



Grant Thornton

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Special Purpose Liquidator's Report

Traditional Values Management Limited (In Liquidation) (Special Purpose
Liquidator Appointed) Responsible Entity for the Blue Diamond Deposits
Trust No. 1
ACN 055 106 100

20 November 2014

Andrew Stewart Reed Hewitt
SPECIAL PURPOSE LIQUIDATOR

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2. Preparation of this Report and Qualifications

2.1 Court Orders

- 2.1.1 I, Mr Andrew Hewitt of Grant Thornton Australia Limited (Grant Thornton,) have been appointed as Special Purpose Liquidator of Traditional Values Management Limited (In Liquidation) (Special Purpose Liquidator Appointed) (the Company) by the Honourable Justice Ferguson pursuant to an Order of the Supreme Court of Victoria dated 3 September 2014 (the Order). A copy of the Order dated 3 September 2014 is enclosed at Annexure A1.
- 2.1.2 On 15 October 2014, the Honourable Justice Ferguson amended paragraph 4 of the Order to grant the Special Purpose Liquidator an extension for submitting this Report to 4:00pm on Friday, 14 November 2014. On 14 November 2014, the Honourable Justice Ferguson further amended paragraph 4 of the Order to grant the Special Purpose Liquidator an extension for submitting this Report to 4:00pm on Thursday, 20 November 2014. A copy of the Order dated 15 October 2014 and 14 November 2014 is enclosed at Annexure A2.
- 2.1.3 I have been appointed to investigate, respond to and otherwise act on behalf of the Company with respect to matters alleged by certain unit holders in the Managed Investment Scheme known as the Blue Diamond Deposits Trust No 1 (BDT) detailed in correspondence from Charles Fice Solicitors to the Company's legal representative, Mills Oakley Lawyers (Mills) dated 4 July 2014 (the Charles Fice letter dated 4 July 2014) A copy of Charles Fice Solicitors' letter dated 4 July 2014 is enclosed at Annexure A3, and any proceedings arising out of or relating to those matters.
- 2.1.4 I am informed that Charles Fice Solicitors' clients are as follows:
- 2.1.4.1 Mr Noel Reynolds and Ms Lesley Reynolds in their capacity as Trustees for the Reynolds Superannuation Trust.
 - 2.1.4.2 REFAM Investments Pty Ltd in its capacity as Trustee for the Refam Investment Unit Trust.
 - 2.1.4.3 W.B.U.X Pty Ltd in its capacity as Trustee for the Lesley Heirs Trust.
 - 2.1.4.4 G.J.R Investments Pty Ltd in its capacity as Trustee for the GJR Investments Unit Trust.
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2.1.4.5 Eighty Second Agenda Pty Ltd in its capacity as trustee for the Rice Family Trust.

2.1.4.6 Resort Securities Pty Ltd in its capacity as trustee for the Jam Daman Trust.

2.1.4.7 Mr Noel Reynolds.

2.1.4.8 Mr Geoff Rice.

2.1.5 As Special Purpose Liquidator, I shall by 4:00pm on 20 November 2014 provide to the Court and to the Plaintiffs a report as to the investigation and other matters referred to in paragraph 2.1.3 of this Report.

2.1.6 The particulars of the scope of this Report is commented upon in further detail at Section 3 of this Report.

2.2 Independence and Qualifications

2.2.1 I, Mr Andrew Hewitt of Grant Thornton Australia Limited, have undertaken a proper assessment of the risks to my independence prior to accepting the appointment as Special Purpose Liquidator of the Company in accordance with the law and applicable professional standards. This assessment identified no real or potential risk to my independence.

2.2.2 Enclosed at Annexure A4 is my revised Declaration of Independence, Relevant Relationships and Indemnities dated 25 August 2014.

2.2.3 I am a Partner with Grant Thornton Australia Limited and a member of the Institute of Chartered Accountants in Australia & New Zealand.

I have over 20 years experience in Recovery and Reorganisation for various industries including; real estate and construction, transport, professional services, finance, hotel and accommodation, car dealership, and the retail / wholesale sectors.

In addition to assisting companies encountering financial difficulties, my experience extends to overseeing voluntary administrations, receiverships and liquidations, including a large number of investigative accountant reports, and pre-lending reviews on behalf of banks and finance companies.

2.2.4 Enclosed at Annexure A5 is a copy of my Curriculum Vitae.

2.2.5 Under my supervision as Special Purpose Liquidator, I have utilised Mr Christopher Sequeira (Senior Manager) and Mr Raffi Dishoian (Assistant Manager) of my office to assist me in the preparation of this Report.

2.2.6 As Special Purpose Liquidator, I have engaged Mr Paul James of Clayton Utz as my legal advisor. I note Mr James has utilised Ms Alissa Crittenden of Clayton Utz to assist him on this matter.

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2.3 Information relied upon in this Report

2.3.1 This Report has been prepared from information obtained from the following sources:

- 2.3.1.1 A letter dated 3 September 2014 from Ms Ariel Borland of Mills enclosing the Affidavit of Mr Geoff Handberg dated 28 July 2014. I enclose at Annexure A6 a copy of the covering letter dated 3 September 2014, and at Annexure A7 a copy of Mr Handberg's affidavit dated 28 July 2014.
- 2.3.1.2 A letter dated 10 September 2014 from Mr Geoff Handberg of Rodgers Reidy as a Joint and Several Liquidator of the Company (together with Mr Brent Morgan referred to herein as the Liquidators) enclosing a CD of the Liquidators' internal company working files. I enclose at Annexure A8 a copy of the covering letter dated 10 September 2014 and a screenshot of the folders and files contained on the CD.
- 2.3.1.3 An email dated 15 September 2014 from Mr Joshua Ho of the Liquidators' office, attaching a listing of the Company's books and records, that was made available for my staff to inspect. I enclose at Annexure A9 a copy of the email dated 15 September 2014 and a copy of the Company's books and records listing.
- 2.3.1.4 An email dated 25 September 2014 from Mr Joel Koo of the Liquidators' office, providing a link to a drop box containing email correspondence with Ms Lynne Philistin. I enclose at Annexure A10 a copy of the email dated 25 September 2014.
- 2.3.1.5 An email dated 25 September 2014 from Mr Koo of the Liquidators' office attaching a listing of copies of file notes and emails, both pre and post appointment, with the Secured Creditors with respect to the employment of Ms Philistin, and the Timeshare Loan Portfolio collection procedure. I enclose at Annexure A11 a copy of the email dated 25 September 2014.
- 2.3.1.6 On 26 September 2014 Mr Sequeira of my office and I met with Ms Borland of Mills, Mr Geoff Handberg, Mr Shane Cremin and Mr Joshua Ho of the Liquidators' office, and Ms Crittenden of Clayton Utz to obtain information with respect to the Charles Fice letter dated 4 July 2014.
- 2.3.1.7 On 2 to 3 October 2014 and 6 to 8 October 2014 (inclusive) Mr Dishoian or both Mr Dishoian and Mr Sequeira attended upon the Liquidators' offices situated at Level 3, 326 William Street, Melbourne Victoria 3000, and conducted an inspection of the Liquidators' internal records for the Company. My staff's attendance at the Liquidators' offices included a review of the Company's computer software system utilised for the recording, maintenance, and reporting of the Timeshare Loan Portfolio, known as Mission.
- 2.3.1.8 A letter dated 6 October 2014 from Ms Borland of Mills providing documents and information as requested in my letter dated 1 October 2014. A copy of the Mills covering letter dated 6 October 2014 is enclosed at Annexure A12, and a copy of my letter dated 1 October 2014 is enclosed at Annexure A13.

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- 2.3.1.9 An email dated 7 October 2014 from Mr Ho of the Liquidators' office attaching copies of the Company's pre appointment audit reports. I enclose at Annexure A14 a copy of the email dated 7 October 2014.
- 2.3.1.10 An email dated 7 October 2014 from Mr Ho of the Liquidators' office attaching copies of the Company's post appointment bank account statements. I enclose at Annexure A15 a copy of the email dated 7 October 2014.
- 2.3.1.11 On 15 October 2014 Mr Sequeira and Mr Dishoian of my office, and I met with Mr Chris Charles of Charles Fice Solicitors, Mr Geoff Rice / the Secured Creditor and Ms Crittenden of Clayton Utz to obtain information with respect to the Charles Fice letter dated 4 July 2014.
- 2.3.1.12 A letter dated 15 October 2014 from Mr Handberg of Rodgers Reidy enclosing documents with respect to Mr Rice and Mr Noel Reynolds / the Secured Creditors having access to the Liquidators' ongoing management and performance of the Timeshare loans. A copy of Mr Handberg's covering letter dated 15 October 2014 is enclosed at Annexure A16.
- 2.3.1.13 A letter dated 27 October 2014 from Mr Andrew Chambers of K&L Gates, representing Mr Neil Campbell as contradictor, providing a CD containing information as requested in my letter dated 23 October 2014. A copy of the K & L Gates covering letter dated 27 October 2014 is enclosed at Annexure A17, and a copy of my letter dated 23 October 2014 is enclosed at Annexure A18. I advise that I was unable to access the information provided by Mr Chambers, however I subsequently received copies of same from Mills.
- 2.3.1.14 A letter dated 29 October 2014 from Mr Charles of Charles Fice Solicitors, providing documents and information as requested in the meeting held on 15 October 2014. Included in the enclosures to the letter is a document titled 'Secured Creditors' Position Paper' dated 29 October 2014. I enclose at Annexure 19 a copy of the covering letter dated 29 October 2014, and at Annexure 20 a copy of the Secured Creditors' Position Paper dated 29 October 2014.
- 2.3.1.15 A letter dated 31 October 2014 from Ms Borland of Mills providing documents and information as requested in my letter dated 23 October 2014. A copy of the Mills covering letter dated 31 October 2014 is enclosed at Annexure A21, and a copy of my letter dated 23 October 2014 is enclosed at Annexure A22.
- 2.3.1.16 A letter dated 10 November 2014 from Ms Crittenden of Clayton Utz to Ms Borland of Mills with respect to queries in relation to the New Auditor Proceeding, New Director Proceeding, and the New Dantay Proceeding. On 19 November 2014, Ms Borland of Mills responded to the Clayton Utz dated 10 November 2014. A copy of the letter dated 10 November 2014 and 19 November 2014 is enclosed at Annexure A23.
- 2.3.1.17 On 11 November 2014 Mr Sequeira and Mr Dishoian of my office and I met with Ms Borland of Mills, Mr Geoff Handberg, and Mr Shane Cremin of the Liquidators' office, and Ms Crittenden of Clayton Utz to obtain further information with respect to the Charles Fice letter dated 4 July 2014.

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- 2.3.1.18 On 11 November 2014 I wrote to Mr Peter Rawlings of Rawling & Company Solicitors requesting copies of any file notes that Mr Rawlings kept with respect to meetings and / or discussions held with the Liquidators. In an email dated 11 November 2014, Mr Rawlings advised that he did not possess any documents and referred me to the Company's former solicitors, MacPherson & Kelly. In this regard, I have confirmed that the Liquidators have previously obtained books and records from MacPherson & Kelly. A copy of my letter dated 11 November 2014 is enclosed at Annexure A24, and a copy of Mr Rawlings' email dated 11 November 2014 is enclosed at Annexure A25.
- 2.3.1.19 An email dated 12 November 2014 from Mr Ho of the Liquidators' office attaching extracts of the Liquidators' time reports and the Liquidators' File Notes with respect to the Timeshare Loan Portfolio. I enclose at Annexure A26 a copy of the email dated 12 November 2014.
- 2.3.1.20 An email dated 13 November 2014 from Mr Ho of the Liquidator's office attached various correspondence with respect to the Timeshare Loan debtors including debtor arrears letters and schedule of responses for debtors in relation to confirming their debt. I enclose at Annexure A27 a copy of the email dated 13 November 2014.
- 2.3.1.21 A letter dated 17 November 2014 from Ms Borland of Mills with respect to queries in relation to the auditor's files relating to the Company's fraud protection policy. I enclose at Annexure 28 a copy of the letter dated 17 November 2014.
- 2.3.1.22 On 18 November 2014, Mr Sequeira and Mr Dishoian of my office, and I met with Mr Charles, Mr Rice and Mr Noel Reynolds / the Secured Creditors and Mr James of Clayton Utz to obtain information with respect to the Charles Fice letter dated 4 July 2014.
- 2.3.1.23 A letter dated 19 November 2014 from Mr Charles of Charles Fice Solicitors to Mr James of Clayton Utz, provided documents and information as discussed at the meeting held on 18 November 2014. A copy of the covering letter dated 19 November 2014 is enclosed at Annexure A29.
- 2.3.2 I advise that my findings and conclusions as detailed in this Report are made with reference to the scope detailed at Section 3 of this Report and based on the documents and information that I have reviewed from the abovementioned sources. For clarification, my staff and I have sought to limit our review of the abovementioned documents to only those documents identified as being pertinent to the scope of this Report, and have not completed a comprehensive review of all documents associated with the Liquidation of the Company.

act/omission/
decision

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3. Scope

3.1 Pursuant to paragraph 3 of the 3 September 2014 Orders, I was:

"Appointed as a liquidator of TVM (Special Purpose Liquidator) to investigate, respond to and otherwise act on behalf of TVM in respect of the matters alleged by certain unit holders in the Management Investment Scheme known as Blue Diamond Deposits Trust No 1 in correspondence from Charles Fice Solicitors to Mills Oakley Lawyers dated 4 July 2014, and any proceedings arising out of or relating to those matters."

3.2 The scope of my appointment as Special Purpose Liquidator is defined by reference to the Charles Fice letter dated 4 July 2014. I have reviewed the Charles Fice letter dated 4 July 2014, and provide a summary of the scope of this Report below, utilising the paragraph numbering contained in the Charles Fice letter:

3.2.1 Paragraph 1 provides background information. There is no requirement for me to make comment or report on same.

3.2.2 Paragraph 2 comments upon proceeding SCI 2014 3254, commenced by Mr Charles' clients against the Liquidators and Ms Philistin. This Report will summarise the allegations made within the Charles Fice Letter dated 4 July 2014 against the Liquidators, and form an opinion on the conduct of the Liquidators with respect to alleged negligence by mismanagement of the Timeshare Loan Portfolio. This allegation is specified in further detail at Section 3.2.10 and 3.2.12.

3.2.3 Paragraph 3 provides background information. There is no requirement for me to make comment or report on same.

3.2.4 Paragraph 4 provides background information. There is no requirement for me to make comment or report on same.

3.2.5 Paragraph 5 provides background information. There is no requirement for me to make comment or report on same.

3.2.6 Paragraph 6 refers to allegations of conflicts of interest against the Liquidators that are specified in further detail at Sections 3.2.18, 3.2.19, 3.2.20, 3.2.28, 3.2.29 and 3.2.30 of this Report.

3.2.7 Paragraph 7 provides background information. There is no requirement for me to make comment or report on same.

3.2.8 Paragraph 8 provides background information. There is no requirement for me to make comment or report on same.

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3.2.9 Paragraph 9 alleges that fees charged by the Liquidators for the care, preservation and realisation of the Timeshare Loan Portfolio was extraordinarily high. This allegation is specified in further detail at Section 3.2.20 of this Report.

3.2.10 Paragraph 10 provides background information with respect to the alleged fraud committed by Ms Philistin. This Report will detail my understanding of the Liquidators' process in engaging Ms Philistin to manage the Timeshare Loan Portfolio, the Liquidators' management of the Timeshare Loan Portfolio and Ms Philistin, and document the alleged fraud committed by Ms Philistin. This Report will provide commentary upon the Liquidators' actions, and the allegations of negligence by mismanagement of the Liquidators with respect to the Timeshare Loan Portfolio.

This Report will summarise the allegations made by Mr Charles, and determine if the Liquidators were prudent and did all things necessary in their management of the Timeshare Loan Portfolio that may have identified the alleged fraud caused by Ms Philistin.

3.2.11 Paragraph 11 provides background information. There is no requirement for me to make comment or report on same.

3.2.12 Paragraph 12 refers to a letter of demand dated 22 May 2014, in which the alleged negligence of the Liquidators was 'fully canvassed'. A copy of the letter dated 22 May 2014 is enclosed at Annexure B1. I provide a summary of the assertions contained in the letter dated 22 May 2014 below:

3.2.12.1 The Liquidators owed the Secured Creditors duties in contract and tort having executed the Deed of Agreement dated 24 August 2013 and the Terms of Settlement dated 10 April 2013. In contract the Liquidators breached the general implied term to be skilful and careful and in tort the Liquidators breached a common law duty of care to the Secured Creditors to investigate and manage the Timeshare Loan Portfolio.

3.2.12.2 The Liquidators failed to act competently in monitoring the monthly payments made by Timeshare Loan Portfolio debtors, and failed to conclude that the said payments made were, on average, far less than ought to have been paid in order to satisfy the interest and principal reduction payment of the loans.

3.2.12.3 The Liquidators breached their duty to investigate and preserve the Company's assets by failing to write to all Timeshare Loan Portfolio debtors to confirm their existence and the balance of the outstanding loans owed.

3.2.12.4 The Liquidators further breached their duty to investigate and preserve the Company's assets by not conducting title searches over any of the properties identified in the lists of Timeshare Loan Portfolio debtors in order to check whether the Company had lodged caveats over the properties.

3.2.12.5 As a consequence of the Liquidators' reporting to the Secured Creditors, that the Liquidators had engaged in misleading or deceptive conduct, by falsely representing the amount and recoverability of the Timeshare Loan Portfolio and the surplus available to unsecured creditors.

3.2.13 The above allegations of negligence by the Liquidators will be addressed by reference to Sections 3.2.2, and 3.2.10 of this Report.

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- 3.2.14 Paragraph 13 provides background information. There is no requirement for me to make comment or report on same.
- 3.2.15 Paragraph 14 refers to an earlier paragraph 2. I refer to my comments at Section 3.2.2 of this Report.
- 3.2.16 Paragraph 15 provides background information. There is no requirement for me to make comment or report on same.
- 3.2.17 Paragraph 16 provides background information. There is no requirement for me to make comment or report on same.
- 3.2.18 Paragraph 17 comments upon proceeding SCI 2017 02835 commenced by the Liquidators' against the Company's former auditors; Price Gibson Pty Ltd (Price Gibson), and raises the prospect of whether the Liquidators would be joined to any such proceeding as 'joint tortfeasors'. This Report will comment upon the possibility of the Liquidators being joined to a proceeding for negligence against the Company's former auditors, Price Gibson, and in this regard attention is drawn to the comments at Sections 3.2.2 and 3.2.10 of this Report.
- 3.2.19 Paragraph 18 alleges that the Liquidators may have a conflict of interest in the event that they were negligent in managing the Timeshare Loan Portfolio. This Report will comment upon whether or not the Liquidators have a real or perceived conflict of interest in the event that Price Gibson seek to join them to the SCI 2017 02835 proceeding, and / or the Liquidators were negligent in managing the Timeshare Loan Portfolio. In this regard attention is drawn to the comments at Sections 3.2.2 and 3.2.10 of this Report.
- 3.2.20 Paragraph 19 makes reference to an earlier paragraph 9, with respect to allegations that the Liquidators' remuneration of \$437,964.75 is 'extraordinarily high' having regard to the allegations made with respect to negligence by mismanagement of the Liquidators of the Timeshare Loan Portfolio. I refer to my earlier comments at Section 3.2.9 of this Report. This Report will review the Liquidators' remuneration claim, and approval process with respect to same, and provide comment upon their entitlement for the remuneration claimed having regard to this Report's findings with respect to the allegations of negligence by mismanagement of the Timeshare Loan Portfolio raised.
- 3.2.21 Paragraph 20 raises an allegation that the Liquidators may have a conflict of interest in retaining funds recovered from the Timeshare Loan Portfolio for their future remuneration claims. This Report will comment upon the basis for the Liquidators retaining funds in the Liquidation, and the process by which the Liquidators receive approval to draw remuneration claims.
- 3.2.22 Paragraph 21 provides background and information. There is no requirement for me to make comment or report on same.
- 3.2.23 Paragraph 22 provides background and information. There is no requirement for me to make comment or report on same.
- 3.2.24 Paragraph 23 provides background and information. There is no requirement for me to make comment or report on same.
- 3.2.25 Paragraph 24 provides background and information. There is no requirement for me to make comment or report on same.

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3.2.26 Paragraph 25 provides background and information. There is no requirement for me to make comment or report on same.

3.2.27 Paragraph 26 provides background and information. There is no requirement for me to make comment or report on same.

3.2.28 Paragraph 27 asserts that the Liquidators are retaining sums pursuant to the Deed of Settlement Agreement (the Settlement Agreement) for their own personal gain, and thus an actual or perceived conflict of interest arises. This Report will comment upon the Settlement Agreement entered into with the Secured Creditors, and the basis for the Liquidators being allowed to 'personally' retain one third of the recoveries from the Timeshare Loan Portfolio.

3.2.29 Paragraph 28 asserts that in circumstances where a conflict of interest arises, the Liquidators should apply to Court or resign. In this regard I refer to my comments at Sections 3.2.18, 3.2.19 and 3.2.28 of this Report.

3.2.30 Paragraph 29 further elaborates on the alleged conflicts of interest of the Liquidators. In this regard I refer to my comments at Sections 3.2.28 and 3.2.29 of this Report.

3.2.31 Paragraph 30 does not require me to make comment or report on same.

3.2.32 Paragraph 31 alleges that the Liquidators have / or soon will contravene Section 532(2)(a) of the Corporations Act 2001 (the Act). This Report will comment upon the operation of Section 532(2)(a) of the Act.

3.2.33 Paragraph 32 does not require me to make comment or report on same.

3.2.34 Paragraph 33 does not require me to make comment or report on same.

3.2.35 Paragraph 34 does not require me to make comment or report on same.

3.2.36 Paragraph 35 does not require me to make comment or report on same.

3.3 The Charles Fice letter dated 4 July 2014 detailed at Section 3.2 of this Report makes reference to a number of assertions that the Liquidators were negligent in undertaking their management of the Timeshare Loan Portfolio. As previously stated at Section 2.2.6 of this Report I have engaged Clayton Utz as my legal advisors with respect to this matter. In this regard I detail below a summary prepared by Clayton Utz of the principles of negligence that apply to liquidators that I have relied upon in addressing the assertions of negligence raised in the Charles Fice letter dated 4 July 2014.

3.3.1 *The office of liquidator has been described as a hybrid composite with elements of fiduciary, trustee, agent, officer of the company, and in some instances, officer of the Court.*

3.3.2 *Liquidators owe a common law duty of care to the company being administered and, in at least one instance, it has been said that they owe a duty of care to the company's shareholders and creditors.*

3.3.3 *A liquidator must exercise reasonable care and skill in the performance of his or her duties. That entails exhibiting care and diligence that is reasonable in all the circumstances, having regard to the liquidator's skills.*

3.3.4 *Further, the standard of care applicable to professionals under the Wrongs Act 1958 (Vic) (WA) applies to liquidators. In that context, the standard of care is determined by reference to what could reasonably be expected of a person possessing the skills of a liquidator.*

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- 3.3.5 *In addition to a common law duty of care, a liquidator owes a statutory duty of care and diligence to the company being administered pursuant to Section 180(1) of the Act. Where a liquidator has breached Section 180(1), the business judgement rule at Sections 180(2) and 180(3) of the Act may operate as a defence.*

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4. Background

- 4.1 The Company was incorporated on 13 February 1992, and since 9 March 2000 the Company has been the responsible entity for the Blue Diamond Deposits Trust No.1 (ARSN 091 948 202) (BDT).
- 4.2 BDT was constituted in September 1992 and was registered as a managed investment scheme in 2000. BDT was a mortgage fund that raised money from investors and wrote loans for both:
 - 4.2.1 Commercial borrowers for commercial ventures (Commercial Loans).
 - 4.2.2 Individual borrowers to fund an interest in time share schemes administered by companies associated with two (2) directors; Messers Rice and Reynolds. The Timeshare Loan Portfolio were loans made by the Company to individuals.
- 4.3 Between 1 October 1999 and 17 December 2009 the directors of the Company were:
 - 4.3.1 Ms Susan Taylor (13/02/1992 – 09/12/2009).
 - 4.3.2 Ms Elizabeth Clegg (01/10/1999 – 03/12/2009).
 - 4.3.3 Mr Gavin Lethlean (08/08/1997 – 03/12/2009).
 - 4.3.4 Mr Joseph Bengasino (13/02/1992 – Current).
 - 4.3.5 Mr Ronald Bray (29/05/2009 – Current).
 - 4.3.6 Mr Noel Reynolds (29/05/2009 – Current).
 - 4.3.7 Mr Geoff Rice (29/05/2009 – Current).

From my discussions with Messrs Charles, Rice and Reynolds, it is my understanding that the reasons for Messrs Rice and Reynolds seeking to be appointed to the Board of the Company was primarily to investigate the value and subsequent realisation of the Company's assets for the benefit of the BDT's unit holders.

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Furthermore, in my discussions with Messrs Rice and Reynolds it was confirmed that the Company's Timeshare Loan Portfolio was not a primary focus of the Company's Board during the tenure of their directorship, and that they had focussed their attention on the Company's commercial loan portfolio. In my discussions with them, they advised that they did not conduct any due diligence of the Timeshare Loan Portfolio they took as security for the monies advanced pursuant to the Charge as they had visibility of the quality of the borrowers through their associated business Holiday Concepts Pty Ltd.

- 4.4 On or about 6 November 1995, and in March 2000, Dantay Pty Ltd (Dantay) and the Company entered into an agreement pursuant to which Dantay was appointed by the Company as its agent to assist in the performance of its duties as responsible entity of BDT.
- 4.5 On or around 14 August 2006, the Secured Creditors (refer to Section 4.6 of this Report for further details) agreed to loan the Company and BDT \$4,000,000 which would be secured by a fixed and floating charge granted by the Company over the Timeshare Loan Portfolio. Further advances were made by the Secured Creditors to the Company and BDT in 2007, however the security for these additional advances remained the fixed and floating charge granted over the Timeshare loans.
- 4.6 The Secured Creditors who held the Charge over the Timeshare Loan Portfolio are detailed below:
 - 4.6.1 Mr Reynolds and Ms Reynolds in their capacity as trustees for the Reynolds Superannuation Trust.
 - 4.6.2 Eighty Second Agenda in its capacity as trustee for the Rice Family Trust.
 - 4.6.3 Refam Investments Pty Ltd in its capacity as trustee for the Refam Investment Unit Trust.
 - 4.6.4 WBUX Pty Ltd in its capacity as trustee for the Lesley Heirs Trust.
 - 4.6.5 GJR Investments Pty Ltd in its capacity as trustee for the GJR Investments Unit Trust.
 - 4.6.6 Resort Securities Pty Ltd in its capacity as trustee for the Jam Daman Trust
(the Secured Creditors)
- 4.7 On 17 December 2009, Mr Brent Morgan and Mr Handberg were appointed as Joint and Several Administrators of the Company (the Administrators) pursuant to a resolution of the Company's directors under section 436A of the Act. Subsequently on 3 February 2010 Messrs Morgan and Handberg were appointed Joint and Several Liquidators of the Company (the Liquidators) pursuant to Section 439A of the Act.
- 4.8 At the time of the Joint and Several Administrators' appointment the following persons were directors of the Company:
 - 4.8.1 Mr Bengasino.
 - 4.8.2 Mr Ron Bray.

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4.8.3 Mr Reynolds.

4.8.4 Mr Rice.

4.9 The Company's pre-appointment auditors were Price Gibson who had completed unqualified:

4.9.1 Full year audit reports for the financial years ended July 2004 to July 2008.

4.9.2 Half yearly audit reports for the financial periods ended July 2003 to July 2007

4.10 Section 14 of this Report discusses the Auditors' unqualified reports in further detail

4.11 On 2 August 2011, Mr Richard Rohrt of Hamilton Murphy was appointed Receiver of the Company's Timeshare Loan Portfolio by the Secured Creditors pursuant to its charge.

4.12 On 10 April 2013, the Settlement Agreement was entered into between the Liquidators and Mr Reynolds and Ms Lesley Reynolds in their capacity as trustees for the Reynolds Superannuation Trust and other parties listed in the 'Schedule of Parties' to the Settlement Agreement.

The Agreement was entered in order to facilitate the payment of the outstanding debt in the sum of \$717,500 owed to the Secured Creditors by the Company.

4.13 Ms Philistin was a bookkeeper responsible for the management and reporting of the Timeshare Loan Portfolio during the External Administration.

4.14 On or about 4 March 2014, Ms Philistin admitted to creating fraudulent loan entries and stealing \$1,053,350 from the Company during the period 27 January 2004 to 29 May 2007.

4.15 The admission by Ms Philistin followed an investigation commenced by the Liquidators in August 2013, following their becoming aware of a discrepancy in monthly receipts for the Timeshare Loan Portfolio repayments and / or the discrepancy being raised by Mr Rice. The Liquidators have reported the matter to the Victorian Police.

4.16 The following chain of letters were sent between Charles Fice Solicitors and Mills:

4.16.1 Letter dated 22 May 2014 from Charles Fice Solicitors to the Liquidators in which Mr Charles asserted that the Liquidators conduct in failing to detect the fraudulent loans, had caused the Secured Creditors loss and damage.

4.16.2 Letter dated 28 May 2014 from Mills to Charles Fice Solicitors in response to his letter dated 22 May 2014.

4.16.3 A further letter dated 25 June 2014 from Mills to Charles Fice Solicitors in response to the letter dated 22 May 2014.

4.16.4 Letter dated 27 June 2014 from Charles Fice Solicitors to Mills noting that two of his clients had commenced proceedings against the Liquidators.

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- 4.16.5 Letter dated 23 July 2014 from Charles Fice Solicitors to Mills noting his clients the that the Liquidators had failed to obtain approval under Section 477B of the Act in respect of entering into certain agreements.
- 4.16.6 Letter dated 4 July 2014 from Charles Fice Solicitors to Mills demanding that the Liquidators resign due to serious conflicts of interest. The letter dated 4 July 2014 is discussed at Section 3 of this Report.
- 4.16.7 Letter dated 28 July 2014 from Charles Fice Solicitors to Mills repeating his client's demand that the Liquidators' resign.
- 4.16.8 Letter dated 11 July 2014 from Mills to Charles Fice Solicitors in response to the letter dated 4 July 2014, advising that the Liquidators were taking advice on the allegations made and would respond as soon as practicable.
- 4.16.9 Letter dated 21 July 2014 From Charles Fice Solicitors to Mills raising a further conflict that in Mr Charles' view rendered the Liquidators no longer independent.
- 4.16.10 Letter dated 22 July 2014 from Mills to Charles Fice Solicitors in response to the letter dated 21 July 2014.
- 4.16.11 Letter dated 23 July 2014 from Charles Fice Solicitors to Mills restating his request that the Liquidators' resign.
- 4.16.12 Letter dated 1 September 2014 from Charles Fice Solicitors to Mills again detailing a list of alleged conflicts of interest on the part of the Liquidators.
- 4.17 Mr Handberg in his affidavit dated 28 July 2014 sought orders from the Court for a Special Purpose Liquidator to be appointed to act on behalf of the Company to investigate, respond to and otherwise act on behalf of the Company with respect of the matters alleged in the Charles Fice letter dated 4 July 2014.
- 4.18 The Honourable Justice Ferguson by an Order of the Supreme Court of Victoria dated 3 September 2014 (and later amended on 15 October 2014) appointed me, Mr Hewitt, as Special Purpose Liquidator of the Company.
- 4.19 On 6 June 2014 the Liquidators filed a Writ with the Supreme Court of Victoria against the Company's Auditors, Price Gibson, and its directors Mr Graeme Desmond Price and Mr Peter John Gibson. I note the Writ is yet to be served. Enclosed at Annexure C1 is a copy of the Writ dated 6 June 2014.
- 4.20 On 27 June 2014 Mr Charles' clients, Eighty Second Agenda Pty Ltd and G.J. R Investments Pty Ltd, filed a Writ and Statement of Claim against the Liquidators in Proceeding SCI 2014 3254. Enclosed at Annexure C2 is a copy of the Writ and Statement of Claim dated 27 June 2014.

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5. Secured Creditor Discussions

- 5.1 This section of the Report will document the information before me as to discussions held and correspondence exchanged between the Liquidators and Messrs Rice and Reynolds, in their capacity as representatives of some of and / or all of the Secured Creditors who held a Charge over the Timeshare Loan Portfolio as detailed at Section 4.6 of this Report.
- 5.2 I refer to Section 3.2.2 of this Report, and note that at paragraph 2 of the Charles Fice letter dated 4 July 2014, it is necessary for me to form an opinion on the conduct of the Liquidators with respect to alleged negligence by mismanagement of the Timeshare Loan Portfolio. In this regard, this section of the Report will document any identifiable arrangements in place between the Liquidators and the Secured Creditors with respect to:
- 5.2.1 The Liquidators' engagement of Ms Philistin.
 - 5.2.2 The Liquidators' management of the Timeshare Loan Portfolio, and Ms Philistin.
 - 5.2.3 The Liquidators' duty to report to and keep informed the Secured Creditors.
- 5.3 I refer to Section 3.2.10 of this Report, and note that at paragraph 10 of the Charles Fice letter dated 4 July 2014, the alleged fraud of Ms Philistin is raised. It is necessary for me to form an opinion on the conduct of the Liquidators with respect to alleged negligence by mismanagement of the Timeshare Loan Portfolio with respect to identifying the fraud. In this regard, this section of the Report will document any identifiable arrangements in place between the Liquidators and the Secured Creditors with respect to:
- 5.3.1 The Liquidators' engagement of Ms Philistin.
 - 5.3.2 The Liquidators' management of the Timeshare Loan Portfolio and Ms Philistin.
 - 5.3.3 The Liquidators' duty to report to and keep informed the Secured Creditors.
- 5.4 I refer to Section 3.2.20 of this Report, and note that at paragraph 19 of the Charles Fice letter dated 4 July 2014, it makes reference to an earlier paragraph 9, with respect to allegations that the Liquidators' remuneration of \$437,964.75 is 'extraordinarily high' having regard to the allegations made with respect to negligence by mismanagement of the Timeshare Loan Portfolio. This section of the Report will document any identifiable arrangements in place between the Liquidators and the Secured Creditors with respect to remuneration.

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Pre Appointment

- 5.5 Discussions held with the Liquidators and a review of their internal books and records identified that various discussions were held before their appointment as Voluntary Administrators (referred herein as the Liquidators) with the Secured Creditors.
- 5.6 In an undated 'Draft Confidential File Note' enclosed at Annexure D1 prepared by the Liquidators, it states that Messrs Rice and Reynolds, represent the secured creditor who is owed approximately \$2.7m, and together with Mr Bray control over 50% of the units in BDT.
- 5.7 The 'Draft Confidential File Note' also states that Messrs Rice and Reynolds became directors earlier that year, and controlled the Board with 'four of the seven directors on side'. Under the heading 'Initial plan of attack' the following comment is made with respect to loan repayments:

"Secure assets including bank account(s) & loan repayments but without upsetting the appletart. Initial thought on the ongoing collection of the timeshare loans is for status quo to remain."

I infer that this reference is made to mean the processes and procedures involved in the maintenance and ongoing collection of the Timeshare Loan portfolio was to remain relatively unchanged.

- 5.8 It is my understanding from the Liquidators that the term 'appletart' referred to the pool of Commercial loans and Timeshare Loan Portfolio debtors held by the Company and the overall process involved with the collection of same.
- 5.9 In a meeting held on 26 November 2009, between the Liquidators, and Messrs Rice and Reynolds, the Liquidators' File Note records 250 loans within the Timeshare Loan Portfolio totalling approximately \$4 million, and the Secured Creditors being owed an amount of \$2.7 million, resulting in a \$1.3 million surplus. I enclose the Liquidators' File Note dated 26 November 2009 at Annexure D2.
- 5.10 On 27 November 2009, the Liquidators, Messrs Rice, Reynolds and Rawlings held a telephone discussion with respect to the Company's options in relation to entering into External Administration. I enclose the Liquidators' File Note dated 27 November 2009 at Annexure D3.
- 5.11 The appointment of Voluntary Administrators was further discussed on 1 December 2009 at the offices of Macpherson & Kelly. From the Liquidators' File Note dated 1 December 2009 I have identified that Messrs Rice and Reynolds were present at the meeting. A review of the Liquidators' File Note identifies the following pertinent comments:

5.11.1 Under a heading titled insurance, the following professional indemnity policies are noted:

5.11.1.1 Directors.

5.11.1.2 Dantay Pty Ltd.

5.11.1.3 Robert Daniels and Associates.

5.11.1.4 Price Gibson.

5.11.2 Under a heading titled 'Loans', the description for the 'Timeshare Loan Portfolio' notes "smaller loans, don't tend to default".

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5.11.3 The File Note records that the Company's accounts were only 'compilation accounts' that simply compiled information provided and that no checks had been made on same. The File Note appears to state that an agreement was reached between those present at the meeting that the accounts would be 'agreed for now'.

5.11.4 The File Note subsequently records that the Auditors (Price Gibson) should have checked the accounts. The inference being that this added weight to the decision that the accounts would be 'agreed for now'. I enclose the Liquidators' File Note dated 1 December 2009 at Annexure D4.

5.12 The Liquidators' File Note dated 7 December 2009, records a telephone discussion held on 7 December 2009 between Mr Rawlings and the Liquidators, whereby Mr Rawlings queried if the Secured Creditors would need to appoint a Receiver. Mr Handberg is recorded as having responded:

5.12.1 *"No – account for them for their assets. Keep it all separate – time codes, bank accounts."*

A copy of the Liquidators' File Note dated 7 December 2009 is enclosed at Annexure D5.

5.13 The Liquidators' File Note dated 8 December 2009 records a meeting held at the offices of Macpherson & Kelly between the Liquidators and Messrs Rice, Reynolds and Rawlings. A review of the Liquidators' File Note identifies the following pertinent comments:

5.13.1 Mr Reynolds is recorded as stating that *"loan collections – not complicated – info on our computer"*.

5.13.2 Mr Handberg is recorded as stating that *"you don't necessarily need a receiver. I account for your funds separately"*.

5.13.3 Mr Reynolds is recorded as stating that *"time share owners are paying into general account"*.

5.13.4 Mr Rice is recorded as stating with respect to the time share owners *"need to keep them happy and deal with enquiries so they keep paying"*.

5.13.5 Mr Handberg is recorded as stating with respect to Messrs Rice and Reynolds' comments that he would *"leave the computer girl there – if not broken don't fix. I will need to monitor. May / May not need to tell them"*.

A copy of the Liquidators' File Note dated 8 December 2009 is enclosed at Annexure D6.

5.14 The Liquidators' File Note dated 8 December 2009 records a number of matters pertinent to the understanding of the substantive discussions held between the Liquidators' and Messrs Rice and Reynolds with respect to the Timeshare Loan Portfolio including:

5.14.1 An inference that the Timeshare Loan Portfolio was not a complicated asset to manage.

5.14.2 That information within the Company's Mission software system to record the Timeshare Loan Portfolio could be relied upon.

5.14.3 That it was important to keep the Timeshare Loan Portfolio debtors 'happy', which reinforces the message contained in the 'Draft Confidential File Note' not to 'upset the applecart' detailed at Section 5.7 of this Report.

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- 5.14.4 That Mr Handberg would account to the Secured Creditors, and that having regard to their discussions he would leave the computer girl (taken to mean Ms Philistin) in her role and that he qualified this statement by noting he would need to monitor that arrangement. It is apparent that Mr Handberg at that stage had not formed his opinion about whether or not to communicate to the Timeshare Loan Portfolio debtors.
- 5.15 Mr Handberg's comments allude to his opinion that pre appointment systems and procedures in place with respect to the collection of Timeshare Loan Portfolio debtors were sound and would not require changing, but rather monitoring by the Liquidators. At Section 8 of this Report the Liquidators' monitoring of the Timeshare Loan Portfolio and Ms Philistin is discussed in further detail.
- 5.16 It would appear from my discussions held with Messrs Rice and Charles, my review of the Liquidators' File Note dated 8 December 2009, and my discussions held with Mr Handberg, that there is a dispute surrounding whether or not the Liquidators and Secured Creditors were in agreement with respect to whether or not the Liquidator was to have written to the Timeshare Loan Portfolio debtors early in the Administration / Liquidation.
- 5.17 In this regard I am of the opinion that a more prudent practitioner may have ordinarily written to debtors early in the appointment to provide them with comfort that the company's records accurately recorded debtors. In the case of the Liquidators, I would ordinarily expect that if they did not write to debtors that other steps would have been undertaken to provide them with this degree of comfort to rely on the Company's records. I have found limited evidence to suggest that the Liquidators did undertake any other steps to verify debtors.
- 5.18 I refer to the letter dated 30 December 2009 from Mr Handberg as then Joint and Several Administrator to Mr Bengasino, a director of the Company, describing his pre appointment involvement (a copy of the letter dated 30 December 2009 is enclosed at Annexure D7). In particular I note the following:
- 5.18.1 Mr Handberg held a telephone discussion with Mr Rice on 24 November 2009
- 5.18.2 Mr Handberg held a meeting with Geoff Price (Rice) and Mr Reynolds on 26 November 2009

5.9

Post Appointment

- 5.19 Discussion held with the Liquidators and a review of their internal books and records indicate that various discussions were held after their appointment between the Liquidators, the Secured Creditors and Mills, with respect to the Timeshare Loan Portfolio.
- 5.20 The Liquidators' File Note dated 18 December 2009, details a meeting held between the Liquidators' and Mr Rice with respect to the process for the Timeshare Loan Portfolio management which recorded that:
- 5.20.1 Mr Handberg and Mr Reynolds were to discuss the best / most economical way to do the administration job (for the Timeshare Loan Portfolio).
- 5.20.2 That Ms Philistin could do the Timeshare Loan Portfolio administration for \$25,000.00 per annum.

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5.20.3 That Ms Clegg could do the Timeshare Loan Portfolio administration for \$100,000.00 per annum, but that amount was too much, and that instead the Liquidators' would initially utilise her services (to amongst other things collect the Timeshare Loan Portfolio debtors) and then 'ditch' her.

5.20.4 That Mr Rice agreed with Mr Handberg's assessment as detailed above.

5.21 This File Note further elaborates on matters addressed in the Liquidators' File Note dated 8 December 2009 detailed at Section 5.13 of this Report, that the 'computer girl' to be kept was Ms Philistin, that is, Ms Philistin's continued employment to administer the Timeshare Loan Portfolio. In addition it suggests that there was a view to minimise the costs of the administration of the Timeshare Loan Portfolio. In the record of the discussion held it is clear that Ms Philistin was viewed as being the most economical person to administer the Timeshare Loan portfolio given that Ms Clegg's annual salary of \$100,000.00 was viewed as being too expensive when compared to Ms Philistin's salary of \$25,000.00 for undertaking the same role. A copy of the Liquidators' File Note dated 18 December 2009 is enclosed at Annexure D8.

5.22 In an email dated 23 December 2009 from Mr Rice to Mr Cremin of the Liquidators office, Mr Rice appears to advocate employing Ms Philistin over Ms Clegg, as Ms Clegg's scope of work would diminish significantly in the New Year, and that she had no experience in Timeshare collections. A copy of the email dated 23 December 2009 from Mr Rice to Mr Cremin is enclosed at Annexure D9. An extract of Mr Rice's statement is detailed below:

5.22.1 *"Can you advise if you intend to keep Liz on a full time basis. We felt that her scope of work would diminish significantly in the new year given we had identified receivables and as she has no experience in collection debts, Noel and I had intended to employ Lynne (the part time employee) who has had a great deal of experience in collections, she is also an accountant, for around \$25k pa to collect the timeshare and follow up arrears."*

5.23 Based on the email dated 23 December 2009, and having regard to the previously abovementioned Liquidators' File Notes it would appear that:

5.23.1 Messrs Rice and Reynolds as Secured Creditors intended to employ Ms Philistin as their collection officer.

5.23.2 Ms Philistin was regarded as a current 'part time' employee, presumably of the Company.

5.23.3 Ms Philistin was regarded as an experienced and qualified person to administer the Timeshare Loan Portfolio.

5.23.4 Ms Philistin's salary of \$25,000.00 per annum was viewed as the most economical going forward given her experience and significantly cheaper rate.

5.24 In an email response dated 23 December 2009 from Mr Cremin of the Liquidators' office to Mr Rice, Mr Cremin confirms that the Liquidators are continuing to employ both Ms Clegg and Ms Philistin, and that they would look at getting Ms Philistin to take over in the New Year. The email also notes that the Liquidators had instructed both Ms Clegg and Ms Philistin to bring the Timeshare Loan Portfolio accounts up to date, in order to manage the collections of same going forward, and that the process was expected to take several weeks. A copy of the email dated 23 December 2009 from Mr Cremin to Mr Rice is enclosed at Annexure D10.

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- 5.25 Based on my review of the Liquidators' File Note dated 12 January 2010 and discussions held between my staff and the Liquidators' office, I am of the opinion that Ms Clegg and Ms Philistin were the only two (2) individuals who had access to and knew how to operate, update, and maintain the Company's Mission software system utilised to record the Timeshare Loan Portfolio. A copy of the Liquidators' File Note dated 12 January 2010 is enclosed at Annexure D11.
- 5.26 Based upon my staff's review of the specialised nature of the Mission software system, I believe Ms Clegg and Ms Philistin's knowledge of the Mission software for the maintenance and monitoring of the collection of the Timeshare Loan Portfolio, assisted the Liquidators to undertake their appointment in an economical and commercial manner. The costs of employing and training a new person or alternatively of training one of the Liquidators' staff, would have added costs to the Administration / Liquidation.
- 5.27 In discussions held between my staff and the Liquidators' office it is apparent that it was only after Ms Philistin's alleged fraud was discovered on or about 3 March 2014, and Ms Philistin was terminated, that the Liquidators' and their staff obtained a more intimate understanding of the operational functionality of the Mission software system. Until that point Ms Clegg and Ms Philistin, and subsequently Ms Philistin solely were responsible for maintaining the Mission software.
- 5.28 The Liquidators' internal Agenda for a meeting held on 2 February 2009 [sic] (I believe that the reference should have been to 2010) between Messrs Handberg and Cremin, Mr Stuart Lewin of Mills, and Messrs Rice, Reynolds, and Rawlings, it is noted:
- 5.28.1 Under a heading titled 'Benefit to unit holders to date v costs' that costs would always be higher initially than the apparent or obvious benefits, and that costs were being incurred for amongst other things, understanding the loan / security portfolio.
- 5.28.2 That both Ms Philistin and Ms Clegg were not required to maintain the Mission software and more specifically that Mr Handberg thought that it was Ms Clegg who should be terminated given her higher salary of \$100,000.00 per annum and rent requirement of \$2,000 per month, as opposed to Ms Philistin's salary of \$25,000.00 per annum and who could work from her home.
- 5.29 Based upon the Liquidators' internal Agenda dated 2 February 2009 (2010), it would appear that the Liquidators consulted with the Secured Creditors in regard to determining who would be employed and made responsible for maintaining the Mission Software post the appointment of the Liquidators. A copy of the Liquidators' internal Agenda dated 2 February 2009 (2010) is enclosed at Annexure D12.
- 5.30 In the Liquidators' File Note dated 2 February 2010 of the meeting between Messrs Handberg and Cremin, Mr Lewin of Mills, and Messrs Rice, Reynolds, and Rawlings, it is recorded that the opinion of the Secured Creditors, in particular Mr Reynolds, was that Ms Philistin was the appropriate person to retain and continue the maintenance of the Timeshare Loan Portfolio. I enclose a copy of the Liquidators' File Note dated 2 February 2010 at Annexure D13.
- 5.31 In particular I note the following record of statements made by the Secured Creditors with respect to the discussion about Ms Philistin:
- 5.31.1 Mr Rice is recorded as stating "Lyn can do all data entry, arrears experience, calls coming in. I believe Lyn will be helpful down the track in terms of information...Lyn is more qualified to do it. She can do it from Mornington (her home) and come in as needed".

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5.31.2 Mr Reynolds is recorded as stating that *'Lyn is the best person to deposit, collect debts and collate information...Lyn also knows the secured creditor position – interest and principal'*.

- 5.32 A Liquidators' File Note dated 3 February 2010, records a discussion held on 3 February 2010 between Mr Cremin of the Liquidators' office and Mr Rice with respect to the processes and procedures of monitoring the collection of the Timeshare Loan Portfolio.
- 5.33 Mr Rice appears to have made it clear that he did not think that the Timeshare Loan Portfolio should be sent to a debt collection agency, and that it should only be as a last resort.
- 5.34 Mr Cremin confirmed that the Liquidators would get Mr Philistin to send two (2) letters to debtors who were late in their payments, and only after that would the Timeshare Loan Portfolio debtors in arrears be sent to a debt collection agency. From the record of the Liquidators' File Note dated 3 February 2010, it appears that this arrangement was agreed to by both the Liquidators and Mr Rice. I enclose a copy of the Liquidators' File Note dated 3 February 2010 at Annexure D14.
- 5.35 A Liquidators' File Note dated 29 June 2010, records a meeting held on 29 June 2010 between Messrs Handberg, Rice, and Reynolds. A copy of the Liquidators' File Note dated 29 June 2010 is enclosed at Annexure D15.
- 5.36 Mr Handberg is recorded as stating that the Timeshare Loan Portfolio debtors were performing and Mr Reynolds is recorded as stating that Lyn was doing a good job.
- 5.37 This meeting was held approximately 6 months after the appointment of the Voluntary Administrators, and infers that both the Liquidators and Secured Creditors had no issues with Ms Philistin's role or performance.
- 5.38 I held a meeting on 15 October 2014 with Mr Charles, the legal representative of Messrs Rice and Reynolds, and Mr Rice. At the Meeting it was conveyed by both Mr Charles and Mr Rice to me that the Secured Creditors denied the involvement of the Secured Creditors in employing Ms Philistin and stated that it was purely the decision of the Liquidators to employ Ms Philistin.

A further meeting was held on 18 November 2014 with Mr Charles, and Messrs Rice and Reynolds. At the meeting reference was made to a File Note prepared by Ms Clegg with respect to Ms Philistin and the management of the Timeshare Loan Portfolio by the Administrators. In this regard I refer to Section 5.41 for further comment with respect to same. A copy of Ms Clegg's File Note prepared in or about 2011 is enclosed at Annexure D16.

- 5.39 At the meetings, I requested confirmation whether the Secured Creditors took any contemporaneous notes of their meetings and / or discussions held with the Liquidators. Messrs Rice and Reynolds confirmed that the Secured Creditors did not, and were therefore unable to provide me with any notes from their meetings to confirm their position with respect to discussions held with the Liquidators pre-appointment and post appointment with respect to arrangements pertaining to their security position, the employment of Ms Philistin and the management of the Timeshare Loan Portfolio.

- 5.40 In this regard I note that I have provided both the Liquidators and the Secured Creditors with an opportunity to provide me with both a verbal and documentary overview of their respective positions with respect to the Charles Fice letter dated 4 July 2014. In addressing the issues of the Charles Fice letter dated 4 July 2014, I have relied upon both the documentary information provided as well as individuals' recollection of events, however I have preferred the version of events recorded in contemporaneous documents, or documents over an individual's recollection of events.
- 5.41 My basis for this preference has arisen as a result of contradictory evidence between individuals' recollections of events compared with events as recorded in contemporaneous file notes and other documents such as email correspondence. For example in the Affidavit of Mr Rice dated 8 October 2014 (copy enclosed at Annexure D17) at paragraphs 38 and 39 Mr Rice denies that he stated that Mr Handberg needed to retain one employee to assist him and his staff in the collection of the Timeshare Loan Portfolio and that in Mr Rice's view that employee should be Ms Philistin. At Section 5.22 of this Report I referred to an email from Mr Rice to Mr Cremin of the Liquidators' office dated 23 December 2009 which contradicts Mr Rice's recollections as detailed at paragraphs 38 and 39 of his Affidavit dated 8 October 2014.
- 5.42 My investigations have identified that numerous pre and post appointment discussion were held between various parties including the Liquidators and the Secured Creditors on the administration of the Timeshare Loan Portfolio. Based on the documents reviewed it appears that the Liquidators consulted with the Secured Creditors, and that they appeared to support the Liquidators' decision to employ Ms Philistin. In this regard the Secured Creditors made indications to the Liquidators that given her experience and cheaper cost, Ms Philistin should be retained to maintain the Mission Software and collection of the Timeshare Loan Portfolio. As stated at Section 5.37 of this Report, the Secured Creditors were unable to provide sufficient documentary evidence to support their claim that they had no input, nor did they support the Liquidators' decision to employ Mrs Philistin.

I refer to Sections 3.2.2, 3.2.10, and 3.2.20 of this Report, and I make the following summary of my findings:

- 5.43 With respect to the allegations of negligence by mismanagement of the Liquidators in relation to the management of the Timeshare Loan Portfolio I note the following:
- 5.43.1 A number of meetings and discussions were held between the Liquidators and Messrs Rice and Reynolds / the Secured Creditors with respect to the Timeshare Loan Portfolio and the Liquidators' actions. In this regard, I am of the opinion that the Liquidators properly engaged with the Secured Creditors and kept them apprised with respect to their security and the Liquidators' actions affecting same. This included reviewing arrangements put in place some six (6) months after the Liquidators' appointment.
- 5.43.2 Based on the Liquidators' File Notes recording the discussions held with Messrs Rice and Reynolds / the Secured Creditors, I infer that there was consensus amongst all parties that where possible, the Liquidators were to endeavour to maintain the processes and procedures involved in the maintenance and ongoing collection of the Timeshare Loan Portfolio.
- 5.43.3 Furthermore, based upon the Liquidators' File Notes and documentation I have reviewed, it is apparent that there were considerations relevant to managing the Timeshare Loan Portfolio in an economical and commercial manner.

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- 5.43.4 I am of the opinion that in consultation and with Messrs Rice and Reynolds / the Secured Creditors, it was decided to engage Ms Philistin in order to be economical, and to maintain the status quo from the perception of Timeshare Loan Portfolio debtors.
- 5.44 With respect to the allegations of negligence by mismanagement of the Liquidators in relation to the management of Ms Philistin I note the following:
- 5.44.1 A number of meetings and discussions were held between the Liquidators and Messrs Rice and Reynolds / the Secured Creditors with respect to Ms Philistin's engagement, and the Liquidators' management of Ms Philistin. In this regard, I am of the opinion that the Liquidators properly engaged with the Secured Creditors and kept them apprised with respect to Ms Philistin's engagement.
- 5.44.2 I have inferred from the Liquidators' File Notes recording discussions held between the Liquidators and Messrs Rice and Reynolds / the Secured Creditors that where possible, the Liquidators were to endeavour to maintain the status quo from the perception of Timeshare Loan Portfolio debtors. This included the engagement of Ms Philistin, and attending to correspondence to Timeshare Loan Portfolio debtors in-house.
- 5.44.3 Furthermore, based upon the review of the Liquidators' File Notes and documentation that I have reviewed, it is apparent that there were considerations relevant to managing the Timeshare Loan Portfolio in an economical and commercial manner. I am of the opinion that the discussions held with Messrs Rice and Reynolds / the Secured Creditors did address these concerns and that they were duly kept apprised of the Liquidators' actions including the decision to engage Ms Philistin.
- 5.44.4 I am of the opinion that Ms Clegg and Ms Philistin were the only two (2) individuals who had access to and knew how to operate, update, and maintain the Company's Mission software system utilised to record the Timeshare Loan Portfolio.
- 5.44.5 I am of the opinion that Ms Philistin was regarded as a part time employee of the Company, who was viewed as being experienced in her role to manage the Timeshare Loan Portfolio and report to the Liquidators at the most economical cost option available; being \$25,000.00 per annum.
- 5.44.6 Having regard to the specialised nature of the Mission software system, I am of the opinion that that Liquidators' originally required Ms Clegg and Ms Philistin's knowledge of the Mission software for the maintenance and monitoring of the collection of the Timeshare Loan portfolio, and subsequently solely Ms Philistin in order to undertake their appointment in an economical and commercial manner.
- 5.45 With respect to the allegations of negligence by mismanagement of the Liquidators in relation to failing to identify the alleged fraud committed against the Timeshare Loan portfolio, I note the following:
- 5.45.1 A number of meetings and discussions were held between the Liquidators and Messrs Rice and Reynolds / the Secured Creditors with respect to the background of the Timeshare Loan portfolio.
- 5.45.2 I note that the Timeshare Loan Portfolio was generally viewed as totalling approximately \$4 million, and the Secured Creditors being owed an amount of \$2.7 million, resulting in a \$1.3 million surplus to the Company.

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- 5.45.3 I note that it was conveyed that the Auditors (Price Gibson) should have checked the accounts, and that the Liquidators and Messrs Rice and Reynolds / the Secured Creditors were of the opinion that the accounts would 'be agreed'. I have inferred this to mean that the accounts / Mission software could be relied upon
- 5.45.4 In addition, I note that it was conveyed to the Liquidators that the Timeshare Loan Portfolio was not a complicated aspect of the Company's business, and that the relevant information was on the Company's Mission software system.
- 5.45.5 Approximately six (6) months after the appointment of the Liquidators, the performance of the Timeshare Loan Portfolio was discussed with Messrs Rice and Reynolds / the Secured Creditors at which it was viewed as performing well and that Ms Philistin was doing a good job.
- 5.45.6 In this regard, I am of the opinion that the Liquidators properly made enquiries with Messrs Rice and Reynolds / the Secured Creditors and were provided with a degree of comfort as to the quality of the Timeshare Loan Portfolio and ability to rely upon the Company's information.
- 5.45.7 I am of the opinion that a more prudent practitioner may have ordinarily undertaken steps to provide themselves with a degree of comfort to rely upon the Company's records with respect to the Timeshare Loan Portfolio. I refer to Section 10 of this Report for further details.
- 5.46 With respect to the arrangements in place between the Liquidators and Secured Creditors with respect to remuneration, I note the following:
- 5.46.1 A number of meetings and discussions were held between the Liquidators and Messrs Rice and Reynolds / the Secured Creditors with respect to the appointment of the Administrators / Liquidators and the security position of Messrs Rice and Reynolds / the Secured Creditors.
- 5.46.2 I am of the opinion that Messrs Rice and Reynolds / the Secured Creditors elected not to appoint a Receiver and Manager pursuant to their security, as they had sought and obtained sufficient responses from Mr Handberg as to the Liquidators agreeing to account to the Secured Creditors for their security, being the Timeshare Loan Portfolio.
- 5.44.3 In this regard, I was not able to identify any written record of specific discussions with respect to the Liquidators' remuneration for undertaking the role described above, however I note that generally it was explained that the Liquidators would account to the Secured Creditors for their assets and separately (or identifiably) record their time (remuneration) in relation to the collection and maintenance of such assets. It would appear the Liquidators proposed only to deduct direct expenses incurred in the preservation and collection of the Timeshare Loan Portfolio, and that that their remuneration for same would be paid once the Secured Creditors were paid.
- 5.44.4 I discuss the Liquidators' remuneration in further detail at Section 12 of this Report.

6 The Mission Software

- 6.1 This section of the Report will document the Company's Mission software system utilised to record the Timeshare Loan Portfolio.
- 6.2 I refer to Section 3.2.2 of this Report, and note that at paragraph 2 of the Charles Fice letter dated 4 July 2014, it is necessary for me to form an opinion on the conduct of the Liquidators with respect to alleged negligence by mismanagement of the Timeshare Loan Portfolio. In this regard, this section of the Report will document the operational arrangements of the Liquidators with respect to the Company's Mission software system utilised to record the Timeshare Loan Portfolio.
- 6.3 I refer to Section 3.2.10 of this Report, and note that at paragraph 10 of the Charles Fice letter dated 4 July 2014, the alleged fraud of Ms Philistin is raised. It is necessary for me to form an opinion on the conduct of the Liquidators with respect to alleged negligence by mismanagement of the Timeshare Loan portfolio with respect to identifying the fraud. In this regard, this section of the Report will document the operational arrangements of the Liquidators with respect to the Company's Mission software system utilised to record the Timeshare Loan Portfolio.
- 6.4 My discussions held with both the Liquidators, and Mr Charles and Mr Rice / the Secured Creditors, have disclosed that the 'Mission' software system utilised by the Company was a special purpose built software system tailored for the Company to enable it to record and maintain the Timeshare Loan Portfolio and its Timeshare Loan Portfolio debtors.
- 6.5 I understand that the software was built and administered offsite by Advanced Computing, who are situated in Kyabram, Victoria.
- 6.6 Under my instructions, my staff have undertaken a limited review of the Mission software system and have confirmed to me the specialised nature of the system in terms of its operational and reporting functionality.
- 6.7 From my experience, it is not uncommon to encounter companies with purpose built software systems to record and monitor their financial accounts and / or assets, and / or specific asset classes.
- 6.8 Based upon my review of the documents available, it would appear that Ms Clegg and Ms Philistin were the only two (2) individuals who had access to and knew how to operate, update, and maintain the Company's Mission software system utilised to record the Timeshare Loan Portfolio. The basis for my opinion is detailed at Section 5 of this Report.

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- 6.9 Having regard to the specialised nature of the Mission software system, I have formed the opinion that that Liquidators' reasonably required Ms Clegg and Ms Philistin's knowledge of the Mission software system for the maintenance and monitoring of the collection of the Timeshare Loan Portfolio, and in order to undertake their appointment in an economical and commercial manner. The basis for my opinion is detailed at Section 5 of this Report.
- 6.10 In addition, the Liquidators relied heavily on both Ms Clegg and Ms Philistin, and subsequently solely Ms Philistin to generate various reports from the Mission software system to enable the liquidators to monitor the Timeshare Loan portfolio.
- 6.11 I refer to Section 5 of this Report and note that the Liquidators' reliance placed upon both Ms Clegg and Ms Philistin, and subsequently solely Ms Philistin, arose from a degree of concern to undertake their appointment in an economical and commercial manner.
- 6.12 In discussions held between my staff and the Liquidators' office it is apparent that it was only after Ms Philistin's alleged fraud was discovered and Ms Philistin was terminated, that the Liquidators and their staff obtained a more intimate understanding of the operational functionality of the Mission software system.
- 6.13 Until that point in time, Ms Clegg (previously) and Ms Philistin were solely responsible for maintaining the Mission software, and raising reports utilised by the Liquidators to manage the Timeshare Loan Portfolio and its debtors.
- 6.14 I refer to Sections 3.2.2, and 3.2.10 of this Report, and I make the following summary of my findings:
- 6.14.1 The Company's Mission software system was a specialised system in terms of its operational and reporting functionality. However, based upon my experience, it is not uncommon to encounter companies with purpose built software systems to record and monitor their financial accounts and / or assets, and / or specific asset classes.
- 6.14.2 Ms Clegg and Ms Philistin were the only two (2) individuals who had access to and knew how to operate, update, and maintain the Company's Mission software system utilised to record the Timeshare Loan Portfolio, and generate reports utilised by the Liquidators to manage the Timeshare Loan Portfolio.
- 6.14.3 The Liquidators and their staff had a very limited role in relation to the Mission software system until after the alleged fraud of Ms Philistin was discovered, and placed reliance upon Ms Philistin's expertise knowledge in the Mission software system.
- 6.14.4 I note that to a degree, the Liquidators' actions may have arisen out of a desire to operate and manage the Timeshare Loan Portfolio in an economical and commercial manner. In my experience, the liquidator in those circumstances generally would seek to implement a reporting framework to get comfort that the tasks are being completed properly.
- 6.14.5 From my experience it is not uncommon to utilise existing staff's expertise and skillset within a company, when undertaking an external administration appointment to maximise efficiencies and operate in an efficient and cost effective manner.
- 6.14.6 Having regard to the commentary at Section 5 and Section 6 of this Report, I am of the opinion that the Liquidators' actions in operating, maintaining and managing the Mission software system were not negligent by mismanagement.

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6.14.7 However, I am of the opinion that a more prudent practitioner, may have at some stage (even a later stage during their appointment) sought to have their staff trained in the Mission software system as a means of mitigating the risk of losing that key person, or to assist in better monitoring the Timeshare Loan Portfolio. In those circumstances, the Liquidators and their staff would have the ability to better verify and confirm the reports and information being generated by Ms Philistin from the Mission software system.

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7 Reporting to Secured Creditors

- 7.1 This section of the Report will document the steps taken by the Administrators and the Liquidators to report to the Secured Creditors with respect to the Timeshare Loan Portfolio.
- 7.2 I refer to Section 3.2.2 of this Report, and note that at paragraph 2 of the Charles Fice letter dated 4 July 2014, it is necessary for me to form an opinion on the conduct of the Liquidators with respect to alleged negligence by mismanagement of the Timeshare Loan Portfolio. In this regard, this section of the Report will document the Liquidators' duty to report to and keep informed the Secured Creditors in relation to their management of the Timeshare Loan Portfolio.
- 7.3 I refer to Section 3.2.10 of this Report, and note that at paragraph 10 of the Charles Fice letter dated 4 July 2014, the alleged fraud of Ms Philistin is raised. It is necessary for me to form an opinion on the conduct of the Liquidators with respect to alleged negligence by mismanagement of the Timeshare Loan Portfolio with respect to identifying the fraud. In this regard, this section of the Report will document the Liquidators' duty to report to and keep informed the Secured Creditors in relation to their management of the Timeshare Loan portfolio and of Ms Philistin. } ?
- 7.4 Since the appointment of the Administrators on 17 December 2009, the Administrators and subsequently Liquidators have been reporting to the Secured creditors on a monthly basis.
- 7.5 The first report submitted by the Administrators to the Secured Creditors was dated 15 January 2010.
- 7.6 The report dated 15 January 2010 details the amount remitted by the Administrators to the Secured Creditors, that is to; N & L Reynolds Super and Refam Investments Pty Ltd (the Reynolds entities), and GJR investments Pty Ltd and 82nd Agenda Pty Ltd (the Rice entities).
- 7.7 The Administrator also provided a payment schedule, detailing a summary of the outstanding balance of the secured loan for both the Reynolds entities and the Rice entities.
- 7.8 In addition, I note that in the report dated 15 January 2010, the Administrators make mention that in the month of December 2009, that they had made an assessment of what the minimum principal and interest payments of the Timeshare Loan Portfolio debtors should have been compared to what was actually received.
- 7.9 I enclose a copy of each of the reports provided to Messrs Reynolds and Rice dated 15 January 2010 at Annexure F1.
- 7.10 In addition to the contents of the 15 January 2010 report, the Liquidators commencing from 2 March 2010 furnished Messrs Rice and Reynolds with an analysis of the Timeshare Loan Portfolio.

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- 7.11 The analysis of the Timeshare Loan Portfolio provided a summary of the surplus owed to the Secured Creditors, and an arrears schedule detailing all Timeshare Loan Portfolio debtors that were in arrears.
- 7.12 In addition, the report dated 2 March 2010, notes that the Liquidators had identified some errors (immaterial) with respect to the Secured Creditors recorded principal loan amount and interest paid.
- 7.13 Furthermore, the report dated 2 March 2010, comments upon the Timeshare Loan Portfolio debtors in arrears, offers an opinion on the reasons for same, and documents what steps the Liquidators had instructed Ms Philistin to undertake with respect to Timeshare Loan Portfolio debtors in arrears.
- 7.14 I enclose a copy of each of the reports provided to Messrs Rice and Reynolds dated 2 March 2010 at Annexure F2.
- 7.15 Discussed in further detail at Section 8 and 9 of this Report are the arrears reports which were also provided to the Liquidators on a weekly basis and utilised to monitor those Timeshare Loan Portfolio debtors who were in arrears and required arrears letters being sent to them or other actions with respect to their late payment.
- 7.16 On 2 August 2011, Mr Richard Rohrt of Hamilton Murphy was appointed Receiver of the Company, by the Secured Creditors. Accordingly, the Liquidators commenced reporting on a monthly basis directly to the Receiver.
- 7.17 In addition to the documents previously provided to the Secured Creditors, the Liquidators also commenced furnishing the Receivers with a detailed list of the outstanding Timeshare Loan Portfolio debtors.
- 7.18 The detailed list of outstanding Timeshare Loan Portfolio debtors, listed every debtor's outstanding Timeshare loan balance.
- 7.19 The detailed list of outstanding Timeshare Loan Portfolio debtors, included debtors and amounts that were subject to the alleged fraud committed by Ms Philistin.
- 7.20 I enclose at Annexure F3 a copy of the report provided to the Receiver dated 2 September 2011.
- 7.21 By letter dated 17 October 2011, the Liquidators also furnished the Receivers with a copy of each of the Liquidators' monthly reports to the Secured Creditors for the period 17 December 2009 to 28 April 2011. I enclose a copy of the Liquidators' letter dated 17 October 2011 at Annexure F4.
- 7.22 In a letter from Mr Chris Charles of Charles Fice Solicitors dated 30 October 2012, the Liquidators were informed that the Receiver would be terminated effective 6 November 2012. I enclose a copy of the Charles Fice Solicitors letter dated 30 October 2012 at Annexure F5.
- 7.23 In addition, the Liquidators commencing from 28 November 2012, began reporting to Mr Charles of Charles Fice Solicitors.
- 7.24 I advise that the reports provided to Mr Fice were of similar content to the reports previously being provided to the Receiver. I enclose at Annexure F6 a copy of the Liquidators' report dated 28 November 2012 provided to Charles Fice Solicitors. At Section 19.9 of this Report onwards, I provide details of correspondence between the Secured Creditors and the Liquidators from August 2013 onwards.

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I refer to Sections 3.2.2, and 3.2.10 of this Report, and I make the following summary of my findings:

7.25 With respect to the allegations of negligence by mismanagement of the Liquidators in relation to the management of the Timeshare Loan Portfolio, and their management of Ms Philistin I note the following:

7.25.1 From the reports reviewed, it appears that the Liquidators on a monthly basis reported to the Secured Creditors and provided information in relation to the Timeshare Loan Portfolio, that would satisfy the reporting requirements ordinarily expected between a practitioner and the secured creditor. There is no evidence until August 2013 that there were any concerns raised by the Secured creditor in relation to the recoveries or reporting that was being provided to them by the Liquidators.

7.25.2 I have identified examples of the Liquidators undertaking an analysis of the performance of the Timeshare Loan Portfolio.

7.25.3 I have identified examples of the Liquidators keeping the Secured Creditors informed of their instructions to Ms Philistin.

7.25.4 I note that the Liquidators provided the reports utilised by them to monitor the performance of the Timeshare Loan Portfolio to the Secured Creditors. The Liquidators' monitoring of the Timeshare Loan Portfolio is discussed in further detail at Section 8 of this Report.

7.25.5 Having reported sufficiently to the Secured Creditors during the External Administration, I am of the opinion that the Secured Creditors were sufficiently informed of the performance of the Timeshare Loan Portfolio and of the Liquidators engagement of Ms Philistin. Accordingly, the Secured Creditors were in a position to review the performance of the Timeshare Loan Portfolio and raise any matters they deemed contrary to what was being communicated by the Liquidators or concerns with respect to the performance or management of the Timeshare Loan Portfolio.

7.25.6 Furthermore, I note that the Receiver appointed by the Secured Creditors, did not raise any identified concerns with respect to the Liquidators' reporting to the Secured Creditors and / or Receiver with respect to the performance or management of the Timeshare Loan Portfolio or the Liquidators' management of same.

7.26 With respect to the allegations of negligence by mismanagement of the Liquidators in relation to failing to identify the alleged fraud committed against the Timeshare Loan portfolio, I note the following

7.26.1 The Liquidators on a monthly basis satisfactorily reported to Secured Creditors and provided information in relation to the Timeshare Loan Portfolio, that would satisfy the reporting requirements ordinarily expected between a practitioner and the secured creditor.

7.26.2 I have identified examples of the Liquidators undertaking an analysis of the performance of the Timeshare Loan Portfolio.

7.26.3 I have identified examples of the Liquidators keeping the Secured Creditors informed of their instructions to Ms Philistin.

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- 7.26.4 As will be described in more detail at Section 8 of this Report, the arrears report provided to the Secured Creditors was one of the key documents that was allegedly being manipulated by Ms Philistin to hide her fraudulent activity.
- 7.26.5 The detailed debtor listing is a key document which may have identified discrepancies within the Timeshare Loan Portfolio, that is, Ms Philistin's fraudulent activity, had that report been compared against previous monthly reports.
- 7.26.6 I note that the Liquidators provided the reports utilised by them to monitor the performance of the Timeshare Loan Portfolio to the Secured Creditors. The Liquidators' monitoring of the Timeshare Loan Portfolio is discussed in further detail at Section 8 of this Report.
- 7.26.7 Having reported sufficiently to the Secured Creditors during the External Administration, I am of the opinion that the Secured Creditors were sufficiently provided with information with respect to the Timeshare Loan Portfolio that would have enabled them to undertake an analysis of the detailed debtor listing with previous monthly reports.
- 7.26.8 Accordingly, the Secured Creditors were in a position to review the performance of the Timeshare Loan Portfolio and raise any matters they deemed contrary to what was being communicated by the Liquidators or concerns with respect to the performance or management of the Timeshare Loan Portfolio.
- 7.26.9 Furthermore, I note that the Receiver appointed by the Secured Creditors, did not raise any identified concerns with respect to the performance or management of the Timeshare Loan Portfolio that may have led to the identification of the alleged fraud committed by Ms Philistin.

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8 Monitoring of the Timeshare Loan Portfolio

- 8.1 This section of the Report will document the Liquidators' activities with respect to monitoring the Company's Timeshare Loan Portfolio and its debtors.
- 8.2 I refer to Section 3.2.2 of this Report, and note that at paragraph 2 of the Charles Fice letter dated 4 July 2014, it is necessary for me to form an opinion on the conduct of the Liquidators with respect to alleged negligence by mismanagement of the Timeshare Loan Portfolio. In this regard, this section of the Report will document the Liquidators' activities with respect to monitoring the Company's Timeshare Loan Portfolio and its debtors.
- 8.3 I refer to Section 3.2.10 of this Report, and note that at paragraph 10 of the Charles Fice letter dated 4 July 2014, the alleged fraud of Ms Philistin is raised. It is necessary for me to form an opinion on the conduct of the Liquidators with respect to alleged negligence by mismanagement of the Timeshare Loan Portfolio with respect to identifying the fraud. In this regard, this section of the Report will document the Liquidators' activities with respect to monitoring the Company's Timeshare Loan Portfolio and its debtors.
- 8.4 As detailed at Sections 5 and 6 of this Report, the Company's 'Mission' software system was a purpose built software system tailored for the Company to enable it to record and maintain the Timeshare Loan Portfolio and its debtors.
- 8.5 As previously stated at Sections 5 and 6 of this Report, I have formed the opinion that Ms Clegg and Ms Philistin were the only two (2) individuals, and subsequently solely Ms Philistin, who had access to and knew how to operate, update, and maintain the Company's Mission software system utilised to record the Timeshare Loan Portfolio and its debtors, and generate reports for the purposes of managing same.
- 8.6 In this regard, the following sections of this Report will document the reporting tasks the Liquidators directed Ms Philistin to undertake, in order to assist the Liquidators in their management of the Timeshare Loan Portfolio and its debtors.

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Daily Basis

- 8.7 On a daily basis, the Liquidators' would direct Ms Philistin to undertake the following activities:

- 8.7.1 Ms Philistin was to access the Company's pre-appointment bank account, detailed below, to determine if any payments had been received from the Timeshare Loan Portfolio debtors.

Bank: National Australia Bank Limited
 BSB: 083-781
 Account: 4841 72174

Ms Philistin was provided with viewing access only.

- 8.7.2 In this regard, I note that separating (limiting) levels of authority with respect to an employees' ability to both access and undertake transactions to a bank account is a normal control (risk mitigation) process, and would have provided the Liquidators with a degree of comfort against the risk of potential employee fraud.
- 8.7.3 Ms Philistin was to record any Timeshare Loan Portfolio debtor payments received overnight within the Company's Mission software.
- 8.7.4 Ms Philistin was to create a manual listing, detailing the amounts received from each Timeshare Loan Portfolio debtor, and this manual listing was to then be provided to the Liquidators.
- 8.7.5 The Liquidators' staff would utilise the bank statements and the manual listing of Timeshare Loan Portfolio debtor payments to complete a reconciliation of the Timeshare Loan Portfolio debtor payments received into the pre-appointment bank account. In addition, the Liquidators would also record the Timeshare Loan Portfolio debtor payments into the Liquidators' internal MYOB file for the Company.
- 8.7.6 In this regard, I note that the Liquidators' actions to undertake a reconciliation of the manual listing of Timeshare Loan Portfolio debtor payments with the bank statement, is a normal control (risk mitigation) process, and would have provided the Liquidators with a degree of comfort against the risk of potential employee fraud by verifying the receipt of debtor funds. I enclose at Annexure G1 copies of an example of the manual listing of Timeshare Loan Portfolio debtor payments and bank statement provided to the Liquidators on a daily basis.
- 8.7.7 The Liquidators, to further mitigate the risk of potential fraud, may have requested a report from the Mission software which confirmed the correct allocation of payments received against the corresponding debtor.

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Weekly Basis

8.8 On a weekly basis, the Liquidators would direct Ms Philistin to undertake the following:

8.8.1 Ms Philistin was to generate an arrears report from the Company's Mission software which detailed those Timeshare Loan Portfolio debtors that were classified as being in arrears. The arrears report would specify the amount in arrears, the number of months in arrears, and include an 'actions' column which detailed what was being undertaken with respect to endeavouring to recover arrears funds from Timeshare Loan Portfolio debtors, including but not limited to sending arrears letters and taking legal action to recover arrears funds.

8.8.2 Based upon the weekly arrears report, Ms Philistin was to draft arrears letters to the Timeshare Loan Portfolio debtors in arrears, and was to then provide the draft letters together with the arrears report to the Liquidators for their review and approval, prior to Ms Philistin sending arrears letters to the Timeshare Loan Portfolio debtors.

8.8.3 In this regard, I note that the Liquidators' actions to undertake a regular weekly system of monitoring those Timeshare Loan Portfolio debtors in arrears, and a reporting system of endeavours to recover Timeshare Loan Portfolio debtors in arrears is what would ordinarily be expected by a more prudent practitioner.

8.8.4 In addition, I note that the Liquidators' actions to undertake a process of reviewing and verifying draft arrears letters to be issued to Timeshare Loan Portfolio debtors is also what would ordinarily be expected by a more prudent practitioner.

8.8.5 In my discussions held with the Liquidators, it was identified that the arrears reports were generated in the Company's Mission software, and exported into excel, thereby providing Ms Philistin with the opportunity to manipulate the arrears report to exclude the arrears of what has been classified as Category A, B and C fraudulent Timeshare Loan Portfolio debtors.

8.8.6 The alleged manipulation of the arrears report in excel allowed Ms Philistin to hide the fraudulent Timeshare Loan Portfolio debtors from the Liquidators and prevented them from identifying missing arrears letters, and potentially discovering the alleged fraudulent activity conducted by Ms Philistin.

8.8.7 In addition, it is alleged Ms Philistin manipulated Timeshare Loan Portfolio debtors within the Company's Mission software system by setting up loans on the basis that there was to be a nil minimum monthly repayment. The effect of this manipulation within Mission, was that fraudulent debtors who had not made a minimum payment, would not appear on the arrears report as their minimum monthly repayments had been set up as nil.

8.8.8 Category A, B, and C fraudulent Timeshare Loan portfolio debtors are further explained at Section 10 of this Report.

8.8.9 I enclose at Annexure G2 an example of a weekly arrears report generated in excel dated 7 December 2010, for the week ending 3 December 2010.

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Monthly Basis

- 8.9 On a monthly basis, the Liquidators would direct Ms Philistin to undertake the following:
- 8.9.1 Ms Philistin was to generate a Loan Portfolio Analysis Summary which was a detailed summary of the total number and dollar amount of the outstanding Timeshare Loan Portfolio debtors.
 - 8.9.2 Ms Philistin was to generate an arrears report for the month. With respect to the arrears report, I refer to my previous comments detailed at Sections 8.8.1 to 8.8.7 of this Report.
 - 8.9.3 Ms Philistin would manually generate a summary of Timeshare Loan Portfolio debtor receipts for the month into an excel worksheet.
 - 8.9.4 Commencing after the appointment of Mr Rohrt as Receiver of the Company on 2 August 2011, Ms Philistin was to generate a Timeshare Listing which was a detailed listing of every outstanding Timeshare Loan Portfolio debtor. I note that the Liquidators furnished a copy of the Timeshare Listing to the Receiver.
 - 8.9.5 In this regard, I note that the Liquidators' actions to direct Ms Philistin to produce monthly reports about the Timeshare Loan Portfolio debtors outstanding and in arrears, was designed as a management tool to monitor and oversee the Timeshare Loan Portfolio and the collection of its debtors.
 - 8.9.6 I note that the Timeshare Listing reports generated after the appointment of Mr Rohrt provided the Liquidators with a more detailed basis for monitoring and overseeing the Timeshare Loan Portfolio and the collection of its debtors, than just solely relying on the Loan Portfolio Analysis Summary.
 - 8.9.7 In addition, I note that a more prudent practitioner may have sought to undertake some steps of verification to compare the Timeshare Listing report against those of previous months. Had such an analysis been undertaken it may have identified anomalies within an individual debtors' loan account.

Six monthly

- 8.10 On a six monthly basis, the Liquidators would direct Ms Philistin to undertake the following:
- 8.10.1 Ms Philistin was to generate Timeshare Loan Portfolio debtor statements, which detailed the statement balance of each Timeshare Loan Portfolio debtor's loan, and provided same to the Timeshare Loan Portfolio debtor. I enclose at Annexure G3 an example Timeshare Loan Portfolio debtor statement for Mr Grant and Mrs Maree Pendlebury for the period 1 January 2014 to 30 June 2014.
 - 8.10.2 In my opinion, a more prudent practitioner may have conducted a sample review of the Timeshare Loan Portfolio debtor's statements to monitor its performance.

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I refer to Sections 3.2.2, and 3.2.10 of this Report, and I make the following summary of my findings:

- 8.11 With respect to the allegations of negligence by mismanagement of the Liquidators in relation to the management of the Timeshare Loan Portfolio I note the following:
- 8.11.1 The Liquidators set up reporting systems on a daily, weekly, monthly and six monthly basis to assist them in monitoring and overseeing the Timeshare Loan Portfolio and its debtors, including debtors in arrears.
 - 8.11.2 The Liquidators limited Ms Philistin's authority with respect to the Company's bank account, and this would have provided the Liquidators with a degree of comfort against the risk of potential disposition of funds.
 - 8.11.3 The Liquidators undertook regular reconciliations of the manual listing of Timeshare Loan Portfolio payments with the bank statement, and this would have provided the Liquidators with a degree of comfort against the risk of potential employee fraud by verifying the receipt of debtor funds.
 - 8.11.4 I have previously noted that the Timeshare Listing reports generated after the appointment of Mr Rohrt on 2 August 2011 provided the Liquidators with a more detailed basis for monitoring and overseeing the Timeshare Loan Portfolio and the collection of its debtors, than just solely relying on the Loan Portfolio Analysis Summary.
 - 8.11.5 I am of the opinion that a more prudent practitioner may have sought to undertake some steps of verification to compare the Timeshare Listing report against those of previous months.
 - 8.11.6 I am of the opinion that a more prudent practitioner may have conducted a sample review of the Timeshare Loan Portfolio debtor's statements to monitor its performance.
- 8.12 With respect to the allegations of negligence by mismanagement of the Liquidators in relation to the management of Ms Philistin I note the following:
- 8.12.1 The Liquidators set up reporting systems on a daily, weekly, and monthly basis to assist them in supervising Ms Philistin's role of managing the Timeshare Loan Portfolio and its debtors, including debtors in arrears.
 - 8.12.2 The Liquidators limited Ms Philistin's authority with respect to the Company's bank account, and this would have provided the Liquidators with a degree of comfort against the risk of potential employee fraud.
 - 8.12.3 The Liquidators undertook regular reconciliations of the manual listing of Timeshare Loan Portfolio payments with the bank statement, and this would have provided the Liquidators with a degree of comfort against the risk of potential employee fraud by verifying the receipt of debtor funds.
 - 8.12.4 The Liquidators undertook regular reviews of draft correspondence prepared by Ms Philistin to the Timeshare Loan Portfolio debtors, and in particular monitored Ms Philistin's activities with respect to pursuing those Timeshare Loan portfolio debtors in arrears.

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8.12.5 However, I note that this was not always the case as it does not appear that the Liquidators conducted a review of the Timeshare Loan Portfolio debtor's statements to monitor its performance

8.12.6 As previously identified in this Report and further detailed herein, the Liquidators placed a heavy reliance upon Ms Philistin's knowledge and expertise with respect to the Company's Mission software system. Having regard to the systems put in place by the Liquidators to monitor the Timeshare Loan Portfolio and Ms Philistin, and my findings at Section 5 of this Report, I do not believe that the Liquidators reliance on Ms Philistin was unreasonable.

8.13 With respect to the allegations of negligence by mismanagement of the Liquidators in relation to failing to identify the alleged fraud committed against the Timeshare Loan Portfolio, I note the following:

8.13.1 The Liquidators set up reporting systems on a daily, weekly, monthly and six monthly basis to assist them in monitoring and overseeing the Timeshare Loan Portfolio and its debtors, including debtors in arrears.

8.13.2 I have previously noted that the Timeshare Listing reports generated after the appointment of Mr Rohrt on 2 August 2011 provided the Liquidators with a more detailed basis for monitoring and overseeing the Timeshare Loan portfolio and the collection of its debtors, than just solely relying on the Loan Portfolio Analysis Summary.

8.13.3 I am of the opinion that a more prudent practitioner may have sought to undertake some steps of verification to compare the Timeshare Listing report against those of previous months.

8.13.4 Had such a process been implemented either earlier in the Liquidators' appointment or once the reports were generated after Mr Rohrt's appointment on 2 August 2011 then the alleged fraud of Ms Philistin may have potentially been discovered at an earlier date.

8.13.5 Ms Philistin's alleged manipulation of the arrears report allowed Ms Philistin to hide the fraudulent Timeshare Loan Portfolio debtors from the Liquidators and prevented them from identifying missing arrears letters, and potentially discovering the alleged fraudulent activity conducted by Ms Philistin. In this regard, Category A, B, and C fraudulent Timeshare Loan Portfolio debtors are further explained at Section 10 of this Report.

8.13.6 As previously identified in this Report, I am of the opinion that a more prudent practitioner may have conducted a sample review of the Timeshare Loan Portfolio debtor's statements to monitor its performance.

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9 Identification of Alleged Fraud

- 9.1 This section of the Report will document the Administrators / Liquidators' actions during their management of the Timeshare Loan Portfolio and its debtors, and in particular the background and the events that identified the alleged fraud committed by Ms Philistin.
- 9.2 I refer to Section 3.2.2 of this Report, and note that at paragraph 2 of the Charles Fice letter dated 4 July 2014, it is necessary for me to form an opinion on the conduct of the Liquidators with respect to alleged negligence by mismanagement of the Timeshare Loan Portfolio. In this regard, this section of the Report will document any identifiable arrangements in place between the Liquidators and Ms Philistin with respect to Ms Philistin's engagement and the management of the Timeshare Loan Portfolio.
- 9.3 I refer to Section 3.2.10 of this Report, and note that at paragraph 10 of the Charles Fice letter dated 4 July 2014, the alleged fraud of Ms Philistin is raised. It is necessary for me to form an opinion on the conduct of the Liquidators with respect to the alleged negligence by mismanagement of the Timeshare Loan Portfolio with respect to identifying the fraud. In this regard, this section of the Report will document any identifiable arrangements in place between the Liquidators and Ms Philistin with respect to Ms Philistin's engagement and the management of the Timeshare Loan Portfolio.
- 9.4 I refer to my previous comments with respect to Ms Philistin's engagement, role, and the Liquidators' consultation with the Secured Creditors detailed at Sections 5, 7 and 8 of this Report.

Engagement of Ms Philistin

- 9.5 In a letter dated 7 January 2010 from the Liquidators to Ms Lynne Philistin (copy enclosed at Annexure H1), the Liquidators confirmed Ms Philistin's employment as per her previous employment conditions. Ms Philistin's hourly rate was stated to be \$25.71.
- 9.6 In a letter dated 7 January 2010 from the Liquidators to Ms Elizabeth Clegg (copy enclosed at Annexure H2), the Liquidators confirmed Ms Clegg's employment as per her previous employment conditions. Ms Clegg's hourly rate was stated to be \$52.88.
- 9.7 In a letter dated 22 February 2010, the Liquidators detailed to Ms Philistin her role and duties with respect to the management of the Timeshare Loan Portfolio and the collection of its debtors. Ms Philistin's employment was stated as being on a casual basis, estimated at approximately 25 hours per week, and her role and duties were to comprise of the following:
- 9.7.1 Daily banking and recording receipt of timeshare monies.
 - 9.7.2 Updating and backing up (weekly) of the Mission software.
 - 9.7.3 Attending to enquiries made by borrowers and investors.

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9.7.4 Collating Caveat withdrawal correspondence.

9.7.5 General bookkeeping.

9.7.6 Collecting and managing arrears.

9.7.7 Ad hoc administrative tasks as requested from time to time.

I enclose a copy of the Liquidators' letter to Ms Philistin dated 22 February 2010 at Annexure H3.

- 9.8 I refer to Section 5.13 of this Report and note that in the Liquidators' File Note dated 8 December 2009, it records a discussion held between the Liquidators and Messrs Rice, Reynolds, and Rawlings whereby Ms Philistin was viewed as being the most economical person to administer the Timeshare Loan Portfolio.
- 9.9 In a letter dated 2 March 2010 (copy enclosed at Annexure H4), the Liquidators terminated Ms Clegg's employment effective from 5 February 2010.
- 9.10 From the documents reviewed, and discussions held with the Liquidators, I am of the opinion that the Liquidators placed a large reliance on Ms Philistin to administer and maintain the Timeshare Loan Portfolio, and to report directly to the Liquidators.
- 9.11 An example of the Liquidators' reliance is documented in a Liquidators' File Note dated 29 May 2012 (copy enclosed at Annexure H5) whereby the Liquidators' staff requested that Ms Philistin conduct spot checks on 20-30 Timeshare Loan Portfolio loans to ensure interest was being accrued on the loans.
- 9.12 In a meeting I held with Messrs Handberg and Cremin on 11 November 2014, I requested evidence of the Liquidators and / or their staff undertaking spot checks early in the appointment as either Administrators or Liquidators to confirm or otherwise verify the existence and quantum of the Timeshare Loan Portfolio. The purpose of my enquiry was to ascertain what steps the Liquidators or their staff undertook themselves to provide the Liquidators with a basis for relying on the Company's recording of the Timeshare Loan Portfolio.
- 9.13 Whilst the Liquidators have provided further information arising from my enquiries, the information provided in my opinion does not indicate that the Liquidators themselves undertook additional investigations to provide a proper basis for relying on the Company's recording of the Timeshare Loan Portfolio. My staff's review of the Liquidators' files identified only examples of requests made to Ms Philistin by the Liquidators / the Liquidators staff as demonstrated at Section 9.11 of this Report.
- 9.14 I am of the opinion that the investigation role of conducting spot checks should have been undertaken by the Liquidators rather than Ms Philistin whose responsibility it was to record same in the Mission software.
- 9.15 I am of the opinion that a more prudent practitioner may have conducted a sample review of the Timeshare Loan Portfolio to verify that the loan file and security pack was complete and matched the details recorded in the Company's Mission software. Furthermore, a more prudent practitioner may have sought to conduct a sample review to ensure that caveatable interests arising from certain Timeshare Loans had been properly registered in the Company's favour against those Land Titles. I note that such an exercise may have identified issues with the Company's Timeshare Loan Portfolio that may have resulted in the Liquidators conducting further investigations that may have identified the alleged fraud earlier.

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- 9.16 The alleged fraud committed by Ms Philistin is discussed in further detail at Section 10 of this Report. In this regard, I note that even had the Liquidators undertaken a spot check of loan files, and having regard to the nature of the fraud committed, it may not have resulted in the Liquidators identifying any concerns with respect to the documentation associated with the loan files reviewed.
- 9.17 I refer to Section 8 of this Report which provides further details with respect to Ms Philistin's monitoring and reporting to the Liquidators on a daily, weekly, monthly and bi-annual basis with respect to the Timeshare Loan Portfolio.
- 9.18 Regular correspondence was sent between the Liquidators and Ms Philistin with respect to the Timeshare Loan Portfolio, including but not limited to; issues surrounding the Timeshare Loan Portfolio debtors in arrears, the status of payments, and daily, weekly, and monthly emails providing the Liquidators with documents to enable them to monitor the Timeshare Loan Portfolio as discussed at Section 8 of this Report.

Circumstances leading to the Identification of the Alleged Fraud

- 9.19 In an email from Mr Rice to Ms Katrina Georgiou of the Liquidators' office dated 9 August 2013 (copy enclosed at Annexure H6), Mr Rice queried why there were low receivables for the month of July 2013. Mr Rice noted that if the accounts receivable balance was over \$2 million, the interest component of the Timeshare loans for the month should be in the order of \$20,000 plus principal repayments. Mr Rice also queried if the collection procedure was working.

From my review of the Liquidators' files, it appears that the Liquidators relied upon Ms Philistin to assist the Liquidators in addressing Mr Rice's queries.

- 9.20 I enclose at Annexure H7 a copy of an email dated 13 August 2013 from Ms Philistin to Mr Ho providing a listing of Timeshare Loan Portfolio debtors who had made advance payments. I note that the listing identified nineteen (19) Timeshare Loan Portfolio debtors who had made advance payments that ranged from less than one (1) month in advance to fourteen (14) months in advance.
- 9.21 A Liquidators' File Note dated 14 August 2013, documents a telephone discussion held on 14 August 2013 between Mr Ho of the Liquidators' office and Ms Philistin. Ms Philistin advised Mr Ho that the Company had always allowed Timeshare Loan Portfolio debtors to pay in advance.
- 9.22 Mr Ho advised Ms Philistin that the Timeshare Loan contracts stipulated that Timeshare Loan Portfolio debtors were required to make monthly payments regardless of any advanced payments. In this regard I provide an extract of the Terms and Conditions of the loan contract below:

"The applicant may repay the whole or any part of the unpaid balance of the loan and any other money owing under contract at any time before the due date for the last payment. If only part of the loan is repaid early, that amount of a usual repayment shall remain the same unless Holiday Credits agrees beforehand to change the repayment"

I enclose a copy of the Terms and Conditions of the loan contract at Annexure H8.

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- 9.23 Ms Philistin advised Mr Ho that as a result of the advanced payments being recorded into the Mission software, the software generated arrears report failed to include / identify those Timeshare Loan Portfolio debtors who had made advanced payments and who had not remitted their monthly repayments.
- 9.24 I enclose a copy of the Liquidators' File Note dated 14 August 2013 at Annexure H9.
- 9.25 In an email from Ms Philistin to Advance Computing dated 15 August 2013, Ms Philistin on behalf of the Liquidators, requested the creation of a report (excel spreadsheet) (Schedule of Advanced Payments) that could be generated from Mission and would include the following:
- 9.25.1 Account Number.
- 9.25.2 Account Name.
- 9.25.3 Monthly payment amount.
- 9.25.4 Amount the loan was in advance and / or arrears.
- 9.26 I enclose at Annexure H10 a copy of the email dated 15 August 2013, and the Schedule of Advanced Payments provided to the Liquidators.
- 9.27 As a result of Ms Philistin's investigations, the Liquidators in a letter dated 19 August 2013 to the Secured Creditors (copy enclosed at Annexure H11) advised that the gross timeshare receipts for the month of July 2013 of \$14,799.49 was lower than previous months due to twelve (12) Timeshare debtors that had made advanced payments and because the Company's Mission software failed to recognise a loan to be in arrears when advanced payments were received until such time as the advanced payment had been fully drawn down.
- 9.28 I am of the opinion, that the arrears schedules being produced by Ms Philistin and provided to the Liquidators, and subsequent arrears letters being sent to debtors, did not capture all Timeshare Loan Portfolio debtors that were in arrears. The basis of my opinion is demonstrated by the fact that Ms Philistin was able to manipulate the excel generated arrears report, and set up loans on the basis that there was to be a nil minimum monthly repayment. This is discussed in further detail at Sections 8.8.5 and 8.8.6 of this Report.
- 9.29 I am of the opinion that a more prudent practitioner may have undertaken his own enquiries of the performance of the Timeshare Loan Portfolio, rather than relying on Ms Philistin to undertake enquiries, in order to satisfactorily inform himself in order to respond to Mr Rice's email dated 9 August 2013.
- 9.30 As a result of the Liquidators' August 2013 investigations into the Timeshare Loan Portfolio, the Liquidators requested from Ms Philistin a summary of debtors who had made advanced payments in conjunction with the production of the arrears report, to ensure that going forward arrears letters would be sent to those debtors who failed to make the required minimum payment. I have not identified any other additional monitoring steps employed by the Liquidators as a result of the August 2013 investigations.
- 9.31 I refer to Section 8 of this Report for further details with respect to Ms Philistin's monitoring of the Timeshare Loan Portfolio debtors.
- 9.32 In February 2014 as a result of further reductions in debtor receipts, the Liquidators initiated a review of the Timeshare Loan Portfolio and undertook an ageing analysis of its debtors. I enclose at Annexure H12 a Deposit and Loan Maturity Summary report extracted from the Mission software which has some investigation narration by the Liquidators noted on it.

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too late.

- 9.33 The reduction in receipts in early 2014, prompted the Liquidators by email dated 3 March 2014 to request from Ms Philistin to provide loan statements for 51 Timeshare Loan Portfolio debtors. I enclose a copy of the Liquidators email dated 3 March 2014 at Annexure H13.
- 9.34 Ms Philistin was unable to provide the requested information and proceeded to admit that she had manipulated the Mission software to hide her fraudulent activity.
- 9.35 I refer to Sections 3.2.2 and 3.2.10 of this Report, and I make the following summary of my findings:
- 9.36 With respect to the allegations of negligence by mismanagement of the Liquidators in relation to the management of the Timeshare Loan Portfolio I note the following:
- 9.36.1 The Liquidators appointed Ms Philistin to assist with the management of the Timeshare Loan Portfolio and the collection of its debtors and specified her specific role.
- 9.36.2 The Liquidators placed a large reliance on Ms Philistin to administer and maintain the Timeshare Loan Portfolio, and to report directly to the Liquidators.
- 9.36.3 The Liquidators' files have only identified examples of requests made to Ms Philistin by the Liquidators / the Liquidators' staff to conduct spot checks on the Timeshare Loan Portfolio, as opposed to the Liquidators / the Liquidators' staff conducting those investigations themselves.

10 Fraud committed by Ms Philistin

- 10.1 This section of the Report will document the alleged fraud committed by Ms Philistin with respect to the Company's Timeshare Loan Portfolio and its debtors.
- 10.2 I refer to Section 3.2.10 of this Report, and note that at paragraph 10 of the Charles Fice letter dated 4 July 2014, the alleged fraud of Ms Philistin is raised. It is necessary for me to form an opinion on the conduct of the Liquidators with respect to alleged negligence by mismanagement of the Timeshare Loan Portfolio with respect to identifying the fraud. In this regard, this section of the Report will document whether or not the Liquidators' activities with respect to monitoring the Company's Timeshare Loan Portfolio and its debtors should have identified the alleged fraud or if they may have been deficient to some degree.
- 10.3 According to the Liquidators, as at the date of appointment of the Administrators, a review of the Company's books and records disclosed that the Timeshare Loan Portfolio asset:
- 10.3.1 Had a book value of approximately \$4,334,175.73.
 - 10.3.2 Comprised of approximately 320 loans in number.
 - 10.3.3 Generally had a maturity of between 10-15 years.
 - 10.3.4 Had only a small number of loans which were in default.
- 10.4 The Timeshare Loan Portfolio held by the Company was comprised of loans made to individuals, some or all of which were secured by unregistered mortgages supported by caveat over real property, which were generally made for the purpose of funding the acquisition of interests in various "timeshare" schemes operated by Holiday Concepts and its associated entities.
- 10.5 According to the Liquidators, potential borrowers would attend a meeting held by Holiday Concepts whereby they would be able to purchase an interest in a timeshare property by finance provided by the Company's Timeshare Loan Portfolio.
- 10.6 The potential borrowers for a timeshare property utilising finance provided by the Company's Timeshare Loan Portfolio were all introduced to the Company by Holiday Concepts. When potential borrowers' applications were successfully approved, the relevant funds were advanced directly to Holiday Concepts.
- 10.7 As previously discussed, Ms Philistin was a part-time employee of the Company, and both Ms Philistin and Ms Clegg were employed by the Administrators to assist in managing the Company's Timeshare Loan portfolio.

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- 10.8 Ms Philistin's employment was subsequently extended by the Liquidators on 22 February 2010, to manage the Company's Timeshare Loan portfolio and maintain the Company's Mission software system utilised to record, manage and generate reports with respect to the Timeshare Loan Portfolio. I note Ms Clegg's employment was terminated effective 5 February 2010. I refer to Section 9 of this Report which provides further details with respect to Ms Philistin's engagement / employment.
- 10.9 It is alleged that between 27 January 2004 and 29 May 2007, Ms Philistin processed 71 bogus Timeshare Loan applications totalling \$1,053,350.00.
- 10.10 The alleged fraudulent Timeshare Loans were based on authentic, original applications for a timeshare property by finance from the Company's Timeshare Loan Portfolio.
- 10.11 The alleged fraud committed by Ms Philistin can be categorised into four (4) distinct categories:
- 10.11.1 Individuals who had cancelled and / or discontinued their Timeshare Loan applications prior to approval (financial gain). This has been classified by the Liquidators as a Category A type fraud.
 - 10.11.2 Individuals who had applied for Timeshare Loans and had their applications declined on the basis they did not satisfy the Company's lending criteria (financial gain). This has been classified by the Liquidators as a Category B type fraud.
 - 10.11.3 Genuine loans which were paid out in full, but not closed off within Mission, and were later reactivated as Timeshare Loans with outstanding balances (Non-financial gain). This has been classified by the Liquidators as a Category C type fraud.
 - 10.11.4 Other.
- 10.12 The alleged acts of fraud, particularly the four (4) categories documented at Sections 10.11.1 to 10.11.4 of this Report are described in more detail below.
- 10.13 Enclosed at Annexure I1 is the Liquidators' File Note dated 8 September 2014 providing a guide to the alleged acts of fraud committed by Ms Philistin.
- 10.14 Category A – Pre Appointment
- 10.14.1 'Category A' acts of fraud consisted of potential borrowers who had submitted their loan applications to Holiday Concepts, however during the allowed 'cooling off' period, subsequently contacted Holiday Concepts and cancelled their Timeshare Loan applications.
 - 10.14.2 Holiday Concepts would notify Ms Philistin via telephone of the potential borrower's request to have their Timeshare Loan applications cancelled.
 - 10.14.3 Ms Philistin would prepare a facsimile / list of approved Timeshare Loan applications for Ms Taylor, a former director of the Company, who resigned shortly before the Company was placed into External Administration.
 - 10.14.4 Ms Taylor would review the list of approved Timeshare Loan applications, which would on occasion include those Timeshare Loan applicants who cancelled their Timeshare Loan applications and the amount of the Timeshare Loan applied. Ms Taylor would approve the list and amounts.

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- 10.14.5 Ms Philistin would also prepare a facsimile to Holiday Concepts with the same information however she would exclude from this list those Timeshare Loan applicants who had cancelled their Timeshare Loan applications.
- 10.14.6 Payments with respect to the cancelled Timeshare Loans that were approved by Ms Taylor, were paid either by cheque or Electronic Funds Transfer (EFT).
- 10.14.7 Payments made via cheque would be payable to 'Links' and once signed by Ms Taylor would be amended to Ms Philistin's name before being deposited into her personal account. The reference to 'Links' refers to Holiday Concepts as the responsible entity of the Links Club, one of the timeshare resorts developed by Holiday Concepts.
- 10.14.8 If the payment was made via EFT, Ms Philistin would enter all the details online, which would include her own bank account details. She would then proceed to contact the authoriser which would be one of Ms Taylor, Mr O'Toole or Mr Daniels to instruct them to obtain the authorisation code, and enter it into the system to allow the transfer of funds.
- 10.14.9 To complete the act of fraud, Ms Philistin would create a false facsimile, for both the debtor file and to Holiday Concepts which would include the cancelled Timeshare Loan's debtor details. This would match the facsimile provided to Ms Taylor.
- 10.15 A comprehensive example of all documentation with respect to a 'Category A' type fraud is enclosed at Annexure I2.
- 10.16 Ms Philistin did all things necessary to cover up the fraudulent loan and ensure that Holiday Concepts were under the impression that cancelled Timeshare Loan applications were cancelled.
- 10.17 Ms Philistin at the same time also ensured that Ms Taylor and the Company were under the impression that the cancelled Timeshare Loans were legitimate and approved, and proceeded to prepare all relevant documentation for same and updated the Mission software accordingly.
- 10.18 To maintain the alleged fraud, Ms Philistin would also use a portion of the misappropriated funds to maintain these fraudulent loans to make these Timeshare Loan accounts appear to be legitimate, when in fact they were fraudulent from inception.
- 10.19 I note that the 'Category A' fraudulent acts were committed prior to the appointment of the Administrators / Liquidators.
- 10.20 I am of the opinion that given the pre-appointment discussions held with Messrs Rice and Reynolds / the Secured Creditors and the comments referenced to have been made with respect to the Timeshare Loan Portfolio, the Mission records, and Ms Philistin, the Liquidators would not have had cause to have suspected and therefore investigated the Timeshare Loan Portfolio specifically for fraudulent Timeshare loans.
- 10.21 Furthermore, given that documents that were produced and distributed to each of Ms Taylor, the Company and Holiday Concepts, it would have been difficult for the Liquidators to have identified the fraud merely by reviewing the Company's books and records as there was no conflicting documentation on file which would have identified the Category A type loans as being fraudulent.

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10.22 I also refer to Section 7 of this Report, and draw particular attention to the reports and schedules of the Timeshare Loan Portfolio debtors provided by the Liquidators to the Secured Creditors, and that based on this information the Secured Creditors also did not identify any suspicion of fraudulent Timeshare Loans.

10.23 Category B – Pre Appointment

10.23.1 'Category B' acts of fraud consisted of individuals who applied for Timeshare loans and had their applications declined on the basis that they did not satisfy the Company's lending criteria.

10.23.2 Holiday Concepts would contact Ms Philistin with respect to the potential borrowers.

10.23.3 Ms Philistin would review the Timeshare Loan application with the supporting documentation, and recommend that Holiday Concepts reject the Timeshare Loan application.

10.23.4 Ms Philistin would prepare a facsimile / list of approved Timeshare Loan applications for Ms Taylor's review, which on occasion would include those Timeshare Loan applicants who had been rejected for not meeting the Company's lending criteria.

10.23.5 Ms Taylor would review the list of approved Timeshare Loan applications, and the amount of the Timeshare Loan applied. Ms Taylor would approve the list and amounts.

10.23.6 Ms Philistin would also prepare a facsimile to Holiday Concepts with the same information however she would exclude from this list those Timeshare Loan applicants who had their Timeshare Loan applications declined.

10.23.7 Payments for rejected Timeshare Loan applications made via cheque would be payable to "Links" and once signed by Ms Taylor would be amended to Ms Philistin's name before being deposited into her personal account.

10.23.8 If the payment was made via EFT, Ms Philistin would enter all the details online, which would include her own bank account details. She would then proceed to contact the authoriser which would be one of Ms Taylor, Mr O'Toole or Mr Daniels to instruct them to obtain the authorisation code and enter it into the system to allow the transfer of funds.

10.23.9 To complete the act of fraud, Ms Philistin would create a false facsimile, for both the debtor file and to Holiday Concepts which would include the cancelled Timeshare Loan's debtor details. This would match the facsimile provided to Ms Taylor.

10.24 A comprehensive example of all documentation with respect to a 'Category B' type fraud is enclosed at Annexure I3.

10.25 Category B type acts of fraud are very similar to the Category A type acts of fraud, however the acts of fraud occurred with rejected Timeshare Loan applications rather than cancelled Timeshare Loan applications.

10.26 Ms Philistin did all things necessary to cover up the fraudulent Timeshare Loans and ensure that Holiday Concepts were under the impression that those Timeshare Loans were declined.

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- 10.27 Ms Philistin also made sure that Ms Taylor and the Company were under the impression that the declined Timeshare Loans were legitimate and approved, and proceeded to prepare all relevant documentation for same and updated the Mission software accordingly.
- 10.28 To maintain the fraud Ms Philistin would also use a portion of the misappropriated funds to maintain these fraudulent Timeshare Loans to make the accounts appear to be legitimate as payments were being applied against the fraudulent loans.
- 10.29 I note that the Category B fraudulent acts were committed prior to the appointment of the Administrators / Liquidators.
- 10.30 I am of the opinion that given the pre-appointment discussions held with Messrs Rice and Reynolds / the Secured Creditors and the comments referenced to have been made with respect to the Timeshare Loan portfolio, the Mission records, and Ms Philistin, the Liquidators would not have had cause to have suspected and therefore investigated the Timeshare Loan Portfolio specifically for fraudulent Timeshare Loans.
- 10.31 Furthermore, given that documents that were produced and distributed to each of Ms Taylor, the Company and Holiday Concepts, it would have been difficult for the Liquidators to have identified the fraud merely by reviewing the Company's books and records as there was no conflicting documentation on file which would have identified the Category B type loans as being fraudulent.
- 10.32 I also refer to Section 7 of this Report, and draw particular attention to the reports and schedules of the Timeshare Loan Portfolio debtors provided by the Liquidators to the Secured Creditors, and that based on this information the Secured Creditors also did not identify any suspicion of fraudulent Timeshare Loans.
- 10.33 Category C – Both Pre and Post Appointment
- 10.33.1 'Category C' type fraud consisted of debtor accounts which had been previously settled, however were not closed off within the Mission software and were subsequently fraudulently reactivated to assist in covering up Category A and B type fraudulent Timeshare Loans.
- 10.33.2 Category C type fraud was non-financial, and consisted of the manipulation of the Mission software.
- 10.34 Category C type fraud occurred both before and after the appointment of the Administrators and Liquidators.
- 10.35 The difficulty the Liquidators faced in identifying Category C type fraudulent activity was that the information being reported to the Liquidators was generated by Ms Philistin who ensured that her alleged acts of fraud were always covered up and that the Timeshare Loan reports produced would always appear to reconcile to the Liquidators understanding of the status of the Timeshare Loan Portfolio at the date of their appointment. I refer to Section 8 of this Report which provides further details of the Liquidators' monitoring of the Timeshare Loan Portfolio and management of Ms Philistin.
- 10.36 A comprehensive example of all documentation with respect to a 'Category C' type fraud is enclosed at Annexure I4.
- 10.37 I have previously noted that the Timeshare Listing reports generated after the appointment of Mr Rohrt on 2 August 2011 provided the Liquidators with a more detailed basis for monitoring and overseeing the Timeshare Loan Portfolio and the collection of its debtors rather than just solely relying on the Loan Portfolio Analysis Summary.

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10.38 I am of the opinion that a more prudent practitioner may have sought to undertake some steps of verification to compare the Timeshare Listing report against those of preceding months.

10.39 Had such a process been implemented either earlier in the Liquidators' appointment or once the reports were generated after Mr Rohrt's appointment on 2 August 2011, then the alleged fraud of Ms Philistin may have potentially been discovered at an earlier date.

10.40 Other

10.40.1 Other alleged fraudulent activity conducted by Ms Philistin included the theft of payments in cash by Timeshare Loan Portfolio debtors and the manipulation of debtor cheques to be made payable to herself.

10.41 This category of fraud would have been difficult to identify as there was no paper trail to the funds that were misappropriated.

10.42 With respect to the four (4) categories of alleged fraud detailed above, I make the following additional observations detailed below.

10.43 The Liquidators as detailed at Section 5 of this Report, held a number of pre-appointment discussions with Messrs Rice and Reynolds / the Secured Creditors and the comments referenced to have been made with respect to the Timeshare Loan Portfolio, the Mission records, and Ms Philistin, would not have given the Liquidators cause to have suspected anything untoward and therefore investigated the Timeshare Loan Portfolio specifically for fraudulent Timeshare Loans.

10.44 However, a more prudent practitioner may have undertaken additional steps following their appointment, with respect to confirming / verifying the Timeshare Loan Portfolio and its debtors, including but not limited to sending debtor confirmation letters.

10.45 By way of example, I enclose at Annexure I5 a Timeshare Loan Portfolio debtor confirmation letter dated 20 March 2014, the Liquidators' File Notes dated 24 March 2014, 26 March 2014, and 26 March 2014 are enclosed at Annexure I6, with respect to three responses received to same from a Category A, Category B, and Category C fraudulent Timeshare Loan Portfolio debtor.

10.46 I am of the opinion that had Timeshare Loan Portfolio debtor confirmation letters been sent early in the External Administration, the Liquidators may have received a response like the response received in telephone discussions detailed at Annexure I6. The said response would have raised significant indicators with the Liquidators that there may have been issues with respect to the accuracy of the value of Timeshare Loan Portfolio and its debtors. However this statement is made with the benefit of hindsight which was not available to the Liquidators at the time.

10.47 Furthermore, as discussed at Section 8.9.7 of this Report, had the Liquidators conducted a sample review of the Timeshare Listing report against those of preceding months, which was a listing of all outstanding debtors and their balances, the Liquidators may have identified increases in individual Timeshare Loan Portfolio debtor balances which were previously settled, and which could not be explained by the amount of interest that should have accrued on the loan in the given month.

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- 10.48 In addition, a process such as the one described above at Section 10.47 of this Report, would have also assisted the Liquidators in verifying consistency with the arrears reports being generated, and in these instances the Liquidators may have identified Timeshare Loan Portfolio debtors that were in default on the Timeshare Listing report but which were not detailed on the arrears report.
- 10.49 I refer to Annexure I7 of this Report which encloses Loan Portfolio Analysis Summaries and Timeshare Listings for Timeshare Loan Portfolio debtors for the period July 2012 to December 2012.
- 10.50 Detailed below is a summary table for the balance of the re-activated Timeshare Loan of 'Colin R & Kathleen D Moorese':

Month	Balance of Loan (\$)
July	1,057.28
August	11,998.47
September	11,998.47
October	13,998.47
November	14,298.47
December	14,943.29

- 10.51 I enclose at Annexure I9, a 'Statement of Loan Account' summary for 'Colin R & Kathleen D Moorese' which confirms the Timeshare Loan account was reduced to nil on 8 August 2012 with a narration of 'Final P'ment from Moorese' attributed to the nil balance, and that it was then subsequently fraudulently reactivated on 31 August 2012 in the sum of \$11,998.47.
- 10.52 I note that even in the event that the Liquidators had undertaken additional steps to compare Mission reports to preceding months, that they may not have been able to identify any discrepancies.
- 10.53 In this regard, and using the example of 'Colin R & Kathleen D Moorese', it would be expected that the reactivation of a Timeshare Loan Portfolio debtor account would have resulted in an increase in the number of Timeshare loans listed in the Loan Portfolio Analysis report which was provided on a monthly basis to the Liquidators. This however was not the case as a test around the month when an account was fraudulently reactivated failed to identify an increase in the number of Timeshare Loans.
- 10.54 Furthermore, the dollar value of total Timeshare Loan Portfolio debtors in the Timeshare Listing report summary equalled the dollar value of outstanding Timeshare Loans detailed in the Loan Portfolio Analysis even though it included the reactivated fraudulent Timeshare Loan Portfolio debtor.
- 10.55 Using the same example of 'Colin R & Kathleen D Moorese' and the reactivation of their account in August 2012, the Loan Portfolio Analysis reports listed below and enclosed at Annexure I7 do not increase even during the reactivation period. This indicates that Ms Philistin was able to manipulate Mission to generate reports that would not give rise to suspicion of her alleged fraud based upon the reports being generated without a detailed examination of the Timeshare Loan Portfolio debtors on a line by line basis.

10.55.1 Loan Portfolio Analysis as at July 2012.

10.55.2 Loan Portfolio Analysis as at August 2012.

10.55.3 Loan Portfolio Analysis as at September 2012.

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- 10.55.4 Loan Portfolio Analysis as at October 2012.
- 10.55.5 Loan Portfolio Analysis as at November 2012.
- 10.55.6 Loan Portfolio Analysis as at December 2012.
- 10.56 Furthermore, the Timeshare Listing provided to the Liquidators matched the number and dollar value of the Loan Portfolio Analysis even during the reactivation period. A comparison can be made from the documents enclosed at Annexure I8 detailed below:
- 10.56.1 Timeshare Listing as at July 2012.
- 10.56.2 Timeshare Listing as at August 2012.
- 10.56.3 Timeshare Listing as at September 2012.
- 10.56.4 Timeshare Listing as at October 2012.
- 10.56.5 Timeshare Listing as at November 2012.
- 10.56.6 Timeshare Listing as at December 2012.
- 10.57 Accordingly, given the information that was being provided to the Liquidators and the heavy reliance placed on Ms Philistin to update and monitor the Mission Software, the Liquidators would have found it difficult to identify any Category A, Category B and Category C type fraud based on the information that was being reported to them without a detailed examination of Timeshare Loan Portfolio debtors on a line by line basis.
- 10.58 However, as no new loans were issued after the appointment of External Administrators, the manipulation of the Mission software and the re-activated loans may have been identified had the Liquidators conducted further investigations similar to that identified at Sections 10.46 and 10.47 of this Report.
- 10.59 Based on documents provided to me by Mills, I note that it was after the Liquidators had discovered the alleged fraud by Ms Philistin in March 2013 and on instructions of the Liquidators, that Mills discovered the auditors' work papers with respect to the Company's fraud protection policy and comments with respect to the Company's concerns about Ms Philistin's behaviour. The auditors' work papers document the Company's concerns with respect to some incidents involving Ms Philistin. However I note that documented within the auditors work papers are actions to address the concerns raised and conclude that the incidence of fraud was unlikely. I enclose at Annexure I10 copies of the auditors' work papers with respect to the Company's fraud and protection policy.
- 10.60 I refer to Section 3.2.10 of this Report, and I make the following summary of my findings with respect to the allegations of negligence by mismanagement of the Liquidators in relation to failing to identify the alleged fraud committed against the Timeshare Loan Portfolio:
- 10.60.1 There was alleged fraudulent activity that could be classified into four distinct categories. The Category A and Category B acts of fraud were committed prior to the appointment of the Administrators / the Liquidators. Whilst the Category C acts of fraud, which were acts that did not result in financial gain but were undertaken to continue the deception of previous fraudulent acts, were undertaken both prior to and after the appointment of the Administrators / the Liquidators.

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- 10.60.2 I am of the opinion that given the pre-appointment discussions held with Messrs Rice and Reynolds / the Secured Creditors and the comments referenced to have been made with respect to the Timeshare Loan Portfolio, the Mission records, and Ms Philistin, the Liquidators would not have had cause to have suspected and therefore investigated the Timeshare Loan Portfolio specifically for fraudulent Timeshare Loans.
- 10.60.3 Furthermore, given that documents that were produced and distributed to each of Ms Taylor, the Company and Holiday Concepts, it would have been difficult for the Liquidators to have identified the fraud merely by reviewing the Company's books and records as there was no conflicting documentation on file which would have identified the Category A and Category B type loans as being fraudulent.
- 10.60.4 With respect to the Category C type acts of fraud, I am of the opinion that a more prudent practitioner may have sought to undertake some additional steps of verification to compare the Timeshare Listing report against those of preceding months.
- 10.60.5 I am of the opinion that had such a process been implemented either earlier in the Liquidators' appointment or once the reports were generated after Mr Rohrt's appointment on 2 August 2011, then the alleged fraud of Ms Philistin may have potentially been discovered at an earlier date. I make this assessment with the benefit of hindsight.
- 10.60.6 In addition, I am of the opinion that a more prudent practitioner may have undertaken additional steps following their appointment, with respect to confirming / verifying the Timeshare Loan Portfolio and its debtors, including but not limited to sending debtor confirmation letters as described at Sections 10.45 to 10.46 of this Report.
- 10.60.7 However, I do note that as detailed at Section 5 of this Report, Secured Creditor Discussion, there was confidence placed in the accuracy of the Timeshare Loan Portfolio / Mission accounts, and in particular in Ms Philistin as an employee that may have contributed to the Liquidators not undertaking such additional processes in order to be economical and commercial.
- 10.60.8 I am of the opinion that a more prudent practitioner may have ordinarily written to debtors early in their appointment to provide them with comfort that the company's records accurately recorded debtors, as to the accuracy of the amount recorded by the Company against the Timeshare Loan Portfolio. I refer to paragraph 5.16 and 5.17
- 10.60.9 I refer to Section 5 of this Report and note that from my discussions held with Messrs Rice and Charles, my review of the Liquidators' File Note dated 8 December 2009, and my discussions held with Mr Handberg, that there is a dispute surrounding whether or not the Liquidators and Secured Creditors were in agreement with respect to whether or not the Liquidator was to have written to the Timeshare Loan Portfolio debtors early in the Administration / Liquidation
- 10.60.10 In the case of the Liquidators, I would ordinarily expect that if they did not write to debtors that other steps would have been undertaken to provide them with this degree of comfort to rely on the Company's records. I have found limited evidence to suggest that the Liquidators did undertake any other steps to verify debtors

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- 10.60.11 Based upon my review of the alleged fraud committed by Ms Philistin with respect to the Company's Timeshare Loan Portfolio and its debtors, I have not identified any substantive evidence that the Liquidators should have identified the alleged fraud of Ms Philistin. Had the Liquidators employed some additional processes, the fraud may have been discovered at an earlier date, however this statement is made with the benefit of hindsight which was not available to the Liquidators at the time.

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11 The Settlement Agreement

- 11.1 I refer to Section 3.2.28 of this Report, and note that at paragraph 27 of the Charles Fice letter dated 4 July 2014, it is alleged that on a monthly basis the Liquidators have retained one-third of the proceeds received from Timeshare Loan Portfolio debtors for their own personal gain, and thus an actual or perceived conflict of interest arises.
- 11.2 By way of background, on 22 February 2012, the Liquidators made an application for directions pursuant to Section 511 of the Act, with respect to the construction and operation of the fixed and floating charge dated 14 August 2006, granted by the Company in its capacity as Responsible Entity for the BDT (the Charge).
- 11.3 The Charge provided security over the Timeshare Loan Portfolio, and was granted in favour of the Secured Creditors detailed at Section 4.6 of this Report (the Beneficiaries).
- 11.4 The parties to the proceeding were the Beneficiaries of the Charge and Mr Richard Rohrt, in his capacity as Receiver of the Company's Timeshare Loan Portfolio, having been appointed by the Beneficiaries of the Charge on 2 August 2011.
- 11.5 On 10 April 2013, a Deed of Settlement Agreement (the Settlement Agreement) was entered into between the Liquidators, and the Beneficiaries of the Charge.
- 11.6 A copy of the Settlement Agreement dated 10 April 2013 is enclosed at Annexure J1 of this Report.
- 11.7 Pursuant to clause 1(a) of the Settlement Agreement, the Liquidators agreed that the Company owed the sum of \$717,500 to the Beneficiaries of the Charge, secured by the Timeshare Loan Portfolio.
- 11.8 Furthermore, pursuant to clause 4 of the Settlement Agreement the Liquidators on the 10th of each month, commencing from 10 June 2013, would apply the Timeshare Loan Portfolio repayments received by them in the previous month (and for the payment made on 10 June 2013, the repayments made in April and May 2013) as follows:
- 11.8.1 Two-thirds of the amount of all such repayments (net of "collection costs" as that term is defined in the deed of agreement between the parties dated 24 August 2011) was to be paid to the Beneficiaries of the Charge in reduction of the Debt.
- 11.8.2 The remainder of the amount was to be retained by the Liquidators.
- 11.9 With respect to clause 4(b), I note that the Settlement Agreement was executed by Mr Handberg, for and on behalf of the Company in Liquidation in his capacity as the Joint and Several Liquidator.

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11.10 I further note that the schedule of parties attached to the Settlement Agreement, also note that Messrs Handberg and Morgan are plaintiffs in their capacity as Joint and Several Liquidators of the Company in Liquidation.

11.11 I have conducted a review of the Liquidators' internal banking process with respect to the receipt and payment of Timeshare Loan Portfolio funds pursuant to clause 4 of the Settlement Agreement and I provide a summary of my findings below.

11.12 Timeshare Loan Portfolio debtor receipts were generally remitted into the two (2) pre-appointment bank accounts held with National Australia Bank Limited detailed below:

Account Name:	Traditional Values Management Ltd as Responsible Entity for the Blue Diamond Deposits Trust No.1
BSB:	083-781
Account Number:	48-417-2174 (Account 1)
Account Name:	Traditional Values Management Ltd (In Liquidation) Blue Diamond Trust A.B.N 26 055 106 100/ 2616
BSB:	083-004
Account Number:	16-931-2616 (Account 2)

(the Accounts)

11.13 The Liquidators had taken control of the Accounts, which I note are held in the name of the Company.

11.14 For the duration of her employment, Ms Philistin was provided viewing access only to Account 1.

11.15 Ms Philistin's role was to access Account 1 on a daily basis and reconcile with the recording of the Timeshare Loan Portfolio within the Mission software.

11.16 The Liquidators were responsible for accessing Account 2 and would provide a summary of receipts to Ms Philistin who would then reconcile with the recording of the Timeshare Loan Portfolio within the Mission software.

11.17 On a monthly basis, as required by the Settlement Agreement, the Liquidators would report to the Beneficiaries of the Charge and remit payment pursuant to the requirements of clause 4 of the Settlement Agreement which is summarised Section 11.8 of this Report.

11.18 A review of the Liquidators' files, confirms that the Liquidators on a monthly basis accounted for funds pursuant to clause 4 of the Settlement Agreement and did not retain funds for their personal gain.

11.19 Funds received from debtors into the Accounts were transferred to a special purpose account detailed below, and prior to the transfer to secured creditors:

Account Name:	TVM – Timeshare Distribution
BSB:	083-004
Account Number:	94-390-0645

11.20 The TVM – Timeshare Distribution account was set up solely for the purpose of holding funds pursuant to the Paragraph 4 of the Settlement Agreement.

11.21 I enclose an online statement of the TVM – Timeshare Distribution account for the period 1 May 2013 to 4 September 2014 at Annexure J2 of this Report.

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- 11.22 I have undertaken a sample analysis for the months of June 2014, July 2014, August 2014, and September 2014, and confirm that the Liquidators have dealt with the Timeshare Loan Portfolio debtor receipts in accordance with Clause 4 of the Settlement Agreement.
- 11.23 A review of the bank statement for the TVM – Timeshare Distribution account confirms that the only funds to be withdrawn from the account, once funds were transferred (excluding account fees), were payments to the Beneficiaries of the Charge.
- 11.24 To date, in accordance with clause 4(b) of the Settlement Agreement, one-third of the funds retained by the Liquidators remain in the TVM – Timeshare Distribution account.
- 11.25 I confirm that the Liquidators have retained the one-third allocation to the Company in the TVM – Timeshare Distribution account, and it is my understanding that the Liquidators are not able to draw on part or the whole of the retained funds for their remuneration without first obtaining approval from the Court with respect to their remuneration. The Liquidators' remuneration is discussed in further detail at Section 12 of this Report.
- 11.26 With respect to Section 3.2.28 of this Report, I make the following summary of my findings:
- 11.26.1 The Liquidators executed the Settlement Agreement in their capacity as Joint and Several Liquidators of the Company in Liquidation.
 - 11.26.2 The Liquidators maintained the Company's pre-appointment accounts referred to above as the Accounts, and opened a separate account known as the TVM - Timeshare Distribution account to deal solely with clause 4 of the Settlement Agreement.
 - 11.26.3 A sample analysis for the months of June 2014, July 2014, August 2014, and September 2014, confirmed that the Liquidators have dealt with the Timeshare Loan Portfolio debtor receipts in accordance with Clause 4 of the Settlement Agreement.
 - 11.26.4 The Liquidators have retained the one-third allocation to the Company in the TVM – Timeshare Distribution account, and the Liquidators have not sought to draw in part, or in whole, the retained funds for their remuneration without receiving approval from the Court.
 - 11.26.5 Accordingly, I am of the opinion that the Liquidators have not kept proceeds from the Timeshare Loan Portfolio debtor receipts for their personal gain and that same has been accounted for to the Company in accordance with the Settlement Agreement.
 - 11.26.6 I therefore do not find that the Liquidators have a conflict of interest, as there is no personal gain, apart from the indemnities provided to them under statute with respect to their remuneration claim(s).

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12 Remuneration charged by the Liquidators

- 12.1 I refer to Section 3.2.9 of this Report, and note that at paragraph 9 of the Charles Fice letter dated 4 July 2014, it is alleged that the remuneration amount of \$437,964.75 charged by the Liquidators for the care, preservation and realisation of the Timeshare Loan Portfolio is alleged to be **extraordinarily high**.
- 12.2 I refer to Section 3.2.20 of this Report, and note that at paragraph 19 of the Charles Fice letter dated 4 July 2014, the remuneration amount of \$437,964.75 charged by the Liquidators for the care, preservation and realisation of the Timeshare Loan Portfolio is alleged to be extraordinarily high having regard to the allegations made with respect to negligence by mismanagement of the Timeshare Loan Portfolio.
- 12.3 The following sections of the Report will review the Liquidator's remuneration claim, the approval process with respect to same, and provide comment upon the Liquidators' entitlement for remuneration claimed having regard to this Report's findings with respect to the allegations of negligence by mismanagement of the Timeshare Loan Portfolio.
- 12.4 The Liquidators in an application made in the Supreme Court of Victoria on 18 March 2011 pursuant to Section 511 of the Act, sought directions on whether the Liquidators were entitled to pay their remuneration, costs and expenses incurred as the Company's Administrators and subsequently as Liquidators in relation to the administration and management of the Company from the assets forming the scheme property of BDT. Enclosed at Annexure K1 is a copy of the Originating Process dated 18 March 2011.
- 12.5 The Liquidators outlined their submissions to the Supreme Court of Victoria on 3 May 2011 (the Submissions). Enclosed at Annexure K2 is a copy of the Plaintiff's outline of submissions dated 3 May 2011.
- 12.6 I make particular reference to Paragraph 24 of the Submissions which confirms that the BDT constitution confers extensive powers on the Company in relation to the management of the scheme property of BDT including but not limited to the management of BDT's assets.
- 12.7 The Submissions also stated that the Liquidators sought an order that Mr Neil Campbell, a unit holder in BDT entitled to receive a distribution from the assets of BDT on the conclusion of the Winding Up of BDT, be appointed to represent himself and all other BDT unit holders (the Representative Party) with respect to the remuneration approvals requested by the Liquidators in the Submissions. Mr Campbell's submissions dated 7 June 2011 and 7 June 2012 are enclosed at Annexure K3 and commented upon in further detailed later in this Section of the Report.

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- 12.8 The BDT constitution also provides the Company with a wide ranging indemnity for liabilities incurred by the Company in its administration of BDT, including but not limited to paragraph 4.13 of the BDT constitution the 'Right of Reimbursement for the Responsible Entity', paragraph 15.1 'Indemnification of Responsible Entity', and paragraph 16.6 'Expenses' incurred by the Responsible Entity. The extracts of the BDT constitution are contained in the Submission enclosed at Annexure K2.
- 12.9 I have conducted a review of the documents made available to me by Ms Borland of Mills and advise that the work performed by the Liquidators and their staff was classified into three (3) categories described as:
- 12.9.1 BDT work, for work which was undertaken solely for the purposes of the proper administration of BDT.
 - 12.9.2 TVM work, for work which had been undertaken solely for the purpose of the Administration and then the Liquidation of the Company.
 - 12.9.3 BDT/TVM work, for work undertaken for the "dual purpose" of both the Administration and the Liquidation of TVM and for the purpose of the proper administration of BDT.
- 12.10 In managing the Timeshare Loan Portfolio, according to Mr Handberg's affidavit dated 22 March 2011, the Liquidators undertook amongst other things, the following tasks:
- 12.10.1 Prepared and reviewed daily reports for the Timeshare Loan Portfolio, including collecting and recording daily receipts.
 - 12.10.2 Reviewed and reconciled overpayments made to the Secured Creditors prior to the appointment of Administrators.
 - 12.10.3 Referred defaulting Timeshare Loan Portfolio debtors to professional debt collection agencies and liaised with them regarding the collection of same.
 - 12.10.4 Liaised with Timeshare Loan Portfolio debtors and the Liquidators' solicitors to arrange for the removal of caveats lodged by the Company with respect to Timeshare Loans.
 - 12.10.5 Attended to early settlement of Timeshare Loans where those Timeshare Loan Portfolio debtors wished to pay their outstanding loans in full.
 - 12.10.6 Distributed funds to the Secured Creditors on a monthly basis and provided the Secured Creditors with a detailed monthly report with respect to the management of the Company's Timeshare Loan Portfolio.
 - 12.10.7 Managed the continued employment of two (2) members of the Company's staff (and subsequently the employment of one employee) who assisted with the management of the Timeshare Loan Portfolio and its debtors on a day to day basis.
 - 12.10.8 Attended to the payment of weekly employee wages, superannuation and other entitlements.
 - 12.10.9 Liaised with Trustees in Bankruptcy in relation to pursuing bankrupt Timeshare Loan Portfolio debtors.

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12.11 My staff have reviewed the Liquidators' various remuneration reports and timesheets to confirm that the above description of activity appears reasonable.

12.12 On 14 June 2011, on the application of the Liquidators, the Honourable Justice Ferguson of the Supreme Court of Victoria:

12.12.1 Ordered that the Liquidators be paid their remuneration and expenses from the scheme assets of BDT and be indemnified out of, and have an equitable lien over, the Scheme Assets for all their remuneration and expenses (Order 2).

12.12.2 Directed that pursuant to Section 511 of the Act that the Liquidators would be justified and would otherwise be acting reasonably in causing their remuneration and expenses under Order 2 to be paid from the Scheme Assets (Order 3).

12.12.3 Directed that the matter be referred to an Associate Justice for assessment of the quantum of the Liquidators' remuneration to be paid under Orders 2 and 3.

12.13 An affidavit of Mr Handberg dated 22 August 2011, was filed in support of the claim of the Liquidators' remuneration for the period:

12.13.1 17 December 2009 to 3 February 2010 in the sum of \$184,236.32.

12.13.2 3 February 2010 to 8 July 2011 in the sum of \$1,487,337.50.

12.14 Enclosed at Annexure K4 is a copy of Mr Handberg's affidavit dated 22 August 2011.

12.15 On 29 September 2011, Resort Securities Pty Ltd (Resort Securities) and Holiday Concepts Management Limited (Holiday Concepts) filed their Amended Notice of Objections to the Liquidators' Application for Remuneration. Resort Securities as Secured Creditor of the Company and Holiday Concepts, where Messrs Rice and Reynolds were former directors, were represented by Mr Charles.

12.16 In the Amended Notice of Objection to the Liquidators' Application for Remuneration, Resort Securities and Holiday Concepts made the following statements with respect to the Liquidators' claim for remuneration in relation to the management of the Timeshare Loan Portfolio:

12.16.1 There was no proper accounting of the remuneration claim referable to the Timeshare Loans for the Voluntary Administration period of 17 December 2009 to 3 February 2010.

12.16.2 The fee scale used by the Liquidators was objected to on the basis of quantum and with respect to an increase in the Liquidators' hourly charge out rates during the period of their remuneration claim.

12.16.3 The narrations in the time sheets provided did not disclose sufficient detail of what was done, in order to make an assessment of whether the work undertaken was appropriate or necessary.

12.16.4 A number of activities were either objected to on the basis of the work undertaken and / or the quantum of same.

12.16.5 The quantum of time spent on administrative tasks was objected to.

12.16.6 The overall quantum of time spent on the Timeshare Loan Portfolio was objected to.

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- 12.16.7 It was asserted that the work claimed was straightforward and mechanical and should have been done by a former employee of the Company rather than by the Liquidators and their staff.
- 12.17 Enclosed at Annexure K5 is a copy of Resort Securities and Holiday Concepts' Amended Notice of Objection to Liquidators' Application for Remuneration dated 29 September 2011.
- 12.18 In the Affidavit of Mr Handberg dated 22 February 2012, specifically paragraph 12, Mr Handberg provides an extensive list of the Liquidator's and their staff's tasks with respect to the administration, care, preservation and realisation of the Timeshare Loan Portfolio. The tasks listed appear comprehensive and thorough based on what would ordinarily be expected of a more prudent practitioner in managing the Timeshare Loan Portfolio. Enclosed at Annexure K6 is a copy of Mr Handberg's Affidavit dated 22 February 2012.
- 12.19 Furthermore, enclosed at Annexure K7 is a flowchart prepared by the Liquidators and titled 'Flowchart of tasks undertaken on timeshare collections', which provides an extensive list of tasks completed by each member of the Liquidators' office who had involvement in the management of the Timeshare Loan Portfolio.
- 12.20 A review of this flowchart identifies that the Liquidators had completed significant amounts of work with respect to the care, preservation and realisation of the Timeshare Loan Portfolio.
- 12.21 On 22 February 2012 the Liquidators issued an Interlocutory Process seeking the fixing of their remuneration claims as detailed at Section 12.13 of this Report, and in accordance with the Order dated 14 June 2011. Enclosed at Annexure K8 is a copy of the Interlocutory Process dated 26 August 2011.
- 12.22 Pursuant to the Order dated 14 June 2011 by the Honourable Justice Ferguson, the matter of assessing and reviewing the Liquidators' remuneration was heard by Associate Justice Gardiner who on 18 December 2012 determined that the:
- 12.22.1 Amount of remuneration which the Liquidators were entitled to receive as Voluntary Administrators of the Company between 17 December 2009 and 3 February 2010 in respect of their activities was \$178,634.82.
- 12.22.2 Amount of remuneration which the Liquidators were entitled to receive as Liquidators of the Company between 3 February 2010 and 8 July 2011 in respect to their activities was \$1,418,820.00.
- 12.23 Enclosed at Annexure K9 is a copy of the Order dated 18 December 2012.
- 12.24 I note that with respect to the Liquidators' remuneration claim of \$184,236.32 for the period between 17 December 2009 and 3 February 2010, that an amount of \$5,601.50 was not approved.
- 12.25 I note that with respect to the Liquidators' remuneration claim of \$1,487,337.50 for the period between 3 February 2010 and 8 July 2011, that an amount of \$68,517.50 was not approved.

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12.26 Furthermore, I note that Associate Justice Gardiner stated the following within the judgment:

- 12.26.1 *"I consider the reasonableness of this part of the liquidators' claim is supported by Mr Austin's observations that the receiver and manager appointed by, among others, Resort Securities, in respect of its security over the personal loan assets, claimed remuneration of \$82,041.53 for the five month period 26 August 2011 to 21 December 2011, notwithstanding the fact that the liquidators were the ones actually conducting the realisation of the securities. This is to be compared with the liquidators' claim of \$396,108.50 over a 17 month period from 3 February 2010 to 8 July 2011 in respect of the same category of work. On a monthly analysis, the receivers charged approximately \$16,000 a month as compared with the liquidators who charged approximately \$23,000 a month and who performed the substantive tasks".*
- 12.26.2 *"It is said that there is ample evidence, and careful scrutiny of the Remuneration Report makes it clear who performed the work, grade or level of the relevant person, carrying out the task. I agree with that submission. While the material is extraordinarily voluminous, I consider that when one reviews it, even superficially, it is possible to assess in respect of any given entry the identity of the person who performed the work, what position they hold in the liquidators' organisation, the date that the task was performed, the time spent on it, the rate charged and a good but not perfect understanding by reference to the narrative as to why it was necessary to be performed".*
- 12.26.3 *"The evidence filed by the liquidators in my view demonstrates that no deduction should be made from the liquidators' claim by reason of these matters. The administration and liquidation were at a higher end of complexity and involve considerable responsibilities on the part of the liquidators".*

Approval of time incurred by the Liquidators

- 12.27 The Charles Fice letter dated 4 July 2014, asserts that between 17 December 2009 to 2 August 2011, the Liquidators claimed remuneration exclusively with respect to the care, preservation and realisation of the Timeshare Loans in the sum of \$437,964.75.
- 12.28 In a letter dated 31 October 2014 from Ms Borland of Mills Oakley, the total amount actually charged by the Liquidators was \$431,187.00 which is comprised of \$25,316.00 in remuneration paid from 17 December 2009 to 29 January 2010 and \$396,108.50 from 3 February 2010 to 8 July 2011. Enclosed at Annexure K10 is a copy of the letter of Ms Borland from Mills dated 31 October 2014.
- 12.29 I have conducted a review of the Liquidators' records and note that the following time code was established by the Liquidators in administering and maintaining the Timeshare Loan Portfolio:
- | | |
|----------------------|--|
| Code: | 0974 |
| Loan Number: | Various |
| Description: | Time working on realising Timeshare debtors |
| Description of work: | Banking (Timeshare loan receipts/payments), Caveat removal issues, Employee payments, and Debt collection. |
- 12.30 Enclosed at Annexure K11 is a listing and description of the Liquidators' internal time codes (Timecodes).
- 12.31 Enclosed at Annexure K12 is the 'Work flow illustration of Timeshare code 0974' as prepared by the Liquidators for the period 2 February 2010 to 8 July 2011. This listing provides a summary of the time incurred by the Liquidators and all of their staff with respect to the Company's Timeshare Loan Portfolio.

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- 12.32 The Administrators' Report to Creditors dated 22 January 2010, and prepared pursuant to Section 439A of the Act is enclosed at Annexure K13.
- 12.33 The Report to Creditors dated 22 January 2010 encloses within it, a Remuneration Report that I am of the opinion is generally compliant with the Code of Professional Practice issued by the Australian Restructuring Insolvency & Turnaround Association (ARITA), formerly known as the Insolvency Practitioners Association of Australia (IPAA).
- 12.34 My review of the Remuneration Report contained within the Section 439A Report identifies numerous tasks that were disclosed as being completed by the Liquidators during the period 17 December 2009 to 18 January 2010 with respect to managing the Timeshare Loan Portfolio and its debtors, including but not limited to the following:
- 12.34.1 Reviewing and assessing debtor ledgers.
 - 12.34.2 Removing caveats from properties.
 - 12.34.3 Processing receipts from debtors.
 - 12.34.4 Discussions with employee (Ms Philistin and Ms Clegg) regarding debtor collections.
- 12.35 The Remuneration Report in my opinion, given the short timeframe it covers, provides sufficient details of the tasks completed to justify the time incurred by the Liquidators with respect to managing the Timeshare Loan Portfolio.
- 12.36 On 3 February 2010, a second meeting of the Company's creditors was held pursuant to Section 439A of the Act (the second meeting).
- 12.37 At the second meeting, the creditors resolved to approve the remuneration of the:
- 12.37.1 Voluntary Administrators' fees for the period 17 December 2009 to 18 January 2010 totalling \$144,326.32 (which excludes GST).
 - 12.37.2 Voluntary Administrators' fees for the period 19 January 2010 to 3 February 2010 totalling \$40,000.00 (which excludes GST).
- 12.38 A review of the minutes of the Creditors meeting held on 3 February 2010 discloses that Mr Reynolds (as proxy for Noel & Lesley Reynolds Pty Ltd) and Mr Rice (as proxy for Eighty-Second Agenda Pty Ltd) moved and seconded the following resolutions with respect to the fees incurred by the Liquidators:
- 12.38.1 The Joint and Several Administrators' fees in the sum of \$144,326.32, exclusive of GST, for the period 17 December 2009 to 18 January 2010.
 - 12.38.2 The Joint and Several Administrators' future Administration fees in the sum of \$40,000, exclusive of GST, for the period 19 January 2010 to 3 February 2010.
 - 12.38.3 The Joint and Several Liquidators' future fees in the sum of \$100,000.00, exclusive of GST, from 3 February 2010 onwards.
- 12.39 Enclosed at Annexure K14 is a copy of the minutes of meeting dated 3 February 2010.

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- 12.40 I note that Mr Rice and Reynolds as the Secured Creditors, who are disputing the fees incurred by the Liquidators pursuant paragraphs 9 and 19 of the Charles Fice Letter dated 4 July 2014, were in fact the individuals who moved and seconded the Liquidators' three (3) remuneration resolutions detailed above.
- 12.41 On 2 May 2011 the Liquidators sent a Report and Notice to the Company's creditors to convene an Annual General Meeting pursuant to Section 508 of the Act. The Notice of Meeting detailed the approval being sought for the Joint and Several Liquidators' fees for the period 3 February 2010 to 15 April 2011. Enclosed at Annexure K15 is a copy of the Liquidators' Annual General Meeting Report dated 2 May 2011.
- 12.42 I advise that the Remuneration Report dated 2 May 2011, enclosed within the Annual General Meeting Report provides a significantly greater in depth listing of tasks completed by the Liquidators in managing the Timeshare Loan Portfolio. Enclosed at Annexure K16 is a copy of the Remuneration Report dated 2 May 2011.
- 12.43 I am of the opinion that the Liquidators' Remuneration Report dated 2 May 2011 is generally compliant with the Code of Professional Practice issued by ARITA formerly known as the IPAA.
- 12.44 Based on my review of the tasks disclosed in the Liquidators' Remuneration Report dated 2 May 2011, I am of the opinion that it provides sufficient details of the tasks completed to justify the time incurred by the Liquidators with respect to managing the Timeshare Loan Portfolio.
- 12.45 A review of the minutes of meeting of the Annual General Meeting of creditors of the Company held on 17 May 2011, discloses that Mr Geoff Rice as proxy for Oaks Corner Pty Ltd and Resort Systems Pty Ltd moved the following motions with respect to the Liquidators' fees that were subsequently carried on the voices:
- 12.45.1 The Joint and Several Liquidators' remuneration for the period 3 February 2010 to 15 April 2011 in the sum of \$11,504.50, exclusive of GST, in relation to TVM work.
- 12.45.2 The Joint and Several Liquidators' remuneration for the period 3 February 2010 to 15 April 2011 in the sum of \$1,054,069.00, exclusive of GST, in relation to BDT work.
- 12.45.3 The Joint and Several Liquidators' remuneration for the period 3 February 2010 to 15 April 2011 in the sum of \$50,309.00, exclusive of GST, in relation to both TVM and BDT work.
- 12.45.4 The Joint and Several Liquidators' future remuneration for the period 16 April 2011 and onwards, in the sum of \$30,000.00, exclusive of GST, in relation to TVM work.
- 12.45.5 The Joint and Several Liquidators' future remuneration for the period 16 April 2011 and onwards, in the sum of \$400,000.00, exclusive of GST, in relation to BDT work.
- 12.45.6 The Joint and Several Liquidators' future remuneration for the period 16 April 2011 and onwards, in the sum of \$100,000.00, exclusive of GST, in relation to TVM and BDT work.

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- 12.46 The three (3) identical resolutions for the period 3 February 2010 to 15 April 2011, and for the period 16 April 2011 and onwards, as detailed above, were required as the work performed by the Liquidators and their staff was classified into the three (3) categories as listed in paragraph 12.9.
- 12.47 Enclosed at Annexure K17 is a copy of the minutes of meeting of the Annual General Meeting of creditors of the Company held on 17 May 2011.
- 12.48 As mentioned in Paragraph 12.7, Mr Campbell was appointed by the Court to act as the Representative Party (the contradictor) with respect to the Liquidators' application for the Court's approval of the Liquidators' remuneration claim.
- 12.49 In a letter dated 23 October 2014, I requested from Mr Andrew Chambers of K&L Gates, the solicitor representing Mr Campbell, documentation with respect to the Representative Parties' submissions with respect to the Liquidators' application for approval for their remuneration claim. A copy of my letter dated 23 October 2014 is enclosed at Annexure K18.
- 12.50 In a letter dated 27 October 2014, Mr Chambers of K&L Gates provided a CD containing information as requested in my letter dated 23 October 2014. A copy of the letter is enclosed at Annexure K19. I advise that I was unable to access the information contained in the CD provided, however I note that the contents listing of the CD replicate what I have been provided by Mills.
- 12.51 On 7 June 2012, Mr Campbell, in his role as the Representative Party, filed submissions based on the Interlocutory Process filed on 22 February 2012. Enclosed at Annexure K3 is a copy of Mr Campbell's submissions dated 7 June 2012, of which I provide a summary below:
- 12.51.1 The Representative Party did not dispute the reasonableness of the charge-out rates of the Liquidators and their staff.
- 12.51.2 The work carried out by the Liquidators during the Administration and Liquidation period complied within the categories of work in the remuneration definition.
- 12.51.3 The work with respect to which remuneration was claimed by the Liquidators for the Liquidation period, which related to the Timeshare Loan Assets of BDT was accepted within the categories that fell within the remuneration definition.
- 12.51.4 The Representative Party did however adopt the objections in the Amended Notice of Objections filed on 29 September 2011 by Resort Securities and Holiday Concepts in relation to the apparent excessive costs incurred with respect to recovering the Timeshare Loans, in particular some tasks which appeared to be of a clerical nature that had been charged out at the Liquidator's rate of remuneration.
- 12.51.5 The Representative Party was otherwise satisfied with the work described in the relevant timesheets as work within the remuneration definition.
- 12.52 Furthermore, in an email dated 2 December 2011 from Mr Andrew Chambers to Ms Borland of Mills predating the submissions of Mr Campbell, Mr Chambers states the following:

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12.52.1 *"We have reviewed your description of the tasks and activities undertaken by your clients as referred to in paragraph 4 of your letter. Those tasks appear to be within the scope of work that one would expect that your clients would have had to attend to when properly carrying out their functions as liquidators. We also believe that your clients remuneration incurred with respect to those tasks is remuneration as that term is defined in the Orders".*

12.53 Enclosed at Annexure K20 is the letter dated 15 November 2011 from Ms Borland of Mills to Mr Chambers of K&L Gates.

12.54 Enclosed at Annexure K21 is the email dated 2 December 2011 from Mr Chambers of K&L Gates to Ms Borland of Mills.

12.55 With respect to Sections 3.2.9 and 3.2.19 of this Report, I make the following summary of my finding:

- 12.55.1 The Liquidators have documented significant tasks as detailed above to justify the remuneration they incurred, specifically with respect to the management of the Timeshare Loan Portfolio.
- 12.55.2 The Liquidators' Work In Progress extracts which detail the time incurred during the Voluntary Administration period have been recorded and evidenced appropriately in the Liquidators' timesheets.
- 12.55.3 The Liquidators' Remuneration Reports provide sufficient detail and context of the work completed by the Liquidators during the Voluntary Administration and Liquidation period.
- 12.55.4 The Liquidators' Work In Progress extracts which detail the time incurred during the Liquidation period have been recorded and evidenced appropriately in an attempt to convey the complexity of the issues involved and to sufficiently record all work performed.
- 12.55.5 The Liquidators in an attempt to provide a comprehensive task listing in their Remuneration Reports categorised 13 separate activity codes which reflected the major tasks with the conduct of the Winding Up. These 13 activity codes formed the basis of the Remuneration Report and provided description of the tasks performed by the Liquidators.
- 12.55.6 The time incurred by the Liquidators appears reasonable and necessary, and in compliance with the ARITA code.
- 12.55.7 Based on my review of the Liquidators accounting of and descriptions provided for in the Remuneration Reports and Work in Progress extracts made available to me by the Liquidators, I am of the opinion that the Liquidators' have appropriately accounted for their time with respect to the management of the Timeshare Loan Portfolio for the period 17 December 2009 to 8 July 2011. In addition the Liquidators' remuneration time with respect to the Timeshare Loan Portfolio was subject to overview by the Court and a court appointed Representative Party (the contradictor) as well as submissions made by the Secured Creditors.
- 12.55.8 Mr Rice and Mr Reynolds in their capacity as Secured Creditors of the Company were fully aware of the quantum of the Liquidators' remuneration as they attended and approved the Liquidators' remuneration at the creditors meetings convened.

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- 12.55.9 Mr Campbell as the Representative Party (the contradictor) appointed by the Court was generally satisfied with the work described in the relevant timesheets as work within the remuneration definition and had no significant objections to the approval sought by the Liquidators in paragraph 12.13.
- 12.55.10 Accordingly, I am of the opinion that the Liquidators have acted appropriately in properly obtaining approval of their remuneration, and their claim to draw remuneration against the assets of BDT, and have appropriately had oversight with respect to their remuneration claims for managing the Timeshare Loan Portfolio by the inclusion of a Representative Party (the contradictor). In this regard I also note that both Resort Securities and Holiday Concepts also submitted material with respect to the remuneration claim.
- 12.55.11 Furthermore, I note that the quantum of the Liquidators' remuneration to be drawn against the assets of BDT was determined by Associate Justice Gardiner, and draw particular reference to his following comments:
- 12.55.11.1 The Liquidators claim for remuneration of \$396,108.50 over a 17 month period from 3 February 2010 to 8 July 2011 was reasonable considering the Liquidators were the ones actually conducting the realisation of the securities.
- 12.55.11.2 There is ample evidence, and careful scrutiny of the Remuneration Report makes it clear who performed the work, grade or level of the relevant person, carrying out the task and the necessity of the task to be performed.
- 12.55.11.3 No deduction should be made from the Liquidators' claim as the Administration and Liquidation were at a higher end of complexity and involved considerable responsibilities on the part of the Liquidators.
- 12.55.12 I therefore do not believe that the Liquidators' actual remuneration claim in the amount of \$431,187.00 was extraordinarily high, having regard to my review detailed above of their activity with respect to the management of the Timeshare Loan Portfolio, and given previous scrutiny and approval of such remuneration.
- 12.55.13 I acknowledge that the above analysis is based on documentation and submission produced prior to the identification of the alleged fraud committed by Ms Philistin. By reviewing the remuneration claim of the Liquidators, I have identified that the Liquidators and their staff undertook various tasks with respect to the management, monitoring, and reporting to the Secured Creditors of the Timeshare Loan Portfolio and its debtors.

13 Section 532 of the Corporations Act

13.1 I refer to Section 3.2.32 of this Report, and note that at paragraph 31 of the Charles Fice letter dated 4 July 2014, Mr Charles asserts that the Liquidators should resign due to the fact that the Liquidators have / or soon will contravene Section 532(2)(a) of the Act.

13.2 The basis for this assertion is that the Liquidators are, or soon will be indebted to the Company in the sum exceeding \$2million, as a result of the Liquidators' remuneration claim for work completed in managing the Timeshare Loan Portfolio that is alleged to have been negligent by mismanagement, and any damages claim that the Company may have with respect to same.

13.3 Mr Charles makes particular reference to Section 532(2)(a) of the Act, an extract of which is detailed below:

"a person must not, except with the leave of the Court, seek to be appointed, or act, as liquidator of a company

(a) if the person, or a body corporate in which the person has a substantial holding, is indebted in an amount exceeding \$5,000 to the company or a body corporate related to the company."

13.4 Mr Charles's allegations relate to the assertion that the Liquidators' have acted negligently and have caused serious loss to the Company's creditors, as a result of the anticipated surplus from the Timeshare Loan Portfolio being instead in deficit due to the alleged fraud committed by Ms Philistin.

13.5 In addition, paragraph 9 of the Charles Fice letter dated 4 July 2014, Mr Charles asserts that the Liquidators have charged extraordinarily high fees for managing the Timeshare Loan Portfolio.

13.6 In this regard, I note that the Liquidators are entitled to seek to be remunerated for their time costs incurred in managing the Timeshare Loan Portfolio, with respect to those time costs that have been properly incurred for the care, preservation and realisation of the Timeshare Loan Portfolio. I refer to Section 12 of this Report for further comments with respect to the Liquidators' remuneration.

13.7 Lastly, I have reviewed the Declaration of Independence, Relevant Relationships and Indemnities dated 14 December 2009, issued at the time of Mr Handberg and Mr Morgan's appointment as Joint and Several Administrators, and note that it did not identify any matters of concern with respect to same.

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14 Audit

- 14.1 This section of the Report will document the Liquidators' writ SCI 2014 02835 against the Company's former auditors, Price Gibson Pty Ltd (Price Gibson), and Messrs Graeme Desmond Price and Peter John Gibson (the Auditor Proceeding).
- 14.2 I refer to Section 3.2.18 of this Report, and note that at paragraph 17 of the Charles Fice letter dated 4 July 2014, it comments upon the Liquidators' cause of action against the Company's former auditors; Price Gibson, and raises the prospect of whether the Liquidators would be joined to any such proceeding as 'joint tortfeasors'. This section of the Report will comment upon the possibility of the Liquidators being joined to a proceeding for negligence against the Company's former auditors, Price Gibson, and in this regard attention is drawn to the comments at Sections 5, 6, 7, 8, 10 and 12 of this Report.
- 14.3 Paragraph 18 alleges that the Liquidators may have a conflict of interest in the event that they were negligent in managing the Timeshare Loan Portfolio. This Report will comment upon whether or not the Liquidators have a real or perceived conflict of interest in the event that Price Gibson seek to join them to the Auditor Proceeding, and / or the Liquidators were negligent in managing the Timeshare Loan Portfolio. In this regard attention is drawn to the comments at Sections 5, 6, 7, 8, 10 and 12 of this Report.
- 14.4 My discussions held with the Liquidators and Messrs Charles and Reynolds disclosed that Price Gibson were the Company's pre-appointment auditors (the Auditors), for the full period of the alleged fraud committed by Ms Philistin.
- 14.5 From documents made available to me by the Liquidators, the Auditors had:
- 14.5.1 Completed full year audit reports for the financial years ending June 2004 – June 2008 (copies enclosed at Annexure M1).
 - 14.5.2 Half yearly audit reports for the financial periods ending December 2003 – December 2007 (copies enclosed at Annexure M2).
 - 14.5.3 Commenced drafting the financial accounts for the financial year ending July 2009 (copy enclosed at Annexure M3).
- 14.6 A review of each of the full year independent auditors' reports to the Company as the Responsible Entity of BDT, provided the same opinion that the accounts of BDT were properly drawn up:
- 14.6.1 So as to give a true and fair view of the state of affairs of the trust and the profit of the trust for the year ended 30 June 2004, 2005, 2006, 2007 and 2008.
 - 14.6.2 In accordance with the constitution deed.

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- 14.6.3 In accordance with the Statements of Accounting Concepts and applicable Accounting Standards.
- 14.6.4 The accounting records and other records kept by the Responsible Entity in relation to their dealers licence complied with Section 856(6)(a) of the Act and Sections 866 and 871 (both inclusive) of the Act had been complied with by the Responsible Entity.
- 14.7 A review of each of the audit reports on the compliance plans for the years ended 30 June 2003 to 30 June 2008 disclosed that the auditors' report pursuant to Section 601HG(3) of the Act for each of the financial years contained an unqualified opinion that the Responsible Entity had complied with the scheme's compliance plan during the financial year and that the compliance plan did meet the requirements of Part 5C.4 of the Act.
- 14.8 I enclose at Annexure M4 copies of the compliance reports for the years ended 30 June 2003 to 30 June 2008.
- 14.9 In the Writ dated 6 June 2014, matter number S CI 2014 02835, a copy of which is enclosed at Annexure M5 and filed with the Supreme Court of Victoria (the Writ) against the Auditor and its directors, Messrs Price and Gibson (the Defendants), the following is stated:
- 14.9.1 From about 4 September 1992, Mr Price was registered with ASIC as the Company's appointed auditor, in its own capacity and in its capacity as responsible entity of BDT.
- 14.9.2 From about 17 November 2005, Mr Gibson was registered with ASIC as the Compliance auditor of BDT.
- 14.9.3 The Company was obliged to prepare financial reports and for each year, to have financial reports audited in accordance with the Act, and to obtain an auditor's report.
- 14.9.4 BDT was obliged to prepare financial reports and for each half year, to have the financial report audited or reviewed in accordance with the Act and to obtain an auditor's report.
- 14.9.5 The Defendants were retained to provide the following services (the Auditor Retainer)
- 14.9.5.1 Provide auditing services to the Company and BDT.
- 14.9.5.2 Audit the financial reports of TVM and BDT.
- 14.9.5.3 Provide audit reports.
- 14.10 Pursuant to the Writ, in particular Paragraph 11, the Liquidators allege that during the course of the Audit Retainer, the Defendants:
- 14.10.1 Failed or neglected to test procedures for the transfer of funds including loan funds from TVM to third parties.
- 14.10.2 Failed or neglected to test procedures for the receipt of funds by TVM from debtors.
- 14.10.3 Failed or neglected to send any debtor confirmation letters or make inquiries of any debtors as to the status and recoverability of debts.

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- 14.10.4 Failed or neglected to make any enquiries of the recipients of loan funds from TVM as to the receipt of those funds.
- 14.11 The Liquidators pursuant to Paragraph 12 of the Writ claim that the Auditor's issued reports for the Company and BDT:
- 14.11.1 Without qualification or adverse audit opinion.
- 14.11.2 Which recorded that the auditors had undertaken procedures including examination, on a test basis, of evidence supporting the amounts and other disclosures in the financial reports.
- 14.12 The Liquidators pursuant to Paragraph 17 of the Writ, claim that the Defendants breached the Audit Retainer for the reasons stated below:
- 14.12.1 Failed or neglected to perform the audit services with due care and responsibility.
- 14.12.2 Failed to conduct the audits in accordance with the Australian Auditing Standards.
- 14.12.3 Failed to conduct proper and appropriate verification exercises for the detection of error and fraud and / or failed to warn the Company of the risk of fraud.
- 14.12.4 Failed to review or adequately review the books and records of the Company and BDT.
- 14.12.5 Failed to obtain from officers and employees of the Company:
- 14.12.5.1 Access to the books and records of the Company and TVM.
- 14.12.5.2 Information, explanation and other assistance to enable them to conduct the audits and prepare the reports pursuant to the Audit Retainer.
- 14.12.6 Failed to ask questions or, receive answers from and have discussions with officers and employees of TVM relating to the books and records of the Company and BDT.
- 14.12.7 Failed to exercise reasonable skill and care in carrying out the services pursuant to the Audit Retainer.
- 14.13 In addition, the Liquidators pursuant to Paragraph 34 of the Writ, claim that the Defendants breached the Audit Retainer for the reasons stated below:
- 14.13.1 Failed to provide audit services and conduct the compliance audits in accordance with applicable Australian Auditing Standards.
- 14.13.2 Failed to take reasonable and necessary steps in providing the audit services and conducting the compliance audits.
- 14.13.3 Failed to review or adequately review the books and records of the Company and BDT.
- 14.13.4 Failed to obtain from officers and employees of the Company:

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- 14.13.4.1 Access to the books and records of the Company and BDT.
- 14.13.4.2 Information, explanation and other assistance to enable him to conduct audits and form opinions as required under the Compliance Retainer.
- 14.13.5 Failed to exercise reasonable skill and care in providing the unqualified compliance opinions.
- 14.14 The Liquidators claim that having relied on the audit reports and as result of the breaches in the Audit Retainer, the Company and BDT suffered loss and damage, including the loss of an opportunity to make a claim under the Company's insurance policy which was valid until 29 October 2011 and covered loss resulting directly from the dishonest or fraudulent acts of any employee discovered during the policy period.
- 14.15 Furthermore, the Liquidators claim that the Company having engaged Dantay to provide appropriately qualified staff, that in the event of being notified of the fraudulent conduct the Company would have made a claim against Dantay for breach of contract. Furthermore, the Company and BDT suffered loss and damage, including the loss of an opportunity to make a claim against Dantay, which its insurance policy would have responded. In this regard it is noted that Dantay maintained insurance cover which covered for the loss resulting directly from the dishonest or fraudulent acts of any of its employees. The Dantay insurance policy was valid until 25 February 2012.
- 14.16 I refer to Section 5 of this Report and confirm that the Liquidators in discussions held with Messrs Rice and Reynolds / the Secured Creditors, relied on the finalised audit reports completed by the Auditors to confirm the accuracy and value of the Company's Timeshare Loan Portfolio and as recorded in its Mission software.
- 14.17 According to the Charles Fice letter dated 4 July 2014, and in my discussions with Mr Charles, the existence of the Liquidators' Writ against the Auditors may give rise to a potential claim against the Liquidators for negligence in failing to discover the fraud committed by Ms Philistin. It is asserted that such a corresponding claim against the Liquidators by the Company, may result in a conflict of interest between the Company's potential claim against the Liquidators and the Liquidators' own self-interest in avoiding a damages claim.
- 14.18 I note that at Sections 8, 9 and 10 of this Report, I have identified additional actions that a more prudent practitioner may have employed in addition to those employed by the Liquidators with respect to the management and monitoring of the Company's Timeshare Loan Portfolio, and Ms Philistin.
- 14.19 Accordingly, I cannot say with a complete degree of certainty that the assertion that the Company may have a claim against the Company, does not give rise to at least a perceived conflict of interest.
- 14.20 The Charles Fice letter dated 4 July 2014, alleges that the Auditors would surely join the Liquidators as 'joint tortfeasors' in the proceeding if the writ is served on them by the Liquidators. Mr Charles notes that if the Auditors, post June 2008, breached their duties to the Company, it may be argued that the Liquidators were negligent in their role in not identifying the fraud during their control over the Company and thereby forgoing the Company's chance to claim against the insurance policies identified at Sections 14.14 and 14.15 of this Report. Mr Charles' assertions suggest that the Liquidators may have an actual or perceived conflict of interest in their management of the writ against the Auditors.

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14.21 On 10 November 2014, the Special Purpose Liquidator instructed Mr James of Clayton Utz to write to Ms Ariel Borland of Mills to ascertain the reasons for why the Liquidators had not served the writ on the Auditors.

14.22 On 19 November 2014, Ms Borland of Mills responded to Mr James' letter dated 10 November 2014, and advised that the Liquidators had not yet served the writ on the auditors and other parties as their investigations to the alleged fraud committed by Ms Philistin was ongoing.

14.23 I am of the opinion that it may be perceived that the Liquidators have a conflict of interest in determining whether or not to proceed with the writ against the auditors, or they may be perceived to have a conflict of interest in the manner which they run the proceedings.

14.24 In this regard, I am of the opinion that the Court should consider appointing the SPL to make an assessment of the writ as it currently stands, and if appropriate, whether to withdraw or proceed with the claim against the Auditors. Such an arrangement would eliminate any risk to the Liquidators that their conduct would be criticised as being influenced by a perceived conflict of interest.

14.25 In addition, I note that in Mr Handberg's affidavit dated 28 July 2014, writs have also been filed but not issued against the following parties:

14.25.1 Price Gibson Pty Ltd.

14.25.2 Mr Price.

14.25.3 Mr Gibson.

14.25.4 Dantay.

14.25.5 Ms Clegg.

14.25.6 Ms Taylor.

14.26 Furthermore, I note that the Liquidators' investigations are continuing with respect to claims against Messrs Rice and Reynolds. Mr Handberg in his affidavit dated 28 July 2014 states that the proceedings against Messrs Rice and Reynolds have not been issued as there is not an imminent risk that they will become statute barred.

14.27 In this regard, I am of the opinion that the Court should consider appointing the Special Purpose Liquidator to make an assessment of the writs against the parties listed at Sections 14.27.1 to 14.27.6 of this Report as it currently stands, and if appropriate, whether to withdraw or proceed with the claim against the said parties. Such an arrangement would eliminate any risk to the Liquidators that their conduct would be criticised as being influenced by a perceived conflict of interest.

15 Conclusion

- 15.1 I refer to Section 3 of this Report and provide my findings with respect to the Charles Fice letter dated 4 July 2014.

Liquidators' Negligence by Mismanagement of the Timeshare Loan Portfolio

- 15.2 I refer to Sections 3.2.2, 3.2.10, and 3.2.12 of this Report, and paragraphs 2, 10 and 12 of the Charles Fice letter dated 4 July 2014 which refers to proceeding SCI 2014 3254 commenced by Mr Charles' clients against the Liquidators, allegations of negligence by mismanagement of the Timeshare Loan Portfolio by the Liquidators which is further detailed in Mr Charles' letter dated 22 May 2014, and their failure to identify the fraud committed by Ms Philistin.

Book Value of Timeshare Loan Portfolio

- 15.3 At Section 5 of this Report, I have identified that the Liquidators consulted with Messrs Rice and Reynolds / the Secured Creditors with respect to the Company's recording of the Timeshare Loan Portfolio. In particular, it would appear there were discussions about the Timeshare Loan Portfolio and that it was asserted that the Timeshare Loan Portfolio was not complicated, and the information contained within the Company's Mission software to record the Timeshare Loan Portfolio could be relied upon as it appears reference was made to the Audit and that the accounts could be 'agreed for now'. I refer to Sections 5.11.14 and 5.13.1 of this Report.
- 15.4 I am of the opinion that the Liquidators should have undertaken investigations to provide themselves with a degree of comfort for relying upon the Company's book value recorded for the Timeshare Loan Portfolio.
- 15.5 I have identified that one such method would have ordinarily been to write to Timeshare Loan Portfolio debtors early in the Administration / Liquidation to confirm amounts owing. However, there appears to be a dispute surrounding whether or not the Liquidators and Secured Creditors were in agreement with respect to whether or not the Liquidators were to have written to the Timeshare Loan Portfolio debtors. I refer to Section 5.16 of this Report.

Whilst the Liquidators do make reference in the Liquidators' File Note dated 8 December 2009 to a discussion held with the Secured Creditors, it is not clear as to the level and extent of the discussions held with respect to whether or not the Liquidators were to write to the Timeshare Loan Portfolio debtors. I refer to Section 5.13.5 of this Report.

In my discussions held with Messrs Rice and Reynolds / the Secured Creditors, they deny any such discussions occurred with respect to this specific matter.

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- 15.6 In the absence of the Liquidators not writing to the Timeshare Loan Portfolio debtors, I would have expected the Liquidators to have undertaken other steps such as conducting spot checks on a sample of the Timeshare Loan Portfolio to ensure that the loan files were in order. In this regard I note that I found an example of the Liquidators instructing Ms Philistin on 29 May 2012 to conduct spot checks on 20 to 30 loans. I refer to Section 9.11 of this Report.
- 15.7 I am of the opinion that it would have been preferable for the Liquidators' staff to have undertaken the role of conducting spot checks as opposed to Ms Philistin, however I note that this observation is made with the benefit of hindsight.

Administration and Collection of the Timeshare Loan Portfolio

- 15.8 At Section 5 of this Report, I have identified that the Liquidators consulted with Messrs Rice and Reynolds / the Secured Creditors with respect to the process to be employed with respect to the administration and collection of the Timeshare Loan Portfolio. In particular, it was conveyed that the process should be conducted in an economical / commercial manner and that the continuing employment of Ms Philistin as opposed to Ms Clegg would be preferable having regard to her experience and lower rate of costs. I refer to Sections 5.22.1, 5.23.3, and 5.31.2 of this Report.
- 15.9 I am of the opinion that the arrangements decided upon by the Liquidators, in consultation with the Secured Creditors, would be reasonable subject to a sufficient degree of monitoring by the Liquidators.

Monitoring of the Timeshare Loan Portfolio

- 15.10 At Section 8 of this Report I discuss the Liquidators' monitoring of the Timeshare Loan Portfolio, and note that systems were put in place to provide the Liquidators with daily, weekly, monthly, and six monthly reporting basis for same. I refer to Sections 8.7, 8.8, 8.9 and 8.10 of this Report.
- 15.11 I am of the opinion that the reporting basis implemented by the Liquidators was appropriate to provide them with information to manage the Timeshare Loan Portfolio and the work being undertaken by Ms Philistin. However with the benefit of hindsight, I have identified some examples of additional steps the Liquidators could have employed with respect to their management of the Timeshare Loan Portfolio and supervision of Ms Philistin. I refer to Sections 8.7.7, 8.9.7 and 8.10.2 of this Report.
- 15.12 I have not formed the opinion that these additional steps, had they been employed by the Liquidators, would have necessarily identified the alleged fraud committed by Ms Philistin. However, the additional steps identified in this Report are likely to have increased the prospect of the identification of the fraud.

Alleged Fraud Committed by Ms Philistin

- 15.13 At Sections 9 and 10 of this Report I discuss the alleged fraud committed by Ms Philistin. I refer to Sections 9.34 and 10.11 of this Report.
- 15.14 I note that the disposition of funds occurred prior to the appointment of Administrators / Liquidators, and that the manipulation of the Company's Mission software (non-financial fraud) occurred both before and after the appointment of the Administrators / Liquidators. I refer to Sections 10.14, 10.23, and 10.33 of this Report.

It appears the fraud commenced in or about 2004, at least five (5) years prior to the appointment of the Administrators and remained undetected for approximately ten (10) years.

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I note that over this period, and notwithstanding the oversight by management, the Company's directors, Dantay, the Auditors, and the Administrators / Liquidators, the fraud remained undetected.

The nature of a fraud is that it is a deception designed to avoid detection, which Ms Philistin clearly achieved.

- 15.15 The Liquidators' investigations into the underperformance of the Timeshare Loan Portfolio commenced in August 2013, and relied primarily on information sourced and provided by Ms Philistin. I have identified some examples of additional steps the Liquidators could have employed with respect to their investigation of the underperformance of the Timeshare Loan Portfolio. I refer to Sections 8.10.2, 9.13, and 10.38 of this Report.

Reporting to Secured Creditors

- 15.16 At Section 7 of this Report, I detail the Liquidators' monthly reports provided to the Secured Creditors, the Receiver, and Mr Charles. I refer to Sections 7.4, 7.16, and 7.23 of this Report.
- 15.17 The Liquidators provided in their reports to the Secured Creditor and others, copies of management reports utilised by them to monitor the Timeshare Loan Portfolio. I refer to Sections 7.7, and 7.17 of this Report.
- 15.18 I am of the opinion that the Liquidators sufficiently reported on the performance of collections of the Timeshare Loan Portfolio to the Secured Creditors.
- 15.19 Based on the information provided by the Liquidators, I am of the opinion that the Secured Creditors were in a position to review the performance of the Timeshare Loan Portfolio, and raise any matters they deemed contrary to what was being communicated by the Liquidators or concerns held with respect to the performance of same. In this regard I note that the Secured Creditors did this on 9 August 2013. I refer to Section 9.19 of this Report.

Summary of Finding

- 15.20 In reviewing the conduct of the Administrators / Liquidators with respect to their conduct in managing the Timeshare Loan Portfolio, there are many issues to consider in determining whether their conduct was negligent. Whilst I have identified a number of areas where the Liquidators could / should have conducted further enquiries or activities, on balance I do not believe they acted negligently in their conduct.
- 15.21 I make this observation based on my understanding of negligence as set out at Section 3.3 of this Report and my interpretation of the Liquidators' conduct.
- 15.22 In support of this conclusion, I have taken into account the following:
- 15.22.1 The commercial imperative in managing and collecting the Timeshare Loan Portfolio and its debtors.
 - 15.22.2 The utilisation of the Company's previous employees, who possessed the knowledge and capability to conduct the tasks directed by the Liquidators.
 - 15.22.3 The Liquidators' ongoing engagement and dialogue with Messrs Rice and Reynolds / the Secured Creditors.
 - 15.22.4 The Liquidators' regularity of oversight and monitoring of the collections of the Timeshare Loan Portfolio, and the Company's employees.
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- 15.22.5 The assertions made to the Liquidators that the previous performance of the Timeshare Loan Portfolio had been good.
- 15.22.6 The sophistication of the fraud and the fact that it went undetected for approximately ten (10) years.
- 15.22.7 The number of parties who had scrutinised the Timeshare Loan Portfolio, or who had a duty to satisfy themselves about the value of the Timeshare Loan Portfolio. This included the Auditors who had issued unqualified audit reports.
- 15.22.8 The overstatement by the Company's directors of the book value of the Timeshare Loan Portfolio in the Report as to Affairs and in their interviews with the Liquidators.
- 15.22.9 The Timeshare Loan Portfolio's book value being overstated by the fraudulent loans at the time of the Administrators / Liquidators' appointment.
- 15.22.10 That no financial gain was being obtained by Ms Philistin during the Liquidators' period of control of the Company. At that stage, Ms Philistin was creating book entries to cover the monies she had taken prior to 2007 and prior to the Liquidators' appointment. The financial loss to the Company as a result of the fraud, occurred prior to the Administrators / Liquidators' appointment in December 2009.
- 15.23 I have however identified in previous Sections of this Report, activities that the Liquidators could reasonably have undertaken to better satisfy themselves of the true value of the Timeshare Loan Portfolio and its debtors.

Settlement Agreement

- 15.24 I refer to Section 3.2.28 of this Report and paragraph 27 of the Charles Fice letter dated 4 July 2014 that asserts that the Liquidators have an actual or perceived conflict of interest as a result of the Liquidators retaining one third of the recoveries from the Timeshare Loan Portfolio for their personal gain. I also refer to Sections 3.2.6, 3.2.29 and 3.2.30 of this Report with respect to the allegations the Liquidators have a conflict of interest as a result of this allegation.
- 15.25 I confirm that the Liquidators have properly retained one third of the Timeshare Loan Portfolio in a special purpose account on behalf of the Company in Liquidation, and in accordance with the Settlement Agreement.
- 15.26 I am of the opinion that based upon my investigations detailed at Section 11 of this Report, the Liquidators have properly retained one third of the receipts of the Timeshare Loan Portfolio on behalf of the Company in Liquidation and that they do not have a conflict of interest in this regard.

Remuneration

- 15.27 I refer to Sections 3.2.9 and 3.2.20 of this Report and paragraphs 9 and 19 of the Charles Fice letter dated 4 July 2014 which alleges that the Liquidators' remuneration of \$437,964.75 is 'extraordinarily high' having regard to the allegations made with respect to negligence by mismanagement of the Timeshare Loan Portfolio. I also refer to Sections 3.2.6, 3.2.21, 3.2.29 and 3.2.30 of this Report with respect to the allegations the Liquidators have a conflict of interest as a result of this allegation.

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- 15.28 I am of the opinion that based upon my investigations detailed at Section 12 of this Report, the Liquidators have complied with their obligations to report to creditors on their remuneration claim, have appropriately obtained creditor approval of their remuneration claim, sought Court approval to draw their remuneration from the assets of BDT, and that there was appropriate oversight by the Court, the Representative Party (the contradictor), and the Secured Creditors with respect to the quantum of remuneration claimed. I refer to Sections 12.12.1, 12.15, 12.35, 12.37, 12.42, 12.48, and 12.52.

misses the point

Section 532(2)(a) of the Act

- 15.29 I refer to Section 3.2.32 of this Report and paragraph 31 of the Charles Fice letter dated 4 July 2014, which alleged that the Liquidators have / or soon will contravene Section 532(2)(a) of the Act.
- 15.30 It is my understanding that the basis for this allegation is that it is claimed the Liquidators may be indebted to the Company for a sum in excess of \$2 million, as a result of potentially being required to reimburse the Company for their remuneration claimed for work completed in managing the Timeshare Loan Portfolio that is alleged to have been negligent by mismanagement, and any damages claim that the Company may have with respect to same.
- 15.31 I am of the opinion that based on my investigations there is no substantive evidence to suggest that the Liquidators have acted negligently in managing the Company's Timeshare Loan Portfolio. In addition, as at the date of this Report, the Liquidators are not indebted to the Company for a sum in excess of \$5,000.00 and therefore have not contravened Section 532(2)(a) of the Act.

Auditor

- 15.32 I refer to Sections 3.2.18 and 3.2.19 of this Report and paragraphs 17 and 18 of the Charles Fice letter dated 4 July 2014 which comments upon proceeding SCI 2017 02835 filed but not served by the Liquidators' against the Company's former auditors; Price Gibson, and raises the prospect of whether the Liquidators would be joined to any such proceeding as 'joint tortfeasors'. It is also alleged that the Liquidators may have a conflict of interest in this event.
- 15.33 As previously discussed, I have not identified any substantive evidence to indicate that the Liquidators had acted negligently in managing the Company's Timeshare Loan Portfolio, or with respect to their failure to identify the fraud committed by Ms Philistin. I am unable to make comment as to the likelihood of the Auditors joining the Liquidators as 'joint tortfeasors' in the event that the Writ is served against the Auditors, however I do accept that it is a possibility that may eventuate. In the event that this does occur, I do consider there is a real possibility of a conflict of interest for the Liquidators.

17

Conflicts of Interest

- 15.34 I refer to Sections 3.2.6, 3.2.19, 3.2.20, 3.2.21, 3.2.28, 3.2.29 and 3.2.30 of this Report and paragraphs 6, 18, 19, 20, 27, 28, and 29 of the Charles Fice letter dated 4 July 2014 which alleges conflicts of interest of the Liquidators.
- 15.35 I have not identified any actual conflicts of interest of the Liquidators.
- 15.36 I am of the opinion the possibility that the Liquidators may be joined as 'joint tortfeasors' by the Auditors, or any other party whereby similar proceedings are envisaged with respect to the alleged fraud committed by Ms Philistin, that there will exist a conflict of interest of the Liquidators with respect to their involvement in same.

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16 Recommendation

- 16.1 I refer to Section 15 of this Report. I also refer to Mr Handberg's affidavit dated 28 July 2014 and note:
- 16.1.1 The Liquidators have filed but not served a Generally Indorsed Writ against Price Gibson, and Messrs Price and Gibson.
 - 16.1.2 The Liquidators have filed but not served a Generally Indorsed Writ against Dantay.
 - 16.1.3 The Liquidators have filed but not served a Generally Indorsed Writ against Ms Clegg and Ms Taylor.
 - 16.1.4 The Liquidators may have similar claims against Messrs Rice and Reynolds.
- 16.2 As previously stated, I am of the opinion there exists the possibility that the Liquidators may be joined as 'joint tortfeasors' by the Auditors, or any other party whereby similar proceedings are envisaged with respect to the alleged fraud committed by Ms Philistin. By reason of that possibility, I consider that there will exist a conflict of interest of the Liquidators in conducting those proceedings on behalf of the Company.
- 16.3 Accordingly, I respectfully suggest the following alternatives for the Court to consider:
- 16.3.1 The Special Purpose Liquidator is required to report on any further matters or provide clarification on any matters contained within this Report
 - 16.3.2 That Special Purpose Liquidator is to 'shadow' the Liquidators with respect to the litigation matters detailed at Sections 16.1.1 to 16.1.4 of this Report.
 - 16.3.3 The Special Purpose Liquidator is to take carriage of the litigation matters detailed at Sections 16.1.1 to 16.1.4 of this Report.

Dated this 20th day of November 2014



Andrew Stewart Reed Hewitt
SPECIAL PURPOSE LIQUIDATOR

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IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE

No. SCI 2014/3849

COMMERCIAL & EQUITY DIVISION

B E T W E E N:

TRADITIONAL VALUES MANAGEMENT LTD (IN LIQUIDATION)
(ACN 055 106 100)

Proposed Plaintiff

- and -

GEOFFREY NIELS HANDBERG

Proposed First Defendant

- and -

BRENT LEIGH MORGAN

Proposed Second Defendant

SECURED CREDITORS' POSITION PAPER

Instructions

1. I am instructed to prepare a position paper, which is to be provided to the special purpose liquidator, for consideration by him. It is not intended to provide legal or other advice to the special purpose liquidator, who has his own legal advisers from whom he will be taking appropriate advice. Rather, the purpose of this paper is to inform the special purpose liquidator of the concerns of the secured and other creditors in relation to the conduct (or lack thereof) on the part of the Liquidators. I also understand that this position paper will form part of the special purpose liquidator's report which will, in due course, be provided to the Court.

Background

2. The liquidators were charged with preserving and realising the assets of TVM for the benefit of creditors and unit holders. One of the principal assets was a timeshare debtors' portfolio which, according to the books and records of TVM, was worth \$4,351,144 at the time of the liquidators' appointment. The timeshare debts were charged to the secured creditors whose debts at the time amounted to only \$2,585,914.
3. The difference between the book value of the portfolio and the debt owing to the secured creditors, understates the putative surplus of \$1,765,230 which was expected to be available for unsecured creditors and unit holders after payment out of the secured creditors.
4. This is because:

- (a) the timeshare debtors were paying interest to TVM in excess of 13.5% p.a. (and up to 14.5% p.a.);
 - (b) the secured creditors were only being paid interest by TVM at 11.5% p.a.;
 - (c) the timeshare debts and the secured creditors' debts all had more than half a dozen years to run at the time of the liquidators' appointment;
 - (d) as a consequence of the interest differential and the unexpired periods of the loans, the surplus ought to have increased continually over time from the base amount.
5. Philistin was, it now appears, originally employee of Dantay Pty Ltd but commenced being an employee of TVM some time prior to its Liquidation. As is now known she created 71 bogus timeshare debts in 2004 – 2007 in the books of TVM and diverted the 71 bogus debtors' loan amounts to her own accounts at the Commonwealth Bank. She then apparently gambled away all of that money.
 6. The Liquidators were appointed Administrators of TVM on 17 December 2009 and liquidators on 3 February 2010.
 7. While there is dispute as to whether it was the Liquidators who personally employed Philistin or whether the Liquidators procured TVM to employ her, there is no doubt that it was the Liquidators who caused Philistin to provide financial and accounting services to TVM. From the time of their appointment as Administrators, on 17 December 2009, until about 5 March 2014, the Liquidators failed to uncover Philistin's fraud. To the contrary, Philistin continued to make false representations to the Liquidators, on a regular basis, in writing and orally, that the Timeshare Loans were largely performing property. Philistin did not bring to the attention of the Liquidators the bogus loans. They were simply kept "off the radar"
 8. Each of the legitimate Timeshare Loans was secured by unregistered mortgages over the timeshare debtors' real property, almost invariably their homes. TVM almost invariably lodged caveats over those properties .

Breaches of Duty under section 180 of the *Corporations Act*, the General Law and the National Credit Code

9. Section 180 of the *Corporations Act* states:

"A director or other officer of a corporation must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they:

- (a) *were a director or officer of a corporation in the corporations circumstances; and*

- (b) *occupy the office held by and have the same responsibilities within the corporation as the director or officer”.*

10. Section 9 defines “officer” as including the liquidator of the corporation.
11. In preserving, managing and getting in TVM’s timeshare debtors’ portfolio the liquidators breached section 180 of the *Corporations Act*. The liquidators also failed to exercise reasonable care and skill in performing necessary duties, under a Common Law duty of care¹.
12. A reasonable liquidator in the position of the Liquidators, exercising proper care and diligence would have discovered Philistin’s fraud within a short period after his or her appointment. A reasonable liquidator in the position of the Liquidators would have taken the following simple basic steps:
 - (a) writing to each timeshare debtor directing them to make future payments to him and seeking confirmation of their debt.
 - (b) reviewing each timeshare debtor’s file to check whether “paper-work” in order.
 - (c) after reviewing the relevant “paperwork” conducting a property search over each timeshare debtor’s property to verify that a caveat had been lodged.
 - (d) deducting from gross monthly timeshare debtors’ receipts all amounts paid to retire loans during that month. The significance of taking this step is that if, during a given month, a debt was retired ahead of its due date, the additional moneys received that month would tend to suggest that the portfolio was performing properly overall when such was not necessarily the case;
 - (e) Monitor each net monthly payment amount to check that as a minimum it exceeded 1/12th of say 14% of the total supposed timeshare debts.
 - (f) Spot check whether timeshare debtors’ balances were continually decreasing. If this were done, the bogus loans would have been discovered.
 - (g) inquire as to why some debtors’ balances were increasing without those debtor’s loans ever appearing in a debtors’ arrears listing.
13. It is submitted that any reasonable liquidator would not have failed to take any, let alone all, of those 7 steps.
14. The secured creditors were not privy to TVM’s bank statements showing which timeshare debtors made lump sum payments to retire their debts, in what amounts and when.

¹ *Sydlow Pty Ltd (in liq) v TG Koselas Pty Ltd* (1996) 14 ACLC 846. See also Walmsley and Ors, *Professional Liability in Australia* (Law Book Co, Sydney, 2002) pp 486 and 487 and McPherson’s *Law of Company Liquidation* at para [8.570].

Despite not having access to the documents in the possession of the Liquidators, Mr Rice wrote to Joshua Ho, of the Liquidators, in August 2013. He advised the Liquidators that on his simple calculations the monthly timeshare debtors' receipts did not appear to be adequate to cover the interest due, let alone reduce principal. Had Rice been shown figures adjusted for loan retirements, the shortfalls would have been starkly revealed to him from very early on during Handberg's administration.

15. Included in a letter dated 20 May 2014 from Charles Fice to Mills Oakley is an analysis showing a few of the bogus debtors' balances increasing by around 10% without any of those debtors ever appearing in the arrears list. We attach to this paper a table recently prepared by Charles Fice showing the movement of randomly sampled loans over a 10 month period during the 2011/12 financial year. This analysis shows bogus debts increasing (albeit slightly) during that period while legitimate debts decreased (save for Petrovski which increased marginally. It is believed that Petrovski was a genuine, but defaulting debtor).
16. The Liquidators have sought to justify their failure to carry out at least some of the 7 checks referred above. These excuses were initially set out in Mills Oakley's letter to Charles Fice of 25 June 2014 (attached) particularly in paragraphs 13 and 25.
17. In essence, the Liquidators claim they employed Philistin but took no steps to verify the loans because Rice and Reynolds urged him not to. This is untrue and Mr Rice has deposed that this is untrue. Mr Rice and Reynolds deny giving any directions of the sort to Handberg. Those directions, and the professed reasons for them, are absurd on their face². The directions are said to have been given by Rice and Reynolds in the presence of Peter Rawling, TVM's solicitor, and Bray, a director who were both present at the relevant meeting with Handberg in December 2009.

Consumer Protection Issues

18. In addition to the Liquidators' various breaches outline above, TVM engaged in a "credit activity" in respect to the Timeshare Loans³.
19. TVM engaged in a "credit activity" with respect to the Timeshare Loans and must have had an Australian Credit License authorising it to engage in the activity. Handberg acted

² but even if Handberg is believed, he should still have properly carried out the duties he owed TVM and its creditors irrespective of contrary "directions" from any third party.

³ The National Credit Code applies because in the case of the timeshare Loans the debtors were natural persons, the credit provided was wholly or predominantly for person, domestic or household purposes or to purchase, renovate, improve or refinance a residential property for investment purposes, charges were made for providing the credit and the credit was provided in the course of a business: section 5(1).

for reward as the agent of the licensee, TVM, in administering, managing and collecting the Timeshare Loans on behalf of TVM and the secured creditors.

20. Any liquidator acting with reasonable skill and care was obliged to ensure that TVM properly performed its obligations under the National Consumer Protection Act 2009 (Cth) more commonly referred to as the Consumer Code. Thus Handberg should have :
 - (a) reviewed each debtor file on his appointment to ascertain whether the Code was being complied with and accordingly whether TVM was or might be exposed to claims. In addition he ought to have re-examined any file each time the debtor fell into arrears before then taking the prescribed steps prior to launching default proceedings;
 - (b) written to each debtor advising them where to pay and where to send notices allowed to be sent by debtors under the Code;
 - (c) sent periodical statements to each debtor.
21. In respect of (a), inspection of the “bogus” loan files would have instantly revealed that there was no security in place in respect of any of the bogus debtors.
22. In respect of (b), the Consumer Code allows debtors to give the licensee notices requiring TVM to provide the debtor with various of information - with failure to provide a strict liability offence (e.g. a statement of balances and amounts under s 36(2) or a notice previously given under s 185(1)). Practically speaking, the debtors would not know where to send their notices, or more importantly their money, unless the liquidator had written to them. If a letter had been sent to a purported debtor in respect of only one of the 71 bogus loans, discovery of the bogus loans would have occurred immediately.
23. In respect of (c), the obligation to send periodical statements arises under s 33 of the Consumer Code. A failure to comply carries strict liability penalties. If the Consumer Code had been complied with, the sending of the first monthly statement to a “bogus” debtor would have revealed the fraud.
24. Finally, in order properly to comply with the Consumer Code Handberg was required to keep full and detailed records (see part 2.5 of the National Consumer Protection Act 2009) regarding all transactions on the file (particularly payments). Had he done so he would have quickly discovered something amiss.
25. The present is not a case where the liquidators, by reason of a lack of funds, are unable to make any but the most cursory of investigations. In the present case TVM was expected to have a significant surplus of funds, the Liquidators had available to them the

resources necessary to undertake the above simple steps. The Liquidators took none of those 7 basic steps.

26. As events turned out the Liquidators were handsomely remunerated in respect of their conduct which failed to discover the bogus loans. As at 3 August 2011 the Liquidators had “incurred remuneration and costs in the amount of \$437,964.75 exclusively in the care, preservation and realisation of the timeshare assets (Timeshare Remuneration)” for less than 20 month’s work.
27. Mr Rice’s email in August 2013 to Mr Joshua Ho of the Liquidators was initially dismissed as being misconceived. Despite their initial dismissal of the email it would appear that some time after about August 2013 some inquiries were made by the Liquidators to follow up what they had been told by Mr Rice. Those inquiries, whenever they began, resulted in the Liquidators confronting Philistin and informing Rice and his solicitors of her fraud on 5 March 2014.
28. In a letter from the Liquidators to Rice and Reynolds dated 19 March 2014 Handberg stated:

“I confirm that since around September 2013, I have been reviewing the overall debtor position in light of decreasing recovery rates without a corresponding increasing default rates. My investigations reveal several anomalies or discrepancies in the records maintained by Lynne Philistin. My attempts to resolve these issues culminated in Philistin attending my office on 4 March 2014 and making various admissions”.

29. It would appear that it was only because the matter was expressly brought to the attention of the Liquidators that any inquiry in the fraud was commenced. Further, why it took the Liquidators over 6 months to discover the fraud, after being told about the anomalies, requires explanation. Charles Fice’s description of the Liquidators, in its letter to Mills Oakley of 22 May 2014 as being “asleep at the wheel - and asleep for a very long time” is entirely apt.
30. The 71 bogus loans discovered by Handberg in March 2014 totalled \$1,803,976 . At that time the amount owing to secured creditors was \$374,779 . The difference, that is \$1,429,197 plus some interest, should have been available for the unsecured creditors of TVM and the unit holders of the BDT Trust if the bogus debts had been genuine, secured debts all paying interest of around 14% p.a.
31. In a protective Writ issued by the liquidators against TVM’s auditors, Price Gibson Pty Ltd, under SCI 2014 2835, the liquidators assert (at para 21):

“Until about 29 October 2011, TVM had the benefit of an insurance policy which included coverage for loss resulting directly from the dishonest or fraudulent acts of an employee discovered during the policy period”.

32. Then in para 22(c) they allege that:

“Until about 25 February 2012 Dantay maintained insurance which included coverage for loss resulting directly from the dishonest or fraudulent acts of any of its employees”.

33. If the Liquidators had discovered Philistin’s fraud before 25 February 2012 - that is within 26 months of their appointment – the Liquidators would have had a good chance of recovering for TVM’s unsecured creditors and the unit holders, the losses caused to TVM by Philistin pursuant to those policies of insurance.

34. It is submitted that further losses which were suffered by TVM as a consequence of the Liquidators’ breaches of s.180 of the *Corporations Act*, their general law duty of care and duties under the Consumer Code, include all the remuneration they received associated with managing and administering the timeshare debtors’ portfolio for a few months less than 5 years. That remuneration is estimated by the secured creditors to be approximately \$800,000, less the approximately \$110,000 recovered directly from timeshare debtor proceeds under the Settlement Deed of April 2013. Simply put, the services provided by the Liquidators, in respect of the Timeshare Loans, were of no benefit to TVM and the Liquidators’ remuneration for those services should be forfeited. As observed in McPhersons Law of Company Liquidation at paragraph [4.7.2260]: *“A liquidator who breaches his or her duty to exercise a reasonable degree of professional skill and care ... may be denied costs in instituting futile legal proceedings, and may forfeit remuneration if he or she is guilty of a breach of duty.”*⁴

Further, a liquidator is only entitled to indemnity out of the assets being administered for costs and expenses reasonably and properly incurred in the administration⁵

35. It is contended by the secured creditors that the Liquidators are vicariously liable for damages for Philistin’s misrepresentations to TVM over a period in excess of 50 months. There are two matters to consider. First, there is a dispute as to whether Philistin was employed by the Liquidators, or whether the Liquidators caused TVM to employ Philistin.
36. If, as suggested by the Liquidators, Philistin was employed by TVM, her contract of employment is invalid on the basis that the Liquidators failed to comply with s. 477(2B) of the *Corporations Act*. No attempt has been made to seek retrospective approval of this

⁴ Re Kal Assay Southern Cross Pty Ltd (in liq) (1992) 9 ACSR 245 (Hawkins A M at 263); Porter v Miller Street Pty Ltd [2008] FCAFC 77, the Court at [64].

⁵ Mead v Watson [2005] NSWCA 133 at [11] – [16], [154], [160].

decision. To the contrary, other contracts were the subject of an application for retrospective approval, but not the employment of Philistin.⁶

37. As a consequence of the Liquidators' failure to comply with s. 477(2B) any contract between TVM and Philistin is likely to be void or at least unenforceable. As such, as the Liquidators are likely to be held to have been directing her activities, and as such they were at law her employer and are vicariously liable for her acts and omissions.
38. The special purpose liquidator is referred to the commentary in *Laws of Australia*, in which at para. 4.7.1920 it was observed that while the consequences of a liquidator's failure to obtain the requisite leave of the court (or approval of the creditors or committee of inspection) before exercising his powers is not clear, it has been said that the consequence may be that the entire transaction, as between the company and the liquidator, is "invalid"⁷ In other cases the "indoor management rule" has been applied⁸.
39. In the case of *Rendall v. Conroy*, Queensland Law Journal, 1897, Chubb J held that the contract, as between the liquidator and company, was void, on the basis that it had not been entered into with the appropriate approval.
40. In *KD Morris & Sons Pty Ltd (in liq) v. Bank of Queensland Ltd* (1980) 146 CLR 165 Murphy J, following *Rendall*, was of the opinion that approval of the Court of the committee of inspection was required in respect of the transaction and that the powers under the Corporations Law did not authorise the liquidator. As a consequence the company's liability to the bank was not a cost or expense of the winding up and it had no priority over other debts.
41. Statutory receipts and payment records filed with ASIC by Handberg reveal that Philistin received approximately \$65,000 in wages during her purported employment by TVM. Given that Handberg flagrantly disregarded the need for Philistin's employment contract

⁶ It appears that the Liquidators sought approval of some contracts, but not the contract with its legal advisers, Mills Oakley. The secured creditors' legal representatives were not parties to that application, although they had notice of it and sought to put some material before the Court. As observed in McPherson's Law of Company Liquidation at [8.1010]:

"Hence, if the liquidator ... appoints a solicitor to assist in the performance of her or his duties, [9] the contract is made with, and the liability fixes upon, the company and not the liquidator, since it is in respect of the assets of the company and not to the liquidator personally that credit is given by the other party to the transaction. [10]"

It is not known whether this matter was brought to her Honour's attention.

⁷ citing *Rendall v Conroy* (1897) 8 QLJ 89; *KD Morris & Sons Pty Ltd (in liq) v Bank of Queensland Ltd* (1980) 146 CLR 165; *Murphy J* at 179 (CLR).

⁸ According to McPherson at paragraph [8.1380], "(Perhaps the more widely accepted view) in the absence of the required sanction is a matter that affects the relationship between the liquidator and the company or its creditors and cannot be made the subject of objection by a third party".

to be scrutinised and approved by the Court (or creditors), even nunc pro tunc, he should repay TVM the total amount of those wages.

42. The Liquidators contend that they did not cause Philistin to enter into a *new* contract with TVM but she merely continued under her *old* contract with TVM which did not require Court approval. Such contention is incorrect. According to McPherson's Law of Company Liquidation:⁹

"It appears that there is widespread support for the view that if a court goes into voluntary liquidation because of insolvency, the resolution to wind up indicates the fact that the company is not able to perform its obligations under the employment contract and as a consequence it acts as a dismissal notice. [7¹⁰] Further, as noted at [7.610], s 558 entitles employees to claim payment under s 556 as though dismissed on the date the winding up began, and makes provision for debts owing and entitlements due to persons employed by the company after liquidation, without distinguishing between voluntary and compulsory winding up."

43. Further, as a consequence of Philistin's contract of employment being void, as between her and TVM, her employment must have been by the Liquidators personally. Where the liquidator employs an agent pursuant to s 477(2)(k), he must constantly and directly supervise the agent in matters of importance and substance within the liquidator's area of competence. A liquidator must not simply hand over to the agent all of his powers and functions. This is what appears to have occurred in this case.¹¹

44.

45.

46.

(a)

(b)

(c)

47.

48.

49.

⁹ at para. 7.620

¹⁰ Citing See Bennetts, "Unfair Dismissal Proceedings in Company Liquidation and Receivership" (1990) C&SLJ 158 at 162; Gronow M, "Insolvent Corporate Groups and their Employees" (2003) 21 C & SLJ 188 at 192.

¹¹ See, for example, McPherson's Law of Company Liquidation, para. 8.1140.

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DATED: 29 October 2014

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