

25 January 2009

**SECOND REPORT OF THE LIQUIDATORS  
TO CREDITORS AND MEMBERS OF  
BAIRDS ROAD PHARMACY LIMITED (IN LIQUIDATION)**

**INTRODUCTION**

Bairds Road Pharmacy Limited (In Liquidation) ("the Company") was placed into liquidation on Friday, 15 May 2009 at 4.58 pm by order of the High Court in Auckland pursuant to Section 241(2)(c) of the Companies Act 1993 ("the Act"). Gareth Russel Hoole and Kevin David Pitfield were appointed joint and several liquidators of the Company at that time.

This report should be read in conjunction with the liquidators' first report dated 24 June 2009.

**RESTRICTIONS**

This report is not intended for general circulation, nor is it to be reproduced or used for any purpose without the liquidators' written permission in each specific instance. The liquidators, Staples Rodway Limited, its employees and agents do not assume any responsibility or liability for any losses occasioned to any party for any reason including as a result of the circulation, publication, reproduction or use of this report contrary to the provisions of this paragraph.

The liquidators reserve the right (but will be under no obligation) to review this report and, if considered necessary, to revise the report in light of any information existing at the date of this report which becomes known to them after that date.

**EVENT SINCE THE LAST REPORT**

The liquidators have not been able to recover any funds from the related party loans disclosed in their first report. Having conducted extensive investigation into the wider group of companies owned or controlled by the Amarsee family, including undertaking land title searches in respect of all companies which are known to be associated, the liquidators are of the view that in all but one case, all significant land holdings are fully encumbered. Whilst statutory demands were served on all known debtor companies, only one liquidation proceeding was initiated against the related parties, as first and subsequent ranking security holders would enjoy priority over and above the Company, which ranks only as an unsecured creditor to the related parties. The one case where the liquidators did commence liquidation proceedings was against

Madhvi Developments Limited (“Madhvi”). Based on discussions with Madhvi’s liquidators, it does not appear as though there will be any recovery for Madhvi’s unsecured creditors.

In the case of all other debtors, the costs of pursuing claims would not, in the liquidators’ view, be economically viable with little prospect of any economic recovery through the pursuit of the Company’s or its related parties’ director given that he was adjudicated as a bankrupt on 6th August 2009. Based on the information available to the liquidators, the directors of the Company held little regard to the concept of the Company as a separate legal entity and exposed the Company to many transactions with related parties without taking appropriate measures to protect the Company’s assets.

In this regard, offences against the Act will be reported to the Registrar of Companies in accordance with section 258A of the Act.

Since the liquidators’ first report the injunction obtained preventing the sale of the pharmacy business was contested by both the purchaser, being Pharmacy Group Holdings Limited (“PGH”) and a third party financier who held a second ranking GSA over the entire assets and undertakings of PGH.

This led to an application being made to the court by these parties to rescind the injunction, which application was defended by the liquidators resulting in PGH continuing to hold and trade the pharmacy business, but prevented PGH from dealing with the business assets and the proceeds therefrom, other than in the normal course of business.

The substantive proceedings brought to overturn the Sale and Purchase transaction were scheduled to be heard in November.

In the meantime, the liquidators became aware that parties from whom a substantial portion of the pharmacy business was sourced, were intending to open their own pharmacy. This would have led to a substantial erosion in value of the pharmacy business.

Further the liquidators became aware that PGH was dissipating the assets and proceeds from the operation of the pharmacy business that would have otherwise been available for the creditors of the Company.

As a result of the liquidators’ concerns about the pharmacy business and its assets, the liquidators sought and obtained an alteration to the injunction which allowed PGH (subject to the liquidators and the second ranking GSA holders approval) to sell the assets of the pharmacy business with the condition that all proceeds of the sale would be held in trust pending the outcome of the substantive proceedings.

Due to the substantial costs being incurred; the fact that there were no other company assets from which the liquidators would realise funds; and the liquidators invitation to the creditors to fund the liquidators’ ongoing costs was declined, the liquidators sought alternative avenues to enable them to pursue the court proceedings.

Whilst various alternatives were considered (including third party litigation funding), ultimately the petitioning creditor provided an immediate solution by agreeing to fund the liquidators' legal expenses provided for in Schedule 7 (1)(1)(e) of the Act.

As the substantive hearing approached, PGH put the liquidators on notice that they would no longer be defending the proceedings because all assets were fully encumbered to the GSA holder and/or related parties thereof. However, the second ranking GSA holder (who had in the meantime engaged their own legal counsel and barrister) proceeded to file their statement of defence and advised that the proceedings were going to be contested, but did agree to a sale of the pharmacy business and for the proceeds to be retained in the escrow in accordance with the altered injunction.

After seeking and obtaining expressions of interest and indicative non-binding bids for the pharmacy business, the liquidators ultimately identified and caused the strongest bidder to conclude a sale and purchase contract with the PGH. Prior to settlement of the sale and purchase agreement, PGH was placed into liquidation. Whilst this event delayed and added extra costs to the settlement process, ultimately settlement was achieved and the proceeds were placed into escrow with independent solicitors.

In addition to strongly contesting the pending substantive proceedings, the second ranking GSA holder threatened to seek costs. With the proceeds of sale then available, the liquidators re-evaluated their position taking into consideration:

- (a) That the proceedings would be defended;
- (b) That continuing the proceedings would involve significant additional costs;
- (c) That inevitably there would be some litigation risk in continuing with the proceedings particularly as against the second ranking GSA holders claimed interest in the proceeds from the pharmacy business; and
- (d) The funding creditor's desire to achieve an out of court settlement.

After seeking and obtaining input from their legal advisors and QC as to the level of litigation risk and the additional costs which might be expected to accrue, the liquidators felt it prudent to seek an out of court settlement which maximised recovery and minimised risk to the liquidation estate.

Whilst further negotiations ensued, ultimately settlement was achieved whereby all parties (including the liquidators of PGH) obtained a share of the proceeds being held in escrow.

As at the date of this report there has been a partial release of the proceeds and this has been applied by the liquidators in accordance with the statutory priorities of payments contained in the Schedule 7 of the Act.

The liquidators are still awaiting release of the balance of these funds which have been held up due to a seeming lack of expediency on the part of the PGH liquidators.

## **ESTIMATED DATE OF COMPLETION OF LIQUIDATION**

Subject to any unforeseen matters arising from the investigation of the Company's affairs and the timeframe associated with the collection of receivables and the release of the balance of the settlement proceeds, the liquidators tentatively estimate that this liquidation will be completed within the next year.

Please note that all subsequent reports prepared by the liquidators will not be mailed to the creditors and members of the Company, but will be available on the New Zealand Companies Office and Staples Rodway websites.

Should you have any queries regarding the liquidation of the Company, please do not hesitate to contact Andrew Turner at the office of the Liquidators on telephone 968 9200 or by email on [andrew.turner@staplesrodway.com](mailto:andrew.turner@staplesrodway.com).



.....  
Gareth Russel Hoole  
JOINT LIQUIDATOR



.....  
Kevin David Pitfield  
JOINT LIQUIDATOR