Other professional costs	(863)	(695)	(220)	(210)
Funds available to unsecured creditors from non-circulating assets	15,239	7,936	8,169	7,969
Net realisations from non-circulating assets	15,239	7,936	8,169	7,969
Circulating assets available				
Cash at bank at appointment	2,085	2,085	-	-
Debtors net of rebates (pre-appointment)	11,092	10,789	-	-
Inventory (net of selling costs and WET)	9,032	6,590	-	-
Less: PMSI claims	(272)	(622)	-	-
Distribution from Mount Pleasant (surplus)	7,868	7,659	-	-
Distribution from Mount Pleasant (MWG POD claim)	179	179	-	-
Estimated trading surplus/ (deficit)	(1,482)	(1,334)	-	-
Other non-trading costs	(6,127)	(6,127)	-	-
Total circulating assets	22,375	19,219	-	-
Less: Administrators fees and disbursements	(1,370)	(1,370)	(29)	(29)
Less: Liquidators fees and disbursements	(479)	(532)	(21)	(23)
Less: DOCA fees	(582)	(637)	(5)	(5)
Less: Legal fees	(176)	(194)	(59)	(65)
Net realisations from circulating assets	19,768	16,486	(113)	(122)
Less: Priority employee entitlements	(3,784)	(3,784)	-	-
Funds available to unsecured creditors from circulating assets	15,984	12,702	(113)	(122)
Add: Liquidator recoveries	1,020	510	-	-
Less: Provision for direct legal and other costs of recovery actions	(500)	(250)	-	-
Liquidator's recoveries after direct costs	520	260	-	-
Estimated funds available to unsecured creditors	31,742	20,897	8,056	7,847
Unsecured creditor claims (including contingent claims)	(45,934)	(56,840)	(189)	(189)
Estimated surplus / (deficiency) to unsecured creditors	(14,192)	(35,943)	7,868	7,659
Estimated dividend (cents in \$)				
Secured creditor	100.0	100.0	100.0	100.0
Priority creditors	100.0	100.0	N/A	N/A
Unsecured creditors	69	37	100.0	100.0

90. The analysis set out in the Liquidation EOS is subject to the Variances set out above and also the following factors:

- the duration and final position of the liquidators' trading of the business, in particular the realisation strategies implemented for stock where the business ceases to trade in a liquidation scenario;
- the ultimate value achieved from the sale of inventory and property, plant and equipment;
- the success of any recovery actions pursued by the liquidators - as discussed at paragraph 78 above, the Deed Administrators consider that the potential insolvent trading claim against the Directors identified above may be difficult as the Directors may have a number of defences available to them; and

Witness

Deponent

(d) the costs of litigation as part of any potential recovery actions that may be brought by the liquidators.

91. We note that in a liquidation scenario, the quantum of unsecured creditor claims will be higher than compared to the DOCA. This is because under the DOCA various creditor claims (such as those of continuing employees and claims relating to continuing leases) are effectively being assumed by or transferred to McWilliam's. In the event the Companies are placed into liquidation, such claims would be provable in the winding up of the Companies.

92. In our view, the increase in the estimated unsecured creditor claims in a liquidation scenario (as compared to a DOCA) is likely to substantially outweigh any potential recoveries achieved by a liquidator, even if those potential recovery actions were wholly successful.

93. Based on the above analysis and the currently available information, the Deed Administrators consider that in the event that:


(a) McWilliam's is placed into liquidation, there will be a likely return to:


- (i) secured creditors of 100 cents in the dollar in all scenarios;
- (ii) priority unsecured creditors of 100 cents in the dollar in all scenarios;
- (iii) ordinary unsecured creditors of between 37 and 69 cents in the dollar in a low and high scenario respectively; and
- (iv) shareholders of McWilliam's will not receive a return.

(b) Mount Pleasant is placed into liquidation, there will be a likely return to:

- (i) secured creditors of 100 cents in the dollar in all scenarios;
- (ii) ordinary unsecured creditors of 100 cents in the dollar in all scenarios; and
- (iii) the balance of the funds will be distributed to McWilliam's as the sole shareholder of Mount Pleasant.

94. While the Deed Administrators anticipate that secured and priority creditors (such as employees) would be able to be paid a dividend in full in a timely manner under a liquidation scenario prior to December 2020, the timing of the payment of a dividend to unsecured creditors would be dependent on the time taken to sell the Group's inventory, property, plant and equipment, and would likely take at least 6 to 12 months. Further, the Deed Administrators estimate that in a liquidation there will be a return of between 37 cents to 69 cents in the dollar to ordinary unsecured creditors however there will be no return to shareholders of McWilliam's.


.....
Witness


.....
Deponent

Deed Administrators' opinion and relief sought

95. Based on the matters set out in paragraphs 81 to 94 above, the Deed Administrators believe that the interests of the members of McWilliam's will not be unfairly prejudiced by the Share Transfer if leave is granted under section 444GA of the Act to effect the transfer in accordance with the terms of the DOCA. In fact, the Deed Administrators consider that the interests of Members would be enhanced by the effectuation of the DOCA (which is conditional on the transfer of the shares of the Members to the Proponent and in accordance with section 444GA of the Act).
96. As explained in paragraph 93 above, the Deed Administrators estimate that in a liquidation there will be a return of between 37 cents to 69 cents in the dollar to ordinary unsecured creditors and no return to shareholders of McWilliam's.
97. On the other hand, the Deed Administrators estimate that under the DOCA and associated Creditors' Trust, there will be a return of between 94 cents to 100 cents in the dollar to ordinary unsecured creditors and possibly as much as \$10.5 million available for distribution to the shareholders of McWilliam's. As set out at paragraph 71 above, it is a term of and condition precedent to the DOCA that the shares of McWilliam's are transferred to the Deed Proponent (including but not limited to obtaining an order pursuant to section 444GA of the Act).
98. Accordingly, the Deed Administrators are of the view that the transfer of the Shares to the Proponent (or its nominee) in accordance with the DOCA will not prejudice McWilliam's existing shareholders on the basis that estimates indicate the DOCA will result in a better outcome for the shareholders (that is, there is a likelihood that shareholders may receive a return) than the only alternative, being liquidation of the Companies (in which case it is very likely that shareholders will not receive any return). In addition, the DOCA:
- (a) will enable the Deed Administrators to achieve a better and more timely return to the creditors of McWilliam's than would exist in a liquidation of the Companies; and
 - (b) in furtherance of the objects of Part 5.3A of the Act, will maximise the chances of the business of the Companies continuing in existence.
99. If leave is not granted pursuant to section 444GA, the DOCA will not be effectuated. If that occurs, the Companies will likely be wound up and in those circumstances:
- (a) the contribution payments under the DOCA will not be available;
 - (b) the return to members of McWilliam's is likely to be nil; and
 - (c) whilst the existing members will retain their 100% shareholding in McWilliam's, those shares will unlikely have any value.



.....
Witness



.....
Deponent

ASIC Relief

100. McWilliam's, being an unlisted company with more than 50 members, is also subject to the takeovers prohibitions in section 606 of the Act. In this regard, the Deed Administrators are proceeding on the basis that section 444GA of the Act does not operate to the exclusion of the takeover provisions set out in Chapter 6 of the Act.
101. The Deed Administrators are also proceeding on the basis that:
- (a) it would be unlawful for the Proponent to acquire more than 20 percent of the issued share capital of McWilliam's without complying with Chapter 6 of the Act, unless one of the exceptions in section 611 of the Act applies;
 - (b) none of the exceptions in section 611 of the Act apply; and
 - (c) ASIC relief from the takeover provisions in Chapter 6 of the Act is therefore required to facilitate the Share Transfer to the Proponents as contemplated by the DOCA.
102. As set out in paragraph 73 above, it is a condition precedent of the DOCA that the Deed Administrators make an application to ASIC seeking relief from section 606 of the Act (**ASIC Relief**) in order for the Share Transfer to proceed in accordance with the terms of the DOCA and for ASIC to grant the ASIC Relief.
103. The Deed Administrators have made an application to ASIC for the ASIC Relief. At **page 613 of exhibit GD1** is a copy of the application for ASIC Relief (excluding enclosures) (**ASIC Application**).
104. In support of the ASIC Application, the Deed Administrators have engaged Grant Thornton Corporate Finance to provide an independent expert report (**IER**) valuing the Companies on a going concern basis and liquidation basis prepared in accordance with ASIC Regulatory Guide 111 (*Content of expert reports*) and 112 (*Independence of experts*).

Service on members of McWilliam's

105. I intend to give notice of the Application to all the members and creditors of McWilliam's in the event that any of them wish to be heard in relation to the Application.
106. At **page 655 of exhibit GD1** is a notice (**Proposed Notice**) that I intend to provide to persons entitled to oppose the Application under section 444GA(2) of the Act, including:
- (a) the members of McWilliam's;
 - (b) the creditors of McWilliam's;
 - (c) ASIC; and

Witness



Deponent



(d) any other interested parties.


107. The Proposed Notice provides, among other things, information to the shareholders regarding this application in the form of an explanatory statement and provides information as to how these persons may be entitled to access the IER.

Sworn by the deponent
at Sydney
in New South Wales
on 29 / 09 / 2020
Before me:

)
)
)
)



.....
Signature of deponent


.....
Signature of witness

Name of witness: Erin Felthouse.....

Qualification of witness: Lawyer