

7th March 2013

Manager
Corporate Governance and Reporting Unit
Corporations and Capital Markets Division
The Treasury
Langton Crescent
PARKES ACT 2600

Re: Submission – Insolvency Law Reform Bill 2013.

Dear Sir/Madam,

We have studied with interest the proposals dated December 2011 with particular attention to Ch10 Regulator Powers, CH11 Specific Issues for small business and CH12 Corporate insolvency reforms following on to the Exposure Draft – Insolvency Law Reform Bill 2013.

We are encouraged by the work that has been done to date and the changes that are being proposed to address a range of issues in this area.

We are a small manufacturing business located in Ballarat in regional Victoria and would like to bring to your attention in this submission two practical case studies. One relates specifically to our company and the other relates to an article published by Mr Karl Quinn of the Age newspaper in Melbourne. I recently met with Mr Quinn to discuss these matters and we agree that both cases show remarkable similarities.

The purpose for our submission is to highlight apparent deficiencies in the operation of the current insolvency process and regulatory environment. These examples are being cited as benchmarks to test the proposed changes as effective solutions to what is currently happening in practice. Currently there is a widely held perception that the process does not achieve the goal of loss minimisation for the stakeholders, particularly for the smaller creditors. An immediate objective should be to restore integrity to the process to encourage more creditors to actively participate rather than seeing involvement as a waste of time.

Our company specific case study relates to Lloyd Brewer Marine Pty Ltd, “ACN 102 511 692” trading as Kincaid Marine Rolco. whose principal place of business is at 15 Foden Ave Somerton and whose Sole Director/Shareholder is Mr Lloyd Brewer. We have provided machined components to this firm from 2007 and known Mr Brewer for a number of years prior to that and been supportive of his endeavours. In February 2010 we withdrew credit facilities due to collection difficulties although we still supported the firm by supplying on a prepaid basis while continuing to request payment of arrears. Outstanding credit invoices relate to the period Dec 2009 to Feb 2010.

The company (“ACN 102 511 692) resolved on 9th October 2012 to enter voluntary liquidation. The company changed its name a few days before entering liquidation. The summary of affairs of a company (ASIC form 509) supplied by the liquidator shows the assets as virtually nil (\$3411) and a total deficiency of \$972,378. The major assets had been disposed of via a previous sale (date unknown) to another company Ski Wake Boats Pty Ltd “ACN 152 677 033 with the same Sole Director/Shareholder

(Mr Brewer) and the same principal business address. These details can be verified from the ASIC website and as far as we know the business trading is ongoing.

We received from the appointed liquidator Mr Andrew Juzva of G.S. Andrews Advisory of Carlton, Victoria notice of his appointment, form 509 (RATA) and details of secured, preferential and unsecured creditors, details of creditors meeting and fee structure etc which seemed to satisfy most procedural requirements. Although, the concept of the company officers agreeing to pay the liquidators fees up to a limit of \$20,000 (limit set at Creditors meeting) seemed to have some problems with respect to limiting the scope of the process. The amount stated as owing to our company (\$18,613.92) agreed with our records. Other significant debts included, ATO – Insolvency team (\$85,010.61), Lloyd Brewer Properties (\$117,662.38), Other (118,986.27 incl. \$18,613.92 above) all unsecured.

The most significant secured debt was a debenture mortgage held by Lloyd Brewer (\$585,000.00). The fuller implications of the issues relating to these items is worthy of consideration at another time, not the least with respect to consequential losses to Commonwealth revenue.

In a subsequent letter Mr Juzva (16/10/2012) indicated that he was conducting an enquiry into the affairs of the company, and accordingly, if there were any matters which we believed should be investigated could we please provide details and supporting documentation.

Following an initial open and very cordial conversation with Mr Juzva on 13/11/2012 and a follow up confirmation letter from myself on 17/11/2012 a number of further questions were raised. A number of these questions have been satisfactorily answered through correspondence via email up to COB 21/12/2012, others have not. Two of the most significant unanswered items were as follows.

Firstly, relating to a request for verification from the company and bank records to support the \$585,000.00 debenture mortgage to Mr Brewer. This was not addressed. Note: This would seem to be a relatively simple matter of referencing the directors loan balance in the company balance sheet in the previous tax return and verifying movements in the loan account since.

Secondly, with respect to a request for copies of tax invoices relating to the sale of all company assets, relevant company bank statements showing the receipt and disbursement of funds and also a copy of the independent valuers report relating to these assets. We were advised as follows “Persuant to sec 486 of the Corporations Act, the court may make such orders for inspection of the books and records of the company by creditors as the court sees just.....”. It was then suggested by Mr Juzva that “In the circumstances you may wish to make an application to the court for inspection of the books and records”. Enough said.

In addition to the above we provided a copy of our detailed aged debtor invoice listing to assist Mr Juzva with his assessment as to whether any insolvent trading had taken place. Additional detail as to questions raised with the liquidator and the responses therefrom are available if further detailed enquiry is of interest.

The second case study or example is related in an article in the “Age” Tuesday 8th January 2013 By Karl Quinn regarding liquidation of a firm trading as HIT Productions. A copy of the article is appended as a pdf image. It is mostly self explanatory although again a look at the public revenue effects may be appropriate.

The only other comment I chose to make is that I struggle to understand how a company relying on government grants and obviously not making profits can accumulate a debt to the Tax Office of \$692,387.00

Insolvencies can cause immense damage to businesses and thereby individuals both on a financial and emotional level especially if poorly managed and may also result in a reduced confidence in our business frameworks. For example, a \$10,000.00 bad debt to a business operating at a 10% margin requires \$100,000.00 extra sales to make it up. Bad debts are therefore a significant risk to the viability of small businesses in particular.

After having reviewed the proposed amendments to legislation and encouraged that they will improve the process, I believe, that a further step should be considered to enhance the ability to expose poor corporate conduct and reduce the incidence of these activities falling through the cracks between responsibilities of different administrative bodies through poor communications. I also believe that the key is through the insolvency practitioners in that they should be accountable to all stakeholders and participate in a mandatory reporting regime to draw the process together. The principal stakeholders include all Creditors, ASIC, Insolvency Practitioners, Shareholders, Directors, ATO and relevant Courts.

Reporting should highlight where there are areas of concern with respect to one or more of the following.

- Conduct and ongoing fitness of Directors and company officers.
- Verification of all claims especially debenture charges for Directors
- Identification of insolvent trading issues.
- Identification of non arms length asset disposals
- Identify possible Phoenix activity attempting to defraud creditors.
- Other areas as appropriate.

These areas as a minimum should be signed off in each insolvency case.

The Insolvency Practitioners are in the best position to assess these issues and be the eyes and ears for the other stakeholders. They have the training, are in effective control of the company and its assets, have control and access to the company records and also direct access to the company directors and staff. They are therefore best placed to indicate where further regulatory action may be needed to be taken,

In conclusion, I am personally available to provide further specific detail with respect to matters raised in this submission and take this opportunity to wish you all the best in formulating this legislation.

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Theatre company in liquidation but the shows go on

By **KARL QUINN**
ENTERTAINMENT EDITOR

A MELBOURNE-BASED theatre company that has received more than \$900,000 in federal government grants since December 2010 has gone into liquidation during the Australian Taxation Office almost \$700,000.

HIT Productions, which is based in Bostmans and run by 54-year-old actor-promoter Christine Harris, entered liquidation on December 22 with debts totalling about \$1.6 million.

Almost \$1 million is identified in a list of known creditors lodged with the Australian Securities and Investments Commission as being owed to Ms Harris (\$900,000) and a "Mr Harris" (\$61,000). The company's largest single creditor other than Ms Harris is the Tax Office, which is owed \$62,887.

Until the day before it entered liquidation, the company that owes the money was registered with ASIC as Follow Your Dreams. But it has long failed and been known as HIT Productions.

The company specialised in taking theatrical productions to the suburbs and regional Australia, and has been a frequent recipient of arts grants through state and federal regional touring programs.

In July 2011, it received a federal grant of just under \$25,000 to tour a production of David Williamson's *Let the Sunshine*, starring former *Baywatch* star

Peter Phelps and one-time *Chantrelle* Ally Fowler.

In October of the same year, it received almost \$240,000 to take *Diving for Pearls* on the road. That production starred Kevin Harrington, who will be seen as long-distance runner Cliff Young in the ABC TV tele-movie *Cliff* this year. Those productions also attracted \$50,000 and \$63,000 of Victorian government funding support in the 2011-12 financial year.

Lately though, HIT appears to have had some misses. In September, it held "the greatest clearance sale ever" in which, according to its Facebook page, sets, props and costumes were all "going at bargain prices".

On December 21, Ms Harris changed the name of her company to its Australian Company Number. The next day, it entered liquidation. Ms Harris had also registered on November 22 a new company HIT Productions Pty Ltd, which appears still to be trading.

In fact, it appears to be still operational for the new-style HIT. According to its Facebook page, the company has a busy roster of shows lined up for 2012, including a revival of David Williamson's *The Great*, starring John Wood, and the Herritspeers vehicle *Be My Party* (*And I'll Die If I Want To*).

The latter is part-funded by the Victorian government, which awarded HIT Productions \$150,000 in July 2012 towards three regional tours this year.

"Age" Tuesday Jan 8th 2012



Liquidator: Christine Harris (second from left). PHOTO: MICHAEL SHAW