

Enclosure 2

1 MR CRUTCHFIELD: If the court pleases I appear with

2 Ms Van Proctor for the plaintiffs.

3 HER HONOUR: Yes, thank you Mr Crutchfield.

4 MR CRUTCHFIELD: Your Honour there's quite a bit of material.

5 I'll just check that Your Honour's got it. Your Honour

6 should have the first affidavit of Mr Handberg sworn on

7 28 July 2014.

8 HER HONOUR: Yes.

9 MR CRUTCHFIELD: Which is a large affidavit with many exhibits.

10 HER HONOUR: A lot of them go to background rather than - - -

11 MR CRUTCHFIELD: Exactly, precisely and I wasn't proposing to

12 take Your Honour to any of those exhibits except perhaps

13 the exception of the 4 July letter.

14 HER HONOUR: Yes.

15 MR CRUTCHFIELD: Then there's the second affidavit,

16 Mr Handberg, which is 29 August 2014.

17 HER HONOUR: Yes and then there was a third affidavit this

18 morning, is that right?

19 MR CRUTCHFIELD: Exactly, we've got a hard copy of that, the

20 original.

21 HER HONOUR: I'll give you leave to file that in court then.

22 MR CRUTCHFIELD: Thank you, Your Honour. What that affidavit

23 exhibits is the correspondence since the last time.

24 HER HONOUR: Additional correspondence.

25 MR CRUTCHFIELD: As Your Honour knows we've been liaising with

26 ASIC. ASIC's position is and Your Honour will see in the

27 correspondence I think they use language like it appears

28 on its face to be a private dispute between two parties.

29 But we've kept them informed all the way along and ASIC

30 are not taking a position in relation to the hearing.

31 But we did say to ASIC that we would update, give them

1 and give the court all of the correspondence between
2 Mills Oakley and Charles Fice and there are two - - -

3 HER HONOUR: There are a couple of letters that your
4 instructors haven't been able to get.

5 MR CRUTCHFIELD: Exactly. Your Honour is ahead of me as usual
6 and we've got copies of those.

7 HER HONOUR: Well I'm not because I haven't had time to read
8 all of that correspondence this morning.

9 MR CRUTCHFIELD: Well Your Honour - - -

10 HER HONOUR: In relation to - I haven't read all the
11 exhibits - - -

12 MR CRUTCHFIELD: Yes, it's more - and I don't say this
13 disrespectfully, Joycean style correspondence from
14 Charles Fice which is not we submit going to add or
15 detract from what Your Honour has to deal with today
16 and I'll come back and explain why I say that. The
17 last matter is there's an affidavit of our instructing
18 solicitor, Ariel Borland which exhibits confidentially
19 the costs agreements which are relevant to the 477(2)(b)
20 aspect of the case which we would seek to tender
21 confidentially.

22 HER HONOUR: Yes.

23 MR CRUTCHFIELD: We take the view that Your Honour can hardly
24 give us the directions that we seek without seeing the
25 agreements.

26 HER HONOUR: Yes.

27 MR CRUTCHFIELD: But we are very concerned that nobody else
28 sees the agreements including to be candid about it
29 Charles Fice and their clients.

30 HER HONOUR: Yes, well I'll make orders that those exhibits be
31 placed in a sealed envelope not to be opened - - -

1 MR CRUTCHFIELD: Thank you, Your Honour.

2 HER HONOUR: - - - without further order of the court.

3 MR CRUTCHFIELD: We'll hand that forward. Ms Van Procter will
4 deal with that aspect of the application. Now I think
5 that's all by way of the material I needed to provide to
6 Your Honour.

7 HER HONOUR: Just to make it clear so that it's on the
8 transcript, it's the exhibits to the affidavit of
9 Aerial Cary Borland of 3 September 2014, Exhibits ACB1,
10 2, 3 and 4.

11 MR CRUTCHFIELD: Thank you, Your Honour. Does Your Honour have
12 a copy of the folder of authorities that we prepared?
13 Your Honour wasn't given a folder? We've got a copy for
14 Your Honour.

15 HER HONOUR: I wasn't given a folder. I don't recall being
16 given a folder.

17 MR CRUTCHFIELD: That's fine Your Honour, we've got a copy
18 here.

19 HER HONOUR: I have looked at some of the authorities myself
20 from your submissions.

21 MR CRUTCHFIELD: Yes, thank you Your Honour.

22 HER HONOUR: But it's of assistance to have a complete folder.

23 MR CRUTCHFIELD: Thank you, Your Honour. There are some other
24 authorities in the course of preparing for today that we
25 wanted to take Your Honour to very briefly, just some
26 passages and I wanted to take Your Honour also to the
27 legislation starting with the 1862 UK Companies Act, just
28 to get it into historical context in an endeavour to
29 persuade Your Honour that honest remark was just plainly
30 wrong with the greatest respect.

31 HER HONOUR: Who sorry?

1 MR CRUTCHFIELD: Honest remark.

2 HER HONOUR: Yes.

3 MR CRUTCHFIELD: Yes, just plainly wrong Your Honour.

4 HER HONOUR: I have to say I would like you to take me through
5 it but I can't see how it can be anything other than in
6 the liquidation. If it's not in the liquidation where
7 does it fall?

8 MR CRUTCHFIELD: Yes.

9 HER HONOUR: The company's in liquidation so with respect I
10 also can't really understand the obiter.

11 MR CRUTCHFIELD: Yes and Your Honour's right to point out it is
12 obiter. It also does lead to a logical conundrum that
13 Ms Van Proctor pointed out to me and that is a liquidator
14 for the investigative conduct of an administrator, even
15 if that person was the administrator, it would follow
16 that you need a replacement or a special purpose. But a
17 liquidator can never investigate the conduct of a
18 liquidator. It just seems - - -

19 HER HONOUR: Well the claim could never be pursued.

20 MR CRUTCHFIELD: And the claim could never be pursued.

21 HER HONOUR: Because the company's in liquidation.

22 MR CRUTCHFIELD: Yes.

23 HER HONOUR: It would seem to me - but I would like you to take
24 me - - -

25 MR CRUTCHFIELD: It's obviously a serious submission to
26 make and it's made respectfully to His Honour.

27 HER HONOUR: Yes.

28 MR CRUTCHFIELD: We first need to persuade Your Honour that
29 that decision is wrong or ought not be followed and then
30 if we get over that hurdle we then need to persuade
31 Your Honour as to why we submit - and in a sense it

1 doesn't lie in our mouth to say what I'm about to say but
2 we submit if Your Honour were to do anything then the
3 appropriate thing to do would be to appoint a special
4 purpose liquidator.

5 Now my interpolation if Your Honour were to do
6 anything, what I mean by that is we apprehend that if
7 Your Honour were to do nothing then the blunderbuss type
8 approach that's being taken would continue. These
9 matters having been raised Mr Handberg has properly
10 brought it before Your Honour promptly and we do
11 apprehend if we get to the power question that it
12 probably is appropriate subject obviously to
13 Your Honour's views that a special purpose liquidator
14 be appointed because hopefully that will put an
15 end to this, but we're extremely concerned about the
16 costs implications that might flow from that so we'd be
17 respectfully asking the court to have a monitoring type
18 - almost like a Chapter 11 role over such a person to
19 ensure that the costs don't explode.

20 HER HONOUR: Yes, I have had the benefit of reading the
21 material of the submissions which were very helpful to me
22 before today. My preliminary view was that I ought not
23 to follow honest remark but I'd like you to take me
24 through that if I got to it, that it was appropriate
25 to appoint a special purpose liquidator. As you've
26 correctly pointed out in your written submissions there's
27 no application before the court for the removal of the
28 liquidator. In any event the liquidators have been in
29 place for over four years.

30 They have done a lot of work that is not really
31 infected. If there's been any negligence or breach of

1 contract by the liquidators its confined to what is in my
2 view at the moment a discrete issue related to the fraud
3 that occurred before their appointment.

4 MR CRUTCHFIELD: Exactly Your Honour, yes.

5 HER HONOUR: It's pretty narrow.

6 MR CRUTCHFIELD: Yes.

7 HER HONOUR: A special purpose liquidator could deal with that,
8 can look at it. If the special purpose liquidator comes
9 to the view that there's a good cause of action that TVM
10 has against the liquidator I would have thought that that
11 liquidator could bring a proceeding itself in addition to
12 the proceedings that are already on foot by the - it's
13 the secured creditors isn't it?

14 MR CRUTCHFIELD: Yes, Your Honour.

15 HER HONOUR: At that stage, depending upon the special
16 liquidators investigations things will unfold and develop
17 and if it becomes necessary no doubt the liquidators will
18 consider their position further.

19 MR CRUTCHFIELD: Exactly Your Honour, yes.

20 HER HONOUR: I'm just saying that with the benefit of having
21 had all of the material and to have had your written
22 submissions.

23 MR CRUTCHFIELD: Yes.

24 HER HONOUR: But I would like you to take me through it.

25 MR CRUTCHFIELD: I will do so Your Honour. Just while I think
26 of it the other relevant matters we would submit is of
27 course Your Honour said the consolidated proceedings down
28 for trial.

29 HER HONOUR: Well partly that, but it's a whole lot of things.
30 There's a whole lot of work that's not really affected by
31 this.

1 MR CRUTCHFIELD: Exactly, thank you for that indication
2 Your Honour. Perhaps start - if Your Honour's got the
3 folder of authorities - - -
4 HER HONOUR: Yes.
5 MR CRUTCHFIELD: - - - with honest remark. Now, could I go
6 first - it really starts at page - I hope Your Honour's
7 got the A.L.R., the Australian Law Reports version.
8 HER HONOUR: I have.
9 MR CRUTCHFIELD: At p.777 of that behind Tab 1.
10 HER HONOUR: Yes.
11 MR CRUTCHFIELD: I wouldn't mind a dollar for every time
12 counsel's done this to Your Honour. Can I go back a
13 page? I apologise.
14 HER HONOUR: That's all right.
15 MR CRUTCHFIELD: It doesn't start under that heading. It
16 really starts in the paragraph before 47, Re George A.
17 Bond?
18 HER HONOUR: Yes.
19 MR CRUTCHFIELD: I need to take Your Honour to that case
20 because what Justice Brereton summarises that case as
21 standing for, we submit, is just not what it does stand
22 for and not the way it's been interpreted subsequently.
23 If we just go to 47 - yes, just before Line 35 in
24 Paragraph 47 His Honour observed that, "Where the claim
25 was against the liquidator himself for alleged misconduct
26 in the discharge of his office particularly where he was
27 practically a bare trustee", and what His Honour meant by
28 that was the administration. The liquidation had been
29 entirely other completed other than - - -
30 HER HONOUR: So he's just holding money to distribute to
31 the - - -

1 MR CRUTCHFIELD: Precisely. The only thing is there might be
2 claims against the liquidator, the threatened claim
3 against the liquidator.

4 HER HONOUR: Yes.

5 MR CRUTCHFIELD: Yes, and neither believed - "And neither
6 believed or ought to believe that the claim had any
7 reasonable prospects of success." That's important. "Or
8 that any useful purpose would be ... (reads) ... action
9 as would be permitted such prosecution." And then it
10 said, "Re Bond therefore supports the proposition that a
11 ... (reads) ... in the discharge of the office of
12 liquidator." That, we respectfully submit, is where His
13 Honour's started to go wrong and one can see that if one
14 goes to Re George A. Bond itself, which is at Tab 4, and
15 if Your Honour goes to Tab 4 at p.307?

16 HER HONOUR: Yes.

17 MR CRUTCHFIELD: It's the third full paragraph starting, "I
18 think."

19 HER HONOUR: Yes.

20 MR CRUTCHFIELD: Although to do it I just do what I did to
21 Your Honour before, if Your Honour goes back a paragraph
22 you'll see dealing with a bare trustee type case. That's
23 where the only other duty remaining to be performed is
24 to procure the form of dissolution other than a possible
25 claim against the liquidator. Does Your Honour see that?

26 HER HONOUR: Yes.

27 MR CRUTCHFIELD: I think with great respect that there is a
28 fallacy underlining that argument which involves the
29 assumption that it is the duty of a liquidator to
30 prosecute every claim which any person interested in the
31 liquidation bona fide believes should be prosecuted on

1 behalf of the company and in the interests of those who
2 are interested.

3 "In my opinion a liquidator owes no duty to the
4 ... (reads) ... reasonable chance of success or would
5 serve some useful purpose." I interrupt myself and
6 observe that's an unsurprising proposition. It's not
7 what gets quoted - not what Justice Brereton quite says
8 in the honest remark, and then he continues. "It may be
9 that when a prima facie case is made such duty then
10 arises and will continue." Skipping over.

11 "Where the claim is against the liquidator
12 ... (reads) ... has any reasonable prospect of success",
13 so we submit that what His Honour is saying in
14 Re George A. Bond is not that a liquidator has no
15 duty to investigate or allow for the investigation of
16 claims against him or herself, that's not what the judge
17 is saying. The judge, in the first part I read to Your
18 Honour, and we submit that's what His Honour is meaning
19 in the whole of the passage, he's not distinguishing
20 between claims against the liquidator and claims against
21 the third party in either case - - -

22 HER HONOUR: He's just saying, isn't he, that liquidators don't
23 have a duty to investigate every allegation.

24 MR CRUTCHFIELD: Precisely. That's it, Your Honour.

25 HER HONOUR: And the question of duty is duty to power in any
26 event, isn't it?

27 MR CRUTCHFIELD: That's true too. It gets picked up in
28 Re Rothwells - I'm sorry, Your Honour. This isn't in our
29 folder of authorities, but it's a helpful decision of
30 Justice Cooper in Re Rothwells which for the transcript
31 is [1990] 2 Q.R. 181, and p.188. If I could just take

1 Your Honour to that please, at No.3.

2 HER HONOUR: Yes.

3 MR CRUTCHFIELD: Paragraph No.3. "Neither a provisional
4 liquidator nor a liquidator ... (reads) ... will serve
5 some useful purpose to the benefit of the company", which
6 is with respect pretty much what Your Honour just said.
7 Then if I go back to honest remark and to 777 under
8 that heading, the power to appoint a special purpose
9 administrator. His Honour in 51 with respect correctly
10 points out that, "The law relating to the appointment of
11 a special ... (reads) ... case may be, not the court, the
12 current provision is 506(4)."

13 Again with the greatest respect to Justice Brereton
14 who seems to be suggesting that Justice Chitty was
15 confused, I'm going to endeavour to show Your Honour
16 that was in error as well and to do that I need to give
17 Your Honour a copy of R East which happily is short.

18 I should just point out to Your Honour I expect to go
19 through these additional matters that are not in our
20 submissions which are really just historical provisions,
21 plus a couple of extra cases. It should take about 30 or
22 40 minutes.

23 HER HONOUR: Thank you.

24 MR CRUTCHFIELD: So Justice Needham at p.500 at about Line F,
25 His Honour says, "The question which raises difficulty is
26 ... (reads) ... is limited to appointing them as joint."
27 That was the context, and then His Honour refers to s.232
28 of the 1961 Act which is dealing with court appointed
29 liquidators.

30 HER HONOUR: Liquidators.

31 MR CRUTCHFIELD: And skipping down to about Line D, he refers

1 to s.133(6) of the Companies Act 1862.

2 HER HONOUR: Yes.

3 MR CRUTCHFIELD: In almost identical terms it was the provision
4 relevant to the various applications in the voluntary
5 winding up et cetera, and then His Honour traces the
6 history in Line E from 1862 onwards.

7 HER HONOUR: Yes.

8 MR CRUTCHFIELD: And then after (f) there is a decision of
9 Justice Chitty Re Midland which the Meagher report, which
10 equates the effect of the compulsory winding up section
11 of the 1862 Act, 1962 with the voluntary winding up
12 s.133(6). Your Honour, I'm about to give Your Honour
13 those sections.

14 HER HONOUR: Thank you.

15 MR CRUTCHFIELD: The report reads in its entirety, "In a
16 liquidation whether compulsory or under supervision
17 the court has jurisdiction to give the conduct of any
18 particular matter arising in the course of a liquidation
19 to one of several liquidators. Apart from this statement
20 of Justice Chitty I have not referred to nor have any
21 decision which assists in the interpretation of 2327.
22 The Full Court of the Supreme Court of Victoria in
23 Mercantile Bank v. Dewoody, and speaking of the power in
24 the then Victorian Act said it was enacted so as to
25 enable the liquidation to proceed to aid the liquidators
26 and not to obstruct them, and therefore a liberal view of
27 the section should be taken".

28 It's the next sentence that's important,
29 Your Honour, "In my opinion, s.269(3) should be construed
30 so as to enable creditors or members as the case might
31 be, or the court as Chitty J said", and what Justice

1 Brereton seemed to be saying was, well look, there's no
2 power in the case of a voluntary winding up because under
3 269(3) and the analogous provisions the power to appoint
4 a further liquidator was one reposed in the creditors or
5 members, not the court.

6 But as Justice Needham says the court can do that
7 as well, and what perhaps has caused the confusion is
8 there's no reference in Justice Needham's decision, or
9 for that matter - - -

10 HER HONOUR: To the other section.

11 MR CRUTCHFIELD: Precisely, to the - - -

12 HER HONOUR: That says you can do whatever you can do in - - -

13 MR CRUTCHFIELD: The analogue to s.5(11), the predecease
14 provisions, exactly, Your Honour. And to make that
15 point, if I just hand forward the 1862 Act, I might
16 give Your Honour the 1961 Act as well, I didn't burden
17 Your Honour with everything in between because - - -

18 HER HONOUR: All right.

19 MR CRUTCHFIELD: - - - they're all the same and they're
20 helpfully summarised - if Your Honour wanted to look at
21 them they're helpfully summarised by Justice Needham
22 anyway at p.501.

23 HER HONOUR: Yes. Thank you.

24 MR CRUTCHFIELD: But with the 1862 Act, there one sees s.92,
25 and this is the provision - this is the Act that was
26 being considered in the Re Midland case - - -

27 HER HONOUR: Yes.

28 MR CRUTCHFIELD: - - - you can see the power to appoint - the
29 court to appoint one or more liquidators in s.92 - - -

30 HER HONOUR: Yes.

31 MR CRUTCHFIELD: - - - about half way through the section, "In

1 all cases if more persons than one are appointed to the
2 office of official liquidator the court shall declare
3 whether any act hereby required or authorised to be done
4 by the official liquidator is to be done by all or any
5 one or more of such persons".

6 HER HONOUR: Yes.

7 MR CRUTCHFIELD: So that's been there since Methuselah was a
8 lad, and as the modern cases point out, notwithstanding
9 the mandatory language courts don't tend to declare that,
10 and the courts have also pointed out that that's a power
11 that can be exercised at any time during the winding up
12 which is the power that gives the court the power - - -

13 HER HONOUR: Well it would be unworkable if the court couldn't
14 do that.

15 MR CRUTCHFIELD: Exactly. Then go to 133, that's the voluntary
16 winding provision - - -

17 HER HONOUR: Yes.

18 MR CRUTCHFIELD: - - - and 132 and 133 when read together one
19 can see that as Justice Brereton correctly pointed out,
20 that's a power reposed in the creditors or members. But
21 go then please, Your Honour, to s.138 at the bottom of
22 the page - - -

23 HER HONOUR: Yes.

24 MR CRUTCHFIELD: - - - and Your Honour will see about half way
25 through the fourth line, the end of the fourth line, "All
26 or any of the powers which the court might exercise if
27 the company were being wound up by the court". Does
28 Your Honour see that?

29 HER HONOUR: Yes.

30 MR CRUTCHFIELD: And for some strange reason one still gets a
31 frisson of excitement when one sees similar language

1 150 years later. And also just to track - - -
2 HER HONOUR: It goes through - the 1961 has the same?
3 MR CRUTCHFIELD: Yes, it's the same in the 61 Act, 232(7),
4 Your Honour will see that at 664 as court appointed.
5 HER HONOUR: Yes.
6 MR CRUTCHFIELD: 269(3) for voluntary, yes - no, I'm sorry,
7 Your Honour, it's not that section it's, just let me find
8 it here, sorry, I seem to have lost it for the moment,
9 I'm looking for the voluntary winding up - - -
10 HER HONOUR: It will be in 233 won't it, or no?
11 MR CRUTCHFIELD: 269.
12 HER HONOUR: Yes, so that's the equivalent.
13 MR CRUTCHFIELD: So that's for voluntary.
14 HER HONOUR: Yes. And then you can do anything in a voluntary.
15 MR CRUTCHFIELD: And then the 5(11) provision is 274.
16 HER HONOUR: Yes, thank you. And it's the liquidator in each
17 of the provisions who's entitled to apply?
18 MR CRUTCHFIELD: Yes. Now s.511 of the Corporations Act was,
19 I'll just give Your Honour the reference, s.413(1) of the
20 Companies Code.
21 HER HONOUR: Yes.
22 MR CRUTCHFIELD: So I'm doing this slowly cos as I say, it's
23 important when one's submitting that this decision is
24 wrong, but one can see we submit that in two important
25 respects His Honour has misunderstood the position. Then
26 - yes, 55 is the Hill v. David Hill case. That was a
27 case of course at p.55 - - -
28 HER HONOUR: Yes.
29 MR CRUTCHFIELD: - - - I'm back now in honest remark - - -
30 HER HONOUR: Yes.
31 MR CRUTCHFIELD: - - - this was a case where the liquidator,

1 "In the liquidation", Your Honour will see at Line 45,
2 "In the liquidation a question arose as to whether the
3 deed administrator was in breach of duty in his capacity
4 as deed administrator".

5 Over the page Justice Brereton says, "Although
6 the conduct in question arose in the course of the deed
7 administration it was a claim that arose preceding
8 the liquidation and did not involve examination of the
9 liquidator's conduct in the liquidation but his conduct
10 as deed administrator before the liquidation".

11 Now aside from the perplexing nature of such a
12 limitation which doesn't seem to further the policy which
13 underpins these provisions, we again submit it's not
14 quite how Justice Santow expressed himself in the Hill
15 case, and I'll give Your Honour a copy of that. We don't
16 have a copy of Hill, or unless I've got - no, I've got
17 a copy, that's what's happened. Here we go. Sorry,
18 Your Honour.

19 HER HONOUR: Thank you.

20 MR CRUTCHFIELD: If I can just ask Your Honour to read
21 Paragraph 19, Justice Santow, as His Honour then was,
22 in Hill v. David Hill, and in particular the last
23 sentence of 19, Your Honour.

24 HER HONOUR: Yes, and that's the same sort of claim that you've
25 had against the liquidator.

26 MR CRUTCHFIELD: Precisely. A liquidator's an officer too.

27 HER HONOUR: The company would have had - the company in
28 liquidation.

29 MR CRUTCHFIELD: Yes.

30 HER HONOUR: And I keep coming back to this.

31 MR CRUTCHFIELD: That's right.

1 HER HONOUR: There's no one to bring this action if it's
2 not - - -

3 MR CRUTCHFIELD: Exactly and Movitex makes that point, and I
4 want to take Your Honour very briefly to Movitex to show
5 that, but exactly, and that's the fulcrum around which
6 Justice Santow's reasoning turns, we submit, is the fact
7 that Mr De Vrie was an officer just as a liquidator is,
8 so - - -

9 HER HONOUR: There's no distinction between pre and post - - -

10 MR CRUTCHFIELD: Precisely. Now we also - I won't go to
11 them, Your Honour, but we list at Paragraph 25 of our
12 submissions many cases where the conduct of a liquidator
13 has been dealt with in the course of and as a matter
14 arising in the winding up. I won't go to them,
15 Your Honour.

16 HER HONOUR: No.

17 MR CRUTCHFIELD: But Your Honour has seen them. Can I just add
18 two to that list, please?

19 HER HONOUR: Yes.

20 MR CRUTCHFIELD: At Tab 11 of our folder Your Honour will see
21 the decision of Justice Finkelstein in Pasminco.

22 HER HONOUR: Yes.

23 MR CRUTCHFIELD: And I just draw Your Honour's attention to
24 p.478 at Paragraph 22.

25 HER HONOUR: Yes.

26 MR CRUTCHFIELD: Here we were dealing with Pasminco, which was
27 subject to a deed, so it wasn't in liquidation.

28 HER HONOUR: No.

29 MR CRUTCHFIELD: But Your Honour can clearly see that
30 Justice Finkelstein had in mind appointing a further
31 special purpose administrator - - -

1 HER HONOUR: Yes, and - - -

2 MR CRUTCHFIELD: - - - to investigate the administrator.

3 HER HONOUR: And by analogy with the liquidation.

4 MR CRUTCHFIELD: Well, on Justice Brereton's reasoning you can
5 do that, but you can't do it when it's a liquidator. And
6 we rhetorically ask why? Why would you impose such a
7 limitation? And the other decision is the decision in
8 Lowe.

9 HER HONOUR: Which tab is that? No, you're giving me one, I
10 see.

11 MR CRUTCHFIELD: It's not; I'm bombarding Your Honour with more
12 cases, I'm sorry.

13 HER HONOUR: No, that's all right. Which paragraph?

14 MR CRUTCHFIELD: Paragraph 31. And Your Honour will see there
15 that appointing a special purpose liquidator in the
16 voluntary winding up and in reliance upon s.511. Does
17 Your Honour see?

18 HER HONOUR: Yes.

19 MR CRUTCHFIELD: So that's that. Yes. Then could I go - I
20 mentioned Movitex; perhaps it's convenient to just
21 briefly go to that. That's at Tab 7 of our folder.

22 HER HONOUR: Yes.

23 MR CRUTCHFIELD: It's unnecessary to go to all the facts,
24 Your Honour, other than if you'd just go to p.311. This
25 was an action against - the possibility of an action by
26 the company against the liquidators. I apologise for the
27 poor copy of the print.

28 HER HONOUR: That's all right. Which part of the - - -

29 MR CRUTCHFIELD: I think it's Line F. The sentence starts,
30 "Such an action would of course have been unconnected
31 with the winding up."

1 HER HONOUR: Yes, I've got that.

2 MR CRUTCHFIELD: "And in Re North Brazilian Sugar Factories it
3 would have been a clear authority as indeed the judge
4 held against acceding to the application." Your Honour,
5 if Your Honour looked at North Brazilian Sugar Factories
6 Your Honour will see that was an application for
7 inspection of books and records.

8 HER HONOUR: Yes.

9 MR CRUTCHFIELD: To be exercised in support a personal, a
10 non-company, action.

11 HER HONOUR: Yes.

12 MR CRUTCHFIELD: And that's what that case stands for. Then
13 the Court of Appeal says, "Before us however the action
14 being mooted is an action by the company itself against
15 the liquidators. Such an action is not, in my judgment,
16 unconnected with a winding up. The cause of action, if
17 there is one, is an asset of the company that is being
18 wound up."

19 HER HONOUR: Well, that's really - - -

20 MR CRUTCHFIELD: Which is precisely your point, with respect.

21 HER HONOUR: I can't see how it can be - - -

22 MR CRUTCHFIELD: Anything else.

23 HER HONOUR: - - - anything else. And if it's to be prosecuted
24 while the company is in liquidation it's got to be by a
25 liquidator.

26 MR CRUTCHFIELD: That's right. So that's all I wanted to
27 do on those. I'll just check if there's anything else I
28 needed to take Your Honour to. We've mentioned in our
29 submissions - just let me check. Yes. The other plank
30 in Justice Brereton's reasoning seems to have been the
31 court's supervisory role under s.536 of the Corporations

1 Act.

2 We point out, Your Honour, it doesn't logically
3 follow that because the court has a power of supervision
4 under s.536 that the powers that a court has in respect
5 of liquidators, court appointed or otherwise, are
6 confined to those supervisory powers. And, as
7 Your Honour knows - and I've got a - - -

8 HER HONOUR: Well, the supervisory powers are in relation to
9 both court winding up - liquidators appointed by the
10 court for winding up as well.

11 MR CRUTCHFIELD: Exactly. And Justice French made a similar
12 point. Tell me - just say "Stop" if Your Honour wants
13 me to stop doing this, but I've also got an extract
14 from - - -

15 HER HONOUR: No, I - - -

16 MR CRUTCHFIELD: - - - Austin & Black's Annotated Corporations
17 Act.

18 HER HONOUR: Yes. No, I'm assisted by this, by you taking me
19 through it.

20 MR CRUTCHFIELD: Thank you, Your Honour. Perhaps if we can
21 just go to that first. I'd ask Your Honour, please, to
22 go to Austin & Black's Annotations?

23 HER HONOUR: Yes.

24 MR CRUTCHFIELD: Your Honour will see the first paragraph,
25 "This section applies", et cetera.

26 HER HONOUR: Yes.

27 MR CRUTCHFIELD: "This section is concerned with matters
28 which may lead to sanctions against a liquidator or
29 intervention in respect of his or her conduct for
30 disciplinary reasons." And at the bottom of that page,
31 Your Honour, the sentence starting, "The court will have

1 regard to the purpose of such an enquiry in exercising
2 its discretion which relates to regulation, supervision,
3 discipline and correction of liquidators in the interests
4 of honest and efficient administration of the estates of
5 companies subject to winding up.

6 The interest to be served by the section is a public
7 interest and the section is not concerned in any direct
8 way with the vindication of private rights." And there
9 are similar provisions, as Your Honour knows, in the
10 Bankruptcy Act and Justice French dealt with that in this
11 *Macchia v. Nylint* case.

12 HER HONOUR: Yes.

13 MR CRUTCHFIELD: We draw Your Honour's attention to
14 Paragraph 44.

15 HER HONOUR: Yes.

16 MR CRUTCHFIELD: I wonder if Your Honour could perhaps just
17 read down to "*In Re Gault*."

18 HER HONOUR: Yes.

19 MR CRUTCHFIELD: And we also draw to Your Honour's attention
20 p.121, the last page of what we've given Your Honour, at
21 the top of the page the first full sentence, starting "As
22 is the case with s.178 it is not a vehicle for pressing
23 claims", et cetera.

24 HER HONOUR: Yes. They might go hand-in-hand with one another
25 to a certain extent.

26 MR CRUTCHFIELD: Exactly.

27 HER HONOUR: But they're not - it's not the same.

28 MR CRUTCHFIELD: I will also give Your Honour a reference to
29 Justice Robson's decision - I don't have a copy, but I'll
30 just give Your Honour the reference - *Vink, V-i-n-k, v.*
31 *Tuckwell* [2008] V.S.C. 100 at Paragraph 86. Paragraph 86

1 where His Honour also deals with the limited nature of
2 the 536 jurisdiction.

3 So, Your Honour, they are - let me just go back and
4 see if there's anything else in Honest Remark, but I
5 think that's the principal reasons we say that obiter
6 dicta should not be followed, Your Honour.

7 HER HONOUR: Yes. Has Honest Remark ever been followed that
8 you're aware of?

9 MR CRUTCHFIELD: Not that I'm aware of. Although we would
10 submit, slightly disturbingly, Ford's Corporations Law
11 quotes it for the proposition that we're submitting is
12 wrong. If there were such a limitation then every
13 liquidation, no matter how large, where an issue arose,
14 presumably one would need a new liquidator in every case.
15 And there's no warrant for such a limitation. Ms Van
16 Proctor says it is cited in respect of other issues, but
17 not this.

18 HER HONOUR: Yes.

19 MR CRUTCHFIELD: Yes.

20 HER HONOUR: Thank you.

21 MR CRUTCHFIELD: At Paragraph 57, back in Honest Remark, if
22 Your Honour were - we would submit it's not necessary for
23 Your Honour to do so, but if Your Honour were minded to
24 look at the cases dealing with liquidators' breach of
25 duties and the court's role in respect of leave, the
26 Justice Santow decision in Mamone v. Pantzer, which is
27 about halfway through Paragraph 57.

28 HER HONOUR: Yes.

29 MR CRUTCHFIELD: Justice Santow's referring to court appointed
30 liquidators there. It makes sense there.

31 HER HONOUR: Yes.

1 MR CRUTCHFIELD: The quote from Justice Young in Re de Boso
2 over the page at 780, His Honour Justice Young points
3 out, "The liquidator even in a voluntary winding up has
4 very strong powers". Then next paragraph, "The court
5 will be very jealous of its delegate exercising the
6 powers that it's given. The court will take every
7 precaution to make sure that those powers are used
8 impartially.

9 The corollary of this is that the court will not
10 permit its officer to be sued by a creditor", which of
11 course is not the situation we're dealing with here, or
12 have an inquiry made under s.536.

13 HER HONOUR: I think that you've got to look at it on the basis
14 of there can be different types of claims or potential
15 claims against liquidators which might infect the whole
16 of the liquidation and the work that they're doing, but
17 this is different to that.

18 MR CRUTCHFIELD: It is, it is.

19 HER HONOUR: Different from that.

20 MR CRUTCHFIELD: Now we've actually done a little table which
21 may assist Your Honour in regard to the point that
22 Your Honour just made which is a summary of outstanding
23 matters in the liquidation. There was one matter in this
24 table that I was given that was confidential. Is that
25 still there? If Your Honour's happy to receive it on the
26 basis that we'd ask for Item 5 to be kept confidential
27 but if we can hand forward that list. There's no
28 difficulty with Your Honour reading Item 5 and then
29 Your Honour can decide whether Your Honour will receive
30 the document on the basis that keep that paragraph
31 confidential.

1 HER HONOUR: Will you just give me a moment Mr Crutchfield to
2 have a look through it?

3 MR CRUTCHFIELD: Yes.

4 HER HONOUR: Thank you. In relation to the assessments of the
5 proofs of debt, that can't be affected can it, as the
6 table indicates by this because it's post the date of
7 liquidation?

8 MR CRUTCHFIELD: Yes, that's right.

9 HER HONOUR: What I might do Mr Crutchfield is hand this
10 document back and perhaps your instructors could provide
11 a copy that limits Paragraph 5 so that it doesn't
12 indicate against whom the first part might be.

13 MR CRUTCHFIELD: Yes, thank you, Your Honour. We will do that.

14 HER HONOUR: Thank you and then I can place that then on the
15 court file.

16 MR CRUTCHFIELD: Yes.

17 HER HONOUR: Most of those matters I think are covered in
18 affidavit material.

19 MR CRUTCHFIELD: They are and what we've endeavoured to do is
20 give Your Honour the references to the affidavit.

21 HER HONOUR: Yes.

22 MR CRUTCHFIELD: Where they're referred to. Then Your Honour
23 I just wanted to briefly to go Paragraph 199 of
24 Mr Handberg's first affidavit. I've dealt with the
25 honest remark matters, unless Your Honour had any
26 questions about it?

27 HER HONOUR: No, I do think with respect that His Honour ought
28 not be followed, that decision ought not be followed in
29 respect of this matter.

30 MR CRUTCHFIELD: Thank you, Your Honour.

31 HER HONOUR: Paragraph 199 did you say?

1 MR CRUTCHFIELD: Yes. This is the 4 July - - -
2 HER HONOUR: Yes.
3 MR CRUTCHFIELD: It's the summary of the 4 July letter which is
4 GNH47.
5 HER HONOUR: Yes.
6 MR CRUTCHFIELD: Now I just wanted very briefly to deal with
7 these. They're the alleged conflicts so I'd ask
8 Your Honour to read those.
9 HER HONOUR: Yes.
10 MR CRUTCHFIELD: Mr Handberg deals with those matters at
11 Paragraph 210.
12 HER HONOUR: Yes.
13 MR CRUTCHFIELD: As Your Honour's already pointed out the
14 relevant fraud started it seems in about 2004.
15 HER HONOUR: 2004 to 2008 it looks like from what's in evidence
16 before me on this application.
17 MR CRUTCHFIELD: Yes, that's right, exactly.
18 HER HONOUR: And then?
19 MR CRUTCHFIELD: The second item that it raised we would submit
20 seems at the moment - we are making an application for
21 the special purpose liquidation and we've heard what
22 Your Honour's said about one being appointed so we're
23 not seeking to dissuade Your Honour from that course,
24 but I just point out B seems to be a matter of complete
25 speculation. The proceeding hasn't even been served on
26 the auditors.
27 HER HONOUR: But as I say these things can unfold.
28 MR CRUTCHFIELD: Exactly.
29 HER HONOUR: I do think that in light of the correspondence
30 that's been sent and the actual proceeding being
31 commenced by the secured creditors that - I'm not saying

1 there's a prima facie case, far from it. But what I am
2 suggesting is that there's sufficient there that I
3 think - - -

4 MR CRUTCHFIELD: We understand Your Honour. It's perhaps not
5 very helpful to speculate as to whether Mr Charles'
6 clients have a admirable, altruistic interest in the
7 purity of the insolvency process or as the correspondence
8 would suggest, pp.1222-1232 that they're motivated by a
9 new liquidator as Mr Charles said, considering the facts
10 objectively discontinuing the proceedings against their
11 client.

12 Be that as it may - but we do say there's one reason
13 why when the special purpose liquidator is appointed
14 Your Honour that we would respectfully submit that that
15 special purpose liquidator be obliged to report regularly
16 to the court in relation to what's happening and what
17 costs are being incurred.

18 As Your Honour knows, Your Honour would have seen in
19 the material, the investors in this - many of them were
20 retirees down on the Mornington Peninsula and as
21 Your Honour also sees there's a real prospect of
22 substantial returns to the investors.

23 HER HONOUR: Yes.

24 MR CRUTCHFIELD: We have a form of order which I can hand up
25 - it might be convenient if Ms Van Proctor perhaps deals
26 with the other aspect of the application first because
27 the orders - - -

28 HER HONOUR: Cover that as well do they?

29 MR CRUTCHFIELD: - - - cover those as well.

30 HER HONOUR: All right, well that might be more convenient to
31 hear what Ms Van Proctor says.

1 MR CRUTCHFIELD: If the court pleases.

2 HER HONOUR: Thank you Mr Crutchfield. Yes, Ms Van Proctor.

3 MS VAN PROCTOR: Thank you, Your Honour. Your Honour will have
4 seen that there are two declarations and two orders that
5 are sought in the originating process at Paragraph 1
6 to 4. Those matters seek either declarations about the
7 plaintiff's entry into certain agreements.

8 HER HONOUR: Yes.

9 MS VAN PROCTOR: Or retrospective approval to have entered into
10 those agreements.

11 HER HONOUR: But your primary argument is isn't it that
12 approval's not required because it's an agreement
13 between the liquidators as liquidators not the company.

14 MS VAN PROCTOR: Precisely.

15 HER HONOUR: I haven't read that correspondence. Would you
16 like me to look at the retainer agreements now?

17 MS VAN PROCTOR: I could take you through if that assists the
18 court?

19 HER HONOUR: Yes, it would.

20 MS VAN PROCTOR: The issues are set out from Paragraph 201
21 of Mr Handberg's first affidavit where he annexes as
22 Exhibit GNH49 a letter from Charles Fice of 21 July - - -

23 HER HONOUR: Yes.

24 MS VAN PROCTOR: - - - and that letter asserts that there are
25 two types of agreements that required approval, the first
26 is the costs agreements that the liquidators have entered
27 into, and the second is a deed of agreement that was
28 in fact entered into by Mr Charles's clients, and the
29 liquidator - his clients being secured creditors. Now
30 that agreement, the deed of agreement, is annexed as
31 GNH 50 - Exhibit GNH 50 to Mr Mr Handberg's first

1 affidavit - - -

2 HER HONOUR: Yes.

3 MS VAN PROCTOR: - - - and the costs agreements as you know are
4 annexed to Ms Mooreland's affidavit this morning. Just
5 before we turn to those, I should say, Your Honour, that
6 this issue first arose in 2011. The correspondence that
7 relates to each of these issues being ventilated in 2011
8 is Exhibit GNH51 of Mr Handberg's affidavit. And if
9 Your Honour doesn't mind turning to that, Your Honour
10 will see at p.1204.

11 HER HONOUR: Yes, I've got that now, thank you.

12 MS VAN PROCTOR: At Paragraph 6, this is a letter from
13 Mills Oakley, the plaintiff's solicitors, Paragraph 6,
14 they contend that the costs agreements are between
15 the liquidators or the firm Rogers Reidy - - -

16 HER HONOUR: Yes.

17 MS VAN PROCTOR: - - - Mills Oakley, and they explained why
18 they think that approval's not required on the following
19 page on Paragraph 9, at the end of Paragraph 9 the final
20 sentence, "The deed of agreement dated 24 August 2011",
21 that's the second type of agreement was entered into was
22 likewise not an agreement that was entered into on behalf
23 of the company and therefore approval's not required.
24 And then Your Honour will see on the following p.1206
25 that this complaint was raised by Charles Fice with ASIC
26 and ASIC had formed the same view.

27 HER HONOUR: Yes.

28 MS VAN PROCTOR: So just to put it in context then, if I could
29 take Your Honour to the costs agreements that are annexed
30 to Ms Borland's affidavit, if you go to p.2 Paragraph 4
31 of Ms Borland's affidavit Your Honour will see that she

1 deposes that Mills Oakley entered into a costs agreement
2 with Rogers Reidy in December 2009 - - -

3 HER HONOUR: Yes.

4 MS VAN PROCTOR: - - - that's when the liquidators were first
5 appointed, and then an updated costs agreement was
6 entered into similarly by Rogers Reidy and Mills Oakley
7 in October of 2010. Now those agreements were of course
8 the subject of that 2011 correspondence, and since that
9 time there has been a further costs agreement entered
10 into, and that costs agreement relates to what's known
11 colloquially as the consolidated proceedings, the
12 proceedings against the liquidator - sorry, against the
13 auditors, the accountants - - -

14 HER HONOUR: Person or auditors and the accountants.

15 MS VAN PROCTOR: Precisely, Your Honour.

16 HER HONOUR: The one's that set down for trial next February.

17 MS VAN PROCTOR: That's correct, exactly. And then in
18 Paragraph 7 you'll see that there's a little - this
19 agreement is a little more complex in that there is a
20 copy of the costs agreement which has had a hand drawn
21 line through the words, "Mr Handberg and Mr Morgan", in
22 one version, and Ms Borland believes that this was
23 effected by someone at Rogers Reidy.

24 HER HONOUR: Yes.

25 MS VAN PROCTOR: - - - although in Paragraph 8 Your Honour will
26 see that the copy on the Rogers Reidy file doesn't have
27 that - - -

28 HER HONOUR: Yes.

29 MS VAN PROCTOR: - - - that handwritten amendment. And what we
30 say about that, Your Honour, is that it is - our primary
31 submission still that this is an agreement that is

1 between the liquidators or Rogers Reidy and Mills Oakley.
2 If it's not though, we seek retrospective approval in
3 respect of that agreement. If it would assist
4 Your Honour there are two authorities that are referred
5 to in our bundle.

6 HER HONOUR: I might just have a look at the costs
7 agreements - - -

8 MS VAN PROCTOR: Of course.

9 HER HONOUR: - - - because I haven't seen them, so.

10 MS VAN PROCTOR: So, Your Honour, unfortunately this affidavit,
11 the exhibits are not paginated, but you will see behind
12 the first ACB1 - - -

13 HER HONOUR: Yes.

14 MS VAN PROCTOR: - - - on about the third page, you can see
15 that the client is listed in that disclosure statement as
16 Rogers Reidy.

17 HER HONOUR: Yes.

18 MS VAN PROCTOR: And that version as is explained in the
19 affidavit is not signed.

20 HER HONOUR: What about the letter?

21 MS VAN PROCTOR: The letter is addressed to the company, or to
22 mister - care of Mr Handberg. He was at that point the
23 administrator.

24 HER HONOUR: So that - no, it's all right. I was thinking that
25 the costs agreement was the letter which incorporated
26 the disclosure statement, but I see that it says,
27 "Our general terms are set out in the enclosed costs
28 agreement", so that - - -

29 MS VAN PROCTOR: That's right, and disclosure statement. But
30 the disclosure statement refers to Roger Reidy, and
31 then - - -

1 HER HONOUR: And so does the costs agreement.

2 MS VAN PROCTOR: So does the costs agreement.

3 HER HONOUR: Yes, I see. I miss - - -

4 MS VAN PROCTOR: Sorry, my apologies.

5 HER HONOUR: - - - I was read - I was reading too quickly.

6 MS VAN PROCTOR: And then if it's convenient to turn to the

7 second exhibit which is ACB2 - - -

8 HER HONOUR: Yes.

9 MS VAN PROCTOR: - - - it does have the same addressee but the

10 general terms are set out in the enclosed - - -

11 HER HONOUR: Yes.

12 MS VAN PROCTOR: - - - updated costs agreement - - -

13 HER HONOUR: yes.

14 MS VAN PROCTOR: - - - and again that is with Rogers Reidy

15 signed by Mr Handberg.

16 HER HONOUR: And the third one's the one that bears the

17 handwritten on one version - - -

18 MS VAN PROCTOR: That's right, Your Honour.

19 HER HONOUR: - - - but not on the other.

20 MS VAN PROCTOR: On the first version, the page that just

21 follows the exhibit cover sheet, Your Honour will see

22 that handwritten strike through and Your Honour might

23 observe that that strike through is not initialled,

24 whereas if Your Honour turns to p.5 of that

25 agreement - - -

26 HER HONOUR: Yes.

27 MS VAN PROCTOR: - - - you will see that those strike throughs

28 are in fact initialled by - - -

29 HER HONOUR: Yes.

30 MS VAN PROCTOR: - - - on behalf of both - - -

31 HER HONOUR: And I think taking into account that it's not

1 initialled and it wouldn't also be consistent with the
2 earlier agreements.

3 MS VAN PROCTOR: Precisely, Your Honour, and even in
4 Paragraph 1 of that agreement under the summary
5 Your Honour will see, "The work we will do for is to
6 act for you and TVM". It's not consistent through the
7 document.

8 HER HONOUR: It doesn't - no, it doesn't make sense. Yes, well
9 I'm satisfied that that agreement is between Rogers Reidy
10 and Mills Oakley.

11 MS VAN PROCTOR: If Your Honour pleases. I have then also for
12 completeness, take Your Honour to the deed which is the
13 second agreement - - -

14 HER HONOUR: Yes.

15 MS VAN PROCTOR: - - - in respect of which relief is sought,
16 which is Exhibit GNH50 to Mr Handberg's first affidavit.

17 HER HONOUR: Yes. I did have a look at that, but I would be
18 assisted if you'd take me to it again. 50 did you say?

19 MS VAN PROCTOR: That's right, Your Honour.

20 HER HONOUR: Thank you.

21 MS VAN PROCTOR: And again this correspondence was this
22 - sorry, this deed was the subject of the correspondence
23 in 2011.

24 HER HONOUR: Yes.

25 MS VAN PROCTOR: And on p.1172 - - -

26 HER HONOUR: Yes.

27 MS VAN PROCTOR: - - - Your Honour will see that the parties
28 are Mr Handberg and Mr Morgan as liquidators.

29 HER HONOUR: It's really - they could really only enter into it
30 in their own capacity couldn't they, because of what was
31 to be done?

1 MS VAN PROCTOR: Precisely, which is the point that ASIC makes
2 in its correspondence.

3 HER HONOUR: Yes.

4 MS VAN PROCTOR: Firstly, that it appears to be on behalf
5 - entered into by the liquidators, and secondly it really
6 could only have been entered into by the liquidators.

7 HER HONOUR: By the liquidators.

8 MS VAN PROCTOR: Precisely.

9 HER HONOUR: And just - going back to the costs agreement for
10 the moment, it doesn't make any difference, it doesn't
11 bring into operation the relevant provision because
12 there might be a right of indemnity and a lien over the
13 company's assets by the liquidators for reimbursement of
14 fees that they pay?

15 MS VAN PROCTOR: In my submission, Your Honour, it doesn't.
16 The provision requires the agreement to have been entered
17 into by the company.

18 HER HONOUR: Yes.

19 MS VAN PROCTOR: And that's consistent with what the
20 authorities say about it.

21 HER HONOUR: Yes.

22 MS VAN PROCTOR: If it would assist Your Honour, I could
23 take you to two of those authorities to illustrate the
24 principle, but they're in the - - -

25 HER HONOUR: No. They've been referred to and I've had regard
26 to some of them in preparing for today.

27 MS VAN PROCTOR: If the court pleases.

28 HER HONOUR: Thank you, Ms Van Proctor.

29 MS VAN PROCTOR: Thank you.

30 HER HONOUR: Yes, Mr Crutchfield.

31 MR CRUTCHFIELD: Thank you, Your Honour. We do have a draft

1 form of order which we can hand forward.

2 HER HONOUR: Thank you.

3 MR CRUTCHFIELD: I'm instructed there's no particular reason
4 Mr Hewitt's name has been put in there of the three that
5 we've - in respect of whom we have consents. I should
6 point out, Your Honour, that there does - Mr Downey in
7 his - DERY is the acronym.

8 HER HONOUR: Yes.

9 MR CRUTCHFIELD: He says there may be a difficulty - or he
10 cannot investigate the former receiver, so to avoid any
11 difficulty in that regard it might be better not to
12 appoint Mr Downey, so that leaves of the ones we've
13 nominated Mr Turner or Mr Hewitt.

14 HER HONOUR: And there's also been - - -

15 MR CRUTCHFIELD: I was about to say. I think Mr Fice too - - -

16 HER HONOUR: Mr Jess - - -

17 MR CRUTCHFIELD: Yes. Mr Carson was one.

18 HER HONOUR: I've got the consent for Mr Jess. I don't know
19 that there's a consent for Mr Carson.

20 MR CRUTCHFIELD: I think I'm being told that Mr Carson is a
21 conflict so Mr Jess, that's right, yes. We submit in
22 relation to the consents that have been obtained by the
23 liquidator there's no reason that - of Charles Fice have
24 not said there's anything inappropriate about the special
25 purpose liquidators that we put up, or at least I'm not
26 aware that he has so we would submit that Your Honour
27 ought to select one or other either of Mr Hewitt or
28 Mr Turner. Mr Turner is cheaper.

29 HER HONOUR: They're all well known liquidators.

30 MR CRUTCHFIELD: Yes. We put forward Mr Hewitt as the
31 liquidator then, Your Honour. He wins alphabetically.

1 Now, what we haven't provided for in - and Your Honour
2 will see in the orders we've tried to pick up
3 Your Honour's previous remuneration orders.

4 HER HONOUR: Yes, so that the special liquidators gets
5 remunerated in the same way.

6 MR CRUTCHFIELD: Yes. What we haven't done in these orders
7 Your Honour, and I just raise it for Your Honour's
8 consideration is we haven't got anything in here about
9 how the court would supervise the activities of the
10 special purpose liquidator to - - -

11 HER HONOUR: It could simply be a requirement that the special
12 liquidator report to the court by a particular date and
13 then on that date it can just roll over like you often
14 see with court appointed receivers.

15 MR CRUTCHFIELD: Yes. Thank you, Your Honour. We will have a
16 go at some wording in that respect and send it through to
17 Your Honour's associate.

18 HER HONOUR: And there would be liberty to apply. The
19 liquidator probably doesn't need that, but to avoid any
20 issue about it.

21 MR CRUTCHFIELD: Yes.

22 HER HONOUR: And the time by which the special purpose
23 liquidator is to report should be a reasonable amount
24 of time.

25 MR CRUTCHFIELD: Yes.

26 HER HONOUR: To enable him to deal with it.

27 MR CRUTCHFIELD: Perhaps two months? Is that too long? Six
28 weeks maybe? Perhaps we'll say six weeks.

29 HER HONOUR: Maybe six weeks, and then if he wants longer - - -

30 MR CRUTCHFIELD: If he wants more time, he can say so.

31 HER HONOUR: He can come back to the court and say so.

1 MR CRUTCHFIELD: Yes, thank you, Your Honour.

2 HER HONOUR: For the time being he should contact my chambers
3 in that regard. I'm not sure what will happen going
4 forward, but for the time being if he contacted my
5 chambers if he wanted to come back earlier and perhaps
6 the six weeks, if we could make it a Friday so that it
7 then comes in on a directions day.

8 MR CRUTCHFIELD: Yes.

9 HER HONOUR: Which would be 17 October.

10 MR CRUTCHFIELD: Yes. We might even include an order that the
11 matter be adjourned for directions to that date. Do we
12 provide for that or - - -

13 HER HONOUR: Well, there's nothing more to do, is there?

14 MR CRUTCHFIELD: Probably not, not unless there's - - -

15 HER HONOUR: I don't think there's anything more to do. I
16 don't need to do that. It would just be that the special
17 purpose liquidator report to the court.

18 MR CRUTCHFIELD: By that date.

19 HER HONOUR: By that date.

20 MR CRUTCHFIELD: Thank you, Your Honour. We will add an order
21 to that effect and send it through to Your Honour's
22 chambers if that's convenient.

23 HER HONOUR: Yes. Yes, thank you. I think perhaps the easiest
24 way to go is alphabetically. If that means that it's
25 Mr Hewitt - as I say, they're all well known liquidators
26 and there's no way to choose really between - - -

27 MR CRUTCHFIELD: Yes. If Your Honour pleases.

28 HER HONOUR: There's nothing further, Mr Crutchfield?

29 MR CRUTCHFIELD: Nothing further, yes.

30 HER HONOUR: Thank you.

31 MR CRUTCHFIELD: Might I respectfully assume Your Honour's

1 going to write - will have written reasons in due
2 course - - -

3 HER HONOUR: If you want written reasons, you'll have written
4 reasons.

5 MR CRUTCHFIELD: We do seek written reasons.

6 HER HONOUR: Yes, certainly.

7 MR CRUTCHFIELD: Not just for this matter, Your Honour.
8 If the court pleases.

9 HER HONOUR: That's fine.

10 MR CRUTCHFIELD: Yes.

11 HER HONOUR: Adjourn the court please.

12 - - -