

**Watergardens Pharmacies Pty
Ltd (In Liquidation)
ACN 140 015 425**

Statutory Report by Liquidator

15 January 2019

Contents

Section	Page
1 Introduction	2
2 Current position	2
3 Investigation into the Company's affairs	5
4 Return to creditors	8
5 Conclusion	8
Glossary	10
Annexures	11
A – Receipts & Payments	12

1 Introduction

I refer to our **Voluntary Administrators' Reports** dated 2 August 2018 and 5 October 2018.

At the meeting of creditors held on 15 October 2018, creditors resolved that the Company be wound up under Section 439C(c) of the Corporations Act 2001 and John Lindholm and I were appointed Liquidators of the Company.

I now take this opportunity to report to you on the following matters relating to the liquidation of the Company:

- an update on:
 - the progress of the liquidation
 - my investigations into the affairs of the Company;
- the current position in relation to the realisation of assets; and
- the likelihood of a dividend being paid in the liquidation.

This report should be read in conjunction with the information contained in my Initial Notice to Creditors dated 9 July 2018 and the Voluntary Administrators' Reports.

As outlined in our report to creditors dated 5 October 2018:

- funds received from the sale of the Company's assets will be applied to the registered security interest agreements held with the Company in the first instance; and
- there is expected to be sufficient funds realised to meet any priority claims (i.e. employee entitlements).

Based on the offer on hand, it is unlikely that there will be any return to unsecured creditors after funds have been allocated to the secured creditor and employees.

2 Current position

2.1 Matters addressed during the liquidation

Since our appointment as Liquidators, the following matters have been attended to:

- continued to trade the businesses in the ordinary course;
- entered into a heads-of-agreement with an interested party for the purchase of both pharmacies, with settlement expected to occur on 4 February 2019;
- liaised with suppliers and security holders of stock;
- communications and meetings with employees;
- liaised with debtors regarding the payment of outstanding balances owed to the Company, including but not limited to making enquiries to various WorkCover companies; and
- attendance to statutory requirements.

2.2 Financial position of the Company

The Director has provided a RATA. Set out below is the financial position of the Company known to me as at the date of this report:

	RATA ERV \$	Liquidator's ERV \$
Assets		
Cash on hand / cash at bank	235,664	100,000
Debtors	141,207	Unknown
Inventory	893,787	762,469
Plant & Equipment	754,528	Commercially sensitive

	RATA ERV \$	Liquidator's ERV \$
Other assets	2,280,378	Commercially sensitive
Total assets	4,305,564	Commercially sensitive
Liabilities		
Secured creditors	2,944,889	3,180,438
Employee claims	75,421	408,891
Preferential claims	7,841	-
PMSI claims	2,156,377	862,064
Unsecured creditors	6,970,346	8,366,208
Total liabilities	12,154,874	12,817,601
Estimated (deficiency) / surplus	(7,849,310)	Commercially sensitive

My comments are as follows:

2.2.1 Assets

2.2.1.1 Cash at bank

On the date of our appointment, the Company had funds in two NAB business everyday accounts, which the NAB offset against their secured claim.

NAB Account Name	Balance (\$)
Priceline Pharmacy Watergardens	94,532.84
Terry White Chemists Watergardens	78,428.75
Total	\$172,961.59

Immediately following our appointment, the Director contributed \$100,000 to the Voluntary Administration bank account.

2.2.1.2 Debtors

The Director's RATA states that the outstanding debtor balance as at 9 July 2018 was \$141,206.63, consisting of:

- PBS monies owing by Medicare as at 30 June 2018 of \$29,816.54 (now received);
- June BAS refund from the ATO of \$6,700.00. Upon completion of the ATO audit, the refund was transferred from a refund to a payment and forms part of the ATO's unsecured claim;
- Ten trade debtors totalling \$47,957.01;
- 181 customer debtors totalling \$56,733.08.

We continue to pursue each of the trade and customer debtors for payment.

2.2.1.3 Inventory

The Director's RATA states that the net book value of stock on hand at 9 July 2018 was \$893,787.29.

As we were unable to verify the accuracy of the Company's accounting records, we have assumed that stock on hand as at 9 July 2018 is \$762,469 as per the RGIS stocktake.

We intend to request an updated stocktake be undertaken on the day of settlement, 4 February 2019.

2.2.1.4 Plant and equipment

The plant & equipment of the Company mostly comprised of fixtures and fittings and leasehold improvements. Given that the plant & equipment is subject to the sale process and settlement has not yet occurred, I have withheld my ERV.

2.2.1.5 Other assets

The Company owns two PBS approval numbers. As settlement of the sale of the businesses has not yet occurred, I have withheld my ERV.

2.2.2 Liabilities

2.2.2.1 Preferred creditors

I estimate outstanding claims by employees to be \$408,891.27 comprised of:

Employee entitlements	Amount \$
Annual leave	46,957.57
Long service leave	58,413.80
PILN / Redundancy	292,196.52
Superannuation	11,323.38
Total	408,891.27
Unpaid wages*	40,603.02
Total employee claims	449,500.29

* Outstanding wages for the period 25 June 2018 to 8 July 2018 of \$40,609.02 was paid on 11 July 2018 by the Administrators

2.2.2.2 Secured creditors

As at the date of our appointment, the NAB was the only secured creditor with a charge over the whole Company.

The NAB have confirmed that the debt outstanding to them as at 27 July 2018 is \$3,180,438 (i.e. this takes into account the \$172,962 that was offset on appointment).

2.2.2.3 Unsecured creditors

I estimate the Company's liability to unsecured creditors to be \$8,366,208, principally comprised of the debts due to related party creditors (see 2.2.2.4) and trade creditors including API Limited, Symbion and DHL Supply Chain.

2.2.2.4 Related party creditors

Related party	Amount claimed (\$)
JM Ramsey Settlement	1,128,102.50
Jeffery Ramsey	300,000.00
Pesra Investments Pty Ltd	4,275,388.18
Findon Pharmacy Unit Trust	217,229.00
Total	5,920,719.68

Whilst we have not reviewed the validity of these related party loan amounts at this stage, it would appear to us that the amounts are likely to represent the capital contributions by the two original directors when they acquired the businesses.

2.3 Summary of receipts and payments

A summary of the receipts and payments in the liquidation to date is attached as **Annexure A**.

Creditors are advised that the Liquidators' account of receipts and payments can be inspected at the offices of Ferrier Hodgson, Level 43, 600 Bourke Street, MELBOURNE VIC 3000, during business hours.

3 Investigation into the Company's affairs

3.1 Voidable transactions

3.1.1 Unfair preferences

Section 588FA of the Act gives the Liquidator the power to recover certain transactions that have had the effect of conferring a priority, preference or advantage to the creditor within six months of the commencement of the winding up (the relation back period).

A transaction can only be considered an unfair preference if the company was insolvent at the time the transaction took place, or the company became insolvent as a result of the transaction.

My investigations have identified potential unfair preference payments made to the ATO that may have been subject to a repayment plan by the Company during the relation back period, which are discussed below.

3.1.1.1 ATO

Payments totalling \$12,000 were made to the ATO by the Company during the relation back period. These are detailed in the following table:

Date paid	Amount \$
21 February 2018	4,000
21 March 2018	4,000
23 April 2018	4,000
Total	12,000

I note that the payments appear to be a payment plan, as they are:

- round figures;
- the same amount every month; and
- made on around the same day each month.

Therefore, the ATO may have had grounds to suspect that the Company was insolvent at the time the payments were made.

If it is determined that the Company was insolvent from February 2018, I will initiate contact with the ATO seeking to recover the potential preference payments.

3.1.2 Uncommercial transactions

Section 588FB of the Act requires the Liquidator to investigate transactions which may be deemed to be uncommercial, having regard to the detriment to the Company (if any) suffered as a consequence of the transaction in the period two years prior to the appointment.

In addition, Section 588FDA of the Act refers to "unreasonable director-related transactions" and requires the Liquidator to investigate such transactions, having regard to the detriment to the Company (if any) suffered as a consequence of the transaction.

From the information available to me I have not identified any transactions which would constitute uncommercial transactions or unreasonable director-related transactions.

3.1.3 Unfair loans

Section 588FD of the Act requires investigations of transactions which may be deemed to be unfair loans to the Company. A loan to the Company is considered to be unfair if and only if, interest on the loan is extortionate, or the charges in relation to the loan were extortionate.

From the information available to me I have not identified any transactions which would constitute unfair loans to the Company.

3.1.4 Voidable transactions – related parties

Section 588FE(4) of the Act requires investigations of transactions which may be deemed to be insolvent transactions with a related party entered into within 4 years of the commencement of the winding up.

Absent books and records, I am unable to determine whether the Company was a party to any transactions which would constitute voidable transactions with related parties. However, due to the related party creditors noted in the RATA, this will need to be investigated further.

3.2 Insolvent trading

Section 588G of the Act provides that directors are obliged to prevent a company from:

- incurring a debt whilst insolvent; or
- becoming insolvent by incurring a debt.

If a contravention of Section 588G can be established, then Section 588M empowers a Liquidator (or a creditor under certain circumstances) to recover compensation from a director for any loss or damage suffered as a consequence of any such contravention.

Section 588H of the Act provides a number of statutory defences available to the Director which would have to be considered in deciding whether to commence an insolvent trading action. In his defence the Director could argue:

- that he had reasonable grounds at the time the debt was incurred to expect the Company to be solvent and would remain solvent even after the debt was incurred,
- that he relied on another competent and reliable person to provide information about whether or not the Company was solvent,
- that he was ill or for some other good reason did not take part in the management of the Company; and
- that he took reasonable steps to prevent the incurring of the debt.

Any decision to commence an action against the Director for insolvent trading must have regard to the following:

- the costs of litigation and the unknown likelihood of success,
- the quantum of the claim,
- the fact that the liquidation is presently devoid of funds, and
- the Director's capacity to meet a claim for compensation.

I do not have sufficient information to form a view as to whether the Director has permitted the Company to incur debts at a time when it was insolvent. However, considering the quantum of claims in the liquidation and that the liquidation is presently low of funds, I do not consider that there is any commercial merit in pursuing an insolvent trading claim against the Director at this stage.

I note that Section 588R entitles creditors to commence proceedings under Section 588M against the Director(s) of the Company in their own right, subject to the consent of the Liquidator.

Should creditors have any further information that may assist my investigations into the conduct of the Company's affairs, they should communicate details in writing to my office **within 7 days from the date of this report**.

3.2.1 Indicators of insolvency

From a review of the financial information provided to me, I have identified the following indicators of insolvency:

3.2.1.1 Endemic shortage of working capital – balance sheet test

According to the available financial statements, it would appear that the Company had net asset and working capital positions as follows:

Net asset position (total assets less total liabilities)

\$'000	FY16	FY17
Total assets	7,719	4,986
Total liabilities	15,104	11,325
Net asset surplus / (deficiency)	(7,385)	(6,339)

I note:

- Goodwill was revalued downwards by approximately \$1.5 million during FY17, in line with the Company's policy of revaluing goodwill every three years.
- Total liabilities fell significantly as a result of the director(s) agreeing to forgive some of their loans to the Company totalling \$3.91 million.

Working capital position (current assets less current liabilities)

\$'000	FY16	FY17
Current assets	2,925	1,812
Current liabilities	2,263	2,599
Working capital surplus / (deficiency)	662	(787)

Current assets significantly fell from FY16 to FY17 due to a decrease in cash, trade receivables and inventories.

3.2.1.2 Availability of other cash resources – cash flow test

Profitability

According to the available financial statements, it would appear that the Company had trading results as follows:

	FY16	FY17	FY18
Sales	10,593	10,134	8,446
Cost of sales	(7,454)	(7,354)	(5,887)
Gross profit	3,140	2,780	2,558
Other income	(2,790)	112	55
Expenses	(3,881)	(4,214)	(4,032)
Net profit / (loss)	(3,531)	(1,322)	(1,419)

I make the following comments:

- Other income was negative in FY16 due to a loss incurred on the sale of business and non-current assets of the Town Centre Terry White pharmacy.

- The Company has suffered operating losses of \$1.3 million and \$1.4 million respectively over the last two financial years. A combination of high rents relative to turnover and low store inventory holdings were a significant driver of the losses in FY17.

Access to alternative sources of finance

Cash has remained positive throughout the trading history (at all reporting dates). However, credit limits were reached with major suppliers and orders had not been placed with API since February 2018.

Disposal of non-core assets

The Director unsuccessfully attempted to sell both businesses. The Terry White store was partially sublet to a medical clinic.

3.2.1.3 Overdue Commonwealth and State taxes

ATO

The Director advised in his questionnaire that all taxes have been kept up to date, however from a review of the pre-appointment bank statements, there appears to have been a payment plan entered into with the ATO (see 3.1.1.1).

3.2.1.4 Insolvent trading conclusion

Section	Indicator of insolvency	Date
3.2.1.1	Endemic shortage of working capital	FY17
3.2.1.2	Availability of other cash resources	February 2018
3.2.1.3	Overdue Commonwealth and State taxes	Unknown

Having regard to the above, it is my opinion that the Company may have been insolvent from at least February 2018, being the time when ordering ceased with API, however I intend to investigate this further in the coming months.

4 Return to creditors

As outlined in our report to creditors dated 5 October 2018:

- funds received from the sale of the Company's assets will be applied to the registered security interest agreements held with the Company in the first instance; and
- there is expected to be sufficient funds realised to meet any priority claims (i.e. employee entitlements).

Based on the offer on hand, it is unlikely that there will be any return to unsecured creditors after funds have been allocated to the secured creditor and employees.

5 Conclusion

The following matters will continue to be progressed:

- the settlement of the business,
- recovering any further available debtors,
- completing my investigations into the Company's affairs,
- completing my reporting ASIC,
- attending to statutory obligations.

I may write to you again with further information on the progress of the liquidation.

I expect to have completed this liquidation within six months.

Should you have any questions, please contact Christopher Nicolaci of this office on (03) 9604 5174 or via email at christopher.nicolaci@fh.com.au.

Dated this 15th day of January 2019



George Georges
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
BAS	Business Activity Statement
Company	Watergardens Pharmacies Pty Ltd (In Liquidation)
Department	Department of Jobs and Small Business
Director	Peter Ing Hua Ting
ERV	Estimated Realisable Value
FEG	Fair Entitlements Guarantee
FY	Financial Year
GST	Goods and Services Tax
Liquidators	George Georges and John Lindholm
RBA	Running Balance Account
RATA	Report as to Affairs

Annexures

A – Receipts & Payments

Receipts & Payments as at 13 January 2019		Total \$
Receipts		
Sales		1,862,793.86
Transfer from administrator		1,003,881.28
Rent revenue		14,813.23
Interest income		1,057.13
Total receipts		2,882,545.50
Payments		
Stock purchases		(1,016,750.52)
Appointee fees (VA)		(306,900.00)
Wages		(279,188.05)
Rent expense		(137,574.56)
PMSI settlement		(44,000.00)
PAYG paid to ATO		(34,010.00)
Superannuation		(19,584.73)
Subscription fees		(13,694.35)
Appointee disbursements (VA)		(7,032.55)
Bank charges		(6,346.12)
Insurance		(5,765.97)
GST paid to ATO		(4,251.00)
Legal fees		(3,888.50)
Payroll tax		(2,695.33)
Cleaning		(2,332.00)
Repairs & maintenance		(698.23)
Total payments		(1,884,711.91)
Cash at bank at 13 January 2019		997,833.59